

## Memorandum

To: CTED Transfer of Development Rights (TDR) Policy Advisory Committee and Leonard Bauer, Director, Community Trade & Economic Development

From: J. Tayloe Washburn, Member, Land Use and Climate Change Committee

Date: August 11, 2008

Subject: Policy guidance to the CTED TDR committee

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### A. INTRODUCTION AND CONTEXT

I serve as a member of the state's Land Use & Climate Change Committee (LUCC), which is charged by the legislature with identifying ways in which the Growth Management Act (GMA) might be amended to help achieve the state goal of reducing greenhouse gases and vehicle miles traveled (VMT). The LUCC committee has discussed the importance of the transfer of development rights planning tool ("TDR") as one of the priority topics which should be pursued for purposes of 2009 legislation. The 2008 Climate Action Team (CAT), of which I am also a member, has also identified TDR as a potential strategy for advancing the goals of the Farm and Forest Implementation Working Groups of the CAT, and as one way to attain the state's ambitious climate change goals.

Your CTED TDR Committee has for many months been evaluating TDR issues, pursuant to 2007 state legislation, and focusing in particular on the regional marketplace use of TDR. At our last LUCC meeting, CTED Director Leonard Bauer explained in some detail the scope and limits of your committee's work. He talked about your detailed work underway in several areas, including the regional marketplace. He noted that the LUCC's GMA mandate is broader in many respects, and suggested it is entirely appropriate for the LUCC and its members to submit to him and the CTED TDR Committee overall policy guidance to inform its work, and promote its coordination with the related work of the LUCC and Climate Action Team (CAT). This memorandum is submitted in response to this request by Director Bauer.

TDR is the best example of what Ecology and CTED officials term a "cross-cutting issue" which several state climate change committees have a significant interest in and are authorized to include within their work scope. Like other issues, such as use of SEPA in the future to leverage compact urban growth which reduces VMTs, it makes sense for one group to conduct detailed review and coordinate its ideas with the other state groups. Thus, CTED Director Wilkerson has stated earlier that the CTED TDR Committee is a logical "home" for a specific TDR proposal.

Having said that, the work in all state climate change groups is on a very fast timetable, and any specific 2009 state legislative proposals emanating from the CTED TDR Committee will need to be shared in a timely manner with the LUCC in particular, as the LUCC is specifically directed by the legislature to come up by December 1 with a final report and any specific GMA amendments it believes will help reduce greenhouse gases and VMTs. The LUCC has already concluded that TDR is a priority issue which should go forward, in coordination with your TDR Committee.

As part of my LUCC homework, I worked with a number of people and groups interested in TDRs, including the Cascade Land Conservancy (CLC) to put together an outline of TDR legislation which would put TDRs in a far more central role in the GMA process than at present. That GMA TDR legislative proposal is attached for your review. It was and is intended for discussion purposes only, and several suggestions made in recent days and weeks would likely enhance it, and make it more workable for all stakeholders.

## **B. NEXT STEPS AND TIMETABLE**

It is possible that other LUCC members will in coming days submit their respective suggested TDR policy guidance for your committee, in response to Director Bauer's invitation to do so. Your committee has its original 2007 legislative mandate and will set its own priorities and work program. It is my hope, and I suspect other LUCC and CAT members would agree, that you will carefully evaluate the attached outline of TDR legislation, along with any other specific proposals submitted to your committee, and work with all interested stakeholders to craft a specific legislative proposal in the next 3-5 weeks, working from the attached framework and whatever else you deem appropriate. In so doing, please be clear to note that the TDR proposal which has been discussed by the LUCC and the Farm and Forests IWGs contemplates a broader scope than your committee's original work program. The attached proposal, for example, contemplates TDRs being integrated in a central way in the GMA planning process. It coordinates TDRs with our efforts at the LUCC to jumpstart compact and sustainable development in cities throughout the state. Finally, it ties a specific TDR program to SEPA reforms and our efforts to direct more resources to cities which opt to participate actively in TDR programs.

We recognize the running start and expertise of your committee and its TDR efforts to date, and commend you for your efforts. We are hopeful you will take the policy guidance set forth below, and that submitted by other LUCC members, along with specific legislative proposals such as the one attached to this memorandum, and come back in 3-4 weeks with a specific legislative recommendation which the legislators and other members of the LUCC and CAT can review, comment on, and integrate with their other substantive proposals before we finalize our respective December 1 reports to the state legislature.

## **C. POLICY GUIDANCE TO THE CTED TDR COMMITTEE**

The following suggested TDR policy guidance is, it should be noted, that of the author only, and does not represent the views of the LUCC, CAT, any organizations the author may participate in, or my law firm. It has been prepared, however, with involvement from CLC staff members.

Specifically, I view TDR as a market-based tool to 1) reduce vehicle miles traveled, 2) conserve farms, forests, and rural lands, 3) encourage responsible urban infill, and 4) expedite responsible urban infill, thereby lowering urban housing costs.

Although TDR is a market-based tool, government regulation is needed to establish the TDR marketplace. TDR can either be a stick or an incentive for stakeholders, depending upon how the TDR regulations are crafted. Specifically, cities view TDR as a stick if developing TDR programs becomes an unfunded mandate. Developers view TDR as a stick if the use of TDR is mandated. With this in mind, I hope the TDR Policy Advisory Committee will develop a regional TDR program that is an incentive for stakeholders, not a stick.

It is possible to develop a successful regional TDR marketplace through incentives. Additionally, through leveraging public investment, it is possible to develop a successful regional TDR marketplace with limited public investment. While the CTED TDR Policy Advisory Committee is tasked with developing the details of a regional TDR marketplace, below are thoughts on how to create a successful TDR marketplace through incentives.

**1. Provide cities with the resources needed to develop TDR programs.**

It costs a city \$50,000-\$125,000 to develop a TDR program, barring many cities from voluntarily developing a TDR program. Any TDR requirement placed on cities must be accompanied by the resources needed to develop the TDR program. Resources should include funding from the state to develop the TDR program and/or tax credits from the state to cover the cost of TDR program development. To reduce the cost of developing the program, CTED should develop model TDR ordinances, guidance for TDR economic analysis (see #3), and develop a regional TDR marketplace into which a city could opt-in.

**2. Local control / Opt-in to a regional framework**

Cities should have the ability to develop a local TDR program and determine all of the aspects of the local TDR marketplace, including sending/receiving sites, TDR valuation, and the TDR transfer process. Under this approach, a city may designate areas within the city limits as a sending site, such as critical areas, or areas outside of the city as a sending site, such as farms with prime agricultural soils.

To ease the cost of administering a TDR program, the CTED Policy Advisory Committee should develop a regional TDR marketplace into which a city may opt-in. The regional marketplace would designate sending sites of regional importance<sup>1</sup> and enable and fund a local TDR bank. The city would only be responsible for developing receiving sites and honoring regional TDR credits.

### **3. Provide TDR menu to cities**

CTED should contract with a business with adequate TDR expertise to develop model ordinances for each TDR menu option. Menu options should authorize the following in TDR receiving areas:

- a) Increase density/height/FAR.
- b) "Use" flexibility.
- c) Increase in the amount of allowed impervious surface.
- d) Local governments to plan for more growth than authorized under OFM projections. Cities would have no authority to increase allowable density in UGAs but for the reduction of growth in rural resource areas through TDR. This approach requires modifying OFM's population projections to include TDR.
- e) Any other "bonus" or "incentive" as authorized by the city consistent with controlling laws and regulations.

### **4. Provide incentives to cities that conserve farm and forestlands**

Reprioritize existing state funds to provide incentives to cities that conserve farm and forestlands outside of the city limits. These incentives should be in addition to the new funds/tax credits available to cities for the development of TDR programs. Possible incentives to encourage cities to conserve farms and forests through include:

- a) Priority access to state-based infrastructure funding:
  - I. Top tier access shall be given to TDR receiving sites in regional growth centers as defined by PSRC
  - II. Second tier access shall be given to TDR cities
- b) Priority access to the Planning and Environmental Review Fund (PERF) for SEPA/EIS analyses in TDR receiving areas
- c) Authorize cities to use all private funds spent in the TDR marketplace as matching funds for all RCO grants.

### **5. Provide incentives to developers who use TDR**

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<sup>1</sup> Farms and forests should be priority sending sites as the conservation of these lands advance the state's climate change goals

It is important that TDRs be viewed as and work in practice as voluntary options for developers. As a voluntary tool, TDR will not advance the state's climate change goals unless TDR provides added value for developers. Developers will be more likely to use TDR if receiving sites are either exempted from SEPA or if jurisdictions complete SEPA/EIS analysis of the maximum build-out scenario at the subarea non-project level. This approach increases certainty and reduces costs, both of which maximize private funding available for TDR credits.

**6. Ensure adequate mitigation and appropriate review for receiving site development**

Identify adequate mitigation through a SEPA/EIS analysis of the maximum build-out scenario at the policy level. Require that development in receiving areas fulfill mitigation and review requirements before construction begins in TDR receiving areas.

**D. CONCLUSION**

The policy guidance above advances the state's climate change goals through incentives. The approach reprioritizes and leverages public investment, thereby minimizing the public investment needed to establish a private TDR marketplace. The attached specific proposal is one way to carry out these policy guidelines, and is intended primarily to stimulate discussion among your committee and interested stakeholders throughout the state. I look forward to a specific revised recommendation for state legislation being submitted to the LUCC in 3-4 weeks.