

## Meeting Summary

### Regional Transfer of Development Rights Policy Advisory Committee

Thursday, May 1, 2008

Attendees: Chair Mike Flynn, Kitsap County Commissioner Steve Bauer, Dick Carkner, Mary McCumber, Judd Kirk, Michelle Conner, Nathan Torgelson, Mayor Margaret Larson, Don Stuart, Ivan Miller, Leonard Bauer

Staff: Heather Ballash

Guests: Bill Blake, David Kull, Dan Cardwell, Debi Kirac, Elizabeth Robbins, Mark Sollitto, Alann Krivor, Jeremy Eckert, Jeff Pavey, Brynn Brady, Dave Williams, Mark Beardslee, Lynn Miranda, Darren Greve, Taylor Carroll, Nicholas Bratton, Pete Lymberis, Noel Higa.

#### Public comment

Noel Higa provided public comment on the Solimar Research Group market analysis for Snohomish County and Arlington. Mr. Higa has invested heavily in the existing Arlington TDR receiving area. Mr. Higa stated that there are mistakes in the Solimar study. No one called him from Snohomish County when they were developing their program, and no one called him from Solimar.

Mr. Higa does not think that Solimar should have done a hypothetical analysis for Arlington because it is a real city. The analysis does not take into account the amount of time and infrastructure costs needed to include land in the UGA. It takes 10 – 15 years to get land into the UGA. The study goes back and forth between the hypothetical and being Arlington-specific. For example, the study uses sending area values for Ag-10, but the area includes rural, agricultural and forest land and comes up with an average. Development costs have been ignored, nor has profit been accounted for. The math in the analysis is not correct. The developer's willingness to pay should be \$5,000 rather than \$27,000. Mr. Higa will send his comments in writing to Heather to share with the committee.

#### Snohomish County Update

Mark Beardslee, Senior Planner in charge of the Snohomish County TDR program, provided an update on the County's program. The original proposal went to the County Council, with an alternative from the County Executive that would not change county policies. The alternative would allow the County to make changes to the TDR program by interlocal agreement, development agreement and code changes. The County would be working with Arlington to make their program work and would look at additional

receiving areas. The Council heard the alternatives on April 30, and the vote on the TDR program is currently scheduled for May 12.

Arlington is pleased with the direction the program is going. They will work with the County to make their program work.

Presentation by Solimar Research Group – Preliminary Report on TDR Market Analysis

Solimar Research Group, represented by Bill Fulton and Aaron Engstrom, presented the preliminary results on their market analysis of TDRs in central Puget Sound. They also made recommendations regarding a TDR market mechanism and interjurisdictional feasibility of TDRs. Mike McCormick also participated as a member of the consultant team.

Mr. Fulton made it clear that the market analysis consists of estimates. You can only be precise with actual transactions. Therefore, their analysis is a best guess. The values are not as important as the ratio/relationship between the sending and receiving area values.

*Policy Advisory Committee comments/discussion of the study with consultant*

*A. Market Analysis of sending and receiving areas*

Policy Advisory Committee (PAC) - While this is valuable information, asking about the average value of TDR is like asking for the average value of land. Value is so site specific. We can't tell too much from this. Will we ever be able to determine it, versus letting the market determine value? The goal is to let the market maximize the program, unless it is mandatory.

Fulton – That is all true, multiplied through a multi-county program. You do need to let the market decide the prices. Need to decide what is the ultimate goal, the most acres or the highest priority land conserved. Need to make that decision before trying to shape the market.

PAC – Once the policy decision is made, receiving areas become the problem. Is there any other analysis of what cities can do that is worth more than increased density? For example, creating more certainty in the permitting process?

Fulton – That was addressed in the conversion commodity memo. Cities will also have different priorities than just conservation.

PAC – So far, did you just look purely at the market and not what a city is willing to do?

Engstrom – Yes. But they had to find a niche for TDRs in existing programs.

PAC – Regarding the sending area values, given the premium on development value, is there a sweet spot of proximity between of rural versus resource lots so that lot values are closer?

Fulton – The sending areas are divided by zone, not geography. You may want to target the program to get developers to buy higher value TDRs.

PAC – PDRs can be used for higher value and TDRs for mid-range value.

Fulton – Need to talk more about the vast range of sending area values. Sending area values are tricky.

PAC – Regarding the receiving site in Carnation, what is the policy reason for the impervious surface requirement?

Engstrom – The soil has good perking qualities and the city does not want to have to get an NPDES permit.

PAC – Is there an option on stormwater management in Carnation to provide mitigation elsewhere? This is being looked at in the Department of Ecology’s process on “Mitigation That Works.”

Fulton – That is a good question for the committee.

PAC – Small towns need an incentive. Arlington is paying \$30 million for a sewer plant to save the valley. The price of farmland is increasing with million dollar houses. Concerned about incentives for all parties.

PAC - Need to find the path of least resistance for developers – conduct a charrette to determine what the community wants and then design regulations with the path of least resistance.

PAC - Regarding the sending values in Pierce County, why is there a big difference between rural and resource lands?

Fulton – The prices are based on recent transactions. Please provide any information you have to Heather. In some cases, the number of transactions were small so the price may be off.

PAC – What the developer can afford to pay is not rocket science. You can identify many costs, then mitigation costs which are not determined by the developer. It is so site specific, it is difficult to generalize because there are too many variables.

Fulton – They got as close to site specific as they could with small receiving areas and specific prototypes.

## *B. Market Mechanisms*

PAC – Is there an advantage to the TDR bank to also be a clearinghouse?

Fulton – As long as the bank doesn't manipulate the information to pursue its own objectives. The disadvantage is that both the bank and the clearinghouse need to be credible in their separate roles.

## *C. Feasibility of inter-jurisdictional transfers*

PAC – Could a jurisdiction use a regional mechanism for an internal TDR program?

McCormick – They could certainly do it now, so we wouldn't want to preclude it.

McCormick – Regarding financial payoffs for receiving areas, counties are not overly willing to pay cities. If there is a small impact to the county, it may be willing. If there is a significant impact on county revenues, they may need financial incentives.

PAC – What about assessment impacts on current use?

McCormick – It depends upon how the assessor does it.

PAC – It depends on how serious the county is about conserving the land. There should be no expectation of a rezone to a higher use.

What about the cost of providing services to those lands?

McCormick – A few people are thinking about that, the general consideration is the opposite. The major cost for counties is criminal justice. He has not seen it outside of central Puget Sound.

Fulton – Need to put something on the table for receiving jurisdictions. The benefit from the sending area must be very clear and deeply held.

PAC – One reason for a regional program would be to spread the wealth – save agricultural land for counties without much money. Another reason is that residential uses cost more than they pay. The benefit to King County is where residential is located outside the county commuting in for work.

Another goal of this program under GMA is to accommodate growth, to the extent you purchase development rights and decide where to put them. Drive to buy a home issue – there is a regional reason to help larger job-rich jurisdictions achieve higher densities. There are two questions for the PAC: 1) The fungibility of development rights – conversion commodities that don't solve the housing supply issue; and 2) ratio/multiplier for development rights.

Fulton – Cities say to give them something else that they can't get any other way – regulatory benefits.

McCormick – It is worthwhile to think more about conversion commodities.

PAC – The Army Corps of Engineers has a preference for off-site mitigation – could do that with TDRs. State agencies could look at that.

Fulton – Mitigation banking is TDRs upside down and inside out. It is the best experience with buying and selling credits – the Corps has clear expectations. Need a strong tie to GMA.

PAC – The question for Arlington is how much citizens are willing to pay for additional infrastructure to save the valley. Any city has to look at that.

If some of the TDRs went to another jurisdiction, a small jurisdiction can benefit.

What about using TDRs to accommodate growth?

The math breaks down between counties.

PSRC has the best forecasting mechanism. It could be used to change allocations. It could be zero sum.

McCormick – There will be more resistance to expanding UGAs with the Puget Sound Partnership and Climate Change Challenge. There will be a disincentive to tie TDRs to UGA expansions.

PAC – Could make it mandatory.

There is no population allocated to natural resource lands, only rural lands. The county would focus on small key areas in rural lands. If the focus is on natural resource lands, it would confuse the math with housing targets.

What about a hybrid – city that gets to add development rights could get added ability to raise funds. For example, a local improvement district.

Fulton – There are no examples out there.

#### Preliminary discussion of strategies for a market mechanism and inter-jurisdictional transfers

##### *Options for a regional framework*

PAC – PSRC could develop a policy framework.

Fulton – PSRC’s role could be reconciliation between jurisdictions on receiving areas.  
McCormick - It could be addressed in the multi-county planning policies.

PAC – Need to use Vision 2040.

McCormick – Need some state review and concurrence – some oversight.

PAC – This enormously complex. At the end of the day, has it accomplished anything? Need to be sure can do something significant. Indiscriminate designation of what we want to preserve will result in a hopscotch pattern. Need to rethink this. Regarding a regional bank, what are the politics about where the money goes? Is designation the most important thing within the region?

Who would be the big winners if there was a bank?

It depends on the criteria – Salmon Funding Board, Water Resource Inventory Area, etc. To the extent jurisdictions are awarded state grants or capital funds, locals could bank the rights with state funds. Those programs now require that development rights be extinguished.

Fulton – Think of the bank as a revolving fund. The Tahoe program was funded with state bond funds – used to start a revolving fund to buy and sell rights.

PAC – Then have a process for prioritizing with a bank. There may be some overlaps with the recommendations that the Farmland Preservation Task Force will develop. [Note: CTED will be presenting the TDR program at a future Task Force meeting. CTED also sits on the Task Force.]

Fulton – It doesn’t have to be either/or, some could be used for a TDR pilot and the rest for conventional uses.

PAC – Citizens need to get something out of this. Neighbors need to benefit by getting some amenities.

Why don’t local governments raise the density any way? Need a public process – balance between population projections and conversation with residents. What is the appetite of the receiving jurisdiction for more density?

Pre-GMA, the old discussion is that the plan is for highest and best use. With the GMA need to accommodate growth, they haven’t planned for the ultimate. TDR contribution to get people to do what they want to do anyway – extra funding to do it. How you talk to a community is difficult.

Regarding the inter-jurisdictional feasibility memo, these are the three reasons a city would participate. There may be additional reasons.

It is all about shared values in Arlington. But how can they sell this to other cities on the Stillaguamish? The Mayor would be run out of town if they just upzoned – the community is getting something for it. Every place is very different.

Fulton – It is more difficult to sell on a regional level.

PAC – In urban centers outside of downtown Seattle they are working on an upzone. The residents are willing to accept it with public benefits – affordable housing for the work force and open space in the neighborhood.

Fulton – You want to strive for simplicity and elegance.

PAC – Need neighborhood-level planning – get them to identify the priority for them, as in Seattle. There could be a way to figure out the benefits for a receiving area. Regulatory benefits could be a result of a planned action under the State Environmental Policy Act (SEPA). Regarding connections with a sending area, there could be regional prioritization and then cities could pick their sending area and what benefits the neighborhood. It could be a series of local programs with regional goals.

Keep the fundamental goals. Are not rearranging pockets of money. Need to create value. It will incur some pain, so aren't participating now. Find jurisdictions motivated to create value, and figure out what they want and need – pilots? Will need knowledgeable brokers and attorneys. Can add a lot of value when you make cheap land urban. Pick land on the urban corridor – can create a new city, but must do it with TDRs. Avoid the fight with the neighbors. It is far more effective than an elaborate mechanism. Consider new, dense communities near infrastructure.

Northwest Landing is an example of where people bought into density.

Given the complexity, pilots would help us learn. There are a number of examples to explore and figure out how to do this. Identify opportunities like Arlington and new communities.

There are three kinds of benefits:

- Subjective benefit of preserving land
- Benefit to receiving area
- Benefits to implementers – development community through creation of value

It is a statewide problem. The key has got to be urban areas' participation in preserving of agricultural land. Need to address this statewide.

Don't talk about development rights because people don't have them. When you increase the UGA, it is a windfall. So tax it and use it for infrastructure and the statewide purchase of TDRs. It becomes a deterrent to growth on the urban edge and the funding can be used to protect land. If you take from the center of the urban core, you discourage density there.

Could capture some of the windfall, but are eliminating resource land closest to urban centers that is most valuable to some. Unless you set the tax so high as to discourage a windfall. The Pierce County ordinance is pretty good.

Maybe we should do some demonstration projects, but also have programmatic opportunities. With Recreation and Conservation Office funding, use an increment within a receiving area.

Could designate best valued lands and create a mechanism for planning for TDRs in neighborhoods that increases eligibility for state infrastructure funding.

Should have a regional perspective. The region should set the priorities for sending areas. PSRC should have the information available. Bring it back to a county level for actual brokering to create the nexus between sending and receiving areas. Start here and see if it can go across counties. There is a problem with brand new communities outside the existing UGAs - would have to have a real reason to accommodate growth in new communities outside the UGA. All development inside UGAs needs to be more compact – need to make existing UGA grow better – encourage communities to be denser.

How do we persuade existing communities that more density is good?

Jurisdictions have to deal with it right now with new forecasts. Can't pretend that they don't have to deal with it. Added benefit to what they already have to do. Benefits defined by the neighborhood are good.

Take account of TDRs with the updates.

Mark Beardslee – This raises the Snohomish County concern regarding allocation between rural and urban. TDRs add to what they are already planning for. The countywide program would provide more opportunities that are not just in one area. There could be a problem with the multiplier.

PAC – TDRS accommodate the market if it is there.

If need to accommodate coming growth, why use just TDRs?

TDRs are one tool.

How does this help us move there? Are we assuming that we can't already do it?

We are incrementally going toward more compact development. TDRs add to that. Seattle has slowly been moving the bar. Neighborhood plans get you to identify what they need and to think more broadly. Helps with community buy in.

Growth increases property values. Could argue density increases the value of existing properties.

Create value for whom? For developers, it must be a marketwise path – market feasibility. No benefit to residents until the political decision.

Fulton – The discussion about what persuades residents to accept density will occur regardless of this program. It is a problem for the local governments. You need to presuppose it is possible to persuade residents to move forward.

If can slide through the legislative process and we are done, it is wrong. It is a mistake not to pay attention to residents. Density must result in an improved quality of life. Some are pushing the envelope with density now. If they are already, then what incentive is there for TDRs on top of that?

It has to work within the neighborhoods. The loss of natural resource lands will cost more. How do we direct the growth to the neighborhoods where it should go? Need to link to infrastructure funding. What set of recommendations could we make to move the state conversation forward?

[Note: The legislation creating the program specifically requires CTED and the PAC to “address the means for assuring that appropriate values are recognized and updated, as well as specifically addressing the need to maintain the quality of life in receiving neighborhoods and the protection of environmental values over time...”]

We are talking about cities charging for density to create money. What do they do with that money? TDR is a great tool for a city that wants to print money and knows what they want to do with it. When you get away from that to remote land, it gets harder. For example, parks in Seattle versus agricultural land in the county. Find receiving jurisdictions that are highly motivated and make it work there. Don't think that a regional program can work.

If we think it is important to permanently preserve natural resource lands and sensitive areas, then shouldn't we all be paying for it? The mechanism is public good for all, but those who pay are losers. Not all neighborhoods will pay with higher density. Need a nexus between what we want to protect and those who pay, as all should pay. We should pay a tax, but won't get that. So, think of regional priorities but there must be an incentive for developers and the community.

Need to come up with the reason why. It is about investment in our future.

Olympia is an example of inverse TDRs – can buy down from minimum densities.

Fulton – TDR is not policy. It is an implementation tool for a policy – tether it back to GMA. More density is a GMA policy.

PAC - How do we create value to receiving areas? The value of TDRS could be used as a match for state funds.

Yes. Leverage Washington Wildlife and Recreation Program funding for parks in cities.

The Recreation and Conservation Office funds both city parks and farmland preservation.

If TDRs stay optional it is not a policy. Mandatory is a policy. We are talking about how to preserve farm and forest land – this won't do it. Need a cost benefit analysis of our proposal. The cost may be greater than the benefit. May need something more ambitious.

## BREAK

### *Preliminary strategies discussion (cont.)*

Chair – Regarding market mechanism options, the conversation seems to be coalescing around Option 2 [Note: as presented in the Solimar recommendations, Option 2 would create an information clearing house, create a bank, use both the clearinghouse and bank to support existing programs, and permit limited inter-county trades based on a common interest (e.g., watersheds) and similar market conditions (low transfer ratios).]

PAC – Do you need an amendment to the GMA for inter-county trades? No. Interlocal agreements can occur.

Fulton – The state might want to identify inter-county routes between local governments who might not want to do it on their own.

PAC – You would choose PSRC versus a nonprofit operating the clearing house?

Fulton – A government agency is a more credible keeper of the information. Non profits are accountable to their board. PSRC is accountable to the public. Cascade Land Conservancy will end up as a player.

PAC – PSRC also has all of the regional data.

To the extent TDRs are an implementation tool, PSRC also makes sense.

Agree that we are gravitating toward Option 2. The state's role could be to set the priorities for conservation using criteria or geography. Then cities could self select based on those areas. There would be incentives to do that. A federation of local programs would grow over time into a regional program.

Agreed. It could be cost-sharing, resource protection priorities. Evaluate the use of existing funding streams. Link with existing programs to protect Puget Sound.

Get away from identifying sending and receiving areas, but legislate criteria that jurisdictions could protect.

Fulton – Is the purpose to support TDRs to promote local conservation priorities or state priorities? State funding criteria results in a state priority.

PAC – GMA is bottoms up. Would have real concerns about the state saying what the region's priorities are. The region can better articulate those priorities than the legislature. It would be OK if CTED did it.

Fulton – Consider regional priorities versus by county.

PAC – Concerned about an ad hoc program. State Office of Financial Management funding for counties may be renewed. Having good county planning for farmland preservation is the next logical step. The funding could be available for plans.

Is there a way to establish areas that receiving areas could take TDRs from?

Fulton – That is an option that should be considered. It is a form of veto in other jurisdictions – more transactions with a more open market. A limited market generates less transactions. It is the trade off for buy in from receiving areas.

PAC – Getting willing receiving areas is key.

The state priorities should be very high level, with a county process to focus it. The receiving area would pick the sending area. If we have a number of those, what is the role of the bank?

Could the bank provide the nexus?

Fulton – The bank can create a more common currency. The role could also be to get the market started between jurisdictions.

PAC – If have local programs, could the bank be the place for broader inter-jurisdictional transfers?

Fulton – It could functionally do it.

PAC – Sending landowners could have access to all the receiving areas. The bank could serve all of the programs.

Fulton – A state program to extinguish development rights could be used to capitalize the bank. The bank could get different pots of money to do different things.

PAC – Any county can sell tax-exempt bonds.

It is important not to confuse this as the end and not the means. This shouldn't be the only option and the result shouldn't be that things that used to be available will no longer be available. Be careful about impacting existing pots of money. It is appealing to get funds from the state. TDR is an option to enable locals. Focus on sweeteners.

The bank would use the market and not state funds. The rest of the TDR exchanges could be private.

Need funding to start the bank. Also need to address the timing issue.

Fulton – The state chartered the Tahoe Land Conservancy. Funding was eventually used for a revolving fund.

PAC – There is a bigger appetite for selling than buying.

Under the GMA, we don't have other prospects.

Need a ready supply of development rights if there is funding to buy them. Need implementation in receiving areas. Need a short list of ways to fund a bank.

The Office of Farmland Preservation may propose a small state grant program for purchase of development rights. We could propose that it can be used to start a TDR program.

Revenue-backed financing could be used through the Recreation and Conservation Office's Washington Wildlife and Recreation Program – can make money on sales to buy back the bonds.

Fulton – The advantage of a non-profit is nongovernmental funding to stake the bank. It can be used as a match for state funding in California. The worst thing that happens is you conserve the land, the best is to create a revolving fund.

PAC – The largest average contribution in this region is \$2,700. It could be a recommendation from this committee.

Fulton – Private funds in the bank could get a state match.

Mark Beardslee – Snohomish County thought a lot about a public/private bank. They must do an appraisal under their own rules. A private bank wouldn't have to do an appraisal and could negotiate the price. By giving state funding to a private bank, are you out from under the rules? Can you launder the funding?

PAC – The county can't pay more than the appraised price, but can pay less.

Beardslee – The appraisal sets the market.

PAC – You get to leverage funding every time you revolve. There probably will be more federal funding in the farm bill.

Need to consider what will do when the bulk of the TDRs have been purchased, and TDRs can no longer be used in the receiving area?

We will worry about it when we get there.

*Continued discussion of issues of certainty for buyers and sellers of TDRs( from previous meeting)*

PAC – What about the value of the right in the receiving area? If the building burns down, do you lose the rights?

Need a neighborhood plan with an environmental impact statement.

Never would have considered that the rights weren't permanent. There may be some reason that the public good would require revisiting it.

It must be in perpetuity, but the landowner should keep one development right on the property.

If the land is needed for a road, can put an escape clause in the conservation easement in case the original purpose goes away. We could set a very high bar in the program.

Does the right run with the land?

Be careful in the code. Need a middle ground that keeps the right in the permit, but not running with the land.

Fulton – Could rebuild at the permitted density if burned down, but can't do something else. He is not aware of any term TDRs [a time limit on the TDR versus in perpetuity]. While it alleviates some fears, it is hard to merge term TDRs into a larger program.

PAC – Statewide, farmers want term TDRs.

If we are permanently removing a development right from a sending area, it should be permanently attached to the receiving area. Concerned about the loss of housing potential.

Fulton – It would not be difficult to determine the value between 40 years and in perpetuity.

PAC – Don't make it a term easement, make it a high bar and say that the landowner would have to buy at least some development rights back to offload. Or, allow the public the first right of refusal.

### Next meeting

The next meeting will address the review of the capital budget per the following task:

Identify opportunities for cities, counties, and the state to achieve significant benefits through using transfer of development rights programs and the value in modifying criteria by which capital budget funds are allocated, including but not limited to, existing state grant programs to provide incentives for local governments to implement transfer of development rights programs.

PAC – The Puget Sound Partnership may generate some new funding. Also, Ecology’s “Mitigation That Works” process and the Climate Change Challenge. Need to get these discussions in front of the PAC.

The recommendations need conclusions that TDRs are not a silver bullet.

Next meeting:

- July 17, 2008, 2:00 p.m. to 5:00 p.m., offices of Puget Sound Regional Council