Transfer of Development Rights

Project Findings and Program Recommendations

Skagit County Planning & Development Services in partnership with
the Board-appointed TDR Advisory Committee

July 11, 2014

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Chapter 1. **Executive Summary**

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

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

Overview of TDR

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

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

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

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

Why is Skagit County considering TDR?

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

There has been a long-standing interest in exploring the use of TDR in Skagit County. A citizen advisory committee that assisted the County with its 2005 Comprehensive Plan Update recommended increased use of incentive-based tools such as TDR to conserve natural resource lands. The Envision Skagit Citizen Committee also recommended implementation of TDR in its 2011 *Final Report and Recommendations*. The Board of Directors of Skagitonians to Preserve Farmland has recommended implementation of a TDR program in Skagit County by 2020.

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

Will TDR work in Skagit County?

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

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

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

Major concerns about TDR

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

A few critics see more fundamental flaws in TDR and believe Skagit County should not implement a program now or in the future. They believe TDR interferes inappropriately in the private development market by requiring developers to pay to access additional development opportunities. Others say TDR is not needed because existing comprehensive plan and zoning protections adequately conserve rural and natural resource lands.

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

Conservation goals and sending areas

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

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

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

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

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

Development goals and receiving areas

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

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

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

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

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

Developer incentives

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

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

TDR market analysis

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

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

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

Heartland did identify several benefits to implementing a program now: it will allow the County to be prepared to capture funds for conservation when development does occur and to fine-tune and expand awareness of the program before major utilization occurs. Heartland indicated program usage would likely increase as the economy strengthens, existing development capacity is built out, and additional receiving areas are created.

Transaction mechanisms: TDR and density credits

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

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

TDR and existing conservation programs

Farmland Legacy

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

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

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

City of Burlington

The TDR market analysis provides Burlington several options related to its Agricultural Heritage Density Credit program: (1) Maintain the program as is; (2) Consider raising fees for density credits based on the improving housing market; and (3) Implement a new density credit or TDR option linked to increases in commercial development potential. The last action would involve implementing a floor area ratio (FAR) cap on commercial development permitted outright through zoning. The cap could be exceeded with the purchase of commercial density credits or TDRs.

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

Committee recommendations

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

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

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

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

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

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

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

Next steps

This report seeks to provide the Board of County Commissioners with information to help it decide whether to move forward with a TDR legislative proposal. The report may also help cities and towns consider TDR options now or in the future. If the Board decides to move forward with a legislative proposal, the next steps would include:

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

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

Chapter 2. **Introduction**

At the direction of the Board of County Commissioners (Board), the Skagit County Planning and Development Services Department (Department) has been working with a Board-appointed transfer of development rights (TDR) Advisory Committee (Advisory Committee) to consider the possible development and implementation of a TDR program in Skagit County.

As stated in Resolution No. R20120276 (see Appendix A) appointing the Advisory Committee, its role is to review and provide input on key policy and technical issues and TDR public outreach efforts to County planning staff and consultants, the Planning Commission, and the Board. Specific tasks that the Board assigned to the Advisory Committee through the resolution are as follows:

- Review technical work products developed by project staff and consultants
- Provide input on draft work products
- Share information with respective organizations and agencies
- Bring forward interests, issues, concerns of respective agencies and organizations
- Help to promote awareness and understanding about the TDR project by distributing project information through email, word-of-mouth, and other public outreach methods.

The Advisory Committee includes representatives of organizations and sectors that might directly participate in a Skagit County TDR program, including agriculture, forestry, conservation, development, real estate, banking, and urban planning. As appointed, the Committee also included two at-large members to help represent the interests of Skagit County residents generally:[1]

TDR Advisory Committee Members

Charlie Boon, The Boon Team/REMAX	Margaret Fleek, City of Burlington
Mike Hulbert, Skagit County Conservation Futures Advisory Committee	Allen Rozema, Skagitonians to Preserve Farmland
Martha Bray, Skagit Land Trust	Charlie Guildner, People's Bank
Paul Kriegel, Skagit County Forest Advisory Board	Kendra Smith, Skagit County Farmland Legacy Program
Wayne Crider, Skagit Island Counties Builders Association	Jana Hanson, City of Mount Vernon
Bruce Lisser, Lisser & Associates	Ed Stauffer, Skagit County resident
John Doyle, Town of La Conner	Jennifer Hagenow, Skagit County resident
Kim Mower, dairy farmer	Joe Woodmansee, Woodmansee Construction

[1] One of those at-large members, Jennifer Hagenow, moved out of Skagit County partway through the process. Charlie Guildner stopped attending meetings after the first several months.

Advisory Committee members have met more than a dozen times over a nearly two-year period to learn about and offer their thoughts and insights on transfer of development rights and its potential applicability in Skagit County. They have shared their diverse views and perspectives in a respectful manner and have contributed significant knowledge and insight to the Skagit County TDR project. The Board of County Commissioners and project staff and consultants thank them for their dedication to the project and to the Skagit community.

The following individuals have also assisted with the project as experts in the fields of GIS analysis, transfer of development rights, and real estate economics. They have provided technical assistance, analysis, policy guidance, and administrative support to the project:

- Josh Greenberg, Skagit County GIS, who has provided mapping and GIS analysis.
- Taylor Carroll and Nicholas Bratton, TDR policy experts with Forterra,[2] a conservation and community-building organization based in Seattle, with whom Skagit County contracted for TDR technical assistance.
- Doug Larson, Matt Hoffman, and Ian Loveless, real estate and economic analysts with Heartland, a consulting firm that Skagit County hired to conduct a TDR market analysis.
- Heather Ballash, senior planner with the Washington State Department of Commerce, which oversees the grant that has provided financial assistance to the project. Ballash is also the state's coordinator of the four-county regional TDR program.
- Linda Christensen, grant manager with the Planning & Development Services Department.

Additionally, in early January 2014, Heartland staff and TDR project manager Kirk Johnson held three focus group meetings to seek input on the market and economic analysis from potential TDR program users. These included forest land managers, owners, and conservation professionals; farmers and farmland preservation advocates; and developers and potential receiving-area landowners. Skagit County also extends its appreciation to those participants who are listed in Appendix B .

Several members of the public attended and provided comments at various Advisory Committee meetings.

This report seeks to provide a comprehensive overview of transfer of development rights programs and methods and TDR's potential application in Skagit County. It seeks to reflect the varied views and opinions of Advisory Committee members and others who have participated in project discussions about TDR.

2 Formerly the Cascade Land Conservancy.

The resolution appointing the Advisory Committee did not formally task it with developing consensus recommendations about implementation of TDR in Skagit County. However, this report does seek to identify areas of general agreement or disagreement within the Committee on key issues, including whether:

- Additional land conservation measures are warranted in Skagit County beyond those already contained in the county's comprehensive plan and development regulations and offered by public and private programs in Skagit County.
- Some form of TDR program should be implemented in Skagit County.
- Adequate demand exists or can be created through public policy actions to make a TDR program effective here; and
- Various receiving and sending areas under consideration through this process should be included in a County TDR program if one is implemented.

Where information, data, or recommendations are derived from sources other than the Advisory Committee—for instance, from published reports, from the policy or technical analyses conducted by Forterra, Heartland, or other entities for this or other TDR projects—the report cites the origins of that material.

Advisory Committee members had an opportunity to comment on a draft of the report at a Committee meeting held on June 4, 2014. They were also provided an opportunity to submit written statements for inclusion in the report. Several Committee members submitted written statements, which are included in Appendix C.

Chapter 3. **An Overview of TDR**

What is Transfer of Development Rights?

TDR is a market-based tool for helping to implement a jurisdiction's growth and conservation goals. TDR uses the "economic engine" of new growth to conserve lands that provide economic and environmental benefits valued by the community, such as working farm and forest lands, ecologically significant areas, and open space. TDR also offers additional choices and options to resource and rural landowners interested in the permanent conservation of their land.

A transfer of development rights program contains several elements. First, a community identifies areas that it wants to conserve, known as "sending areas," which often include farms, forests, and open space lands. Second, the community identifies "receiving areas." These are areas best suited for locating additional growth and are typically located in cities, urban growth areas, or carefully selected rural areas. Receiving areas should have the infrastructure capacity and services to meet the needs of increased growth.

By purchasing development rights from sending area landowners, developers gain access to additional development potential or other development incentives in receiving areas. Sending-site landowners who sell residential development rights place a conservation easement on their property that permanently prohibits residential development. The landowner retains ownership of the land and all other property and use rights other than those retired through the conservation easement.

TDR does not limit growth; rather, it allows communities to plan more effectively by directing that growth into areas most appropriate for it. In their comprehensive plans and development regulations, communities can identify which areas are suitable to receive development rights and how much additional development is appropriate.

Some key features of TDR programs include:

- ***TDR is voluntary***. Sending-area landowners would have complete discretion to participate in the program or not. Landowners choosing not to participate would experience no change in the zoning or use of their land. Likewise, in receiving areas, developers not participating in TDR could continue to build to current zoning. Developers wishing to build above current zoning could do so by purchasing TDR credits.
- ***TDR respects property rights.*** TDR provides another option for rural or natural resource land owners who want to permanently conserve their lands. A voluntary TDR program respects private property rights and can provide a new source of revenue for sending-area landowners.
- ***TDR is market-based***. TDR creates a marketplace enabling property owners to buy and sell development rights to one another. Individual property owners may freely negotiate prices for the purchase and sale of these rights. TDR engages the private development market to support conservation at a time when many sources of public conservation funding are in decline and little appetite exists for tax increases.

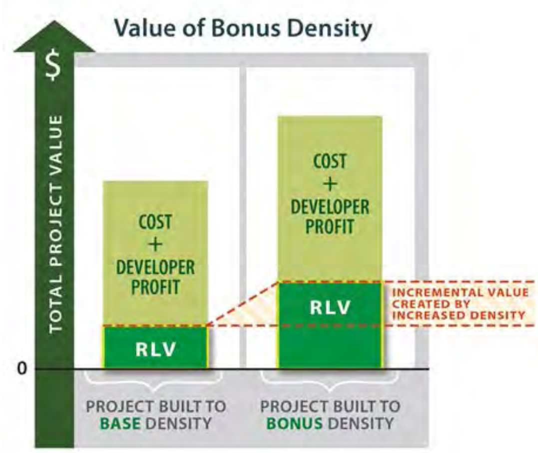
- ***TDR is flexible.*** TDR can be designed to accommodate the needs of each community. Of the more than 200 TDR programs in the United States, the majority focus on farmland and environmental conservation.[3] The goals of each program reflect the conservation and development objectives of the jurisdiction. A key purpose of this review is to identify the specific goals a Skagit County TDR program could serve.

Density credit or fee-in-lieu: a variation on TDR

This report discusses a variation on TDR, called density credit or fee-in-lieu, in Chapter 8 on page 70. Under this approach, developers would purchase density credits from the County (or a participating city) to access additional development potential in designated areas. The County or city would use fees generated from the sale of density credits to conserve land prioritized for conservation. Similarities and differences between TDR and density credit programs will be explored in more detail later.

What is the rationale for TDR?

TDR is a form of what is known as incentive zoning. Developers who access additional development potential through an incentive-zoning program have the opportunity for additional financial gain. In return, they provide a public benefit back to the community. When public policy or zoning decisions create additional development potential on a parcel of land, there is a corresponding increase in economic value associated with the land. Typically, all of that increase accrues to the private landowner.[4] Under TDR, a majority of the increased land value accrues to the developer—providing an economic incentive for additional development—but a portion is retained and used for land conservation.



Credit: Heartland

TDR can complement zoning

TDR can complement traditional zoning by compensating landowners who voluntarily choose to sell residential development rights and protecting property from development in perpetuity through a conservation easement. Some suggest TDR is an *alternative* to comprehensive planning and zoning and that early in the GMA planning process Skagit County opted to pursue zoning *instead* of TDR. However, that reflects a misunderstanding of how TDR can work with traditional

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[3] Forterra national TDR program database, updated July 2012.

[4] That increase can be significant, as when land zoned for rural development at one dwelling unit per 10 acres is moved into an urban growth area with a minimum urban residential density of four dwelling units per acre, resulting in a 40-fold increase in development potential. Of course, there are also additional costs associated with urban development.

zoning tools and overlooks the Skagit County Comprehensive Plan's numerous references to TDR as an option worth exploring.

- **The Growth Management Act** states: "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." (RCW 36.70A.090)
- **Skagit County Countywide Planning Policy (CPP) 4.3**, used to guide development of the Comprehensive Plan, similarly states: "The Comprehensive Plan should support innovative land use management techniques, including, but not limited to, density bonuses, cluster housing, planned unit developments and the transfer of development rights."
- **CPP 4.3 is directly quoted in Comprehensive Plan Chapter 2**, the Urban, Land Use and Open Space Element of the Comprehensive Plan (p. 2.3).

An authoritative resource on TDR program development, *The TDR Handbook*, notes: "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."[5]

On the receiving side, TDR can augment zoning by providing an incentive to developers who choose to build at densities or intensities above those allowed by a jurisdiction's baseline zoning. This can help to concentrate development in areas best suited for growth.

In summary, TDR should not be seen as an alternative approach to achieving Skagit County's land use goals nor as a dramatic solution to growth and conservation challenges. Instead, it is another tool in the planning toolbox, one that works on a voluntary and incentive basis, to help jurisdictions meet the goals established through their comprehensive plans and development regulations.

Why is Skagit County considering TDR?

The Skagit County Comprehensive Plan does an admirable job of protecting natural resource lands, rural character, and environmental resources. As Committee member Ed Stauffer has stated, "The Skagit County Comprehensive Plan is a resource conservation plan." Skagit County went through an extensive process of developing the plan through the 1990s and the 2000s to reflect and meet local needs and achieve compliance with the Growth Management Act (GMA). The current comprehensive plan and development regulations are in full compliance with GMA.

The Skagit County Comprehensive Plan, together with the Countywide Planning Policies and the plans of other cities and towns in Skagit County, encourages the majority (80%) of new population growth to locate in cities and their designated urban growth areas. This planning framework has

[5] Arthur C. Nelson, Rick Pruetz, and Doug Woodruff, *The TDR Handbook: Designing and Implementing Transfer of Development Rights Programs,* Island Press, 2012, p. xxiii.

been effective, as approximately 80% of Skagit County's population growth from 2000 to 2010 located in cities and designated urban growth areas, according to an analysis of U.S. Census data.[6]

The comprehensive plan protects rural character and natural resource lands of long-term commercial significance through low residential densities and development regulations that protect the functions and values of those lands, while respecting private property rights and providing landowners with opportunities for the economic use and enjoyment of their land.

Many Skagit County rural residents are excellent stewards of their land. However, residential development in natural resource lands – even at the low densities allowed under the comprehensive plan and development regulations—can negatively affect resource management activities. Homes built in or immediately adjacent to natural resource lands can generate conflict with generally-accepted farming, forestry, or mineral resource activities—whether that's plowing a farm field in the early morning, applying chemicals or fertilizers used in farming and forestry, harvesting forest lands, or blasting and hauling of mineral resources.

For these reasons Skagit County has implemented (as required by GMA) "right to manage" rules and regulations establishing that natural resource activities are the primary and preferred uses on designated natural resource lands. While these provide some measure of protection, they are not a cure-all.

Additional residential development in natural resource lands or environmentally sensitive areas can have unintended negative environmental impacts due to expansion of road networks, increases in impervious surfaces, and conversion of natural landscapes.

> "Where non-Natural Resource Land uses extend into natural resource areas or exist side-by-side, natural resource management operations are frequently the subjects of nuisance complaints and on occasion have been forced to cease or curtail operations. Such nuisance complaints discourage investments in Natural Resource Land improvements to the detriment of adjacent Natural Resource Land uses and the economic viability of the County's Natural Resource Land industry as a whole."
>
> Skagit County Code 14.38.010(2)(a), Right to Manage Natural Resource Lands

For these and other reasons, there has been a long-standing and broad-based interest in exploring the use of TDR in Skagit County, as evidenced by the following:

- Within three years of its founding, Skagitonians to Preserve Farmland, with support from foundations and Skagit County, completed a study of farmland preservation program options. One program recommendation was to pursue the development of a Skagit TDR program.[7]

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[6] BERK Consulting, *Skagit County Growth Projections, Summary of Methods and Results*, April 2014, p. 3. Josh Greenberg, *Population Analysis of 1990 to 2010 Census Data, Skagit County (Draft)*, Skagit County GIS, January 24, 2012, pp. 8-10.

[7] Skagitonians to Preserve Farmland, *Farmland Preservation in Skagit County: Program Options and Recommendations,* 1992.

- As part of Skagit County's 2005 Comprehensive Plan Update process, a 15-member Citizen Advisory Committee developed a number of recommendations to guide that update. One of the recommendations incorporated into the comprehensive plan through that process states:

  > ***Establish more and better incentives to achieve planning goals****—The toolbox for methods for achieving the County's growth management goals for the preservation of resource lands, protection of critical areas, and preservation of property rights should be expanded. These tools include the purchase and transfer of development rights as well as density "credits" for producing affordable housing and other desired results.*[8]

- Skagit County hired a consultant in 2006 to conduct an initial evaluation of TDR. The consultant completed a literature review of TDR programs around the country and concluded TDR was not feasible in Skagit County at that time.[9] Although it included no market analysis, the study concluded there was inadequate demand for development in Skagit County to support TDR. This was during a very active residential development market when the Mount Vernon TDR program was being used extensively (recording 70 development right purchases between 2004 and 2006). A number of observers inside and outside of Skagit County felt that study was incomplete and reached pre-determined conclusions.
- In 2008, the City of Burlington adopted a "fee-in-lieu" program that allows developers to build above base zoning in specific zones with the purchase of density credits. Revenues generated from the sale of density credits are provided to Skagit County's Farmland Legacy Program for the conservation of agricultural land. Skagitonians to Preserve Farmland and Skagit County helped Burlington to fund the economic analysis that led to Burlington's adoption of "The City of Burlington Agricultural Heritage Credit Program."
- In that same year, the Board of County Commissioners adopted amendments to the Bayview Ridge Subarea Plan that called for creation of a similar density credit program allowing incremental increases in residential densities within the Bayview Ridge Urban Growth Area (UGA).
- Also in 2008, Skagit County initiated the Envision Skagit 2060 process to look at land use challenges and opportunities facing Skagit County over the next 50 years. A citizen committee appointed by the Board of County Commissioners and city mayors developed a set of recommendations for consideration by those jurisdictions, including one stating: "The County should move forward and implement a county-wide Transfer of Development Rights (TDR) program."[10]

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8 *Skagit County Comprehensive Plan,* October 2007, pp. 1-13. Also see a description of the 2005 Comprehensive Plan Update Steering Committee's work in: *Skagit County Integrated GMA/SEPA Report, 2005 GMA Update*, February 17, 2006, pp. 10-13.

9 Ag Prospects, *Transferable Development Rights: A Feasibility Study for Skagit County Washington,* 2006.

10 Skagit County, *Envision Skagit 2060 Citizen Committee Final Recommendations*, October 2011, p. 15.

- Commissioner Ken Dahlstedt has long expressed interest in implementing a mechanism to ensure that landowners who receive additional development potential through redesignations or rezones will contribute to the conservation of natural resource lands.
- In 2013, the Board of Directors of Skagitonians to Preserve Farmland adopted Resolution No. 2013-05, which, among other farmland protection goals, states: “By 2020 there shall be a functioning TDR market place in Skagit County which allows for smart community growth and economic development while protecting our important and valuable agricultural resources lands."

Given the long-standing interest in TDR in Skagit County, and with approval of the Board of County Commissioners, Skagit County applied for a grant in 2011 from the Washington State Department of Commerce to help fund a more thorough evaluation of TDR, including a detailed market analysis that was missing from the 2006 TDR review. That successful grant application was cosponsored by Skagitonians to Preserve Farmland, the City of Burlington, the Skagit Land Trust, and the Skagit-Island Counties Builders Association (SICBA). Following the grant award, Skagit County initiated the current TDR study. In accepting the grant, Skagit County stipulated it was not obligated to implement a TDR program but only to consider TDR as an option. This report is intended to help the Board of County Commissioners decide whether to move forward with implementing a TDR program.

What are the major concerns about TDR?

Following are some of the concerns about TDR that some Advisory Committee members and community members have voiced during this TDR review process. Some who have concerns nevertheless still support Skagit County implementing a TDR program now, believing it will be successful over time. Others cite these concerns as reasons *not* to implement a program at this time. Concerns fall into three general categories:

- **TDR may be a useful tool, but there may not be strong enough demand** or an adequate number of receiving areas in Skagit County to make a TDR program viable or worthwhile at this time.
- **TDR may be a useful tool but it is also a complex one**. Skagit County may not be able to implement and administer a successful TDR program at this time, given limited staff and resources.
- **There are fundamental flaws to the basic concept of TDR and Skagit County should not implement a program now or in the future**. These flaws include the belief that TDR inappropriately interferes in the private development market by requiring developers to pay to access additional development opportunities; TDR is not necessary because existing comprehensive plan and zoning protections are adequate; and TDR will not truly be voluntary and will diminish landowner property rights.

These concerns are further outlined below. They—and responses to them—will also be discussed in later sections of this report.

Not enough demand

Some Committee members have stated that Skagit County is rural whereas they believe TDR programs are more effective or appropriate in urban areas. Some believe there are too few cities participating, too few receiving areas generally, and inadequate demand for development within those receiving areas for a program to be viable at this time. Committee member Charlie Boon has expressed the concern that Burlington, the one city considering becoming a receiving area at this time, sits at a vulnerable spot in the Skagit River floodplain and is the wrong place to be encouraging additional development through TDR.[11]

Urban density is undesirable

Many cities in Skagit County have faced opposition to efforts to increase residential densities. For instance, concern by residents and city councilmembers regarding several residential development projects in Mount Vernon in the late 2000s, with densities in the range of six dwelling units per acre, resulted in changes to the City's planned unit development ordinance. Those changes lowered overall density limits and disallowed the use of transferred development rights in planned unit developments. Skagit County also heard objections to proposed urban residential densities within the Bayview Ridge UGA during the 2013 update of the Bayview Ridge Subarea Plan.

Some Committee members have expressed a dislike of higher-density residential developments such as those cited above, due to what they characterized as the cramped look and feel of the neighborhoods and inadequate on-site parking. At the same time, other Committee members spoke in support of these residential projects as meeting a need for affordable housing for median-income working families in Mount Vernon and being well-accepted by homebuyers in the marketplace.

TDR is unnecessary

Some Committee members believe the Skagit County Comprehensive Plan is an effective resource management plan and, together with existing development regulations, does an adequate job of protecting rural character, natural resource lands, and environmentally-sensitive areas. Committee member Ed Stauffer has stated that rural landowners are stewards of their land, additional conservation through TDR is unnecessary, and rural residents may view TDR as a slap in the face. He has also questioned the voluntary nature of TDR, expressing concern that County staff might use additional regulations on rural development as a way to push rural landowners into selling development rights against their will. Although the Advisory Committee has discussed TDR as a voluntary option for sending-area landowners, Stauffer has expressed concern that a TDR program would diminish the property rights and options of rural landowners.

TDR will complete with Farmland Legacy

Some farmers and other advocates of agricultural land conservation have expressed concerns that TDR would negatively affect the Farmland Legacy Program. Many of these concerns appear related

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[11] City planning director Margaret Fleek responds that Burlington has the most assertive flood hazard mitigation plan in the County, and City officials understand the dangers of flooding. However, the answer is to be prepared rather than to halt all future development within the City. The preferred alternative currently under consideration through the Skagit River General Investigation study would provide greater flood protection to Burlington and other urban areas.

to conclusions reached by the Ag Prospects TDR study mentioned earlier, including fears that TDR would drive up the price of Ag-NRL lands; that downzoning of agricultural land would be necessary to make TDR work; and that a successful TDR program might reduce political support or staff resources for the Farmland Legacy Program. Other Committee members, including some from the agricultural community, have been consistent supporters of TDR throughout this process, saying it can complement Farmland Legacy specifically and agricultural land conservation generally.

Conservation easements shouldn't be permanent

Some forest managers who participated in the Forestry Focus Group meeting expressed uncertainty about their companies' participation in TDR due to concerns over the future economic viability of forestry as an industry. Some advocated that TDR conservation easements should only apply for a certain period of time (such as 40 years) or that there should be a "buy-back" provision allowing forest landowners who sell development rights to purchase them back if commercial forestry is no longer economically viable. On the other hand, several small, private, non-industrial forest landowners saw TDR as a way to increase their economic options, expand their holdings of forestland, and pass forestland down to younger generations of their family.

Development options are already constrained

Some participants in the Developer Focus Group meeting stated that development opportunities in rural portions of Skagit County have been greatly reduced through the implementation of GMA, the Skagit County Comprehensive Plan, and increasingly strict land use regulations. They indicated that additional limits on rural development, even voluntary ones that compensate rural landowners, are unnecessary and undesirable. Some developers questioned the overall premise of GMA and the Skagit County Comprehensive Plan that the majority of new growth should occur in cities and urban growth areas and development should be limited in rural portions of the county. Some members of the development community appeared to have a greater interest in the use of TDR to facilitate rural-to-rural development right transfers, for instance to allow additional rural cluster development through CaRDs and additional residential infill in Rural Villages.

TDR is unfair to receiving-area landowners

Some developers and receiving-area landowners objected to the idea they would need to purchase TDRs or density credits to access additional development potential above baseline zoning. Some stated that impact fees and other development fees are already quite steep. Some felt the urban development they are building consistent with city policies and regulations already provides a public benefit and more should not be required through TDR. Some noted that landowners whose property was downzoned through the implementation of GMA were not compensated financially for their economic losses, and developers and landowners should not be charged in cases where public policy actions increase development potential. In response, developers will only choose to use TDR when demand exists for additional development beyond what is allowed by current zoning, and when the purchase of development rights provides a net economic benefit to the developer. A program that does not provide positive economic value to developers simply will not be used.

TDR is complex and policy can change

Some Committee members expressed concerns about the complexity of TDR and the potential for changing policy priorities. They felt that while TDR may be a viable tool in the future, it might be overly complicated for Skagit County to undertake at this time, especially in the face of other more pressing land use planning challenges. Some Committee members pointed to the situation in Mount Vernon where a developer purchased a large number of development rights and used some in planned unit developments (PUDs), but then lost that opportunity when the City changed its PUD ordinance to disallow the use of TDR credits. Interestingly, the developer who faced that situation with the Mount Vernon program served as a member of the TDR Advisory Committee and nonetheless supports Skagit County's implementation of a TDR program.

Will TDR work in Skagit County?

The answer to the question "*Will TDR work in Skagit County?*" depends in part on how success is defined.

- If one measure of success is ensuring that recipients of rural upzones contribute to land conservation through the purchase of TDRs or density credits, then TDR can work. With the pricing data generated by the Heartland TDR market analysis, such a provision would be relatively easy to adopt and implement.
- If success means that a multi-jurisdictional TDR program is generating a large number of transactions resulting in a significant amount of land conservation over time, that's a more complex question to answer.

Forterra and other TDR researchers, including the authors of *The TDR Handbook*, have documented that TDR does work when programs are well designed and implemented. Forterra maintains a national database of TDR programs and has provided a list of the top-performing TDR programs in the country (included as Appendix E). Although some of the most successful TDR programs are centered around large cities, a growing number of rural communities have successfully implemented TDR or density fee efforts. Some of those successful programs in more rural areas are highlighted in the list of the 25 top programs.

Following are some of the key factors that can help determine whether a TDR program will be effective or not:

Demand for development

One of the key requirements for TDR success is demand for development. Some local skeptics of TDR say there is inadequate demand for development in Skagit County to make a program successful. Although the amount of development in Skagit County will never match that in Seattle or King County, the Washington State Office of Financial Management projects population growth of nearly 36,000 new residents in the County by 2035, boosting the population to nearly 154,000 from around 118,000 today.[12] There will be a corresponding increase in commercial development to serve that growing population.

If even ten percent of that projected population growth were linked to TDR, the result could be almost 10,000 acres of conserved land—about the same amount of land that has been conserved by Farmland Legacy since its inception in 1996.[13]

Linking development to TDR

The problem from the perspective of TDR effectiveness in Skagit County is not a lack of development, but rather that virtually none of the projected demand for development is currently linked to TDR. The only linkages that currently exist are the Burlington Agricultural Heritage Density Credit Program, which allows development above 14 residential units per acre in certain zones, and Mount Vernon's TDR program, which was significantly scaled back several years ago.

The Heartland TDR market analysis and development capacity calculations conducted for Envision Skagit and the 2016 Comprehensive Plan updates reveal that zoning decisions made by Skagit County jurisdictions over the past 20 years have created a sizable amount of development capacity within cities and towns. Elected officials may be reluctant to implement a TDR purchase requirement for development potential that already exists under current zoning, or what some might view as a downzone. If that is the case, the real opportunity for Skagit County and cities is to implement TDR as part of future planning actions that create new development potential. This might look something like the following:

- A city could designate new areas where multi-family development is permitted, as Burlington is currently considering doing around its downtown area. This would expand the potential receiving area for the city's existing Agricultural Heritage Density Credit Program.
- The County and cooperating cities could link the expansion of urban growth areas to the purchase of TDRs, as has been done in Snohomish and Pierce counties. In one likely scenario, the residential development potential of Rural Reserve land added to a UGA could increase from one residence per 10 acres to four residences per acre. That is a 40-fold increase in development, which would create a very viable opportunity to implement TDR.[14]
- A city could decide to allow new residential development in its downtown area alongside or above existing commercial uses. Many cities are moving in this direction in order to encourage more residents and economic vitality in their downtowns. The new units of residential density could be made available through the purchase of TDRs.

In summary, demand for development exists in Skagit County. The question is whether local jurisdictions are interested and willing to link that demand to TDR purchases. Committee member

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[12] Washington State Office of Financial Management, *Medium Series Population Projection for Skagit County*, April 2012.

[13] Assuming a household size of 2.5 persons per household, an exchange rate of three to one (3:1), and an average sending area zoning of one dwelling unit per 20 acres (comparable to Secondary Forest-NRL).

[14] A very similar scenario was analyzed by Heartland in looking at rezones from Bayview Ridge-Urban Reserve to Bayview Ridge-Residential.

Allen Rozema has stated that whether a market for TDR exists in Skagit County is ultimately a question of public policy rather than the presence or absence of sufficient growth.

TDR and density

As the above UGA example illustrates, TDR does not need to be linked to higher density residential development: four residences per acre is generally considered the *minimum* density for urban residential development. In addition to lower density (including some rural) residential opportunities, TDR can also be linked to increases in commercial and even industrial development potential.

However, urban residential development will be a key component of growth in Skagit County, representing perhaps the largest single opportunity to implement TDR in the coming years. Various economic and demographic forces are increasing market demand nationally and regionally for more compact, walkable, high-amenity, and mixed-use communities.[15] That trend may be less pronounced in Skagit County, where many people move to get away from rapidly urbanizing cities and regions. However, it can still be seen here through the smaller-lot nature of new residential developments in Mount Vernon, and the construction of new cottage housing just east of downtown Anacortes—the latter specifically marketed to homebuyers seeking walkable access to the downtown, library, parks, and waterfront.

Whether in relation to TDR or simply meeting the evolving market needs of homebuyers, Skagit County cities will need to find the right formula for fostering attractive and affordable urban residential development. Logical partners in this process would include neighborhood groups, builders and developers, affordable housing providers, architects, and real estate agents. In fact, the National Association of Realtors Smart Growth Program might be a forum for bringing those entities together.[16]

Americans Prefer to Live in Mixed-Use, Walkable Communities

"According to the National Association of REALTORS® 2013 Community Preference Survey, 60 percent of respondents favor a neighborhood with a mix of houses, stores, and other businesses that are within walking distance, rather than neighborhoods requiring driving between home, work, and recreation. Respondents indicated that while the size of a home or yard does matter, most are willing to compromise size for a preferred neighborhood and less commuting."

National Association of Realtors' Website

[15] See National Association of Realtors, *The 2013 Community Preference Survey,* November 1, 2013 (http://www.realtor.org/articles/nar-2013-community-preference-survey); Leigh Gallagher, *The End of the Suburbs*: *Where the American Dream is Moving*, Penguin Group USA, 2013. The author is an assistant managing editor at *Fortune* magazine; Christopher B. Leinberger, *The Option of Urbanism: Investing in a New American Dream*, Island Press, 2009; and A.C. Nelson, "Leadership in a New Era," *Journal of the American Planning Association*, Vol. 72, Issue 4, 2006, pp. 393-407.

[16] See http://www.realtor.org/programs/smart-growth-program. The Realtors' Smart Growth Program was the focus of a well-received workshop sponsored locally by the North Puget Sound Association of Realtors (NPSAR) in the spring of 2012.

Effective TDR pricing

Estimating the market value of additional units of development potential in receiving areas and of residential development rights in sending-area zones was a major focus of the TDR market analysis conducted by Heartland and summarized in Chapter 7. In a traditional TDR program, the County would use these values to establish exchange rates for different sending and receiving zones to place buyers and sellers in the same price ballpark. Buyers and sellers would then negotiate directly with each other to establish a mutually agreeable TDR sales price. In a density credit or fee-in-lieu program, such as Burlington's Density Credit Program, the County would set the price of density credits based on the market analysis. Exchange rates or density fee prices should be periodically reviewed to make sure they are generally tracking the market. Potential developer interest in TDR will be discussed further in Chapter 6, Development Goals, Receiving Areas and Developer Incentives, and in Chapter 7, TDR Market Analysis.

Sending-area landowners

Another key component of a successful TDR program is sending-area landowners who are interested in selling residential development rights in order to permanently conserve their land. Comments from some of the focus group meetings and experience in Skagit County with other conservation programs suggest there would be interest among landowners over time.

- In the first several years of the Farmland Legacy Program's operations, few farmland landowners participated in the program. The concept of purchase of development rights (PDR) was new and many landowners were nervous about stepping into unfamiliar territory. Once a few willing landowners sold development rights to the program and experienced no unanticipated or negative effects, interest steadily increased. Now Farmland Legacy typically receives more applications from interested landowners than it has funds for development right purchases in a given year. Since its creation in 1996, Farmland Legacy has purchased development rights from more than 90 properties and has 11 more applications in process that should close within the year.
- The Skagit Land Trust works with many rural landowners interested in placing their land in permanent conservation status. Some are willing to do so without compensation, donating easements to the land trust, but most seek financial remuneration. Skagit Land Trust conservation deals range from fee-simple (outright) purchases of properties to the purchase of conservation easements on lands that remain in private ownership. Like Farmland Legacy, the Skagit Land Trust reports more interest from property owners than it has funds for property and conservation easement purchases.

Of the landowners who participated in the focus group meetings conducted for this project, small family forestland owners appeared most interested in TDR. They felt TDR could help them expand their forest landholdings or pass land down to their children or grandchildren. Several forest company representatives also expressed a potential interest in participating in TDR, particularly if there were an option to buy back development rights if circumstances on the ground changed significantly. Potential farmer interest in TDR has been expressed by Skagitonians to Preserve Farmland, whose Board of Directors has recommended creation of a Skagit County TDR program.[17]

Long-term prospects for success

As described above, many factors could affect the long-term success (broadly defined) of a TDR program in Skagit County.

The TDR market analysis by Heartland indicates that given the projected demand for development and the existence of large amounts of development capacity in the few receiving areas analyzed, TDR use would be limited in the near term. Factors that would increase TDR use over time include:

- A stronger development market as Skagit County continues to move out of the recession;
- The utilization over time of existing development capacity;
- The County's creation of additional receiving-area opportunities under its regulatory jurisdiction (such as CaRDS and UGA expansions); and
- The implementation of TDR by additional cities.

Nonetheless, Heartland identified several benefits to implementing a program now in expectation of future utilization: it allows the County to be prepared to capture funds for conservation when development does occur, and to work out details, fine-tune, and expand awareness of the program before major utilization.

Recommendation 3-1. Explore additional TDR receiving-areas opportunities

Skagit County should explore additional receiving-area opportunities under its land use jurisdiction, including CaRD density bonuses and UGA expansions. Additionally, the County and those individuals and organizations that support TDR implementation should encourage the cities, which are expected to accommodate 80% or more of the County's future growth, to consider establishing TDR receiving areas.

In the four Central Puget Sound counties (King, Snohomish, Pierce, and Kitsap), the creation of a county TDR program has often preceded and stimulated city interest in TDR. Once a county has established a multi-jurisdictional TDR framework, cities have developed their own programs that link to it, allowing the transfer of development rights from the county to the cities. Increasingly in fast-growing cities in the central Puget Sound region, offering a TDR program linked to higher development potential, especially in downtowns, is viewed as a key element of economic competitiveness.

Although city interest in coordinating with Skagit County on TDR has been limited to Burlington at this time, this nearby example suggests the situation could evolve over time. Issues related to the cities' willingness to work with the County on a multi-jurisdictional TDR program are discussed in greater detail in Chapter 6, beginning on page 49.

[17] Skagitonians to Preserve Farmland, Resolution No. 2013-05.

Chapter 4. **TDR Conservation Goals**

An important element of identifying TDR sending areas is first clarifying what conservation goals the County is seeking to advance through a TDR program. The Advisory Committee's initial discussion of conservation focused on the following resources and the broad range of benefits they provide to the community:

- Natural resource lands, specifically working farm and forest lands.[18]
- Environmental resources.
- Open space areas.[19]

In many cases, conservation of a particular parcel of land may contribute to multiple conservation goals valued by the community, as the box on the right helps to illustrate.

The typical mechanism for conservation through TDR is the purchase and transfer of a property's *residential* development right. Using this mechanism:

- Property conserved through TDR remains in private ownership. There is no granting of public access to the property.
- The residential development right is retired on the sending-site property through a conservation easement.
- Other uses of the property allowed by its zoning and not restricted by the conservation easement remain. The landowner receives payment for the development right while retaining the ability to use the land for productive purposes.

Community benefits of natural resource, environmental and open space conservation:

- Flood control, water supply and quality, air quality
- Physical separation of people and structures from natural hazards
- Wildlife and habitat
- Commercially significant resources including agricultural products, forestry, fisheries, minerals
- Economic development based on a high quality of life
- Natural features and spaces important to defining community image and distinctive character
- Healthy lifestyles
  Historic and cultural

Adapted from the Skagit County UGA Open Space Concept Plan, p. 1.

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[18] Mineral resource lands were generally not a part of the Committee's discussion. Mineral resource lands of long-term commercial significance are identified by the Mineral Resource Overlay (MRO), which may only be located within the County's Natural Resource Land designations.

[19] The Skagit County Comprehensive Plan describes open space as follows: "There are a variety of types of open space lands in Skagit County. Open space areas include greenbelt corridors within and around urban growth areas, green belts which connect critical areas, lands receiving open space tax incentives, resource lands, conservation easements, rural open space areas, park lands, and significant historic, archaeological, scenic and cultural lands." "Urban, Open Space and Land Use Profile," Skagit County Comprehensive Plan, pp. 2-4.

Initially the Committee discussed whether the TDR conservation easement should extend beyond the residential development right and place additional resource management or conservation requirements on the land. However, it became apparent that trying to be more specific about the resource management practices a TDR conservation easement might require could become divisive. It could easily splinter the general agreement that exists among many private landowners, resource managers, and conservation advocates on the benefits of keeping land in a more natural state through the voluntary retirement of residential development rights.

> Property conserved through a TDR program remains in private ownership. No public access is granted to the property.

Given this mechanism, the Committee discussed what TDR can realistically be expected to achieve from a conservation perspective.

- If the reduction in residential development and its associated impacts supports the desired conservation goal, then TDR is probably a good fit. For instance, retiring residential development rights from forest or agricultural resource lands can help support ongoing natural resource management activities due to the reduced potential for conflicts with residential uses.
- However, the TDR easement would not grant public access or limit uses of the property beyond what is allowed by the underlying zoning. For this reason, TDR is probably not an effective conservation tool where the desired goal is public access or ownership (for example, with a park) or other more prescriptive uses of the land.

Public interest in resources to be conserved

The Committee heard from Forterra and others that TDR programs work best where receiving area residents have a strong interest in the areas or resources being conserved. For instance, Burlington has identified agricultural lands immediately surrounding the City as its priority for conservation through its Agricultural Heritage Density Credit Program. Because proximity to cities and other population centers may be a key component for TDR success, the Committee felt it should be an important criterion when establishing TDR sending areas:

- Areas closer to large population centers are more likely to experience rapid population growth than more remote areas.
- Conservation of these areas is also likely to generate more support among receiving-area populations than would more remote sending areas.

At the same time, the Committee recognized that where there is more demand for development, prices to purchase development rights are likely to be higher.

To help prioritize potential TDR conservation areas, the Committee reviewed maps produced by Skagit GIS showing two- and four-mile bands around cities, other UGAs, and heavily traveled road corridors. The prioritization of potential sending areas will be discussed in greater detail starting in Chapter 5, Selection of Sending Areas.

Existing resource protection

Another important question to consider is the degree of existing protections for the lands or resources of interest. Are there other efforts in place—such as restrictive zoning or other conservation mechanisms (for example, purchase of development rights)—that provide effective protection already? If so, TDR might not be necessary or might be better applied elsewhere. If not, TDR may be able to contribute to the desired conservation goals.

Farms, forests and open space lands

From these initial discussions, three conservation priorities rose to the top:

- Designated agricultural natural resource lands and rural lands supporting active agricultural uses, even if those rural lands are not identified as having the most highly productive agricultural soils.
- Designated forest natural resource lands and rural land with active forestry uses or predominant forest cover, even if those rural lands are not rated as having the most highly-productive forest soils.
- Lands identified as having significant open space value to the public, particularly within or immediately surrounding cities, towns, and urban growth areas.

Recommendation 4-1. Prioritize conservation of natural resource and open space lands near urban growth areas

Committee members placed the highest priority on conservation of natural resource and open space lands within and immediately surrounding urban growth areas. Committee members generally felt receiving-area residents would have the greatest interest in supporting conservation of these lands which are also among the most likely to be developed.

Of these, designated Natural Resource Lands—specifically farm and forest lands of long-term commercial significance—and rural lands supporting natural resource production have emerged as the most viable TDR sending areas at this time. This is because:

- They are clearly defined and mapped through the Skagit County Comprehensive Plan.
- TDR is a particularly good mechanism for conserving working natural resource lands because it retires a property's residential development right while leaving it in private ownership and not affecting other permitted uses.
- There is a relatively high level of agreement in Skagit County about the importance of conserving productive natural resource lands.

More specific discussion of how these conservation goals would be implemented through TDR sending areas is discussed in greater detail in Chapter 5.

Other conservation priorities

The Committee discussed environmental and open space conservation priorities that might also be advanced through TDR. One challenge is the general lack of delineation and mapping of environmental and open space conservation priority areas at both the countywide and parcel-specific level as has been done for Natural Resource Lands. This makes their designation as TDR receiving areas more challenging without additional work through this or other projects.

In some instances, environmental conservation priorities are clearly mapped at a more localized level. One possibility may be to use these areas that have been clearly delineated as an overlay that, along with designated natural resource lands, identifies areas where conservation through TDR can provide multiple conservation benefits.

Open space lands within or adjacent to cities, towns, and UGAs

Skagit County developed and adopted the Skagit County UGA Open Space Plan in close consultation with the cities and towns.[20] That plan and most of the city and town comprehensive plans that it draws on identify and map open space conservation areas at a broad, conceptual level. However, few, if any, of the municipalities have mapped their open space conservation priorities areas at a parcel-specific level within or around their UGAs. The County also has not done so beyond the realm of designated natural resource lands and existing public parks and open spaces.

Until this step is taken—which would be the next logical step in implementing the UGA Open Space Plan—it would be difficult to designate specific open space areas around UGAs as TDR sending areas. Also, because TDR leaves sending area properties in private ownership, TDR may not be an effective or appropriate tool for conserving lands intended for public access such as parks or trails.

Floodplains, including areas of high risk and those providing important floodplain functions

Two processes are moving forward that may help identify priority floodplain areas that could serve as TDR sending sites.[21]

First, Skagit County continues to progress with flood protection planning through the Skagit River General Investigation (GI) study with the Army Corps of Engineers and through a Comprehensive Flood Hazard Management Plan. If the Army Corps through the GI process develops a plan that includes raising and widening certain levees, that can transfer flood risk to other areas of the floodplain through what's called induced flooding. Those areas could be included as TDR sending areas, allowing interested landowners to sell unexercised development rights. Another consideration could be floodplain areas that are inundated by "minor" (the most frequent) flood events: two-year, five-year, 10-year, and 25-year events.

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[20] Skagit County Ordinance O20090009 (Sept. 8, 2009).

[21] Parcels located entirely within the *floodway* cannot be developed for residential purposes whereas *floodplain* properties may be developed. Committee members discussed the dramatic increases in federal flood insurance rates and felt as those rates reach their projected peaks over a period of perhaps 10 to 15 years, development in the floodplain would no longer be financially feasible for most landowners.

Second, the Shoreline Master Program Update will consider designation of a Channel Migration Zone on the Skagit River, above Sedro-Woolley, where development may be particularly subject to flood risk over time. If and when designated, the Channel Migration Zone may be a logical TDR sending area, providing landowners the opportunity to voluntarily sell their unutilized development rights rather than develop in a high-risk flood area.

Priority watershed areas

The Washington State Department of Ecology has developed a series of "watershed characterization" models for watersheds throughout the Puget Sound. The watershed characterization models draw on a variety of scientific assessments and data sources in an effort to characterize lands as most suitable for protection, restoration, conservation, or development. These characterizations are based on the land's importance and sensitivity to degradation across a variety of ecological functions, including water quality and flow; freshwater habitats; and terrestrial wildlife habitats.

While the watershed characterization models and data may in the future help to identify areas in Skagit County that are important for conservation, those models are quite complex. To date, Skagit County staff has not been able to determine how to use the models to aid in identifying potential conservation priorities in the County.

As an alternative, the County could emphasize watersheds that already have been prioritized locally, and where significant public resources are already being invested to address issues including water quality, habitat restoration, and recovery of threatened and endangered species. For instance, TDR receiving areas could be located on natural resource lands on some or all of the following watersheds:

- Nookachamps Creek
- Hanson Creek
- Samish River
- Colony Creek
- Carpenter Creek/ Hill Ditch
- Maddox Creek/ Big Ditch
- Fisher Creek

Water supply

One Committee member suggested that the watershed or stream corridors that feed Judy Reservoir (the major source of water for Skagit PUD #1) might be a worthy area for conservation through TDR. However, initial contact with Skagit PUD indicates that they do not believe that residential development at currently allowed densities threatens the Judy Reservoir water supply or quality.

Wildlife habitat

It has been difficult to locate data that clearly and credibly delineate wildlife habitat areas and corridors at a landscape level that warrant additional conservation through TDR. Both natural resource managers and conservation professionals on the Committee were cautious about trying to use Washington State's Priority Habitat and Species data for broad designation of TDR sending areas. They noted that the data is better at the site level.

Site-specific critical areas

The County could consider a process whereby individual properties that do not fall within a designated TDR sending area could be considered for eligibility on a site-specific basis. Applications could be initiated by property owners who determine that site conditions and the County's critical areas regulations make their property more hazardous, difficult, or expensive to develop than they had anticipated.

For instance, a property owner might apply after discovering through a geological site assessment that their property is located in an area subject to hazards such as landslides. The recent fatal mudslide along the Stillaguamish River brings this scenario to mind.

This would build upon an existing code provision, SCC 14.24.170, which identifies "incentives… intended to minimize the burden to individual property owners from application of the provisions of this Chapter and assist the County in achieving the goals of this Chapter." One of the options listed is sale of the development rights on property containing critical areas to the Conservation Futures Farmland Legacy Program. That option could be expanded to sale of development rights through a TDR program.

> "Natural Resource Lands are the cornerstone of Skagit County's economy, community, and history. As such, their protection and enhancement is of paramount importance to Skagit County and its citizens."
>
> Skagit County Comprehensive Plan, Natural Resource Lands Element, p. 4-1

Is additional conservation needed?

The Skagit County Comprehensive Plan has strong protections for conserving natural resource lands and rural character. In fact, Skagit County is frequently cited as having among the strongest protections for prime agricultural lands (Ag-NRL) in the state and nation.[22]

The Natural Resource Lands Element of the Comprehensive Plan, Chapter 4, states: "Natural Resource Lands are the cornerstone of Skagit County's economy, community, and history. As such, their protection and enhancement is of paramount importance to Skagit County and its citizens." Agriculture, forestry, and mining, as well as commercial and recreational fishing and shellfish harvesting, tourism, and other economic sectors related to Skagit County's natural landscape are important contributors to Skagit County's economy. For instance:

- Agriculture in Skagit County produces more than $300 million in annual gross farm income from crops, livestock, and dairy products each year.[23] The more than 1,200 farms in the County employ about 2,400 workers and generate an additional 883 to 1,718 jobs in agricultural support sectors.[24]
- There are nearly 700 direct jobs in forestry in Skagit County, and more than 1,800 total jobs (including direct, indirect, and induced), resulting in wages of more than $70 million

[22] American Farmland Trust, *Losing Ground: Farmland Protection in the Puget Sound Region*, January 2012, Appendix B, p. 17.

[23] "Natural Resource Lands Profile," *Skagit County Comprehensive Plan*, p. 4-2.

[24] ECONorthwest, *Economic Indicators of Agriculture's Future in Skagit County*, *Tasks 1 & 2 Final Report*, November 2010.

annually. Taxes and fees generated by forestry in Skagit County amount to more than $3.9 million annually, and nearly $3 million of that went directly to Skagit County in 2013.[25]

Various fiscal analyses indicate that natural resource industries produce a net fiscal gain for Skagit County (generating more revenues than costs), whereas dispersed residential development can generate more costs than revenues due to the various public services and infrastructure needed to serve residential development.[26]

The primary purpose for Natural Resource Land designations (Ag-NRL, Industrial Forest-NRL, Secondary Forest-NRL, and Rural Resource-NRL) is natural resource management and production. At the same time, most resource lands allow some level of residential development, as illustrated in the table to the right.

Table 4-1. Residential Densities in Natural Resource Land Designations

NRL Designation	Residential Density
Agricultural-NRL	One residence/40 acres, only as an accessory use to farming
Industrial Forest-NRL	One residence/80 acres, only if property is within a fire district
Secondary Forest-NRL	One residence/20 acres
Rural Resource-NRL	One residence/40 acres, or four residences/40 acres through a clustered Conservation and Reserve Development (CaRD)

As the Skagit County Comprehensive Plan indicates, residential development in resource lands above certain densities can conflict with the continued use of the land for its primary intended purpose: natural resource production. Development in forest lands can also introduce a greater risk of fire hazards.

Threats to resource lands

Numerous research studies from a range of organizations involved in natural resource management and land conservation have raised concerns about loss of resource lands in Washington State, the Puget Sound Region and— where specific data is available—Skagit County. According to *The Future of Washington Forests* report, developed by the University of Washington's College of Forest Resources with significant input from the forest products industry:

> *Expanding exurban populations are placing increased development pressures on Washington's working forests and are changing these forested landscapes into non-forestry uses. Much of this change is from privately-owned forests converting into residential and commercial development, resulting in significant implications for Washington state, such as the potential decline in a readily available and sustainable timber supply for the forest products industry; a decrease in the quality and quantity of forests available for wildlife habitat, clean water production and storage, carbon sequestration and decreased recreation opportunities.*[27]

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[25] www.workingforests.org

[26] American Farmland Trust, *Cost of Community Services*, *Skagit County, Washington,* March 1999; ECONorthwest, *Evaluation of Fiscal Implications of Growth Management Options in Skagit County*, February 2012.

[27] University of Washington College of Forest Resources, "Land Conversion and Cascade Foothills Forestry Viability" (Study 4), *The Future of Washington's Forests and Forest Industries: Final Report*, July 31, 2007, p. 239.

The report continues:

> *According to Washington's forest industry, land conservation organizations and county resource managers, forestland along the I-5 corridor will likely undergo the most conversion. For the westside of the Cascades, they identified Clark, King, Pierce, Snohomish and Thurston counties as those likely to see the greatest change….while Stein et al. (2005) reported in The Forests on the Edge report that areas in Whatcom and Skagit counties are likely to have housing densities increase by 20-40 percent on private forestlands…*[28]

Similarly, the Puget Sound Action Agenda reports:

> *Development in rural areas presents a particularly concerning pressure on the ecosystem because it is in those rural areas (including both forested and agricultural lands) where high-quality habitat and significant ecological processes remain partially or largely intact. Rural area forest cover and agricultural land is being converted to housing and other uses in five-acre and smaller patchwork patterns. The network of infrastructure (primarily roads, but also other utilities) constructed to serve such development further fragments the landscape, and interrupts or modifies the delivery, movement, and storage of water, sediment, woody debris, and nutrients, and impairs functions of fish and wildlife habitats for feeding, breeding, rearing, and migrating for numerous species.*[29]

The Skagit County Natural Hazard Mitigation Plan notes the wildfire risks generated by increasing residential development in forested lands:

> *One challenge Skagit County faces regarding the wildfire hazard is from the increasing number of homes being built in the urban/rural fringe (known as the wildland-urban interface) as well as the industrial forest. Due to a growing population and the desire of some persons to live in rural or isolated areas or on forested hillsides with scenic views, development continues to expand further and further into traditional forest resource lands.*[30]

Public support for conservation

Skagit County residents have consistently shown a strong interest in land conservation going back several decades. Skagit County residents' concerns about loss of agriculture land, forest land, and open space areas due to development have been documented in public opinion surveys conducted by Elway Research, Inc., in 1996 for the Economic Development Association of Skagit County and Skagitonians to Preserve Farmland, and also in 2005 for the Skagit Watershed Council.[31] A telephone survey of registered voters conducted during development of the Skagit County UGA

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[28] Ibid, p. 273.

[29] Puget Sound Partnership, *Puget Sound Action Agenda (2012/2013)*, p. 53.

[30] Skagit County Department of Emergency Management, *Skagit County Natural Hazard Mitigation Plan*, September 2008, p. 26. "Wildland-urban interface" is a term commonly used by firefighting professionals who work in rural areas.

[31] "Survey Review – Trends in Opinion about Farmland Preservation," Memo from Stuart Elway, Elway Research, to Allen Rozema, Skagitonians to Preserve Farmland, May 5, 2008.

Open Space Plan found similar concerns over the loss of farm, forest, and open space lands. Comparable sentiments were shared by members of the public and documented through Envision Skagit's 11 public visioning sessions.

As noted earlier, not all Committee members agreed with the assessment that additional conservation tools are needed in Skagit County. Some felt that the existing comprehensive plan and development regulations are adequate to protect Skagit County's natural resource lands and rural character. That view was shared by some participants in the Development Focus Group meeting.

It is important to remember that TDR would not *require* participation by any rural or natural resource landowners, nor would it affect the development potential of those choosing not to participate. Instead, TDR is being proposed as a non-regulatory, incentive-based approach allowing *willing* landowners to permanently conserve their lands by selling residential development rights. In that context, TDR could provide additional options to rural and natural resource landowners, rather than taking options away. In doing so, it would help to contribute to the protection of important resource lands in the County which is a clearly stated priority of the Skagit County Comprehensive Plan and a documented priority of many County residents.

TDR would not *require* participation by any rural or natural resource landowners, nor would it affect the development potential of those choosing not to participate. TDR would provide additional options to rural and natural resource landowners while contributing to the protection of important resource lands in the County.

Skagit County development trends

To date, Skagit County has not seen the rate of loss of resource lands and open space areas that some counties to the south have experienced. This is likely a result of the County's strong policy commitment to protecting its natural resource lands as well as its relative distance from the Seattle metropolitan area; however, Washington State and Skagit County are projected to continue to grow over time. Local economic development officials frequently point out that 6.5 million people live within a 100-mile radius of Mount Vernon.[32] The regional economies around Seattle and Vancouver, B.C., remain strong and dynamic. The State Office of Financial Management's current medium growth projection estimates Skagit County will grow by 36,000 residents in the next 20 years. The County's historic growth rate since 1960, carried forward, would result in more and faster population growth over that period.

The table below indicates the number of residences built in Skagit County's natural resource land designations from 2000 to 2012.

32 Economic Development Association of Skagit County Executive Director Don Wick, as quoted in "Mount Vernon tops economic 'rebound' list," *Skagit Valley Herald*, November 18, 2009.

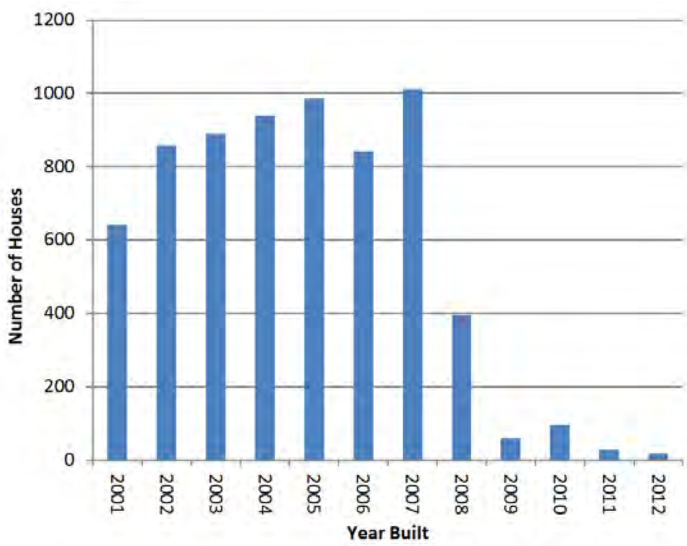
Table 4-2. Homes Built on Skagit County Natural Resource Lands 2000 to 2012

Zoning	Homes
Agricultural-Natural Resource Land (Ag-NRL)	162
Industrial Forest-Natural Resource Land (IF-NRL)	2
Secondary Forest Natural Resource Land (SF-NRL)	43
Rural Resource (RRc-NRL)	63

The County saw strong residential growth between 2000 and 2007 (see Figure 4-1, below), but development dropped sharply in 2008 and remained low through 2012. Skagit County implemented the requirement that Ag-NRL landowners demonstrate three years of farm income to obtain a residential building permit (to demonstrate that a proposed residence is accessory to farming) in 2008. The number of residences built on Ag-NRL dropped considerably after that but it is still too early to distinguish the effects of that requirement from the significant drop in residential development in the County overall.

Appendix F shows the estimated number of existing, unexercised development lots in rural Skagit County by zone.

Figure 4-1. Residences Built in Rural Skagit County, 2000-2010 (excluding cities, towns, and unincorporated urban growth areas)



Chapter 5. **Selection of Sending Areas**

Through its discussions, the Committee evaluated all of Skagit County's Natural Resource Land (NRL) designations for possible inclusion as TDR sending areas: Agricultural-Natural Resource Land (Ag-NRL), Industrial Forest-NRL (IF-NRL), Secondary Forest-NRL (SF-NRL), and Rural Resource-NRL (RRc-NRL). The Committee also discussed the potential for conserving land not designated as natural resource land where there are active natural resource uses (primarily farming or forestry). The main designation where this would occur is Rural Reserve (RRv).

Each designation's suitability as a potential TDR sending area is discussed below. Committee members who supported County implementation of TDR also agreed that Secondary Forest-NRL, Rural Resource-NRL, and Rural Reserve lands with active agriculture or forestry should be identified as sending areas. Some Committee members had more mixed feelings regarding Ag-NRL and Industrial Forest. Eventually all of those who supported County implementation of a TDR program recommended including all of the designated Natural Resource Lands as well as Rural Reserve parcels with active agricultural and forestry uses.

Secondary Forest-NRL

Secondary Forest is one of two Forest Resource Land designations in the Skagit County Comprehensive Plan. In designating forest lands of long-term commercial significance, the County first identified all lands meeting a set of forest resource land designation criteria. From that initial land base, the County then identified a roughly quarter-mile band on the outer edge as Secondary Forest, to provide a buffer between Industrial Forest lands and rural (non-resource) lands.

The major distinction between Industrial Forest and Secondary Forest lands is the average parcel size. While Industrial Forest has an 80-acre minimum parcel size, Secondary Forest land may be divided into 20-acre parcels.

Secondary Forest has a development potential of one residence per 20 acres. *The Future of Washington Forests* report notes, "Forest parcelization is…thought to affect the cost of forest management activities by reducing the size of forested tracts (Munn et al. 2001). As an example, Harris and DeForest (1993) found that harvesting costs are inversely related to tract size, escalating for stands less than 40 acres in size." (p. 244)

Forest Resource Lands

"Forest Resource Lands are those lands that due to soils, climate, topography, parcel size, and location have long-term commercial significance for forestry. Skagit County is committed to preserving and enhancing the forest land base and promoting a strong forestry industry."

Skagit County Comprehensive Plan, Natural Resource Lands Element, p. 4-12

Increased parcelization in Secondary Forest not only appears to increase the cost of forest management activities, but also increases the potential for conflicts between those activities and residents living on and adjacent to Secondary Forest lands.

Development pressure

Secondary Forest lands are located on the outer edge of designated Forest Natural Resource Lands, typically adjacent to higher-density rural areas. Compared to Industrial Forest, they generally have easier access to the public road network, allow higher residential densities, and are not subject to the same prohibition on development if located outside of a fire district. All of these factors would indicate that of the Forest Resource Lands, Secondary Forest would experience a greater likelihood of development than Industrial Forest land.

Skagit County Assessor's data indicate that 43 residences were built in Secondary Forest between 2000 and 2012. GIS analysis estimates a total of 973 unexercised development rights in Secondary Forest.

Existing conservation protections

Secondary Forest lands benefit from GMA-compliant land use policies and development regulations intended to protect resource lands of long-term commercial significance, including the Right-to-Manage provisions of Skagit County Code 14 SCC 14.38.010. Secondary Forest lands are also eligible for, and many are enrolled in, Open Space Timber tax status (see sidebar). Beyond that, programs or funding sources that encourage the conservation of Secondary Forest lands while leaving them in private ownership and in productive use for forest management purposes are limited to non-existent.[33]

Landowner interest

Several individual private forest landowners who participated in the Forestry Focus Group discussion were very supportive of the idea of a TDR program that would support voluntary conservation of forest lands. One suggested the most likely participants would be individual forest landowners who own in the range of five to 40 acres. TDR could be a means for small landowners to expand their ownership, or to retain that ownership for succeeding generations by helping to cover estate taxes. Jim Owens, president of the local chapter of the Washington Family Forestry Association, talked with seven or eight local landowners

Open Space Taxation

The Open Space Taxation Act allows property owners to have open space, farm and agricultural, and timberlands valued at their current use rather than at their highest and best use. The Act states that it is in the best interest of the state to maintain, preserve, conserve, and otherwise continue in existence adequate open space lands for the production of food, fiber, and forest crops, and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the state and its citizens. Open Space Taxation does not represent permanent conservation. A landowner may remove his or her land from Open Space Tax status, subject to payment of back taxes on the difference between the land's current use value and its "highest and best use" value.

[33] Skagit County's Forest Advisory Board has criticized what they see as a proliferation of organizations purchasing forest resource lands for passive conservation or environmental mitigation purposes, removing them from active resource management and timber production.

who are members of that organization. Most thought TDR was an excellent idea and no one was opposed. Mr. Owens said the organization's members tend to be older, land rich and cash poor, and the money would be a welcome addition.

Some representatives of larger forest land-owning companies also expressed interest in participating in TDR and were not concerned with the permanent nature of TDR conservation easements. One suggested a landowner who was unsure about the future viability of forestry could opt not to sell development rights or hedge his or her bets by selling some and retaining others.

However, other representatives of forest land-owning companies expressed concern about a future where forest management and timber production are no longer economically viable due to continued loss of the land base, increasing regulations, and loss of infrastructure such as mills. Some said they would have more interest in a TDR program that offered non-permanent conservation easement (like DNR's 50-year riparian easements).[34] Another alternative suggested was a buy-back option—that is, the ability to buy back previously sold development rights at a later date. If that option were not available, some of those forest managers said they would not be interested in participating in TDR.

Kittitas County has implemented a buy-back option into its TDR conservation easements in cases where resource management of the land is no longer viable due to circumstances outside of the landowner's control. This will be discussed in greater depth on page 46 at the end of this chapter.

Rural Resource-NRL

"Rural Resource lands are, generally, areas that have the combined land and land-use characteristics of long-term agricultural, forest or mineral lands, and have the potential for multiple use or smaller scale resource management. Rural Resource lands generally are not managed for industrial-scale farming or forestry but nevertheless contribute to the natural resource land base. Where the Mineral Resource Overlay designation is also applied, industrial-scale mining can occur."

Skagit County Comprehensive Plan, Natural Resource Lands Element, p. 4-22

Rural Resource-NRL

Rural Resource-NRL is another resource land of long-term commercial significance. These lands have combined land and land-use characteristics of long-term agricultural, forest, or mineral lands, and have the potential for multiple use or smaller scale resource management.

Rural Resource lands have a density of one residence per 40 acres, or four residences per 40 acres when developed as a CaRD (clustered) land division.[35] Through the CaRD process, Rural Resource allows the most intensive residential development of any designated Natural

[34] A Kitsap County TDR program that sought to use non-permanent easement was found not to comply with the Growth Management Act. See Central Puget Sound Growth Management Hearings Board, "CPSGMHB Decisions," 07-3-0019c, Suquamish II v. Kitsap County at www.gmhb.wa.gov/central/decisions.

[35] This CaRD density bonus is not available within a quarter mile of a Mineral Resource Overlay area in order to reduce the potential for conflicts between mining activities and residential development.

Resource Land. This reflects the fact that much of today's Rural Resource land was previously zoned Rural, allowing one residence per five acres. The County sought to comply with GMA by designating certain lands Rural Resource-NRL while retaining a residential development potential similar to what those property owners previously had.

Advisory Committee member Kim Mower stated that land being productively farmed in Skagit County has some of the world's best farm soils—even if they are not designated Ag-NRL—and should be conserved wherever possible. Additionally, Rural Resource lands can provide a less expensive entry into farm ownership than Ag-NRL. Many Rural Resource lands are also forested and contribute to the timber supply and to the environmental benefits that forested land provides.

Development pressure

Rural Resource land is often situated near Secondary Forest land and shares many similar characteristics, including ease of access to the public road network. The potential to obtain bonus residential densities through a CaRD is another factor encouraging development in Rural Resource. Skagit County Assessor's data indicate that 63 new residences were built on RRc-NRL lands between 2000 and 2010. GIS analysis estimates a total of 1,572 unexercised development rights in Rural Resource, with CaRD density bonuses representing between 800 and 1,100 of that total.

Other conservation protections

As with the other Natural Resource Lands, existing conservation measures provided for Rural Resource include:

- GMA-compliant designation policies and development regulations intended to protect resource lands of long-term commercial significance;
- Right-to-Manage provisions of Skagit County Code 14.38.010; and
- Eligibility for enrollment in Open Space Ag or Timber current use taxation.

Beyond that, programs or funding sources for conservation of Rural Resource lands, particularly for the purposes of keeping them in private ownership and in productive use for agricultural or forest management purposes, are limited to non-existent.

Landowner interest

It is unclear if any Rural Resource landowners have been directly consulted through the course of the TDR project. Since Rural Resource lands are located in close proximity to Secondary Forest lands and are relatively similar in parcel size and site characteristics, there may well be Rural Resource landowners who have an outlook toward conservation and TDR similar to that of the small private forest landowners consulted through the Forestry Focus Group meeting.

Rural Reserve land in active agricultural or forest use

The Comprehensive Plan identifies Rural Reserve as "one of the three main rural residential land use designations in the rural area." Rural Reserve allows a density of one residence per ten acres, or two residences per ten acres with a CaRD. Rural Reserve is not a designated resource land of long-term commercial use and does not warrant, as a whole, designation as a TDR sending area.

Generally speaking, these are some of the most suitable lands in Skagit County for rural residential development.

Some Committee members advocate identifying Rural Reserve lands in active agricultural or forest use as potential TDR sending areas. Doing so would allow willing landowners to "opt in" to a Natural Resource Land designation after selling residential development rights. According to supporters of this approach, Rural Reserve lands:

- Have significant agricultural and forestry value, even if they are not the most productive agricultural or forest soils in Skagit County;
- Can help to stabilize the agricultural and forest land base against unavoidable losses to resource lands over time;
- Can be more accessible and affordable than Ag-NRL to new farmers; and
- Can provide forest habitat, watershed, and open space benefits that may be diminished through residential development.

Rural Reserve (RRv)

"The purpose of the Rural Reserve district is to allow low-density development and to preserve the open space character of those areas not designated as resource lands or as urban growth areas. Lands in this zoning district are transitional areas between resource lands and non-resource lands for those uses that require moderate acreage and provide residential and limited employment and service opportunities for rural residents. They establish long-term open spaces and critical area protection using CaRDs as the preferred residential development pattern."

Skagit County Code 14.16.320

Although these lands may be less significant to forestry production than SF-NRL and RRc-NRL, Rural Reserve lands meet the ownership size range (five to 40 acres) identified as most common among private non-industrial forest landowners in the Forestry Focus Group meeting. In fact, Jim Owens, the president of the local chapter of the Washington Farm Forestry Association, owns forested land in Rural Reserve.

Recommendation 5-1. Enable Rural Reserve landowners to opt in to TDR

The Committee was generally supportive of an approach used in the Snohomish County TDR program that enables an interested property owner to participate in the TDR program if their land meets certain criteria. In Snohomish County, the rural property must:

1. Meet minimum parcel size requirements (five acres for farmland and 40 acres for forestland);

2. Be enrolled in or be eligible for Open Space Ag or Open Space Timber tax status; and

3. Be in active commercial agriculture or forest use. [36]

Properties that meet these criteria are eligible to participate in TDR, and once development rights are sold the land is redesignated and rezoned to farm land or forest land use.

[36] Snohomish County Code section 30.35A.025(2).

Industrial Forest-NRL

Industrial Forest lands can be quite similar in terms of site productivity characteristics to Secondary Forest, although the average parcel size of Industrial Forest lands is larger. Industrial Forest lands have a density of one residence per 80 acres. Residential development is only permitted if the parcel is located within a fire district and within 200 feet of a public road. This is intended to reduce the risk of forest fires in Industrial Forest lands that would be difficult to fight due to limited access to the property. If the entire parcel of Industrial Forest is located outside of a fire district, residential development is not permitted.

Development pressure

Industrial Forest lands do not face as much development pressure as Secondary Forest or Rural Resource lands. This is because of their more remote location, more difficult access, lower residential density, and the fact that much of the Industrial Forest land is located outside of fire districts. Assessor's data indicates that only two residences were built on Industrial Forest land between 2000 and 2012. GIS analysis indicates there are approximately 400 potentially buildable residential development rights in Industrial Forest. These are from Industrial Forest parcels located in fire districts and any adjacent Industrial Forest parcels under the same ownership.[37]

A few Committee members saw little reason to include Industrial Forest as a TDR sending area because of the limited development pressure and the low residential density. Others supported Industrial Forest as a TDR sending area on the basis that current policies and regulations applicable to Industrial Forest land could become less restrictive over time, whereas conservation easements provide permanent protection. Also, because of their limited development potential, Industrial Forest lands could be among the least expensive development rights to be purchased through TDR.

Other conservation protection

As with the other Natural Resource Lands, existing conservation measures provided for Industrial Forest include:

- GMA-compliant designation policies and development regulations intended to protect resource lands of long-term commercial significance;
- Right-to-Manage provisions of Skagit County Code 14.38.010; and
- Eligibility for enrollment in Open Space Timber tax status.

Beyond that, programs or funding sources for conservation of Industrial Forest lands – particularly for the purposes of keeping them in private ownership and in productive use for agricultural or forest management purposes – are limited.[38]

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[37] The County's development regulations would appear to allow the transfer of residential development rights in such instances from the area outside of the fire district to the area inside the fire district, provided that all required development standards could be met on the land located within the fire district.

[38] Some conservation groups or entities (such as dam operators needing to provide project mitigation) have made large fee-simple purchases of Industrial Forest lands. This frustrates some in the timber industry because it removes those lands from contributing to the timber supply processed by local mills.

Landowner interest

While larger forest landowning companies were generally less enthusiastic about TDR than small non-industrial landowners, at least two foresters who participated in the focus group discussions and own or manage Industrial Forest lands expressed interest in potential utilization of TDR.

Agricultural-NRL

Agricultural-Natural Resource Lands (Ag-NRL) are designated based on the presence of "prime farmland soils" and their location within the 100-year floodplain. The soils found in Agricultural-NRL are considered among the best farm soils in the world.

Ag-NRL has a density of one residence per 40 acres. The code has long required that residences built on Ag-NRL must be accessory to farming operations, but the County had not found a way to implement that rule until recently. In 2008, with support from the agriculture sector, Skagit County implemented a requirement that landowners who want to build a residence on Ag-NRL must demonstrate three years of farm income from the subject parcel, to document the proposed residence is accessory to an agricultural use.

Agricultural-Natural Resource Lands (Ag-NRL)

"Agricultural Resource Lands are those lands with soils, climate, topography, parcel size, and location characteristics that have long-term commercial significance for farming. Skagit County is committed to preserving and enhancing the agricultural land base and promoting economic activities and marketing support for a strong agricultural industry."

Skagit County Comprehensive Plan, Natural Resource Lands Element, p. 4-5

Development pressure

In the decades before GMA, there was a significant loss of agricultural land in Skagit County to development. The American Farmland Trust reports that Skagit County lost 52,622 acres of farmland from 1950 to 2007.[39] Skagit County farmland is considered highly developable for residential and commercial uses because it is flat and relatively inexpensive compared to other land, with easy access to major roads such as I-5 and Highway 20 and beautiful views of the surrounding landscape. Concerns over Ag-NRL led to the creation of the Farmland Legacy Program in 1996 and to the implementation of the three-year farm income rule in 2008. The agricultural community remains concerned about continued conversion of Ag-NRL lands for habitat and environmental restoration purposes.

Other conservation protections

As with other Natural Resource Lands, conservation of Ag-NRL is encouraged through:

[39] American Farmland Trust, *Losing Ground: Farmland Protection in the Puget Sound Region*, January 2012, Appendix B, p.17.

- GMA-compliant designation policies and development regulations intended to protect resource lands of long-term commercial significance;
- The Right-to-Manage provisions of Skagit County Code 14.38.010; and
- Eligibility for Open Space Ag taxation.

Additional conservation protections include the three-year farm income rule and the Farmland Legacy Program.

Landowner interest

Landowner interest in applying TDR to agricultural lands has been split both within and outside of the Committee. Skagitonians to Preserve Farmland has been supportive in recent years of Skagit County implementing a TDR program and including Ag-NRL as a sending area.[40] Supporters of this perspective believe that:

- TDR can supplement the Farmland Legacy Program and, if properly designed, will complement rather than compete with that program.
- TDR will provide an additional option to farmland owners who have not qualified to sell development rights to Farmland Legacy or who are interested in a less restrictive conservation easement.
- Federal funds currently available for Farmland Legacy are on the decline and now come with additional stream buffer requirements.
- Ag-NRL lands are located in the floodplain, providing another policy rationale for discouraging residential development.

Committee member Mike Hulbert, a farmer who serves on the Conservation Futures Advisory Committee, which advises the Farmland Legacy Program, has spoken against applying TDR to Ag-NRL on the following basis:

- Farmland Legacy is one of the most successful purchase of development rights (PDR) programs nationwide and is doing a good job of permanently protecting Ag-NRL land.
- By contrast, TDR is an untested program in Skagit County. Extending TDR to Ag-NRL lands may lessen political support for Farmland Legacy on the belief, correct or not, that TDR will adequately protect Ag-NRL.

A few other Committee members also questioned application of TDR to Ag-NRL for the following reasons: Ag-NRL lands have very limited residential development potential due to the three-year farm income rule; Farmland Legacy focuses entirely on Ag-NRL, whereas there is no comparable program for other resource lands; additionally, the Heartland market analysis indicates that Ag-NRL would be the most expensive to purchase through TDR. TDR transactions will achieve more

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[40] In 2013, the Board of Directors of Skagitonians to Preserve Farmland adopted Resolution No. 2013-05, which, among other goals, states: "By 2020 there shall be a functioning TDR market place in Skagit County which allows for smart community growth and economic development while protecting our important and valuable agricultural resources lands."

conservation if focused on less expensive resource lands than Ag-NRL. The Committee discussed several options for Ag-NRL as a TDR sending area:

1. **Include all Ag-NRL lands in TDR**, on the basis that TDR will complement Farmland Legacy.
2. **Include selected Ag-NRL lands outside of the Farmland Legacy Program "footprint"** (generally east of Sedro-Woolley). The geographic separation would minimize potential for interference with Farmland Legacy while providing a conservation option to some farmland owners.
3. **Exclude Ag-NRL from TDR**. This will eliminate concerns over potential negative interactions between Farmland Legacy and TDR while allowing TDR to work on behalf of other resource lands.

Ultimately, those Committee members who supported County implementation of a combined TDR/density credit program supported inclusion of Ag-NRL as a sending area.

Prioritization of sending areas

The Committee considered whether all lands within a particular designation should be identified as sending areas, or whether some further prioritization should occur so that the program focuses on the highest priority lands or achieves a more significant conservation impact in a given area.

Including all lands within a designation is the most equitable approach as it would provide all landowners within the zone equal opportunity to participate in TDR. It is also important to have a broad enough base of landowners to ensure a healthy market dynamic. If a sending area includes only a few landowners, none may be interested in participating, or collusion could occur among landowners seeking to increase the price of their development rights.

At the same time, in a county as large as Skagit – and with a large number of potential sending areas under consideration—identifying all Natural Resource Lands throughout the County would greatly disperse the impact of any conservation achieved. In addition, more distant properties outside of the path of development may be quick to participate in the program even though their actual prospect for development may be slim.

Recommendation 5-2. Prioritize sending areas based on proximity to growth

The Committee discussed several methods for prioritizing sending area lands (see Table 5-1 below). The one that received the greatest Committee attention was proximity to urban growth areas and growth corridors.

Committee members generally agreed that public support in TDR receiving areas will likely be greater for conservation of nearby lands, and areas closer to existing development are likely to face stronger development pressure than more distant parts of the county.

Skagit County GIS produced a map showing a two-mile buffer around urban growth areas and "growth corridors" defined by I-5 and Highway 20, illustrating a potential way to define sending areas by geography. That map is included as Appendix G.

Table 5-1 Possible Methods for Prioritizing Sending Areas

Criteria	Rationale
Proximity to urban growth areas or growth corridors	• Likely greater public support in TDR receiving areas for conservation of nearby lands. • Areas close to existing development will face stronger development pressure than more distant areas; therefore conservation need is greater.
Strategic significance to a natural resource industry's long-term viability	• Conservation efforts should focus on lands with the most strategic importance to a particular natural resource. Advocated by some participants in the Forestry Focus Group meeting. • Existing prioritization examples include Farmland Legacy Program criteria, which provide points for "fringe" and "core" lands. Skagitonians to Preserve Farmland focuses its conservation efforts along the I-5 and SR-20 growth corridors. • While a valid approach, it may be difficult and time-consuming to achieve consensus on which lands are most valuable or most strategically important for TDR sending areas, particularly given the wide range of resource types being considered.
Multiple conservation benefits (natural resource production, environmental protection, preservation of open space)	• Lands selected might be natural resource lands that also contain habitat for threatened or endangered species or are located in watersheds where significant restoration activity is underway. • This approach would generate overlapping conversation benefits (natural resource, open space, and environmental conservation). • The public may place the greatest value on conserving lands that provide multiple benefits.

Development right eligibility for sale through TDR

The Committee reviewed and generally supported the following proposed process for determining whether a sending-site property has a development right eligible for sale through TDR. The process would follow several of the review steps currently used to determine whether a parcel may be built upon for residential purposes, including the following:

1. **Lot certification for development purposes.** Used to determine if a lot is eligible to be considered for development permits. Evaluates whether a lot meets a minimum required size for its zone or, if not, meets one of several exemptions related to how it was created or

whether certain property improvements were made by a certain date indicating an intent to develop.

2. **Review for easements, plat restrictions or other encumbrances.** Part of the development review process, done to determine if the lot is already subject to a conservation easement or other private restriction that would prohibit residential development of the property.
3. **Review for zoning or other County code restrictions prohibiting development.** Also part of the standard development review process, done to determine if there are code restrictions that apply to a class of properties that prohibit residential development or limit the number of residential development rights that may be exercised.

Examples of such restrictions include the prohibition against construction of a new residence in the floodway (SCC 14.34.190) or on Industrial Forest-NRL outside of a fire district (SCC 14.16.410). This level of review does not require special on-site surveys or assessments. Under the proposed process, properties that are prohibited from residential development at this level of review would not be eligible for the sale of development rights through TDR**.**

Development review not applicable to TDR

An additional level of review is routinely conducted for actual, on-the-ground residential development permits to determine how a project will meet County code requirements for critical areas, shorelines, sanitation (sewer or septic), water, road access, and others. Typically this requires on-site assessments and can cost several thousand dollars to complete. Rarely if ever do the above-mentioned code requirements outright preclude residential development, although in some cases they may significantly increase development costs.

This level of review *would not* be applied to determine if residential development rights are eligible for sale through TDR.

A residential development right on a difficult-to-develop parcel would not be precluded from sale through a TDR program; however, the price negotiated between buyer and seller might be lower than for a residential development right that did not face similar constraints.

Following are two examples where development potential may be constrained but not outright prohibited; therefore, development rights would be eligible for sale through TDR if the properties were located within designated TDR sending areas:

- **Ag-NRL**: Residential development is allowed only as accessory use to farming, based on demonstration of three years' of farm income. The number of residential permits on Ag-NRL has declined since this rule was implemented but permits are still being issued to those who meet the three-year farm income test.
- **Skagit River basin (outside of areas with piped water)**: Residential development on new wells is only allowed with a state-recognized water right or state-approved mitigation plan or alternative water source. There is likely a pathway to development for landowners in the basin. For some it will be easier and less expensive; for others more difficult and more expensive.

Development rights from these areas *would* be eligible for sale through TDR if they are located in a designated TDR sending area.

Other TDR eligibility considerations

Minimum property size for TDR participation

TDR programs often establish a minimum size for properties (a parcel or collection of parcels) that are eligible to participate. TDR transactions will involve some administrative costs to applicants and the County, and a minimum parcel size helps to ensure that any TDR transaction achieves a minimum acceptable level of acreage in conservation status. For discussion purposes, minimum property sizes by zone are proposed as follows.

In the left-hand column is the standard parcel size for each sending area zone. In the right-hand column is the proposed minimum property size for TDR participation. (This could be met by a single parcel or by a collection of parcels that total this amount.) Twenty acres is proposed as the minimum size for the four Natural Resource Lands (NRL) designations—consistent with the standard lot size for Secondary Forest, the smallest of all of the NRLs. Ten acres is proposed for the minimum property size for Rural Resource land participating in TDR—consistent with its standard lot size.

Project staff did not have the opportunity to vet this issue or proposal with the Advisory Committee, which did not have the opportunity to discuss it. Therefore, the below proposal is intended to start a conversation on this issue that will continue if a TDR proposal moves forward for further, legislative consideration.

Table 5-2. Proposed Minimum Property Size for TDR Participation

Designation	Standard Lot Size (acres)	Minimum Size for TDR Participation
Ag-NRL	40	20
Industrial Forest-NRL	80	20
Secondary Forest-NRL	20	20
Rural Resource-NRL	40	20
Rural Reserve	10	10

Number of development rights eligible for sale

The working assumption in discussions with the Committee has been that the number of TDR credits available to be certified for sale through TDR is the same as the number of dwelling units allowed under the property's zoning. For example, if a landowner has a 40-acre parcel in Secondary Forest-NRL (zoned for one residence per 20 acres), there would be two development rights available to be sold through TDR. Rights would not be issued for existing dwelling units or encumbered properties. Property owners could choose to retain some development rights and sell others or, of course, sell none at all.

CaRD density-bonus rights

Another important question is whether a TDR program would allow the sale of development rights provided by base zoning only or—in those designations that allow CaRD density bonuses—would also recognize and allow the sale of bonus development rights.

Allowing the sale of CaRD density bonuses through TDR would be a strong incentive for those landowners because it could double or, in the case of RRc-NRL, quadruple the number of eligible development rights they could sell. On the other hand, it would increase the number of eligible development rights in designated sending areas, requiring more TDR transactions to conserve a given acreage of land.

Committee member Bruce Lisser was the most outspoken on the subject, suggesting that only those landowners who went through the considerable time and expense of designing and gaining County approval of a CaRD development should be able to sell the development rights created by the CaRD bonus density.

Reflecting similar logic, Heartland recommended in the market analysis that the County should only make the base zoning density eligible for sale through TDR based on the following reasoning: The additional development potential of land in designations that provide CaRD density bonuses is already reflected in Heartland's estimated value of the residential development rights from those lands. Developing an eligible lot as a CaRD would increase the landowner's or developer's potential economic return, but it would also significantly increase his or her costs and risks. Allowing the sale of development rights available through CaRD would grant additional economic value to the landowner—value that is already reflected in the estimated value of those development rights—without any of the costs or risks associated with an actual CaRD development.

TDR conservation easements

The Committee discussed and agreed that the focus of conservation through TDR should be retirement of a property's residential development right. As a result, property conserved through TDR would remain in private ownership. The residential development right would be retired on the sending site through a permanent conservation easement, held by the County, and the development potential would be transferred to a receiving area. Other uses of the sending-site property allowed by its zoning would not be affected by the conservation easement. The conservation easement would not grant public access.

Initially the Committee discussed whether the TDR conservation easement should extend beyond the residential development right and place additional resource management or conservation requirements on the land. It discussed examples, including the Farmland Legacy Program easement, which establishes a maximum impervious surface limit of two percent (five percent for dairies) on the property and limits activities on the property to only those necessary for agriculture. A conservation easement could also require more restrictive resource management practices, such as stricter riparian protections or more restrictive forest management practices than are otherwise required by code and law.

However, it became apparent that attempting to get more specific about the resource management practices a TDR conservation easement might require could become divisive. It could easily splinter the general agreement among many private landowners, resource managers, and conservation advocates on the benefits of keeping land in a more natural state through the voluntary retirement of residential development rights.

Focusing the TDR program only on the retirement of residential development rights should help maintain a broader range of support for a TDR program than seeking to implement more specific conservation or resource management goals. In keeping with the voluntary nature of the program, it would leave decisions about more specific land management activities in the hands of the private landowners.

The Committee recommended using standardized easements for all TDR transactions, as opposed to negotiating unique conservation easements for each one. The latter would significantly increase the time and expense of TDR transactions for the landowners and the County.

Buy-back provision

Kittitas County, with the help of Forterra, has implemented a buy-back option in its TDR conservation easement. Something similar to this might help address concerns expressed by some forest landowners and managers about having no economic options if the practice of forestry becomes unviable over time.

The Kittitas County provision applies in cases where resource management of the land is no longer viable due to circumstances outside of the landowners' control. Kittitas County Code Section 17.13.060, TDR Documentation of Restrictions, paragraph 3, reads as follows:

> *A TDR conservation easement permanently encumbers a sending site, excepting extraordinary circumstances and a determination of public benefit. The associated process for opting out of a TDR conservation easement for those qualifying shall include a finding by the Board of the following:*
>
> 1. *Demonstration of a hardship beyond the land owner's control; and*
> 2. *Purchase equivalent transfers of development rights; and*
> 3. *Adoption of a resolution by the Board finding that there is an equivalent or better public benefit to exchange the previously held easement for the easement described above in KCC 17.13.060(3)(b).*
> 4. *At the discretion of the Board, Kittitas County may elect to secure an appropriate land management nonprofit or quasi-governmental organization to receive, manage, and steward TDR conservation easements. (Ord. 2013-001, 2013; Ord. 2010-006, 2010; Ord. 2010-02, 2010; Ord. 2009-25, 2009)*

This or a similar provision could be considered for a Skagit County TDR program to address the concern raised by some forestland owners.

A 40-year conservation easement, as advocated by some participants in the Forestry Focus Group meeting, does not appear feasible. Kitsap County adopted 40-year conservation easements as part of its TDR program, but that provision of the program was subsequently invalidated by the Central

Puget Sound Growth Management Hearings Board as being inconsistent with GMA and not achieving permanent conservation of the land.[41]

[41] See Central Puget Sound Growth Management Hearings Board, "CPSGMHB Decisions," 07-3-0019c, Suquamish II v. Kitsap County (http://www.gmhb.wa.gov/central/decisions/index.html).

Chapter 6. **Development Goals, Receiving Areas and Developer Incentives**

Receiving areas are the locations to which development potential is transferred in the form of TDR credits. They can be located within city limits, unincorporated urban growth areas, or in selected rural areas. Within these areas, developers may access additional development potential by purchasing TDR credits. Because of the market-driven nature of TDR, viable receiving areas are a key component of effective TDR programs.

Aligning receiving areas with development goals

Forterra and other TDR experts recommend that communities select receiving areas consistent with their development goals. A TDR program will function most effectively when closely aligned with the community's vision and goals as reflected in key planning documents such as the comprehensive plan and development regulations.

The Skagit County Countywide Planning Policies (CPPs) establish the framework for county, city and town comprehensive plans. [42] Countywide Planning Policy 1 "Encourage(s) urban development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner." CPP 1.2 states that "Cities and towns and their urban growth areas, and non-municipal urban growth areas….shall include areas and densities sufficient to accommodate as a target 80% of the county's 20 year population projection."

Given these goals—and the fact that slightly more than 80% of Skagit County's new population growth between 2000 and 2010 occurred in cities, towns and urban growth areas (UGAs)—urban areas offer tremendous long-term potential as TDR receiving areas.[43] At the same time, for reasons discussed later in this chapter, several developers interviewed as part of this process appeared most interested in using TDR in the rural portions of Skagit County.

Goal A – Urban Growth Areas

"Guide most future development into concentrated urban growth areas where adequate public facilities, utilities, and services can be provided consistent with the Countywide Planning Policies."

Skagit County Comprehensive Plan, Urban, Land Use and Open Space Element, p. 2-5

At the beginning of this TDR planning process, Skagit County invited all of the major cities and towns to participate. The planning directors from Burlington, Mount Vernon and La Conner agreed to serve on the TDR Advisory Committee. At present, only Burlington is actively considering being a

[42] The County and the cities and towns developed the Countywide Planning Policies in the early 1990s as a required initial step in implementing the Growth Management Act.

[43] BERK Consulting, *Skagit County Growth Projections, Summary of Methods and Results*, April 2014, p. 3. Josh Greenberg, *Population Analysis of 1990 to 2010 Census Data, Skagit County (Draft)*, Skagit County GIS, January 24, 2012, pp. 8-10.

receiving area as part of a County TDR program. Burlington already offers the Burlington Agricultural Heritage Density Credit Program which, like TDR, links additional residential development potential in certain City zones with the conservation of Ag-NRL lands surrounding the City through the County's Farmland Legacy Program.

Encourage greater city participation

From the start of the process, Committee members have emphasized that participation by other cities in addition to Burlington will enable a Countywide TDR program to achieve the greatest long-term impact.[44] A more limited number of receiving areas will naturally result in less demand for development right purchases, especially in comparison to the wide range of potential sending areas in Skagit County. Some Committee members also suggested a TDR program will be more successful if it is coordinated among the various cities in Skagit County, thus creating a more even playing field in terms of development standards across jurisdictions.

In response, several city planners suggested that TDR advocates should encourage city and town elected officials to consider implementation of TDR as part of their 2016 Comprehensive Plan updates that are currently underway.

TDR and Industrial Development

Industrial Land is rarely used as a TDR receiving area because price is often a major factor in a company's selection of industrial development locations. However, Warwick Township (pop. 17,000), in Lancaster County, Pennsylvania, has established a TDR receiving area in its Campus Industrial Zone, a 163-acre site within the township. According to *The TDR Handbook*: "The program's baseline is 10 percent lot coverage – in other words, no TDRs are required to cover up to 10 percent of a lot in this zone. To exceed that baseline, developers must buy one TDR for each four thousand additional square feet of lot coverage above baseline, up to a maximum coverage of 70 percent." The zone, created out of rural land, represented a significant increase in development potential even with the 10 percent lot coverage limit. The Warwick program has preserved 20 farms with a total of 1,318 acres.

Look beyond residential density

The Committee has also urged consideration of more than residential density as a developer incentive under TDR. As discussed in earlier sections, proposals to increase residential density are often controversial among existing city residents and elected officials in Skagit County.

Some other developer incentives used by TDR programs in the Puget Sound region and nationally include:

- Additional square footage, floor area ratio (FAR), or height in commercial areas.

[44] One Committee member, Charlie Boon, repeatedly expressed concern about identifying Burlington as a receiving area due to its location at a vulnerable spot along the Skagit River.

- Additional lot coverage in industrial areas (see **TDR and Industrial Development** profile on page 50).
- Reduced parking requirements in residential or commercial zones.
- New or additional residential development potential in commercial zones resulting in "mixed use" residential and commercial areas.

The initial phase of the project's TDR market analysis evaluated the potential for linking TDR to industrial development in the Bayview Ridge UGA and to commercial and mixed use development in the City of Burlington. The analysis of commercial and mixed use development in Burlington was carried through to the final and more detailed phase of the market analysis. Those findings are discussed in Chapter 7, which summarizes the market analysis results.

City interest in TDR

The Committee discussed why a city or town would be interested in participating in a Skagit County TDR program.

One Committee member asked: Can't a city simply increase the amount of development it allows by changing its zoning code without any linkage to TDR?

The answer, of course, is yes.

Cities and towns have sole land use jurisdiction within their corporate limits. They can change their comprehensive plan policies and zoning regulations as they see fit. A city or town would consider partnering with the County on TDR if it has an interest in conserving land outside of the city's limits and thus outside of its land use jurisdiction. This could include land within the unincorporated portion of the city's urban growth area (which falls under County land use jurisdiction) or land beyond its UGA boundaries.

> "Burlington residents value the agricultural landscape and other types of open space around them. Agriculture is a key part of Burlington's heritage and identity and the city wants to help ensure the permanent protection of working farm lands around it. Because those farmlands are outside of Burlington's city limits, the city has formed a partnership with the county's Farmland Legacy Program to further shared conservation goals."
>
> Burlington Planning Director Margaret Fleek

Committee member Margaret Fleek, who is Burlington's planning director, explained that Burlington sees TDR as an opportunity. The City needs affordable housing for people who work there. The City's base density under its zoning code is 14 residences per acre, which translates into 3,000-square-foot lots.

The Burlington Agricultural Heritage Credit Program allows development at higher densities in certain zones, which is one means to encourage affordable housing for City residents. Fleek says City residents value the agricultural landscape and other types of open space around them. Agriculture is a key part of Burlington's heritage and identity and the City wants to help ensure the permanent protection of working farmlands around it. Because those farmlands are outside of

Burlington's City limits, the City has formed a partnership with the County's Farmland Legacy Program to further shared conservation goals.

More broadly applied, Skagit County is an attractive place to live, a feature that draws many people to move here. Through TDR, the growth that comes to the County because of that quality of life can help protect the rural landscape that makes the County special and unique.

Skagit County is an attractive place to live, a feature that draws many people to move here. Through TDR, the growth that comes to the County because of that quality of life can help protect the rural landscape that makes the County special and unique.

Financial incentives for cities

A city may object to being a TDR receiving area due to concerns over higher densities, greater congestion, or increased costs for local infrastructure.

To address such concerns, King County has provided infrastructure and "amenity" funds to cities that participate in the County's multi-jurisdictional TDR program. Cities may use those funds to finance city amenities including parks, streetscape and transit-related improvements, and cultural facilities.[45] King County has determined that shifting residential development from the County's natural resource lands into cities provides a net fiscal benefit to the County due to reduced costs, warranting these economic contributions to participating cities.

A recent state law enables cities participating in certain county or regional TDR programs to use a form of tax increment financing for infrastructure improvements such as parks, plazas, sidewalks, and roads. At the current time, the Landscape Conservation and Local Infrastructure Program (LCLIP) only applies to three central Puget Sound counties: King, Snohomish and Pierce.

Recommendation 6-1. Explore financial incentives for cities that participate in TDR

Although Skagit County may not have the financial resources of a King County, or access to the LCLIP program, it could look for other opportunities to assist cities who participate in a County TDR program with infrastructure needs.

For instance, Skagit County distributes the portion of the state sales tax rebated to the County (.09%) for city, town, County, or port infrastructure projects that create or retain family wage jobs, per RCW 82.14.370.[46] This source typically generates about $2 million in revenues annually (although about $600,000 of that per year is reserved for debt service through 2022). The County establishes the criteria it uses to rank and select these projects and it could include points in the ranking process for cities or towns that participate as receiving areas in a Skagit County TDR program.

[45] Cascade Land Conservancy, *A Resource Guide to Designing Transfer of Development Rights in Washington State*, p. 47.

[46] RCW 82.14.370, "Sales and use tax for public facilities in rural counties."

Developer incentives

The Committee felt strongly that to be successful, a TDR program would need to appeal to developers. TDR is entirely market-driven and without development right or density credit purchases there is no resulting conservation. Market demand needs to exist for the development incentives offered, and those incentives need to be available at a price that provides an economic benefit for the developer to pursue them.[47] A TDR program must also be easy to use, as delays in the permitting process cost developers money. Uncertainty and risk are strong disincentives, as are changes in program parameters such as those that occurred in the Mount Vernon TDR program affecting where purchased development rights could be used.

Cities can encourage TDR use by advance-planning activities such as subarea plans or a planned action Environmental Impact Statement (EIS) that remove some of the risk and streamline the permitting process for developers. Burlington is considering a planned action EIS for possible changes in zoning in and around its downtown area which may increase opportunities for use of its density credit program.

Finally, the Committee emphasized that developer incentives offered through a TDR program must be compatible with other development regulations in the receiving area. For instance, the potential to build additional commercial square footage through the purchase of TDR credits would be of no value to a developer if it could not be used due to conflicting limitations on impervious surface.

Developer Focus Group Meeting

Many of these same issues were raised by developers and receiving area landowners who participated in the Developer Focus Group meeting with Heartland.

The majority of meeting participants appeared to view TDR as an undesirable means to place additional costs on landowners and developers. They felt TDR would create a disincentive for desired development, rather than provide bonus development opportunities resulting in a higher return on investment. For this group of TDR skeptics, the major exception was for additional development opportunities in rural Skagit County, where comprehensive plan policies and development regulations often limit development potential below market demand.

A smaller number of the developer-group participants supported the goals and premises of the comprehensive plan and TDR, including that:

- The majority of new development should occur in urban areas;
- More compact urban development is helpful for conserving rural and resource lands;
- The development market is moving in the direction of greater urban infill and intensification; and

[47] Although purchase and sales prices are privately determined in a traditional TDR program, the exchange ratios established by the program have a significant impact on whether TDR transactions work financially for both buyers and sellers. Under a density fee program, the jurisdiction operating the program would establish the price of the density credits based on analysis of market data.

- TDR, if attuned to the market, can balance the financial needs and goals of sending-area landowners and receiving-area developers.

Whether they generally supported TDR or not, most participants in the developer meeting agreed the density fee approach would be simpler for developers and provide more certainty by informing them up front about the cost of accessing additional development potential, in contrast to a traditional TDR program where a developer would need to search out willing sellers and negotiate a sales price.

Potential TDR receiving areas

The TDR market analysis conducted by Heartland and summarized in Chapter 7 evaluated three areas for detailed consideration as potential TDR receiving areas. Selection factors included the jurisdiction's interest in being considered as a TDR receiving area, the amount of funds available for the market analysis, and the overall project schedule. The three areas and the zones within them that were analyzed were:

- The City of Burlington's downtown business, commercial, and industrial zones;
- The Bayview Ridge UGA's residential, industrial, and community center zones; and
- Rural upzones, or landowner-requested changes from one rural zone to another zone that create additional development potential.

Following is a brief discussion of each of the potential receiving areas.

City of Burlington

The Burlington Agricultural Heritage Density Credit Program allows additional residential development in a 49-square-block downtown area through the purchase of density credits. The program applies to residential development in the following zones: Downtown Business District (B-1); Medium Residential Neighborhood Business (MR-NB); General Commercial (C-1); and Multi-Family (R-3).

The TDR market analysis will help Burlington consider whether and how to expand the scope and use of the Density Credit Program or create a linkage with a newly created Skagit County TDR program. Specifically, the market analysis provides updated data and analysis regarding (a) long-term market demand for density credits in Burlington, (b) developer willingness or ability to pay for density credits to inform credit pricing decisions, and (c) a proposed mechanism for expanding the City's density credit program (or TDR) to commercial development in the City.

Skagit County also has provided planning funds to Burlington to help the city engage its residents, business owners, and elected officials in planning for the future, in preparation for a state-required comprehensive plan update by 2016. Those funds helped Burlington draw on the expertise of the

Urban Land Institute-Northwest and the University of Washington's Green Futures Lab to develop specific implementing recommendations to move the community's vision forward.[48]

Burlington is focusing on the interrelated goals of expanding affordable housing opportunities for the city's workforce and increasing the economic vitality of the downtown. One outcome might be zoning changes to allow two-story mixed use (commercial and residential) buildings along Fairhaven Avenue – the main downtown thoroughfare – and three- and four-story residential buildings in surrounding blocks. Over the long-term, those zoning changes could help to generate demand for the purchase of additional density credits or TDRs.

> The Bayview Ridge analysis does help to illustrate how TDR could be applied in other comparable urban residential situations, whether linked to incremental increases in residential densities within cities or expansions of urban growth areas to accommodate residential growth.

The City has complete discretion to decide whether or how to implement any changes to its Density Credit Program or create a new linkage to a Skagit County TDR program (if one is created) as a result of this process.

Bayview Ridge UGA

Skagit County governs land use within the non-municipal Bayview Ridge Urban Growth Area a few miles west of Burlington. The UGA includes the Skagit Regional Airport and Port of Skagit and private industrial lands, an existing urban residential community and golf course, and hundreds of acres of mostly vacant land planned for future development. When the TDR planning process started in 2011, Skagit County was developing a planned unit development (PUD) ordinance to guide future residential development at Bayview Ridge. Policies included in the Bayview Ridge Subarea Plan in 2008 called for the use of density credits to allow moderately higher urban residential densities in the Bayview Ridge Residential zone. The County's intent was to use the TDR market analysis to flesh out the details and economics of those policies.

Initially the TDR market analysis evaluated the potential for linking TDR or density credit sales to additional residential and industrial development opportunities at Bayview Ridge. The initial phase of the market analysis showed that residential development held the most promise as a driver of TDR, and later phases explored those residential TDR opportunities in greater depth.

However, the County's policy direction on Bayview Ridge changed significantly in 2013 and early 2014. The County has moved toward expanding the acreage available for industrial development while eliminating planned future urban residential areas. This change is due to concerns over conflicts between the Skagit Regional Airport and proposed new residential development, and the costs of serving that development, particularly costs associated with the need for a new school.

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[48] University of Washington Green Futures Lab, *Burlington at the Crossroads: Final Recommendations*, December 2013; http://www.skagitcounty.net/PlanningandPermitTDR/Documents/FinalReport_Burlington.pdf; Urban Land Institute Northwest, *ULI Technical Assistance Panel Recommendations: City of Burlington*, 2013 (http://northwest.uli.org/wp-content/uploads/sites/39/2012/03/City-of-Burlington-TAP-Report-Final.pdf).

The Heartland analysis revealed the urban residential development at Bayview Ridge to be a fairly promising TDR market opportunity; however, that no longer appears to be an option due to the County's changing policy direction. The Bayview Ridge analysis does help to illustrate how TDR could be applied in other comparable urban residential situations, whether linked to incremental increases in residential densities within cities or expansions of urban growth areas to accommodate residential growth.

Rural upzones

Skagit County has had a long-standing interest in exploring TDR or density credit purchase options as part of upzones in rural portions of the County. Commissioner Ken Dahlstedt has repeatedly questioned the wisdom of using public funds to purchase Ag-NRL development rights through the Farmland Legacy Program while "giving development rights away for free" through rural upzones. He has advocated linking rural upzones to a TDR or density purchase program so that landowners who obtain increased development potential on their land help to contribute to the conservation of natural resource lands.

Several counties have similar provisions in place, including Pierce, Kittitas, and Snohomish. Generally, the county must approve the requested upzone on its own merits, consistent with the applicable comprehensive plan designation criteria. If approved, the owner or developer of the land may access the increased development potential granted by the upzone through the purchase of TDR credits or density credits.

Rural upzones resulted in the highest property value increases of any of the receiving-area scenarios analyzed, as shown in Table 6-1. That is because rural upzones result in relatively large-acreage rural lots which typically have a higher market value than quarter-acre or multi-family urban lots. As a result, rural-upzone transactions require the lowest exchange rates of any of the receiving-area scenarios analyzed—meaning each rural upzone transaction has more purchasing power in terms of TDR credits than its urban counterparts. In some cases, rural upzone transactions can support a one-to-one exchange rate—meaning one development right can be retired from a sending-area parcel for every additional unit of development added to the receiving-area parcel. So while the amount of rural development in Skagit County is projected to be significantly lower than the amount of urban development—20% vs. 80%, resulting in fewer TDR transaction opportunities—each rural transaction subject to TDR purchases has significant development-right purchasing power.

Table 6-1. Comparison of Receiving Area Exchange Rates

Receiving Area	Exchange Rate
Rural upzone	1–3 receiving units/sending credit
Bayview Ridge Single-Family Residential	3–6 receiving units/sending credit
Burlington Multi-Family Residential.	6–10 receiving units/sending credit

The exchange rate represents the number of additional units of development potential obtained for each development right purchased. The range of exchange rates (e.g., 1-3 for rural upzones) reflects different values for different sending-area development rights – with Ag-NRL having the highest and IF-NRL the lowest.

Additional receiving-area opportunities

Some members of the Advisory Committee and participants in the Developer Focus Group meeting encouraged exploration of other receiving area opportunities as well, including those listed below:

Rural options

Some of the greatest interest in TDR among developers interviewed appears to be in rural rather than urban area uses. GMA requires urban jurisdictions to plan for 20 years—resulting in a great deal of existing urban development capacity—whereas growth management requires counties to substantially limit development in rural areas, often below what the market would typically produce. Developers naturally see rural development opportunities beyond what is allowed by County codes.

At the same time, allowing more rural development through TDR than either the comprehensive plan or GMA allow could work against the plan's fundamental goals of protecting natural resource lands, rural character, and environmentally sensitive areas. Some additional rural TDR opportunities may exist but they would need to be carefully crafted.

CARD BONUS DENSITY

Several members of the development community expressed interest in obtaining additional development potential for a Conservation and Reserve Development (CaRD) with the purchase of TDRs. One participant described a situation where a project was short a small amount of acreage needed to obtain an additional development right. The developer may have been willing to purchase a TDR credit in order to obtain one additional lot as part of the CaRD. This additional lot would have utilized infrastructure already being provided to the other clustered CaRD lots and could have resulted in the removal of a development right from Industrial or Secondary Forest land.

Such a provision would likely generate both support and opposition: the former from people who want to see more flexibility in rural development opportunities and the latter from those who view the existing CaRD ordinance as flawed and producing developments they believe detract from rural character rather than protect it.

Heartland did not specifically analyze the economics of CaRD bonus densities; however, the market analysis did include estimated development-right values on Rural Reserve and Natural Resource Lands as part of the rural upzone analysis. Those values could be adapted to the above CaRD scenario.

RURAL VILLAGE INFILL OR EXPANSION

Several participants in the developer meeting showed interest in increased development potential within Rural Villages through the purchase of TDRs. Rural Villages are "limited areas of more intensive rural development," or LAMIRDs, under the comprehensive plan and GMA. They allow more intensive development than is otherwise permitted in the rural area, but that development must be consistent with what generally existed when GMA was adopted in 1990. New development must consist primarily of infill rather than outward expansion and be located within "logical outer boundaries."

Supporters of creating additional development potential in Rural Villages say they are the logical locations for more intensive rural development because of their existing density and the presence of amenities and services, in some instances including sewer and public water. Some suggested that additional population in selected Rural Villages such as Big Lake, Clear Lake, and Edison could help to fund infrastructure improvements that already are needed.

The best opportunity to consider allowing additional development through TDR in a particular Rural Village would be a subarea planning process where the above issues and residents' desires could be explored in greater detail.

Committee member Ed Stauffer noted his participation in the Alger Subarea Planning process in 2006 and 2007. Generally, local residents who participated in that process expressed a desire *not* to see the Rural Village and surrounding rural area grow in size or intensity; however, the County did approve a few upzones as a result of the Alger Subarea Plan, adding land to Rural Intermediate and the Alger Rural Village. Those upzones could have been linked to TDR or density credit purchases if a County program had been in place at the time.

TRANSFERS FROM NATURAL RESOURCE TO RURAL LANDS

Some meeting participants suggested allowing even broader transfers from natural resource to rural lands. Currently, Skagit County Code allows a single property owner who owns adjacent resource and rural parcels to transfer development rights from the former to the latter. Such transfers are not currently allowed among different property owners.

One developer described a project where he could have extended public water to a particular rural site by increasing the number of development lots through the purchase of TDRs. This would have moved development rights off resource lands (or rural lands with restricted water access) to a rural site more suitable for residential development.

This idea is similar to a concept recommended by the Envision Skagit Citizen Committee and also to a proposal for "Conservation Villages" developed by the Cascade Land Conservancy (now Forterra), and considered but not adopted by the Washington State Legislature in recent years.

This concept has too many significant implications to implement at this time, including whether it would be permissible under GMA or achievable with the County's existing CaRD ordinance. However, if and when the Board of County Commissioners authorizes a comprehensive evaluation of the CaRD ordinance and its implementation, the idea could be explored in greater detail.

Recommendation 6-2. Consider a 1:1 exchange rate for rural-to-rural transfers

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.*

UGA Expansions

Several counties link purchase of development rights to expansions of urban growth areas. Examples include Snohomish and Pierce counties. Under Snohomish County's TDR program, the additional development potential granted when rural land is added to a UGA may be accessed through the purchase of TDRs.

A significant increase in development potential occurs when land is moved from rural zoning – for instance Rural Reserve, which allows one residence per 10 acres—to an urban residential zone, typically allowing a minimum density of four units per acre. This particular example represents up to a 40-fold increase in development potential and would generate a sizable increase in property value as well.

At the same time, the resulting four units per acre of residential density remains relatively low by urban standards—in fact, four units per acre is generally the minimum urban density allowed by GMA. This example illustrates how TDR could be applied to a receiving area using fairly standard (for Skagit County) urban densities rather than higher residential densities that have generated conflict in some local communities.

Some might object that linking UGA expansions to TDR purchases might discourage development within the urban growth area by making it more expensive. This could be addressed by an appropriate exchange rate (or pricing of density credits) to ensure that the UGA expansion option remains an economically favorable one for the landowner or developer.

Recommendation 6-3. Explore implementation of TDR for UGA expansions

A TDR provision linked to UGA expansions should be considered in consultation with affected cities. Such consideration should include identification of appropriate sending areas for TDR transactions that would conserve lands of importance to the cities and their residents. The Heartland analysis of upzones from Bayview Ridge Urban Reserve to Bayview Ridge Residential is similar in nature to a rezone from Rural Reserve (which surrounds many city and town UGAs) to urban growth area. It could be adapted to specific UGAs based on more localized analysis.

Municipalities in addition to Burlington

The Advisory Committee strongly encouraged Skagit County to talk with other cities about participating in a countywide TDR program. Of course, the County has no ability to require cities and towns to do so. Following is a brief discussion of some apparent opportunities for and constraints to participation by various cities and towns.

ANACORTES

Anacortes is the second largest city in Skagit County (Mount Vernon being the first) with an estimated 2012 population of about 16,000. City Council member Erica Picket participated in the Advisory Committee's February 2013 discussion of potential TDR receiving areas and shared some thoughts on possible opportunities and obstacles to implementing TDR in the city:

Opportunities:

- Anacortes residents are very concerned about preserving the shoreline, small farms on South Fidalgo Island, and forest lands within and surrounding the city limits.
- Many city residents have financially supported the expansion of the Anacortes Community Forest Lands through contributions to the purchase of conservation easements, demonstrating their commitment to land conservation.

Constraints:

- Finding the right situations where increased residential densities (or other forms of development incentives) are supported by the community could be a challenge.

Others have suggested that the area around downtown Anacortes could be a prime location for additional small-lot residential development, appealing to those who want walkable access to shops, restaurants, parks, the library, and the marina. Commercial and industrial developers have also shown significant interest in recent years in building in Anacortes, due to the city's unique location and amenities. This creates opportunities for linking TDR to types of commercial and industrial development that are consistent with the city's vision and goals which it is currently exploring through its comprehensive plan update process.

LA CONNER

Town administrator and planning director John Doyle is a member of the TDR Advisory Committee. He is supportive of TDR but sees limited opportunities for La Conner to serve as a receiving area due to its small size, limited projected population growth, and limited opportunities for infill development.

Opportunities:

- With an average residential density of about nine dwelling units per acre, Town residents are quite comfortable with the relatively higher (for Skagit County) residential densities and mixed-use development already present in the Town.

Constraints:

- The Town has very limited infill potential and no outward expansion opportunity given its location in the floodplain and surrounding agricultural lands.

- Constraints limiting additional infill development include a lack of area for parking and a desire to maintain the small-town scale and proportion of buildings, which generally are limited to two stories in height.

MOUNT VERNON

Mount Vernon is the largest city in Skagit County with a 2012 estimated population of 32,000 residents. It is home to about 40% of the urban population in Skagit County and is projected to receive about 40% of the projected urban residential growth in coming years. Planning and economic development director Jana Hanson is a member of the TDR Advisory Committee.

Opportunities:

- Mount Vernon is the largest single development market in Skagit County.
- The City's existing TDR program has successfully facilitated development right transfers from agricultural land (within the city limits) to residential neighborhoods.
- The City is very interested in encouraging commercial and mixed-use development in its historic downtown along the Skagit River. The City's economic analysis for the downtown area shows more long-term demand for development than there is capacity, suggesting a market opportunity for TDR.

Constraints:

- The 2008 collapse of the housing market and changes to the City's planned unit development (PUD) ordinance have left the City's TDR program mostly inactive in recent years.
- Mount Vernon is not interested in linking with a County TDR program at this time, particularly one focusing on residential development.
- Downtown development is a top priority for the City, but Hanson is concerned that TDR would create a disincentive rather than an incentive for the development the City wants to encourage.

SEDRO-WOOLLEY

Sedro-Woolley is the third largest city in Skagit County, with an estimated 2012 population of about 11,000. The City has not participated on the TDR Advisory Committee.

Opportunities:

- The City's Mayor has pointed to $40 million in recent infrastructure investments Sedro-Woolley has made to indicate that Sedro-Woolley is ready for and interested in population and employment growth.
- The Sedro-Woolley School District has recently completed improvements to its middle school and has reported sufficient capacity for future growth. A strong school district can be a draw for residential development.
- Sedro-Woolley, Skagit County, and the Port of Skagit are evaluating redevelopment opportunities for the Northern State campus just north of the City. Conceivably, that could

result in a receiving-area opportunity like the Warwick Township example profiled on page 50.

Constraints:

- The City faced challenges implementing a PUD ordinance that allowed lots down to 3,000 square feet, including a shortage of parking space for residents' vehicles on their individual lots.
- The City's zoning already allows relatively high residential densities outright: up to seven residences per acre in certain single-family zones, 15 units per acre in multi-family zones, and up to 20 units per acre in various zones allowing mixed-use development.

The towns of Lyman, Hamilton, and Concrete are not discussed here because of their small size and very limited planning resources.

Chapter 7. **TDR Market Analysis**

This chapter is the executive summary of Heartland's TDR market analysis, available in full at www.skagitcounty.net/PlanningandPermitTDR/Documents/Heartland-Final-TDR-Report.pdf.

Scope of analysis

Heartland was contracted by Skagit County to undertake a market analysis to inform TDR policy. The project scope included analyses of both pre-defined candidate receiving areas (CRAs) and pre-defined potential sending-area zoning districts:

CANDIDATE RECEIVING AREAS

1. Bayview Ridge Residential & Commercial Development
2. Burlington City-Center Residential & Commercial Development
3. Rural Upzone Areas

SENDING ZONING DISTRICTS

1. Ag-NRL
2. RRc-NRL
3. RRv
4. SF/IF-NRL

The first phase of analysis (Phase II) provided a high-level look at supply and demand characteristics within each CRA and summarized the analyses which had been conducted to date on sending and receiving area economics. The second phase (Phase III) of analysis leveraged the Phase II findings to inform an in-depth TDR exchange rate analysis that looked at the economic dynamics at play within the CRAs and within the potential sending areas. Additionally, Heartland endeavored to understand how a hypothetical TDR program, informed by the results of this market analysis, could interact and align with the existing density credit and purchase of development right programs in the County.

Phase II summary

The Phase II analysis focused on understanding the supply and demand dynamics of each CRA to inform areas of concentration for the in-depth Phase III market study. Heartland utilized a macro capacity analysis to determine annual supply and demand for land within the CRAs and to project the relative capacity within each CRA to accommodate projected growth (both household growth and growth of commercial space requirements). This macro analysis produced a "Capacity Threshold Year," which is the year when land capacity would be extinguished based on projected growth patterns. The Capacity Threshold Year can be thought of as a relative indication of land scarcity and demand for density above base levels, which subsequently are indications of implied market demand for a TDR program. The results of this analysis are summarized below.

Table 7-1. Supply and Demand Analysis Summary

	Burlington Residential/Commercial			Bayview Ridge Residential			Bayview Ridge Commercial		
	LOW	MEDIUM	HIGH	LOW	MEDIUM	HIGH	LOW	MEDIUM	HIGH
Developable Land Supply	333 Acres			297 Acres (BR-R) 230 Acres (BR-UR)			383 Acres (LI) 252 Acres (HI)		
Annual Growth	26 DU & 100,000 SF	37 DU & 150,000 SF	72 DU & 200,000 SF	42 DU	58 DU	114 DU	70,000 SF	100,000 SF	130,000 SF
Dev Assumption	14 DU/Acre (Res) 0.3 FAR (Com)			4 DU/Acre (BR-R) 1 DU/5 Acre (BR-UR)			0.25 FAR (LI) 0.12 FAR (HI)		
Annual Land Utilization	10 Acres	14 Acres	20 Acres	11 Acres	15 Acres	29 Acres	9 Acres	13 Acres	17 Acres
Years of Capacity	34 Years	23 Years	16 Years	27 Years	20 Years	10 Years	47+ Years	47+ Years	42 Years
Capacity Threshold	2047	2036	2029	2041	2033	2023	2060+	2060+	2055

The macro capacity analysis determined that there would be relatively little demand for above-base commercial density in the Bayview Ridge CRA; therefore, this CRA was not included in the Phase III analysis. The Burlington residential/commercial and the Bayview Ridge residential CRAs were determined to have relatively the greatest potential under this macro capacity analysis and therefore were analyzed further in Phase III. The Rural Upzone CRA is not a geographically-defined area; therefore, a macro capacity analysis was not applicable. Demand for TDR in this CRA was inferred from past use of the upzone process and the CRA was analyzed further in Phase III.

Phase III summary

TDR is a process of transferring density from sending-area property to receiving-area property. This density has value both to the sending property owner and to the receiving property owner (or developer). Understanding value expectations on each side of this equation is an important component to structuring a TDR program, and was the focus of Heartland's Phase III analysis.

Receiving area ability to pay

To determine whether a property owner on the receiving end of a TDR program has the ability to pay for additional density, it is necessary to understand the property's value before and after receiving the additional density. In a market with sufficient land sale activity at all levels of zoned density, this can be accomplished by analyzing recent comparable sales of properties at both the pre- and post-TDR density levels. However, in the absence of this dataset, it is necessary to use a residual land value (RLV) modeling approach to establish the value lift associated with TDR density.

Heartland determined that the dataset of sales in Skagit County was not sufficient for a strictly sales-based analysis; therefore, RLV was the primary method used to calculate receiving area ability to pay. An RLV approach determines land value by modeling a hypothetical development project and determining how much a developer could "afford" to pay for land and still have the development make economic sense.

The RLV analysis estimates the total value lift that the receiving land owner/developer achieves when receiving TDR density credits. This value lift may or may not be what a developer should be charged for the density. To determine a *fee inference* from this value, Heartland incorporates a *fee as percentage of value* metric of 50%. This means the *fee inference*, or the amount a developer should be asked to pay per density credit, is 50% of the value they receive from that credit. This *fee as percent of value* metric is meant to provide a margin of error in the analysis and to make the TDR density credits more attractive to developers relative to a next-best option (buying more land). The detailed results of Heartland's ability to pay analysis can be found in the slides in Appendix H

BRIEF SUMMARY OF FINDINGS

- Bayview Ridge Fee Inference: $6,600 to $7,350 per unit
- Burlington Residential Fee Inference: $3,800 per unit
- Burlington Commercial Fee Inference: $17.50 per square foot of density
- Rural Upzone Fee Inference: $12,460 to $17,025 per unit
- Higher Bayview Ridge and Rural Upzone fees are associated with the ground-related nature of development in those CRAs relative to the more vertical-related increased density in the Burlington CRA.

One note is that Burlington does not currently have a maximum allowable density for commercial development. For a TDR program to function there would need to be a base density that could be exceeded with TDR bonus density credits. In order to make a fee inference for the Burlington commercial CRA, Heartland set a hypothetical base density at a 0.30 floor area ratio (FAR, gross building square feet per land square feet). This figure was determined to be approximately what the market is currently demanding for commercial space. The ability to pay analysis focused on the value created by going above this hypothetical base density. In the context of Burlington's market, this would entail reducing the amount of a development site that is allocated to surface parking and replacing that area with an expanded building structure.

Sending area value

Establishing a range of sending-area values for multiple zones throughout the County is challenging for a number of reasons. These include the quality of the land and amenities on it, the location of the property, the level of development pressure it faces, and so on. In an ideal situation, the value of the development right would be estimated using comparable transactions. One set would be valuation of land unencumbered and then this value would be compared to sales of similar quality land after the development rights are extinguished. The difference between these two reconciled sets (land that is unencumbered compared to land on which the development rights have been extinguished) would be the value of the development rights. Using County assessor sales data, we had a sufficient set of transactions that did not involve easements for each zone; however, the set of sales to gauge the "after" value was limited in every zone except for the Ag-NRL, which had roughly 60 transactions dating back to 2007. Because conservation easements that have been acquired though the Farmland Legacy Program (FLP) are more restrictive than easements that would be transferred in a TDR transaction, the value of a TDR development right is less than one secured in the FLP. Given this background, we based our sending value range estimates in the following manner:

1. Assembled sales data for each sending area.

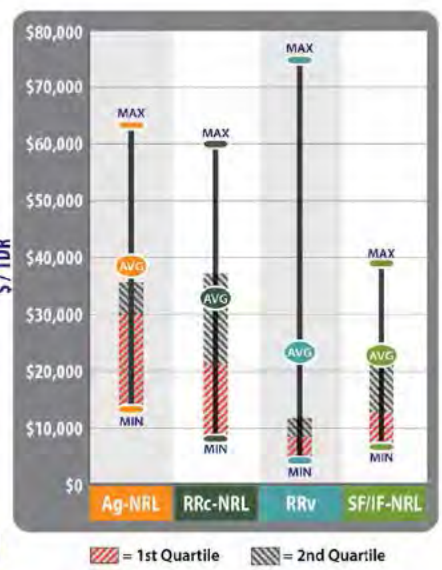
2. Estimated the average value of a development right for FLP transactions to be approximately 30%. This formula is the development right value divided by the unencumbered value.
3. A second set of information from Snohomish County and Forterra was reviewed regarding its PDR vs anticipated TDR pricing relationship.
4. Blending these two relationships with our assessment of the impact on value resulting from fewer restrictions on TDR easements compared to PDR easements, we estimated the average development right would be roughly 20% of the unencumbered value.
5. Applied this ratio to the assembled County sales data for each sending-area zone.
6. This output resulted in a range of sending site values per development right for each zone that a party seeking the purchase of a development right may pay.
7. Assumed TDR purchases would be in the first or second quartile of the resulting TDR values as buyers would likely gravitate towards the lower cost credits unless policy decisions influenced their decision.
8. TDR values for RRv and RRc-NRL include the value of the CaRD density bonus potential.

Sending Value Estimates

- Value Range for TDRs (per Development Right)

	Total Value per: DEVELOPMENT RIGHT	TDR VALUE	REMAINING VALUE
Ag-NRL			
MIN	$65,000	$13,000	$52,000
AVG	$193,000	$38,600	$154,400
MAX	$317,000	$63,400	$253,600
RRc-NRL			
MIN	$40,000	$8,000	$32,000
AVG	$164,000	$32,800	$131,200
MAX	$300,000	$60,000	$240,000
RRv			
MIN	$20,000	$4,000	$16,000
AVG	$116,000	$23,200	$92,800
MAX	$375,000	$75,000	$300,000
SF/IF-NRL			
MIN	$33,000	$6,600	$26,400
AVG	$115,000	$23,000	$92,000
MAX	$195,000	$39,000	$156,000

Assumed TDR Right % of Value: 20%



Exchange rate reconciliation

An exchange rate is needed in a TDR program when the value of one credit on the receiving side is not equal to the value of one credit on the sending side. Without an exchange rate in this scenario, transactions would not occur because one side of the deal would not be receiving adequate compensation for the density that they are either sending or receiving. In this analysis, we calculated exchange rates by dividing the sending area per credit value by the receiving area per credit value, which determines the number of receiving-area credits required to extinguish one sending-area credit.

BRIEF SUMMARY OF FINDINGS:

- Bayview Ridge Exchange Rates: three to six receiving units per sending credit
- Burlington Residential Exchange Rates: six to 10 receiving units per sending credit
- Burlington Commercial Exchange Rates: 1,200 to 2,200 receiving square feet per sending credit
- Rural Upzone Exchange Rates: one to three receiving units per sending credit
- CRA ability to pay is set, therefore exchange rates fluctuate based on differing values in the sending-area zones
- Receiving area credits have highest "buying power" in sending zones with the lowest development right values (SF/IF-NRL) and the lowest buying power in sending zones with the highest development right values (Ag-NRL). Therefore, assuming a fixed demand for density credits on the receiving side, the opportunity to extinguish the most sending credits would be in these low-cost sending zones.

Analysis recommendations

1. **Macro-Level Considerations:** Heartland determined that the current CRA market environments will most likely not support a robust TDR program in the near term. The initial program would likely consist mainly of isolated project utilizations of TDR, where benefits exceed costs to individual developers. However, there are several benefits to implementing a program in expectation of future utilization: it allows the County to be prepared to capture funds for conservation when development does occur, and it allows the County time to work out details, fine tune, and expand awareness of the program before major utilization. We anticipate use will increase as the economy strengthens, existing capacity is utilized, and especially if additional receiving area opportunities are created.
2. **Sending Areas**: The County needs to determine its conservation priorities so that the sending areas can be focused on conserving high-priority land. The sending areas in this analysis were broad zoning districts, which could be refined to target specific conservation goals. Since the Ag-NRL zone already has several conservation programs in place and has more expensive development rights relative to other potential sending zones, a TDR program could focus on lands outside of the Ag-NRL zone. Stakeholder meetings indicated

that general interest exists in providing these zones, which are currently left out of programmatic conservation efforts, with a conservation outlet.

3. **Farmland Legacy Interaction:** As indicated above, a program could be structured to focus on conserving lands not currently conserved by the FLP, which focuses on the Ag-NRL zone. However, a TDR program could also include Ag-NRL as a sending zone and not be directly competing with the FLP. A market-based TDR program would naturally gravitate towards lower-value AG-NRL land that would likely not qualify for the FLP, acting as a secondary option open to Ag-NRL owners.

4. **Receiving areas**: Bayview Ridge residential development would be urban (encouraged by Growth Management Act) and have good TDR buying power relative to Burlington, but it appears that the County is re-evaluating moving in that direction. Other ground-related residential applications could be similarly promising, but the County would need to find another appropriate city/area. There was substantial interest in the development community in rural-to-rural density transfers, which would also have high conservation buying power. However, increasing density in rural zones has not been a County priority. On the commercial side, a commercial TDR program in Burlington would require placing a limitation on commercial density that is not currently in place, which necessitates a discussion of the City's priorities.

There are several benefits to implementing a program in expectation of future use: it allows the County to be prepared to capture funds for conservation when development does occur, and to fine tune and expand awareness of the program before major utilization.

5. **Program Structure**:

   - **Traditional Program:** Private market transactions between buyers and sellers, where the price of credits can be negotiated directly between the two parties. This system creates a potential for economies of scale, which can lead to larger-scale conservation. The County would set the guidelines for the program and record the easements. Additionally, most successful traditional TDR programs will also utilize a financial intermediary that can logistically align the buyers and sellers. The intermediary could be run by the County or by a third party.
   - **Fee-in-Lieu Program:** Developer purchases density from a financial intermediary at a set price. Revenues from density purchases are aggregated by the intermediary and used for targeted conservation purposes.
   - **Preferred Option- Blended Program:** A program that allows for both direct TDR transfer and a fee-in-lieu density purchase option would provide developers with flexibility to choose which method makes the most sense for their project. Sending areas for this program could include SF-NRL, IF-NRL, RRc-NRL, and targeted RRv lands. Additionally, Ag-NRL could either be excluded or included, with the TDR program complementing the existing Farmland Legacy Program. Burlington's existing fee-in-lieu

program (Agricultural Heritage), which provides funds to FLP, could remain in place with fees updated per this analysis. The County could determine additional receiving areas for the TDR fee-in-lieu component aimed at conserving land outside of FLP's target area.

6. **Exchange rates**: In a traditional program it is important for the County to set an exchange rate to align value expectations on the sending and receiving ends of the transaction. The exchange rate can be either fixed or floating. A fixed exchange rate stays constant, while a floating exchange rate fixes one side of the equation (either sending or receiving) and fluctuates based on the appraised value of the unfixed side. Based on the large variation in sending site geography, we would advise a floating exchange rate for Skagit County's program with a fixed receiving value and a sending value based on appraisal. The disadvantage of this system is increased administration costs related to the appraisal process. However, we see these costs as necessary unless sending areas become more defined.
7. **Areas for Further Consideration**: Additional receiving areas could increase program utilization and the extent of conservation from TDR transactions. Heartland's analysis of Bayview Ridge indicated that an opportunity exists for areas with a maximum density in place of four units per acre or less that could be exceeded with TDR purchase. Ideas for potential receiving areas include involving more cities or applying TDR to UGA expansions. Our stakeholder meetings indicated an interest in rural-to-rural density transfers. Potential receiving areas in this vein include integration of TDR with the CaRD program or allowing higher-density infill development in Rural Villages.

Chapter 8. Transaction Mechanisms: TDR and Density Credit

The Committee discussed several options for "transaction mechanisms," or the means of conducting the purchase and sale of development rights or density credits. The major options considered include:

1. Conventional TDR (private buyer-seller);
2. Conventional TDR with public support;
3. Density credit or fee-in-lieu; and
4. A combination of TDR and density credit options.

Taylor Carroll and Nicholas Bratton from Forterra were extremely helpful in describing each of these options to the Committee, explaining their advantages and disadvantages and providing existing examples of each. The following descriptions draw heavily on their work.[49]

Conventional TDR (private buyer-seller)

In a conventional TDR program, an eligible landowner sells development rights or credits directly to a buyer. The two parties negotiate the sale terms and price, which can vary depending on market conditions. The landowner enters into a conservation easement which is recorded on the property from which the development rights have been severed. The buyer can apply the rights towards a development project on the receiving site. The local government managing the program issues, tracks, and redeems TDR certificates.

Advantages:

- This mechanism relies heavily on the private market.
- A transaction can take any form agreed to by buyer and seller.
- Public costs are the lowest of any alternative presented.

Disadvantages:

- The limited availability of information is often a major obstacle to buyers and sellers finding each other, especially at the outset when the marketplace is not well established.
- Buyer and seller interests may not align over time. Developers may need to act quickly in a rapidly growing real estate market, while sellers might want to time their sale to maximize their financial advantage.

[49] In addition to drawing on Committee discussion, this section is adapted from *A Resource Guide to Designing Transfer of Development Rights Programs in Washington State*, Cascade Land Conservancy, pp. 42-45.

- The private market may not be effective in protecting larger contiguous areas of land, since individual developers may need to purchase only a portion of the development rights from a large sending site.
- Development projects requiring the purchase of a large number of development rights may require the negotiation of several development rights transactions, creating added burdens for participating developers.
- Because transactions may occur anywhere within designated sending areas, land protected via this mechanism may not reflect the community's highest conservation priorities.

Buyer-seller with public support

An agency managing a TDR program can take several steps to improve the transparency and ease of buyer-seller transactions. These mainly involve enhancing the availability of information about the process and include maintaining public registries of eligible landowners and interested buyers; publishing historical data about the program (details of past transactions); and marketing the program to eligible participants.

Advantages:

- This mechanism helps interested buyers and sellers to find each other, thus increasing marketplace efficiency.
- Public agency support reduces uncertainty and streamlines decision-making for the participants. As players know more about market conditions, they are better prepared to make decisions about entering the market.
- Public agency support helps address market timing issues in simple buyer-seller transactions by better connecting buyers who need to act quickly with sellers.

Disadvantages:

- The higher level of service provided by the managing agency requires an increase in resources.

Density credit

A density credit or fee-in-lieu mechanism may be used as an alternative to other incentive mechanisms like TDR. Developers pay a fee to the sponsoring public agency to build to a higher density or intensity than baseline zoning allows, or take advantage of other incentives set forth by the program, like building to greater heights than otherwise allowed. Funds collected are used by the jurisdiction to fund the purchase of development rights in high priority conservation areas. Density fees can be set to a specific dollar amount per additional unit of incentive.

A density credit mechanism has many similarities to a conventional TDR transaction. The chief difference is whom the developer pays—in this instance payment is made directly to the government instead of to a private landowner.

Advantages:

- This alternative is simple to administer and has a short transaction time for the developer.
- A fee provides certainty for developers.
- This approach allows the managing agency to make purchases that target high priority areas for conservation.
- A fee can be coordinated with a purchase of development rights (PDR) program, like Farmland Legacy, leveraging public resources for additional development right purchases.

Many Committee members felt a density fee approach would be more understandable to the public compared to a traditional TDR program where one sending-area development right is often exchanged for multiple receiving-area development rights or other development incentives.

Disadvantages:

- A density fee may be perceived as "selling zoning."
- There is a time lag between when the fee is charged and when the funds are expended for conservation.

Using the density fee approach creates a need for a mechanism to purchase development rights with the fees that are generated. Options for doing so are discussed below.

Combination TDR and density credit

The Committee also considered the option of a program that offers both a private buyer-seller TDR transaction option and a density credit option. Heartland recommended this approach as a way to make program participation as attractive as possible for developers and receiving-area landowners.

Recommendation 8-1. Implement a combined TDR and density credit program

Among those Committee members supportive of County action to establish a TDR-type program, the combined approach was the preferred option. They saw it as providing more options for development right purchasers and therefore increasing the likelihood of program use.

Committee members who supported the combined approach also recommended that the County develop a new mechanism to use revenues from density credit sales to conserve forest land and other resource lands, rather than to simply provide the funds to Farmland Legacy to support additional Ag-NRL development-right purchases.

Options for achieving conservation with density credit revenues

If the County were to create a density credit program or a combined program that includes a density credit component, it would need a mechanism for purchasing development rights with the revenues raised. Initially at least, the amount of fee revenues generated would likely be low. The challenge would be pooling and using fee revenues for development right purchases with as little administrative cost as possible.

The Committee considered several options for how this could be done. These options are briefly described below, along with some potential advantages and disadvantages of each option:

1. *Provide funds to the Farmland Legacy Program for purchases of Ag-NRL development rights.*

Advantages:

- This would appear to be the simplest approach, making use of an existing program that has a proven track record of land conservation. It would reassure those in the ag community who fear that a new TDR or density credit program would harm Farmland Legacy.

Disadvantages:

- Agricultural land conservation would be the only beneficiary – and Ag-NRL lands already have the Farmland Legacy Program solely dedicated to their conservation. Other resource and conservation groups have expressed interest in seeing a TDR/density credit program used to assist in the conservation of forest and other resource lands.

2. *Broaden the focus of the County's current Conservation Futures program.*

Under this approach, the Farmland Legacy Program, which operates under the Conservation Futures "umbrella," would continue its work with its current priorities and program structure. A counterpart program or function would be created under Conservation Futures to use density fee revenues for conservation of other natural resource lands.

Advantages:

- By being housed within the Conservation Futures program, a new program or function would benefit from the 18 years of successful conservation experience developed by Farmland Legacy. The new program could start small and receive staff and administrative support from the existing Conservation Futures/Farmland Legacy program.

Disadvantages:

- Farmland Legacy Program supporters might see this as drawing resources away from Ag-NRL conservation, and possibly as the beginning of an effort to redirect Conservation Futures tax dollars toward other conservation uses. Those interested in conservation of lands in addition to Ag-NRL may worry that the Conservation Futures/Farmland Legacy Program's agricultural land emphasis would unduly influence the use of new density fee revenues.

3. *Create a new County program or function to use density fee revenues to purchase development rights from priority conservation areas.*

The program would be operated separately from Conservation Futures and Farmland Legacy, perhaps within the Public Works Department's Natural Resources division.

Advantages:

- Independence from the Conservation Futures/Farmland Legacy Program might be preferable both for advocates of ag land conservation and those who support conservation of other resource lands in addition to Ag-NRL.

Disadvantages:

- Establishing a new conservation program or function would require some level of staff support, which may not be warranted until density fee revenues reach a certain annual dollar amount.

4. *Contract with a separate entity, such as a land trust, to purchase development rights from designated sending or conservation priority areas using density fee revenues.*

The County would contract program functions out to an organization with a proven track record in land conservation. That organization would prioritize and purchase development rights and monitor compliance, although to avoid a "gift of public funds" the easements themselves would likely need to be held by Skagit County.

Advantages:

- This option might be more efficient than creating a new County conservation program.

Disadvantages:

- Even with a tightly-worded cooperative agreement and County-established criteria and priorities for development right purchases, the County would likely experience some loss of control and potentially public accountability. Some members of the public might be uncomfortable with a private organization administering a public conservation program.

Recommendation 8-2. Establish a new County conservation mechanism complementary to Farmland Legacy

Those Committee members who support County action to create a combined TDR and density credit program preferred Option 3 as the means for using new density credit revenues. When adequate fee revenues were accumulated, the County could issue a call for applications from property owners interesting in selling development rights (as is done twice per year through the Farmland Legacy Program).

Properties could conceivably be selected in one of the following ways:

First-come, first-served: proposals that meet the basic eligibility requirements could be accepted in the order they are received, until all available funds were used for that selection period.

Ranking of properties: proposals received during a given application period could be reviewed and ranked for their conservation value based on established selection criteria (as is done by Farmland Legacy). Those receiving the highest rankings would be recommended for purchase.

Reverse auction: this would select the proposal or proposals that provide the most conservation benefit to the County for the lowest cost.[50]

A ranking process could be conducted by staff or by an advisory committee. An advisory committee would provide more public input and oversight than staff alone. It would also likely slow down the process and make it more expensive due to the cost of providing administrative support to the committee.

The County could determine the price it would offer for development rights through one of several ways. However it was determined, the offering price would need to meet the legal test of not constituting a gift of public funds (which in the end might require an appraisal):

- A set fee, based on the TDR market analysis (as updated periodically over time);
- Professional appraisal (as is done by Farmland Legacy, in part due to a requirement that comes with the use of federal and state funds); or
- A pricing formula that seeks to account for the many factors considered in an appraisal but that would be less expensive than a full appraisal. (Again, Farmland Legacy uses a pricing formula for initial pricing that is quite accurate when compared to appraised values.)

The selection body (whether staff only or an advisory committee with staff support) could make selection and purchasing recommendations to the Board of County Commissioners, who would make the final purchase decisions.

Conservation Futures Tax questions

Two questions were raised during the Committee's discussions related to the Conservation Futures tax Skagit County collects that helps to fund the Farmland Legacy Program:

- Is the Conservation Futures Tax set at the maximum amount allowed by law?
- Can Conservation Futures Tax dollars be recycled, essentially creating a revolving loan fund for conservation purchases?

Levy amount

When Skagit County established the Conservation Futures program in 1996, the Board of County Commissioners set the levy rate at the maximum amount allowed of $0.0625 per $1,000 of assessed value in the County. Property values have increased in Skagit County since then but the County's overall ability to raise property tax revenues was limited by Initiative 747 to one percent per year plus new construction.[51]

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[50] The reverse auction concept is attractive because it uses market forces to find the lowest price among willing sellers; however, this process may be more complex that it appears at first blush. Whatcom County is considering the use of a reverse auction process for conservation of agricultural lands. When that process is farther along, Skagit County may be able to learn from Whatcom County's experience to determine if a reverse auction would be feasible and desirable for this particular use.

[51] Approved by Washington State voters in 2001.

As property values have increased faster than the County's ability to raise property tax revenues, the Conservation Futures levy rate has automatically adjusted downward to $0.0559 per $1,000 of assessed value. In 2014, the Conservation Futures Tax generated $803,530 for the Farmland Legacy Program. If the County Commissioners raised the levy rate back to the original $0.0625, an additional $95,000 would have been generated.[52] However, that would put the County over the one percent property tax revenue threshold allowed by Initiative 747. In order to raise the Conservation Futures levy rate back to the original $0.0625, it appears the County would need to reduce property tax revenues generated through another source by a comparable amount.

The Committee did not discuss or offer an opinion on the advisability of seeking to return the Conservation Futures levy rate back to the original $0.0625.

Reuse of Conservation Futures Tax funds

Committee members also asked if the County could use Conservation Futures Tax dollars to purchase development rights and then resell them through a TDR program.

This is one way in which the County could act as a TDR intermediary helping to bridge the gap between private development right buyers and sellers. The other potential benefit would be the ability to reuse Conservation Futures Tax revenues as a revolving fund for conservation purchases:

The County would purchase development rights with Conservation Futures dollars, sell those development rights to private developers, and use the proceeds from those sales to purchase additional development rights. The advantage would be the ability to use Conservation Futures tax revenues multiple times over, which would support the efficient use of public tax dollars.

Currently Skagit County uses all Conservation Futures tax dollars to match federal and state conservation funds for the purchase of Ag-NRL development rights through the Farmland Legacy Program. The federal conservation funds prohibit the resale of development rights purchased with their use; therefore, the reuse of Conservation Futures tax dollars has not been explored to date by the Farmland Legacy Program.

If Skagit County used some Conservation Futures funds by themselves for development right purchases on Ag-NRL or other resource lands, then successfully sold those development rights to private developers through a TDR program, the proceeds from those sales could be used again and again for additional development right purchases.

King County uses its Conservation Futures dollars in this manner based on a determination that such use is consistent with the state law authorizing the Conservation Futures tax. Skagit County has not done its own independent legal research on this issue and the Advisory Committee did not consider a recommendation specifically on this matter.

[52] Tax revenue data from the Skagit County Assessor's website and County Budget Director Trisha Logue.

Chapter 9. **Interaction of TDR and Existing Conservation Programs**

A key focus of this project has been to evaluate how a Skagit County TDR or density credit program might interact with existing public conservation and incentive zoning programs. In particular, the project has sought to ensure that a new program would not harm—and instead might complement—Farmland Legacy. This section discusses potential interactions between TDR and the Farmland Legacy and Burlington Density Credit programs. Also included are much briefer discussions of the Mount Vernon TDR program and the now-tabled density credit proposal at Bayview Ridge.

Farmland Legacy

Many members of the Skagit County agricultural community have expressed concern about the potential impacts of TDR on Farmland Legacy. That concern was fueled by a TDR study conducted for Skagit County by the consulting firm Ag Prospects in 2006.[53] That report suggested that TDR programs have not worked to protect agricultural lands in other communities; that a program could drive up the cost of Ag-NRL lands; and that downzones of agricultural land might be necessary to make TDR successful. Others have expressed the opposite concern that a successful TDR program could draw County political or financial support away from Farmland Legacy.

Farmland Legacy Program coordinator Kendra Smith provided an overview of that program to the Advisory Committee at its September 2012 meeting: Farmland Legacy was created in 1996 based on a survey funded by Skagitonians to Preserve Farmland and the Economic Development Association of Skagit County showing that the Skagit County public strongly supported farmland protection. Known as a purchase of development rights (PDR) program, Farmland Legacy makes use of a state law allowing the County to create a Conservation Futures Tax for the acquisition of land or development rights to protect open space including farmland. Skagit County has selected farmland protection as the primary goal of the Farmland Legacy Program (FLP) and the sole recipient of the local Conservation Futures Tax revenues. The program has also succeeded in attracting federal and state conservation dollars.

By 2012, Farmland Legacy had purchased development rights on 8,000 acres of Ag-NRL land. Participation in the program is voluntary and optional for landowners. Originally the County's offering price for development rights was based on the number of points a particular property scored in a ranking process. More recently, the program has partnered with state and federal funding sources which require appraisals to determine the fair market value of development rights purchased. Development rights purchased with federal funds cannot be resold. Farmland Legacy also partners with other conservation organizations including Skagitonians to Preserve Farmland, Ducks Unlimited, The Nature Conservancy, and the Skagit Land Trust.

[53] Ag Prospects, *Transfer of Development Rights: A Feasibility Study for Skagit County, Washington,* October 15, 2006.

The program has a seven-member board called the Conservation Futures Advisory Committee that makes recommendations on development right purchases to the Board of County Commissioners.

Table 9-1. Comparing PDR and TDR

	PDR	TDR
Funding Source	Public	Private
Use of development rights	Extinguished	Transferred to areas appropriate for growth
Conservation outcome	Strategic, high-value lands	Determined by market, within designated sending area

Comparing PDR and TDR[54]

PDR and TDR programs are similar in purpose but have important differences as well, as illustrated in Table 9-1. Comparing PDR and TDR

Both types of programs share the goal of permanent conservation of resource lands through voluntary transactions in which landowners sell the development potential from their properties. Under both approaches, permanent conservation easements are held by the sponsoring agency. Differences between the two include funding sources, how the development rights are used after purchase, and how conservation is targeted.

FUNDING SOURCES

PDR transactions are generally financed with public funds. Funding sources may include grants from state or federal agencies, local tax revenue, or bonds. In contrast, TDR transactions are generally market-based or may include a mix of privately and publicly financed exchanges.

USE OF DEVELOPMENT RIGHTS

In the most common type of PDR program, development rights are purchased from resource lands and then extinguished (as is done by Farmland Legacy). In a TDR program, development rights are moved from resource lands or other sending areas to receiving areas where infrastructure and services can better accommodate additional development.

Less frequently, the two types of programs work together as follows: a PDR program may retain the value of the development rights it purchases and make them available for resale to private developers through a TDR bank or intermediary. A developer may buy development rights from the bank as an alternative to conducting a private transaction with a landowner.

TARGETING CONSERVATION

PDR and TDR programs share the goal of conserving resource lands, but exactly which lands the programs focus on may vary. Due to the market-based nature of a TDR program, a jurisdiction

[54] This section, including Figure 1, draws heavily on *Snohomish County Purchase of Development Rights and Transfer of Development Rights, Strategic Opportunities for Conservation and Growth Management*, prepared for Snohomish County Council by Cascade Land Conservancy, May 2011, pp. 20-22.

cannot know which properties will ultimately be conserved—it depends on the coming together of private parties. The resulting pattern of TDR conservation will reflect some of a jurisdiction's priorities generally, but may not conserve specific top-priority lands. PDR programs, however, can be more strategically targeted and can focus on buying development rights from high-value lands that otherwise might be passed over in the private market.

TDR and Farmland Legacy

The TDR Advisory Committee's discussions and the Agriculture Focus Group meeting with Heartland helped to draw the following comparisons between the Farmland Legacy Program and a potential Skagit County TDR program:

FARMLAND LEGACY (PDR)

- The program has benefited from steady, dedicated, public funding sources over the years, specifically the Conservation Futures tax and state and federal agricultural land conservation dollars. At the same time, this reliance on public funding could make the program vulnerable to federal or state budget cuts or changes in policy in the future.
- The program focuses on purchasing development rights from the highest priority Ag-NRL lands, including those most likely to convert and those determined to have the highest value for agricultural production.[55] This is done by evaluating all applications received against a set of selection criteria.
- The Farmland Legacy Program easement is more restrictive than a standard TDR easement would be. TDR easements typically retire only the residential development right but do not place additional restrictions on the land. The Farmland Legacy easement requires that the land be kept in agricultural use in perpetuity (precluding certain other uses allowed in the Ag-NRL zone such as conservation or habitat enhancement), and places a strict impervious surface limit on the property.
- Farmland Legacy has a successful track record of Ag-NRL conservation since its creation in 1996, conserving more than 8,000 acres of land.
- Development rights purchased through the program are extinguished, not resold.
- Despite the program's success, some project participants from the agricultural community raised concerns over recent restrictions placed on federal conservation dollars requiring buffer strips along drainage ditches. Some saw these requirements as "very undesirable" and a reason why farmers may be much less interested in selling development rights to Farmland Legacy in the future. The new restrictions have been put in place by federal agencies responding to concerns raised by northwest federal treaty tribes that agricultural land conservation using federal funds is not doing enough to protect salmon habitat.

[55] Application to the program is voluntary and at the initiative of the private landowners.

Competing or Complementary?

Although the Ag Prospects study suggested that TDR could harm the Farmland Legacy Program, other analysts of both PDR and TDR view the two program types as potentially complementary. According to *The TDR Handbook*:

> ***A Strong Connection***. *Effective TDR programs include PDR as part of an overall plan to preserve landscapes or sites, as evidenced by the most successful TDR programs in the Country: Boulder County, Colorado; the New Jersey Pinelands; Montgomery County, Maryland; and King County, Washington, all have major PDR program as well. This correlation suggests that communities considering TDRs should also consider PDR programs and that communities with only a TDR program should consider launching a PDR program. The presence of both PDR and TDR programs signals the community's commitment to achieving its preservation goals. (p. 42)*

A 2011 study by the Cascade Land Conservancy (now Forterra) for the Snohomish County Council that made recommendations to improve the County's PDR and TDR programs concluded the following:

> *The PDR program, being publicly funded, can strategically target lands with high public benefits and under high development pressure for conservation. The TDR program, harnessing the private market, can be effective in conserving resource lands that extend beyond the focus of the PDR program, such as forest land and non-designated farm land, as well as designated agricultural land. One way to maximize the effectiveness of both programs is for each to target conservation of lands best suited to the tool and identify areas in which use of both may be [sic] increase opportunities for landowners. (p. 40)*

The TDR market analysis by Heartland conducted for this process also found no inherent conflict between TDR and PDR programs and also suggested the two could be complementary in Skagit County:

> ***Farmland Legacy Interaction****: As indicated above, a program could be structured to focus on conserving lands not currently conserved by the FLP, which focuses on the Ag-NRL zone. However, a TDR program could also include Ag-NRL as a sending zone and not be directly competing with the FLP. A market-based TDR program would naturally gravitate towards lower-value Ag-NRL land that would likely not qualify for the FLP, acting as a secondary option open to Ag-NRL owners. (Executive Summary, p. 5)*

TRANSFER OF DEVELOPMENT RIGHTS

The following observations relate to how a TDR program differs from and might interact with Farmland Legacy and Ag-NRL lands or other lands that support agricultural production:

- Because TDR is market-driven, it requires an active development market to work. It may take some time for the TDR market in Skagit County to mature and start generating significant support for land conservation. At the same time, because TDR transactions are market-funded they do not require tax dollars, although a TDR program would require some level of administrative support.

- Typical of TDR programs nationwide, the TDR conservation easement would be simpler and less restrictive than the Farmland Legacy Program easement, focusing only on retiring residential development rights. This may be more attractive to some landowners than the Farmland Legacy Program easement, although it would also generate a lower sales price than a more restrictive easement.[56]
- The County would likely have less administrative cost in offering a conventional private buyer-seller TDR program but also less control over the location of conservation purchases. That is because the location of development right purchases would be dictated more by market choices than by prioritization (beyond the policy choices made in establishing eligible sending areas).
- A TDR program could complement Farmland Legacy by providing additional options to landowners. Some landowners whose properties haven't been selected by Farmland Legacy may find willing buyers through a TDR program. TDR could also focus on conserving active agricultural lands in the Rural Reserve and Rural Resource-NRL zones, whereas Farmland Legacy currently applies only to Ag-NRL lands.

RESPONSES TO ADDITIONAL CONCERNS

Following are brief responses to some of the additional fears that have been raised about TDR and its potential effect on Farmland Legacy.

- TDR would increase the price of agricultural land for farmers and the Farmland Legacy Program (asserted by the Ag Prospects TDR study).
- Several Committee members who have experience with the Mount Vernon TDR program said this would be very unlikely. The TDR transactions that occurred in Mount Vernon generated nowhere near the average of $100,000 that Farmland Legacy pays for a development right on 40 acres of Ag-NRL. TDR purchasers would more likely look for lower-priced development rights on non-Ag-NRL land.
- A highly successful TDR program could draw political support away from Farmland Legacy**.**
  - This is conceivably possible. However, given the results of the Heartland market analysis and the limited number of potential receiving areas currently under review, it is unlikely for the foreseeable future. Another possibility is that the two approaches could be additive, achieving more conservation together than either program could achieve alone.
- A new TDR program could draw staff resources away from the Conservation Futures and Farmland Legacy programs.
  - Potentially this is true. Skagit County has limited staff resources, particularly since the economic downturn. Staff support for the Farmland Legacy Program and the Agricultural Advisory Board has been reduced in recent years. Planning & Development

[56] The easement would place fewer restrictions on the land, leaving more options to the landowner, who would therefore retain more economic value and receive less financial compensation.

Services staffing has also been significantly reduced. The department with the most resources for administration of the Farmland Legacy Program and a new TDR program (if one were created) might be the Public Works Department (Natural Resources Division). The Board of County Commissioners will need to weigh staffing resources when considering possible creation of a TDR program. This would be one reason to choose a program option requiring minimal administrative support.

Heartland recommended two potential approaches for ensuring compatibility between a TDR program and Farmland Legacy. One would essentially create a firewall between the two, while the other would integrate them in a manner that Heartland felt would be complementary:

1. Since the Ag-NRL lands already receive conservation support from Farmland Legacy and those lands generally have more expensive development rights relative to other potential sending area zones, a TDR program could be designed to focus on lands other than Ag-NRL (including Rural Resource-NRL and Rural Reserve lands with active agricultural uses).
2. Alternatively, Heartland suggested, a TDR program could include Ag-NRL as a sending zone and still not directly compete with Farmland Legacy. A market-based TDR program would naturally gravitate toward lower-value Ag-NRL land that would likely not qualify for Farmland Legacy Program purchases, acting as a secondary option available to Ag-NRL landowners.

Recommendation 9-1. Ensure compatibility of TDR and Farmland Legacy

Committee members emphasized the importance of ensuring that any new TDR or density credit program complements the Farmland Legacy Program. Those who supported the County establishing a combined TDR and density credit program, as further described in Chapter 11, felt such a program would *be compatible with Farmland Legacy, consistent with Heartland's recommendation #2 above.*

Burlington Agricultural Heritage Density Credit Program

Committee member Margaret Fleek provided the following overview of the Burlington Agricultural Heritage Density Credit Program at the Advisory Committee's September 2012 meeting:

The Burlington City Council implemented the program in 2008 just as the economic and housing downturn began. The program drew on extensive economic research funded by Skagitonians to Preserve Farmland, the Skagit Conservation District, and Skagit County in 2006.[57]

Developers may purchase density credits to place additional dwelling units in a 49-square-block area downtown in the Medium Residential Neighborhood Business (MR-NB) and Downtown Business District (B-1) zones. Density credits may also be used for additional units of residential development in the Retail Core Zone (C-1) and scattered locations of Multi-Family (R-3) zoning.

[57] Thomas/Lane & Associates and Bill Mundy & Associates, *Demand for & Value of Density (Heritage) Credits*, prepared for Skagitonians to Preserve Farmland, City of Burlington, and Skagit County Planning Department, June 2009.

Burlington's base zoning allows residential development at up to 14 units per acre in all of the above zones. This is based on the 3,000 square foot platting pattern of Burlington, Vermont, on which Burlington, Washington, is patterned. The program does not allow placement of apartments in single-family residential zones.

The City substantially decreased parking requirements in the downtown area to encourage infill and redevelopment. The City does not currently allow density credit purchases to increase commercial development potential in commercial zones. When the City implemented the density credit program, it didn't want to create any disincentives to commercial development. However, Fleek said the City may revisit that policy decision as the commercial market improves and Burlington moves through its comprehensive plan and development regulations update.

To date, the program has sold only two density credits, which Fleek attributes to the economic downturn that hit just as the program was put in place. The City is currently reviewing a multi-family project that could purchase as many as 46 density credits, and another project that could use density credits is potentially in the pipeline.

Burlington provides funds generated through the sale of density credits to the Farmland Legacy Program to assist with the purchase of development rights in an 1,800-acre area of Ag-NRL surrounding the City. The goal is to create a ring of permanently protected agricultural land around Burlington, which takes great pride in its agricultural heritage.

Burlington and the TDR market analysis

The TDR market analysis focused on the same geographic areas and zones where the Burlington Density Credit Program currently applies. It evaluated the pricing of density credits for residential development in these mixed-use zones, and the potential for developers to access additional commercial development potential in these zones through the purchase of density credits.

FEE PRICING

Heartland recommended the following density credit fees based on their analysis of developers' ability to pay for additional development potential:

- **Burlington Residential Fee Recommendation**: $3,800 per additional residential development unit. This compares to Burlington's current density credit fee schedule which prices fees at $2,500 per unit to begin with, declining as more credits are purchased.[58]
- **Burlington Commercial Fee Recommendation**: $17.50 per square foot of additional commercial development potential above a .30 floor area ratio (FAR) (or $17,500 for an additional 1,000 square feet). Burlington currently does not have a density credit program that applies to commercial development.

Heartland's higher residential fee recommendation than the density credit price Burlington currently has on the books results from several factors, including more recent economic analysis than the 2006 analysis used to establish the program and Heartland's conclusion that developers

[58] City of Burlington, Resolution No. 13-2011, August 28, 2011.

would be willing to pay a higher amount for each unit of additional density than the 2006 analysis concluded. Fleek says that because the housing market was weakening when Burlington implemented the program, the City chose to establish the fees at the lower end of the spectrum recommended by the earlier analysis.

TDR EXCHANGE RATES

If Skagit County established a TDR program and Burlington chose to offer a TDR option to developers in addition to the current density credit option, Heartland recommends the following exchange rates.[59] Ranges are provided below depending on which County sending area is involved in the TDR transaction, as different sending-area zones have different average development right values:

- **Burlington Residential Exchange Rates**: six to 10 receiving units per sending credit.
- **Burlington Commercial Exchange Rates**: 1,200 to 2,200 receiving square feet per sending credit.

BURLINGTON OPTIONS

What to do with these results is up to the City of Burlington. The City's options include:

1. Maintain the Burlington Density Credit Program as is.
2. Keep the program in place, but consider raising the fees for density credits based on the Heartland analysis and the improving housing market.
3. Expand the program to other zones, or add additional land to one or more of the zones where density credits may be used.

   For instance, Burlington is considering adding additional land around the downtown to the Multi-Family (R-3) zone, both to create additional affordable housing opportunities and to revitalize the downtown by encouraging a larger residential population base that would frequent downtown businesses.
4. Implement a new density fee or TDR option linked to increases in commercial development potential in various City commercial zones.

As described in the market analysis, the last action would involve implementing a cap on commercial development potential permitted outright through zoning. That cap could be exceeded with the purchase of commercial density credits or TDRs. As Heartland explains in the market analysis executive summary:

> *For a TDR program to function there would need to be a base density which could be exceeded with TDR bonus density credits. In order to make a fee inference for the Burlington commercial [receiving area], Heartland set a hypothetical base density at a 0.30 floor area ratio (FAR, gross building square feet per land square feet). This figure*

[59] As discussed in greater detail in the TDR market analysis, an exchange rate is needed in a TDR program when the value of one credit on the receiving side is not equal to the value of one credit on the sending side. Without an exchange rate in this scenario, transactions would not occur because one side of the deal would not be receiving adequate compensation for the density that they are either sending or receiving.

was determined to be approximately what the market is currently demanding for commercial space. The ability to pay analysis focused on the value created by going above this hypothetical base density. In the context of Burlington's market, this would entail reducing the amount of a development site that is allocated to surface parking and replacing that area with an expanded building structure.

Several Burlington landowners and developers participated in the Developer Focus Group meeting with Heartland. They commented that establishing a FAR cap on commercial development that could be exceeded with the purchase of commercial density credits would amount to a downzone. Heartland noted that the current market is not generating commercial development in excess of the .30 FAR, so that cap would only affect development that might occur in the future, as existing commercial land is more intensively built out.

Recommendation 9-2. Consider linking TDR to commercial development in Burlington

Of all of the cities in Skagit County, Burlington would appear to be the one with the greatest potential to link TDR or density credit purchases to commercial development opportunities.

Since the construction of the Burlington Mall in the early 1990s, the City has seen a dramatic expansion of its commercial and industrial land base, including more than 5.6 million square feet of new construction, much of it built on top of very fertile agricultural land. In 2012, Burlington accounted for about 35% of the taxable retail sales that occurred in Skagit County despite having only about seven percent of the County's population. [60] Burlington consistently generates the highest per capita retail sales of any jurisdiction in Washington State [61] and the City recently reported the opening of three new retail stores.

Burlington Conservation Priorities

Burlington's conservation priorities under the current density credit program are Ag-NRL lands surrounding the City. If Burlington expanded the density credit program in a way that generated additional financial resources, it would have discretion in determining how to use those funds. They could potentially be used to conserve or improve water quality within the City limits; to increase the rate of purchase of Ag-NRL development rights around the City through Farmland Legacy; or to conserve other resource or open space lands in the County also in partnership with the County.

Mount Vernon TDR

Mount Vernon has indicated through its planning director Jana Hanson that it is not interested in partnering with the County on a TDR program at this time.

The City established its own TDR program in 1999. It sought to permanently conserve approximately 90 acres of agricultural land located in the southwest portion of the City, within the City limits. The program started seeing transactions in the mid-2000s, with the greatest amount of

[60] Washington State Department of Revenue: http://dor.wa.gov/docs/reports/Local_Retail_Sales/allcal12.pdf

[61] "Burlington, Skagit rate No. 1 in per capita retail sales," *Skagit Valley Herald*, July 23, 2013, updated February 18, 2014.

activity occurring in 2004 through 2006. That was near the height of the residential development boom in Skagit County and large residential development projects were being planned and built in east Mount Vernon, many under Mount Vernon's planned unit development (PUD) ordinance.

At the time, the PUD ordinance allowed increases in residential density through the purchase of TDRs, as well as through other density incentive and clustering mechanisms. All told, developers purchased 70 residential development rights from the sending area, and a total of 40 of those have been used to increase densities in PUDs or standard subdivision projects. At that point, according to Hanson, the City began to receive complaints regarding smaller lots and higher densities than those found in existing residential neighborhoods. Additionally, narrower streets with restricted parking created issues for residents and enforcement problems for the City.

The City Council responded by placing a moratorium on PUDs in 2008, followed by a series of significant changes to the PUD ordinance. One of them precluded the purchase and transfer of development rights for use in PUDs. The Council also restricted the use of TDRs in the lowest density district within the City in order to maintain residential districts with larger lots.

The Mount Vernon TDR program still allows TDR purchases to increase residential densities in several single-family zones by one additional residential unit per acre. This is similar to the proposed use of density credits for incremental increases in residential densities at Bayview Ridge. To date there has been no use of TDRs to add densities in these zones, only in larger projects such as subdivisions and PUDs. The TDR program has seen no recent activity but some projects that received previous plat approval making use of TDR credits are once again moving forward with the upturn in the housing market.

Linkage to County program

If Skagit County created a TDR program, there would be no linkage with the Mount Vernon program unless Mount Vernon changed its current thinking. None of the outstanding TDR credits purchased through the Mount Vernon program could be used through a Skagit County program. If a County TDR program allowed inclusion of other cities over time, Mount Vernon could opt to join the program later. The County would likely defer to the City in selecting conservation priorities and corresponding sending areas, which might logically include areas within or immediately surrounding the Mount Vernon UGA.

Bayview Ridge Density Credits

The Board of County Commissioners approved updates to the Bayview Ridge Subarea Plan in 2008 allowing incremental increases in residential densities in the Bayview Ridge Residential zone with the purchase of density credits. Residential development at Bayview Ridge—including the use of density credits—was to be implemented through a PUD ordinance the County worked on through the middle of 2013.

The current TDR project provided an opportunity to explore the mechanics and economics of implementing the density credit policies. The Heartland market analysis evaluated the economics of adding two additional units of density in Bayview Ridge Residential, as well as the pricing of density credits associated with rezoning land from Bayview Ridge Urban Reserve to Bayview Ridge Residential.

However, Skagit County's plans for Bayview Ridge took a significant turn in the fall of 2013. The Board of County Commissioners directed the release of a proposal to increase industrial-zoned land in the UGA while withholding the proposed PUD ordinance that was to guide significant new residential development. That change in policy direction has continued in early 2014 with the Board proposing to convert more land within the Bayview Ridge UGA from residential to industrial zoning, while removing from the UGA boundary any undeveloped land not suitable for industrial development. If this measure moves forward to adoption as proposed, it will preclude the implementation of the residential density credit concept at Bayview Ridge.

Bayview Ridge Residential

The Heartland analysis found that Bayview Ridge residential development had been perhaps the most promising of the three receiving areas analyzed. Ground-level, single-family, urban residential development is a familiar development type in Skagit County, creating a greater level of familiarity and certainty for developers. Heartland indicated the proposed increase from four to six units per acre represents a relatively incremental increase in density that was likely to find positive acceptance in the marketplace – in the same way that PUD projects and subdivisions of similar density were accepted among developers and the home-buying public in Mount Vernon, if not by the City Council or residents of surroundings neighborhoods.

Heartland has suggested that a similar application of TDR could work well from a market perspective in other cities in Skagit County, if any were interested. The Bayview Ridge analysis would be instructive but additional analysis would be needed for the specific market being considered.

Bayview Ridge Industrial

The initial phase of the Heartland analysis also looked at the potential for applying TDR to industrial development at Bayview Ridge. It found that the market conditions were not as supportive as for residential development, due to the relatively large supply of industrial-zoned land at Bayview Ridge compared to the recent (past 12 years) pace of industrial development there. If the County's increased policy emphasis on industrial development results in a greater rate of industrial growth at Bayview Ridge than has occurred in the recent past, it might warrant a re-look at opportunities to link industrial development to TDR.

Chapter 10. **Program Administration**

A final important consideration is how much time and effort would be required to implement a TDR or density credit program and manage it over time. The answer would depend in part on the scale and complexity of the program that was implemented; how active the County chose to be in providing information about it to potential users; and, of course, its level of use.

The Advisory Committee considered these issues at its March 2014 meeting. Nick Bratton provided examples of different levels of support that Forterra has observed in the TDR programs it has analyzed:

- **Low**: Typically, the program establishes governing policies and code and tracks transactions, certifying development credits and recording conservation easements.
  - In a conventional TDR program, private buyers and sellers find each other, negotiate sales prices, and conduct transactions.
  - In a density credit program, the program establishes a fee schedule, processes density credit purchases, and provides fee revenue to a third party or conducts its own conservation purchases.
  - For Skagit County, the lowest level of administrative support in this instance would involve providing fee revenues to the existing Farmland Legacy Program for Ag-NRL conservation.
- **Medium**: To facilitate private market transactions, the program may provide a website containing TDR sales data, market the program to potential buyer and seller groups (real estate agents, farm and forestry organizations), and offer a market exchange – what Bratton likened to a Craig's list for potential TDR buyers and sellers.
  - For Skagit County, establishing a new program or mechanism to pursue conservation of lands other than Ag-NRL– instead of providing those revenues to the Farmland Legacy Program – would involve an additional level of administrative support.
- **High**: This may involve also offering a TDR bank, which can serve as a market participant, buying and selling development rights to assist with large transactions, smooth out market fluctuations, or facilitate transactions that achieve priority public goals.
  - Few jurisdictions with TDR programs operate TDR banks. Costs are often prohibitive for smaller jurisdictions with limited staff and budget. The required investment of public resources makes the most sense where there is existing TDR market activity and the bank can facilitate additional transactions.

Recommendation 10-1. Provide low to moderate administrative support for TDR

Those Advisory Committee members who support the County implementing a TDR or density credit program at this time also expressed support for a low to moderate level of administrative support. They felt a website and marketing and matchmaking assistance between buyers and sellers could help the private TDR market function.

They recommended an adequate level of administrative support up front to establish a program, allowing it to then evolve over time depending on use. The County could increase support as needed as the program gained use. One Committee member emphasized the importance of attention on the conservation easement side, including monitoring of easements for compliance.

Bratton said the following are also common features among TDR or density credit programs:

- **A method to track the movement of development rights**. This is important for measuring program activity and the marketplace, and also for preventing the same rights from being sold multiple times. Maintaining a database of market information is a common practice. An effective way to track the application for, issuance of, and use of development rights is to assign them serial numbers.
- **A feedback and evaluation mechanism**. A TDR program should include a way to measure its progress against stated policy objectives and a means to modify the design to better meet established goals. Regularly scheduled program evaluations can be established along with a set of criteria measuring effectiveness.
- **Periodic evaluation of TDR exchange rates or density credit fees**. Updates may be required over time, perhaps on a two- to five-year basis, depending on the amount of development activity in the community, program usage, and other factors.

Estimated staffing requirements

Staffing levels for city and county TDR programs in Washington State range from being very limited in many cases to two or more full-time employees for the very active King County TDR program. That is one of the largest and most active in the nation and includes a TDR bank function and a dedicated GIS analyst.

On the low end of the spectrum, Margaret Fleek reports that after setting up the Burlington Density Credit Program, staff time has been minimal, primarily consisting of a review of the density credit option with new applicants at the permit counter. Similarly, Jana Hanson reports that the Mount Vernon TDR program, even at its most active, was staffed by the planner handling whatever development projects the TDR credits were being applied to. It has not required separate administrative support beyond that.

For comparison purposes, staffing of the County's very active Farmland Legacy Program requires up to 1.5 FTEs for a program manager, administrative support, and program monitoring. This not only involves processing applications, supporting the Conservation Futures Advisory Committee in the evaluation process, and implementing and monitoring conservation easements, but also active grant-writing in an effort to raise additional conservation funds.

Whether a TDR or density credit program were housed in Planning and Development Services or elsewhere, such as Public Works, the Department estimates staffing would likely involve a small percentage of an employee's time: perhaps five percent (two hours per week) for a program that primarily responds to public inquiries, or 10 percent (four hours per week) for a program that provides a website and actively seeks to promote awareness and encourage usage. However, if the only County receiving area to begin with is rural upzones through annual comprehensive plan amendments, those would be landowner-initiated and processed by staff handling the comprehensive plan amendment process.

With a density credit option, establishing a new mechanism to purchase development rights with fee revenues would require more administrative support, particularly up front, than simply providing those revenues to the Farmland Legacy Program. Once program policies and procedures were established, administrative support would rise and fall with the level of use.

Chapter 11. **Final TDR Project Recommendations**

The resolution appointing the TDR Advisory Committee did not formally task the Committee with developing consensus recommendations. However, the Committee process did seek to identify areas of general agreement or disagreement among members on key issues, including whether Skagit County should take action to implement a TDR program at this time. Additionally, the County Commissioners have expressed interest in knowing individual Committee members' views on the subject.

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

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

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

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

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

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

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

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

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

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

Rationale

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

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

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

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

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

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

Rationale

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

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

Chapter 12. **Conclusion**

This report seeks to provide the Board of County Commissioners with information to help it decide whether to move forward with a TDR legislative proposal consisting of proposed policies and code language at this time. The report may also help cities and towns consider TDR options now or in the future. If the Board decides to move forward with a legislative proposal, the next steps would include:

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

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

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

Appendices

Appendix A. Resolution Appointing TDR Committee

SKAGIT COUNTY
Resolution # R20120276
Page 1 of 4

A Resolution Establishing an Advisory Committee to Assist Skagit County in Considering Development of a Transfer of Development Rights (TDR) Program

Whereas Skagit County is beginning a project to evaluate possible development of a transfer of development rights (TDR) program; and

Whereas a TDR program is a voluntary, market-based mechanism to encourage the transfer of growth from places where a community would like to see less development, referred to as sending areas, to places where a community would like to see more development, referred to as receiving areas; and

Whereas sending areas might include farmland, forestland, or environmentally sensitive areas such as floodplain and wildlife habitat, while receiving areas typically include cities or other lands that have the infrastructure and services to meet the needs of increased growth; and

Whereas Skagit County has determined that formation of a project advisory committee would improve the public outreach and participation portion of the project; and

Whereas the purpose of the TDR advisory committee is to review and provide input on key policy and technical issues, and TDR public outreach efforts, to the County planning staff and consultants, the Planning Commission, and the Board of Skagit County Commissioners; and

Whereas the TDR advisory committee is not a decision-making body and is not expected to vote on recommendations or achieve consensus on all issues brought before them; and

Whereas the TDR Advisory Committee will consist of 16 members, representing a broad range of interests. Most have been selected to represent groups or organizations that might directly participate in a TDR program, including agriculture, forestry, conservation, builders, developers, real estate professionals, bankers, and city planners; and

Whereas the committee also includes two at-large members who can help to represent the interests of Skagit County urban and rural residents.

Now Therefore Be It Resolved that the Board of County Commissioners:

1. Creates a TDR Advisory Committee to perform the following tasks:
    a. Review technical work products developed by project staff and consultants
    b. Provide input on draft work products
    c. Share information with respective organizations and agencies
    d. Bring forward interests, issues, concerns of respective agencies and organizations
    e. Help to promote awareness and understanding about the TDR project, by distributing project information through email, word-of-mouth and other public outreach methods.

2. Establishes the following guidelines for the Advisory Committee and its members, which are intended to promote productive discussion and an efficient process:
   a. Attend Advisory Committee meetings regularly
   b. Outside of Advisory Committee meetings, represent your personal views and/or views of your respective agency or organization, not views of entire Advisory Committee
   c. At Advisory Committee meetings, discuss issues and concerns in a productive and constructive manner:
      i. All members are expected and encouraged to participate
      ii. All members should have the chance to be heard; no member should dominate
      iii. Share all pertinent information
      iv. Keep an open mind
      v. Actively listen
      vi. Treat others with respect
      vii. Be honest
3. Appoints the individuals in Attachment A to the Skagit County Transfer of Development Rights Advisory Committee.

DATED this 27 day of August, 2012.

BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON

SKAGIT COUNTY COMMISSIONERS SEAL COURT STATE OF WASHINGTON

Kenneth A. Dahlstedt, Chairman

Sharon D. Dillon, Commissioner

Ron Wesen, Commissioner

Attest:

, Asst.
Clerk of the Board

For contracts under $5,000:
Authorization per Resolution R20030146

County Administrator

Recommended:

Department Head

Approved as to form:

Civil Deputy Prosecuting Attorney

Approved as to indemnification:

Risk Manager

Approved as to budget:

Budget & Finance Director

Attachment A

TDR Advisory Committee Roster

1. Charlie Boon, The Boon Team/REMAX
2. Martha Bray, Skagit Land Trust
3. Wayne Crider, Skagit Island Counties Builders Association
4. John Doyle, Town of LaConner
5. Margaret Fleek, City of Burlington
6. Charlie Guildner, People's Bank
7. Jana Hanson, City of Mount Vernon
8. Jennifer Hagenow, Skagit County resident (at large)
9. Mike Hulbert, Skagit County Conservation Futures Advisory Committee
10. Paul Kriegel, Skagit County Forest Advisory Board
11. Bruce Lisser, Lisser & Associates
12. Kim Mower, Skagit County Agriculture Advisory Board
13. Allen Rozema, Skagitonians to Preserve Farmland
14. Kendra Smith, Skagit County Farmland Legacy Program
15. Ed Stauffer, Skagit County resident (at large)
16. Joe Woodmansee, Woodmansee Construction

Appendix B. TDR Focus Group Meeting Participants

The following individuals participated in focus group meetings held by Heartland staff and TDR project manager Kirk Johnson on January 7, 2014, summaries of which are available at www.skagitcounty.net/Departments/PlanningandPermitTDR/marketanalysis.htm.

Forestry Focus Group

Paul Kriegel, Goodyear Nelson, Skagit County Forest Advisory Board

Dave Chamberlain, C & G Timber

Ken Osborn, Arbor-Pacific Forestry Services

Al Craney, Skagit Conservation District

Keith Greenwood, Sierra Pacific, Skagit County Planner Commission member

Jim Owens, forest landowner

Ryan Jepperson, forest landowner

Martha Bray, Skagit Land Trust

Development Focus Group

Jack Wallace, Burlington landowner/developer

Kendall Gentry, Landed Gentry Homes and Communities

John Bouslog, Burlington and Bayview Ridge landowner/developer

Bruce Lisser, Lisser & Associates

Marianne Manville-Ailles, Skagit Surveyors and Engineers

Joe Woodmansee, Woodmansee Construction

Wayne Crider, Skagit-Island Counties Builders Association

Matt Mahaffie, land use consultant, Skagit County Planning Commission member

Ed Stauffer, rural resident/landowner

Agriculture Focus Group

Andrea Xaver, farmer, Conservation Futures Advisory Committee (CFAC) member

Carolyn Kelly, Skagit Conservation District; CFAC Chair

Darrin Morrison, farmer, Board President, Skagitonians to Preserve Farmland (SPF)

Tim Rosenhan, Skagitonians to Preserve Farmland Land Protection Committee

Annie Lohman, farmer, Skagit County Planning Commission Chair

Bob Suttles, Northwest Real Estate Valuation

Allen Rozema, Skagitonians to Preserve Farmland

Appendix C. Committee Member Written Comments

1. Charlie Boon, The Boon Team/REMAX
2. Wayne Crider, Skagit Island Counties Builders Association
3. Molly Doran (for Martha Bray), Skagit Land Trust
4. Margaret Fleek, City of Burlington
5. Paul Kriegel, Goodyear Nelson, Skagit County Forest Advisory Board
6. Bruce Lisser, Lisser & Associates
7. Allen Rozema, Skagitonians to Preserve Farmland
8. Ed Stauffer, Citizen-at-Large Committee member

From: The Boon Team
Sent: Monday, June 02, 2014 5:07 PM
To: KirkJohnson
Subject: TDR

Kirk,
I will be unable to attend the last meeting as more conflicts have risen so I thought I would give my opinion….

After reading the reports and thinking on the subject of the Transfer of Development Rights, I am of the opinion that our current Zoning system is adequate to resolve any of the growth needs of the county. I believe that in the near future, the population growth will be controlled by who can get water and also fire protection. I also believe that if a Landowner does not have water availability or fire protection and if those are required by the County for residences then they have no building rights to sell. In the future if changes are made by water main placement or building requirements that those lots can be built on so too many homes in the outlying areas becomes a problem, then we can look at this issue and as far as I'm concerned we can use the TDR regulations from Snohomish County.

Thanks
Charlie

Charlie & Jeannie Boon
RE/MAX Territory NW

SKAGIT / ISLAND COUNTIES SICBA BUILDERS ASSOCIATION
15571-A Peterson Rd., Burlington, WA 98233 • Phone (360) 757-6916 • Fax (360) 757-0604

June 12, 2014

From: Skagit/Island Counties Builders Association
To: Kirk Johnson, Lead Planner for TDR Program Development and Implementation

Subj: POSITION OF SICBA REFERENCE RURAL TDR PROGRAM

Kirk,

It is our understanding that this will be placed in the appendix portion of the TDR CAC findings that are being forwarded to the Skagit County Planning Commission and the Board of County Commissioners for deliberation.

SICBA believes in conservation of lands if the program is voluntary but we also believe that there are enough programs in place to reach that goal right now. With the Farmland Legacy program and GMA, it is pretty well covered. While some say it is just another "tool," we see it as another ordinance/regulation that not only adds to confusion but could be something that could be "interpreted" differently as leadership changes and as policies change in the future.

In our session the other day, the statement was made that Burlington is changing their zoning to accommodate for their desire to build up and not out and increasing their density to meet what is being proposed for Burlington. That being said, why do they need the TDR program if the zoning is in place unless it is to extract money from a developer/builder for something that is already zoned appropriately for the density he/she might be requesting? This does not support affordable housing if a developer has to pay a fee to build to a density that is already zoned for that density. And, while Burlington's program seems to work in helping to put money into the Farmland Legacy program which does succeed in voluntary conservation of rural ag lands as they become available, we wonder why there would be a reason to tack on more costs if the zoning already supports what is being proposed? TDR programs should be voluntary and an option for someone to use to build to greater density than what is supported by current zoning. So, we don't see Burlington as being a very good example of a functioning receiving area that this program needs to be successful. The developer is still going to have to pay for all services for every unit under Burlington's current code and any upzoning Burlington might do. So, how does having to pay more fees to build to a density already existing contribute positively to affordable housing considering that each unit costs that much more?

There are too many questions that need answers at this time to be sure a program like this doesn't affect something that is in place and already working. In an urban setting where preserving ag land that is already in the UGA is the issue, we certainly can see the value in the program – and it has worked in Mount Vernon in the past. But, we still haven't heard how the value of a TDR is going to be attained except by appraisal. And, with no water in the valley at this time for development, it certainly will affect the appraised value of property. It won't affect the taxed value of the property but will certainly affect the appraisals.

The next issue is Bayview Ridge and the fact that it is not and will not be a receiving area. Until that area has public water and sewer on site, it is not developable as is currently in place. That being said, we still think that area should be left as is and when the water and sewer is run to the area, it should be looked at for some upzoning to be considered at that time. I have been in the area since 1986. I have flown in and out of Bayview Airport many times. My office is near the approach end of the runways. Traffic has not increased over these years enough to be very noticeable and until it increases to the point the FAA needs to put a control tower there, air traffic should not be an issue. The primary runway doesn't even have approach or departure corridors over that area. So, if the zoning in the Bayview Ridge area that is zoned for residential were kept as it is now, that could very easily be a receiving area in the future but never to the density of multifamily housing.

Another issue is staff workload. While it sounds very good to put this into practice right away, we don't think the county has enough staff assets to actively support this program since right now it will sit on the shelf and not be used. Having a "tool" in place makes sense if it is supported along the way and there is some prediction of when it will be used. We do not have that with this program. As we all know, laws and regulations change over time and if it is 10 years down the road before someone wants to use this, it will have to be kept up to date all along the way for those 10 years with current code and then could possibly have to be looked at again – depending on the amount of change that has happened in other laws and regulations. So, there would be staff time used for no gain during that time. This is not very efficient.

Mount Vernon isn't interested in taking part in the program right now and they have plenty of land to take care of their needs for at least 20 or more years. And, Mount Vernon is where the majority of the projected population growth will be. So, the major player doesn't need the program now either.

So, all this being said, we think this is premature. We are not saying it won't work later down the road when regulations change but right now is not the time. And as regulations change, who is to say this program won't have to change as well? So then there would have to be another study done to be sure it does comply with all the other codes when someone wants to use it in the future. And, it will have to be reviewed and updated just like every other ordinance/code in the county to ensure compliance. That equals more work for your staff as we move into the future because of something that is there whether it is used or not. Wait until the time when it is needed and then let's review it for compliance with the current code at that time and implement a program then that is meaningful and will work from the very start with great sending and receiving areas identified.

Thank you,

C.W. Crider

Charles W. Crider
Executive Officer
Skagit/Island Counties Builders Association

SKAGIT LAND TRUST
Saving Land for Tomorrow

June 26, 2014

Skagit County Board of County Commissioners
1800 Continental Place, Suite 100
Mount Vernon, WA 98273

RE: Transfer of Development Rights Program

Dear Commissioners:

The purpose of this letter is to express Skagit Land Trust's support for the implementation of a Transfer of Development Rights (TDR) Program. We served on the TDR Advisory Committee for the past year; it was a diverse and engaged group, and the process was well managed by County staff. While the Trust recognizes the challenges to implementing an effective TDR program at this time, we feel it is an important tool for voluntary land conservation that will be useful in the future as the County faces inevitable growth pressure. It is a good time to get a TDR program up and running before there is too much demand for it, this will allow for more gradual implementation. We support implementing a combined TDR and density credit program as providing the most flexibility for all parties, and therefore encouraging more use of the program.

A TDR program will provide new incentives and better options for landowners, and could be especially useful to conserve important resource lands where little funding has historically been available -- notably productive forest lands. We strongly encourage the inclusion in designated "sending areas" of not only AG-NRL lands, but also lands zoned Rural Resource, Secondary Forestry, as well as those lands eligible for development within the Industrial Forest Zone. Notably, we are aware of a number of landowners in these zones who are interested in TDR options.

We laud the City of Burlington for stepping up to participate in this program, and hope that over time more cities in Skagit County will recognize the economic benefits of well planned urban density coupled with conserving the rural landscapes of Skagit County. Toward that end we encourage the County to continue dialogue with the cities to seek ways to make a TDR program mutually beneficial.

Finally, our support is for a TDR program that utilizes permanent conservation easements. We feel limited term easements do not achieve true land conservation, and can actually have the opposite long-term affect of fueling land speculation. We have similar concerns regarding easement buy-back provisions that may be considered as part of a TDR program; we recommend very careful evaluation of the terms of any buy-back provisions to avoid unintended long-term effects, and to ensure transparency and wise use of public programs and funds.

Thank you for supporting this TDR Committee process and for including Skagit Land Trust. We sincerely appreciate your long-term vision of sustaining the productive natural resources of Skagit County.

Sincerely,

Molly

Molly Doran
Executive Director

P.O. Box 1017, 1020 S Third Street, Mount Vernon, WA 98273 Voice 360.428.7878 Fax 360.336.1079
www.skagitlandtrust.org

CITY OF Burlington
SKAGIT COUNTY, WASHINGTON INCORPORATED 1902

June 23, 2014

RE: Transfer of Development Rights Program

Kirk Johnson, AICP
Senior Planner/Team Supervisor
Skagit County Planning & Development Services
1800 Continental Place
Mount Vernon, WA 98273

Dear Kirk:

The Transfer of Development Rights and the Density Credit programs provide tools and options that are important components of the Growth Management Act planning process. They also provide a means for urban development to contribute to the preservation of the amenities/resource lands that make this region unique.

Updating the Comprehensive plans includes taking the opportunity to evaluate the keys to long term success in each community. It is quickly apparent that future of this region, whether it is living, working, or visiting Skagit County, is directly connected to protecting and connecting the unique and abundant natural resource lands that create the framework for the region.

It is easy to take the provincial negative view, for example, that Transfer or Purchase of Development Rights and Density Credits are not needed, might not be used for many years, or should NOT be a mechanism to gain additional density; just change the zoning code to allow everything a developer wants at no cost. Look a little closer and one might instead take the opportunity to help protect Farmland, Forests or other resource lands using a land use mechanism that does NOT place an extraordinary cost or burden on a developer, and that makes a small but meaningful contribution to help leverage resource protection.

The Burlington Agricultural Heritage Credit program fees are directly connected to the increase in property values that result from increased density. The opportunity to add dwelling units when there is enough parking can make a positive difference to the property owner, and show support for long term agricultural preservation in a mapped area around the City Limits.

Burlington has always been a farming community and we strongly support the preservation of farmland. At the same time, we also plan to grow in our ability to attract and promote tourism and that definitely means resource land preservation countywide. Thanks for the opportunity to participate in the program development process.

Sincerely,

Margaret Fleek

Margaret Fleek
Planning Director

Planning & Permit Center
833 S. Spruce Street • Burlington, WA 98233
Phone (360) 755-9717 • Fax (360) 755-9309 • bplanning@ci.burlington.wa.us

June 5, 2014

Kirk Johnson, AICP
Senior Planner
Skagit County Planning & Development Services
1800 Continental Place
Mount Vernon, WA 98273

Kirk
As promised, here are my minority thoughts.
All of the timber managers I have spoke with on this issue agree with me that giving up TDR's on timberland for ever is a plan that will devalue the land. Therefore we would suggest a rotational policy that would be designed similar to the State riparian easement program which grants the State an easement on that portion of the property for 50 years. This approach will take the development rights away from the property for the short term but eventually reinstates those rights after 50 years and gives the land owner an opportunity to adjust to policy and market changes over the previous 50 years.
This program is very easy to administer as the landowner must show the filing at the County in order to receive payment. This is not a very cumbersome process and it is recorded on the parcel title for the 50 year period.
My second issue is the fact that rural reserve and rural resource lands do not qualify as receiving areas. These are lands that are in close proximity to infrastructure and are usually surrounded by multiple densities that already impact our resource lands. Why shouldn't we have the same densities as the people who surround us?
If there is any interest in discussing these issues I would make myself available.
Thanks for the opportunity to participate on the committee representing the Forest Advisory Board.
This is a very complex issue and I thought you led us well, more so when at times it was difficult.

Thank You,
Paul Kriegel
360-708-8202

LISSER
& ASSOCIATES
LAND SURVEYING / LAND-USE CONSULTATION

RECEIVED
JUN 30 2014
SKAGIT COUNTY
PDS

June 30, 2014

Kirk Johnson
Skagit County Public Works
1800 Continental Place
Mount Vernon WA 98273

Re: TDR Committee

Dear Kirk:

Thank you for the opportunity to add my thoughts to the final TDR report.

First off, I would like to thank you for your leadership through the process, you kept the group well informed and relatively on track.

The process seemed to take quite a long time, but that was probably due in large part to requests by the committee for more detailed information at each step of the process.

Based upon the committee's journey, I believe there is consensus to move forward with the implementation of a TDR ordinance. I have concerns that it may take many years before the ordinance makes any progress with respect to its use. Its success will be further impacted without areas within unincorporated Skagit County to utilize as receiving areas for development.

I have experience with TDR's both in the creation of the ordinance and the implementation. My experience has been mixed, both good and bad, the ability to add density to a project turned out good for the developer, but received negative response from the community. The interesting thing is that those who purchased and reside in the higher density areas like it, those outside feel it is inappropriate and too dense for our community. I would envision similar concerns expressed by county residents when developments utilize the higher density lots.

I believe the subdivisions with similar lots will probably not be the best use of a TDR in our county. The real gains will be noticed in a multifamily (apartment) type of living condition where an extra floor of units to accommodate the increase density within a single building will hardly be noticed.

This leads me to my concern for the immediate viability of any TDR ordinance that is approved by the County, the only successful areas that could receive a density increase would be within incorporated cities and the only interested city at this time is Burlington, a city with relatively limited building areas to take on the new densities.

Skagit County has enormous opportunities to create sending sites for conservation, but is not willing to create any areas to accommodate the receiving areas, especially now that the Bayview Ridge area is being removed from development, a short sighted decision as far as I am concerned.

My personal belief is that the TDR should be placed on the books as another tool for land development, that the County maintain the residential development areas along the east side of the Bayview Ridge with a density of 2 units per acre as long as TDR's are utilized for the development, and be a leader with respect to their implementation.

Targeting this area with relatively higher density, the County could start the ball rolling on TDR usage, start development in an area that is appropriate (out of the floodplain, with sewer and water) and possibly prove to the larger cities, Mount Vernon, Sedro-Woolley, Anacortes, that development in the Urban Growth Areas may be a viable possibility through the TDR process. A transitional density of 2 units per acre could be a great step, could create some conservation and limited development all at the same time.

If the County is not willing to utilize properties such as the Bayview Ridge (especially the eastern end) for development at higher densities that could utilize the TDR process, then it may be even longer for any ordinance to be utilized. The County needs to be a leader in order to bring the large cities on, without them, no substantial gains will be made with respect to the conservation benefits envisioned with the TDR process.

Again, thank you for the opportunity to serve on the committee.

Sincerely,

Bruce G. Lisser, P.L.S.

BGL/mm

Wednesday, July 02, 2014

Skagit County Board of County Commissioners
1800 Continental Place
Mount Vernon, WA 98273

RE: Skagitonians to Preserve Farmland Support for pursuing a Transferable Development Rights Program in Skagit County.

Dear Commissioners:

Skagitonians to Preserve Farmland (SPF) has been a long time advocate for developing a Transferable Development Rights (TDR) program within Skagit County. In 1992, with support from the Bullitt Foundation and Skagit County, SPF completed and issued a report titled Farmland Preservation in Skagit County: Program Options and Recommendations. One of the many program recommendations at that time was to pursue the development of a TDR program. Twenty-two years later SPF is pleased once again to participate and advocate our support for the development of a TDR Ordinance in Skagit County.

Since the 1960's Skagit County has been a leader in developing, adopting and supporting land use regulations, policies and programs that support the protection of farmland and the economic viability of farming in Skagit County. In 1996, Skagit County pursued the creation of the Farmland Legacy Program to support the purchase of development rights on farmland. At that time there were questions and apprehensions regarding how effective the Farmland Legacy Program would be, and the program started slowly and gained in popularity and use. Today Skagit County's Farmland Legacy Program is nationally recognized and leading the State in the amount of farmland protected.

Now is not the time to stop pursuing innovative policies and programs designed to protect our working lands and natural resources while also supporting sustainable development and growth within our municipalities. SPF would like to encourage and support your leadership in implementing the recommendations of the *TDR Advisory Committee* by moving forward with the development of a draft TDR Ordinance for Skagit County.

Thank you again for your leadership on TDRs and in the many other areas of natural resource protection and growth management.

Sincerely,

Allen Rozema
Executive Director

From: algerdew@hotmail.com
To: ronw@co.skagit.wa.us
Subject: Summary
Date: Wed, 18 Jun 2014 13:40:28 -0700

Honorable Ron Wesen, Chairman
Board of Skagit County Commissioners
June 18, 2014

Dear Commissioners:

Pursuant to directives in your resolution #R20120276, dated August, 2013, I wish to inform you that the Advisory Committee held its final meeting on June 8, 2014. Our task was to ". . . evaluate possible development of a transfer of development rights (TDR) program" for Skagit County.

From the resolution, I am the only remaining " . . . at-large member who can help to represent the interests of Skagit County urban and rural residents"; I am prepared to meet with you anytime at your request to discuss in detail any issues which concern you, including public awareness. I attended all committee meetings, (with one exception for which I arranged attendance by proxy), all public presentations, offered my services to the public, the Board, and the Planning Commission during my tenure. I read all of the voluminous materials provided, did independent research, and initiated countless discussions with your constituents. I asked questions, and provided information of and to the staff and consultants.

Skagit County currently has a conservation plan developed under the Growth Management Act and adopted in 1996.
Under State guidelines, Skagit County identified and then inventoried and protected resource lands, (Agriculture, Forest, Mineral, Fish), critical areas (eg steep slopes, wetlands), rural villages, and low population density residential use zoning. One of the salient features of this GMA inspired plan, is that the property owners or rural lands in Skagit County are front-line conservationists defined as Stewards of the Land in RCW 36.70. The results of the studies undertaken as part of this proposal point out that our plan has been absolutely successful in achieving our Conservation Goals. Close to eighty percent of Skagit's Rural Lands remain protected permanently for conservation of legitimate natural resource values. A small portion of our rural land is zoned for low-density rural residential use.

The proposed permanent removal of the right to build a home and live on one's rural property is discrimination against the rural community. A city has no need to alter its development code to allow more dense intra-city uses through the device of demanding someone to give up forever the "American Dream" on a piece of rural property; urban jurisdictions can change their development code at will without engaging in such a charade. Also, the Board of County Commissioners has already created a number of options allowing owners to donate or sell property for conservation. Prudence dictates noting that all such conversion of rural residential use reduces the County's revenue base.

Notwithstanding the directives of your resolution, the Department of Commerce Grant which funds this exercise includes funds and guidelines for preparing and forwarding an ordinance for adoption. At least two opportunities to terminate this project have already passed. I recommend that you do so now. If this proposal is allowed to advance, I predict you will find an uninformed public once again engaged in last-minute panic as it passes to the hapless Planning Commission, and then to you. Would you really sign an ordinance empowering urban officials to eliminate living rights on County residential property, given they already have the power to permit whatever they wish without eliminating rural property rights?

Please forward this document to your colleagues and to staff for inclusion in the Appendix of the Committee Report. Thank you for the opportunity to serve.

Respectfully, Ed Stauffer, Citizen-at-large Committee Member

Appendix D. Forterra Comment Letter

MAIN OFFICE
901 5th Ave, Ste 2200
Seattle, WA 98164

T 206 292 5907
F 206 292 4765
E info@forterra.org

FORTERRA CREATING GREAT COMMUNITIES *and* CONSERVING GREAT LANDS

July 7, 2014

Dear Kirk,

Thank you for offering Forterra the opportunity to comment on the Skagit County transfer of development rights advisory committee process. The county hired Forterra as a consultant to provide strategic guidance for designing a framework for a potential transfer of development rights (TDR) program. Prior to partnering with Skagit County on this project, Forterra had worked with Pierce, Snohomish, Kittitas, and Clark Counties to design or update TDR programs. Forterra has also helped create two pieces of state legislation expanding opportunities for TDR and has been involved in the creation of TDR programs in 10 cities.

In the spirit of our advisory role, Forterra offers these comments on the process through which the advisory committee reached its recommendations. In our experience working with multiple jurisdictions, Forterra has learned that broad stakeholder input is essential to designing TDR programs. From our work with the Skagit TDR advisory committee we observed that the group was representative of a wide range of backgrounds that would use, or have an interest in, a potential TDR program. Meetings were open to the public who were welcome to give input. Overall the dialog was transparent, inclusive of diverse views, and rich with thoughtful contributions.

To help frame the committee's discussions, Skagit County staff conducted thorough analyses of a range of policy options for how TDR could be used in a way that supports the county's specific growth management and conservation objectives. Forterra commends the county for its systematic and comprehensive examination of challenging design considerations faced and for helping the committee to understand the issues and choices related to each. The resulting recommendations included in the report emerged from a process of methodical evaluation and robust dialog. Forterra commends Skagit County for the approach it took in managing and informing the stakeholder committee and believes that the conclusions accurately represent the members' views.

Designing a TDR program is a complex and nuanced process. The challenges of creating a new market, establishing an administrative structure, and defining conservation priorities can be difficult to resolve. Skagit County staff and the advisory committee have asked the right questions and collaborated effectively to answer them. Whatever policy direction the county chooses to pursue Forterra is happy to provide further assistance as requested and thanks staff, advisory committee members and the Board of Commissioners for the opportunity to participate in this productive process.

Sincerely,

Nicholas Bratton

Nicholas Bratton
Policy Project Manager

Appendix E. Top 25 Transfer of Development Rights Programs

City or County	State	Population	Density (pop/sq mi)	Year Began	Acres Conserved
King County	Washington	2,044,449	912.9	1993	141,400
Montgomery County	Maryland	1,016,677	1,978.2	1980	52,052
Palm Beach County	Florida	1,372,171	670.2	1980	31,000
Caroline County	Maryland	32,693	103.5	1989	28,264
Calvert County	Maryland	90,484	416.3	1978	24,723
Howard County	Maryland	304,580	1,144.9	1994	19,362
Indian River County	Florida	141,994	274.5	1985	11,914
Hillsborough Township	New Jersey	38,303 (2010)	702.3	1975	10,571
Sarasota County	Florida	390,429	682.6	2004	8,199
Queen Anne County	Maryland	48,517	128.5	1987	8032
Blue Earth County	Minnesota	65,528	85.6	1970	6,160
Pitkin County	Colorado	17,389	17.7	1994	5,840
San Luis Obispo County	California	276,443	81.7	1996	5,464
Charles County	Maryland	152,864	320.2	1992	5,274
Boulder County	Colorado	294,567	405	1981	5,000
Payette County	Idaho	22,623	55.6	1982	4,113
Rice County	Minnesota	65,049	129.4	2004	4,074
Douglas County	Nevada	47,118	66.2	1996	4,003
Adams County	Colorado	469,193	378.2	2003	4,000
Collier County	Florida	339,642	160.9	1974	3,612
Marion County	Florida	337,362	209.1	2005	3,580
Churchill County	Nevada	24,063	5	2006	3,468
Town of Southampton	New York	56,790	190	1972	2,800
Chesterfield Township	New Jersey	7,699	360.9	1975	2,231

Highlighted jurisdictions are rural in character based on overall population size or population density. For comparison purposes, Skagit County's population is approximately 118,000, with a population density of 67.5 persons/square mile. Mount Vernon's population is approximately 33,000.

Source: Forterra National TDR Program Database, updated July 2012.

Appendix F. Estimate of Existing, Unexercised Development Rights in Rural Skagit County

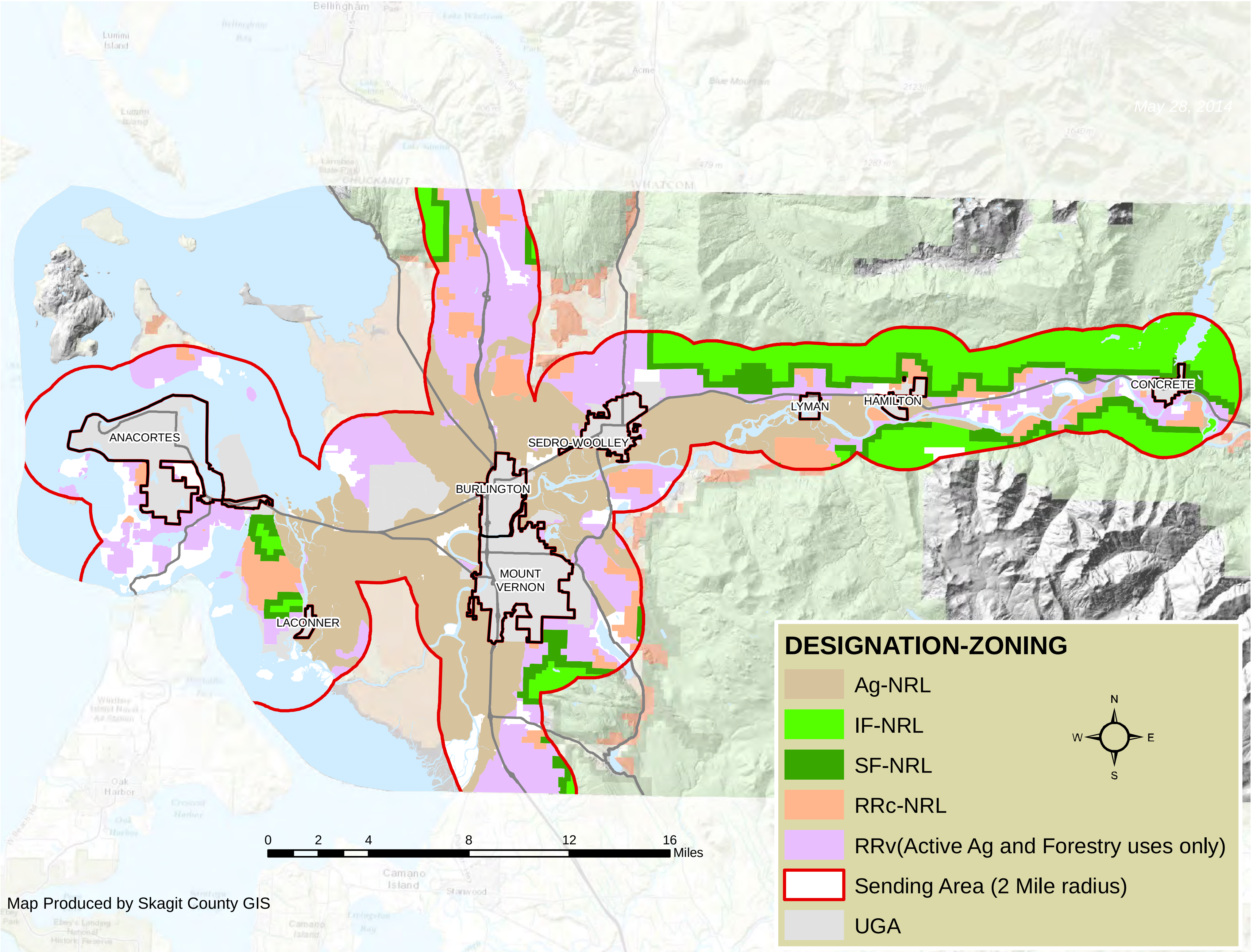
Skagit County GIS has estimated there are approximately 12,300 existing residential development rights in unincorporated Skagit County outside of urban growth areas. This means that under current zoning and land use regulations, there are approximately 12,300 lots that exist or can be created for residential development purposes. Those existing, unexercised development rights are distributed as follows:

Zoning	DRs	Comments
Agricultural-Natural Resource Land (NRL)	683	An estimated 438 of the Ag-NRL development rights are entirely in the floodplain
Industrial Forest-NRL	402	
Rural Intermediate	1,572	
Rural Resource-NRL (RRc-NRL)	1,594	The CaRD density bonus accounts for approx. 800 to 1,100 of these RRc-NRL development rights
Rural Reserve (RRv)	7,206	The CaRD density bonus accounts for approx. 2,500 – 3,000 of these RRv development rights
Rural Village Residential	1057	
Secondary Forest-NRL	973	
Total	13,487	Sum of above
Adjusted Total	12,344	After removal of parcels in public ownership, with existing conservation easements, or located entirely within the floodway

The numbers in the table are based on a set of GIS rules that look at ownership, parcel size, and other factors meant to approximate the analysis done manually as development permits come in through the County's lot certification process. Doing actual lot certifications on all potential building lots would be prohibitively expensive, so this is the best estimate Skagit County has to date. These numbers assume that all parcels that are eligible would take advantage of the CaRD density bonus provisions in code, so they represent a maximum potential in that regard. They also do not look at issues such as access to saltwater islands (a few small islands in Skagit County have development potential but no public transportation access), market demand, etc. The numbers only count Industrial Forest-NRL lands within a fire district or IF-NRL lands immediately adjacent to land within a fire district and under the same ownership (as development right transfers are already allowed in that instance).

About 5,700 of those development rights are currently restricted due to the Department of Ecology's Skagit River Instream Flow Rule, which limits the drilling of new exempt wells in large portions of rural Skagit County.

Appendix G. Map of Potential TDR Sending Areas


May 28, 2014
ANACORTES
SEDRO-WOOLLEY
BURLINGTON
MOUNT
VERNON
LACONNER
LYMAN
HAMILTON
CONCRETE
DESIGNATION-ZONING
Ag-NRL
IF-NRL
SF-NRL
RRc-NRL
RRv(Active Ag and Forestry uses only)
Sending Area (2 Mile radius)
UGA
N
W
E
S
0 2 4 8 12 16
Miles
Map Produced by Skagit County GIS

Appendix H. Selected Market Analysis Slides

Bayview Ridge Residential

BAYVIEW RIDGE DEVELOPMENT SCENARIOS & FEE INFERENCE

HYPOTHETICAL 30-ACRE DEVELOPMENT	TDR DEVELOPMENT SCENARIO	BASE	BONUS	BASE VALUE	BONUS VALUE	INCREMENTAL VALUE	FEE INFERENCE @ 50% LOWER OF BASE LAND VALUE & INCREMENTAL VALUE
	BR-URv	6 Lots 1 Lot/5 Acres (w/ CaRDs)	—	$254,000 ($8,475/Acre) ($42,360/Lot)	—	—	—
	BR-URv -> BR-R	6 Lots 1 Lot/5 Acres (w/ CaRDs)	120 Lots 4 DU/Acre	$254,000 ($8,475/Acre) ($42,360/Lot)	$1,761,000 ($58,700/Acre) ($14,675/Lot)	$1,507,000 ($13,200/ Bonus Lot)	Incremental Value $13,200 x 50% = $6,600 Per Lot
	BR-R 4 DU/Acre -> 6 DU/Acre	120 Lots 4 DU/Acre	180 Lots 6 DU/Acre	$1,761,000 ($58,700/Acre) ($14,675/Lot)	$3,645,000 ($121,500/Acre) ($20,250/Lot)	$1,884,000 ($31,400/ Bonus Lot)	Base Land Value $14,675 x 50% = $7,350 Per Lot

Burlington Commercial

BURLINGTON DEVELOPMENT SCENARIOS & FEE INFERENCE

1-ACRE RESIDENTIAL DEVELOPMENT	TDR DEVELOPMENT SCENARIO	BASE	BONUS	BASE VALUE	BONUS VALUE	INCREMENTAL VALUE	FEE INFERENCE @ 50% LOWER OF BASE LAND VALUE & INCREMENTAL VALUE
	C1, C2, MR-NB & B1 Base Density	14 DU/Acre	—	$111,620 ($2.56/SF) ($7,975/Unit)	—	—	—
	C1, C2, MR-NB & B1 Bonus Density	14 DU/Acre	23 DU/Acre	$111,620 ($2.56/SF) ($7,975/Unit)	$180,075 ($4.13/SF) ($7,830/Unit)	$68,460 ($7,600/ Bonus Lot)	Incremental Value $7,600 x 50% = $3,800 Per Lot
1-ACRE COMMERCIAL DEVELOPMENT							
	C1, C2, MR-NB & B1 Hypothetical Base Density	0.3 FAR 13,068 GBSF 5 Stalls/KSF	—	$459,230 ($10.54/SF) ($35/GBSF)	—	—	—
	C1, C2, MR-NB & B1 Bonus Density	0.3 FAR 13,068 GBSF 5 Stalls/KSF	0.35 FAR 15,246 GBSF 4 Stalls/KSF	$459,230 ($10.54/SF) ($35/GBSF)	$633,620 ($14.55/SF) ($42/GBSF)	$174,390 ($80/ Bonus GBSF)	Base Land Value $35 x 50% = $17.50 per GBSF

Rural Upzones

RURAL UPZONE DEVELOPMENT SCENARIOS & FEE INFERENCE						
TDR 40-ACRE DEVELOPMENT SCENARIO	"BASE (W/ CARDS)"	"BONUS (W/ CARDS)"	BASE VALUE	BONUS VALUE	INCREMENTAL VALUE	FEE INFERENCE @ 50% LOWER OF BASE LAND VALUE & INCREMENTAL VALUE
RRc-NRL	4 Lots 1 Lot/10 Acres	—	$200,260 ($5,000/Acre) ($50,065/Lot)	—	—	—
RRc-NRL -> RRv	4 Lots 1 Lot/10 Acres	8 Lots 1 Lot/5 Acres	$200,260 ($5,000/Acre) ($50,065/Lot)	$324,000 ($8,100/Acre) ($40,500/Lot)	$123,740 ($30,935/ Bonus Lot)	Incremental Value $30,935 x 50% = $15,470 Per Lot
RRv -> RI	8 Lots 1 Lot/5 Acres	16 Lots 1 Lot/2.5 Acres	$324,000 ($8,100/Acre) ($40,500/Lot)	$596,350 ($14,910/Acre) ($37,270/Lot)	$272,350 ($34,050/ Bonus Lot)	Incremental Value $34,050 x 50% = $17,025 Per Lot
RRv -> RVR	8 Lots 1 Lot/5 Acres	40 Lots 1 Lot/1 Acres	$324,000 ($8,100/Acre) ($40,500/Lot)	$1,121,090 ($28,030Acre) ($28,030/Lot)	$797,090 ($24,910/ Bonus Lot)	Incremental Value $24,910 x 50% = $12,460 Per Lot