

## **Overview: The TDR Legislation's Substantive Requirements**

The legislation requires all jurisdictions in Puget Sound Regional Council association of governments to:

- Develop a transfer of development rights program from a TDR program menu.
- Accommodate 10% of new housing units through TDR.
- For all TDR receiving area, the local jurisdiction shall either 1) exempt TDR receiving areas from SEPA/EIS analysis as authorized under state law or 2) complete a SEPA/EIS analysis at the policy level of the maximum build-out scenario.

The legislation requires Washington State to:

- Create TDR model ordinances.
- Prioritize access to state-based infrastructure funding for jurisdictions with TDR programs that conserve resource lands.
- Fund and prioritize access to the Planning and Environmental Review Fund (PERF) for SEPA/EIS analyses in TDR receiving areas.
- Provide funding to jurisdictions for SEPA/EIS analyses in TDR receiving areas.
- Prioritize state Recreation and Conservation Office (RCO) funding for jurisdictions with TDR programs that conserve resource lands.

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## **Proposed Legislative Framework**

### **Trigger**

- All jurisdictions in the PSRC association of governments shall adopt a TDR program from a TDR program menu within three years of the effective date of this bill or the jurisdiction's next comprehensive plan update, whichever comes first.
- In adopting a TDR program, the TDR program must be consistent with the jurisdiction's comprehensive plan and development regulations.
- Jurisdictions outside of the PSRC planning region are encouraged to develop TDR programs.

### **10% of a jurisdiction's projected housing units shall be accommodated through TDR**

- Jurisdictions in the PSRC association of governments shall use TDR to accommodate 10% of their projected housing units.
- To accommodate 10% of each jurisdiction's projected housing units through TDR, the jurisdiction shall create TDR receiving areas. Each receiving area shall have a TDR zoning overlay that defines what development is allowed without TDR by right and what development is allowed with TDR by right.
- This chapter is not intended to change how counties and cities allocate population numbers since population projections are not placed on GMA resource lands.

### **TDR program menus:**

- Jurisdictions shall choose from and adopt at least one of the following TDR menus.
- Within six months of the enactment of this legislation, CTED shall contract with a qualified land trust to develop model ordinances for each of the following menus.

- Regardless of which menu is adopted, each jurisdiction (not the state, PSRC, or a land trust) shall determine where TDR sending and receiving sites are located. Jurisdictions are encouraged to accept development rights from all sending sites in the PSRC region.
- Each jurisdiction shall determine the appropriate TDR transaction mechanisms. Jurisdictions are encouraged to create flexibility in the TDR marketplace by authorizing private party transactions and a municipal TDR bank. To promote marketplace flexibility, the jurisdiction is encouraged to authorize the TDR bank to sell TDR credits and accept in-lieu fees if the bank does not have enough TDR credits to meet demand. Payment of in-lieu fees to a municipal TDR bank does not offend RCW 82.02.020 if the bank uses the payment to acquire additional TDR credits from resource lands.

***City/Urban Growth Area TDR Menus:***

**City/UGA Option One<sup>1</sup>**

Sending Site: Determined by city

Receiving Site: A TDR credit authorizes increased FAR base and/or additional height in TDR receiving sites.

**City /UGA Option Two<sup>2</sup>**

Sending Site: Determined by city

Receiving Site: The city creates a planned action ordinance for a receiving area. The planned action ordinance authorizes allowed base density without TDR and additional allowed density with TDR. The planned action’s upfront SEPA/EIS analysis addresses the maximum build-out allowed with TDR.

**City/UGA Option Three<sup>3</sup>**

Sending Site: Determined by city

Receiving Site: A TDR credit authorizes “use” flexibility (e.g. allow flexibility of use within mixed-use buildings. For example, code requires a six story building has three floors of commercial and three floors of residential. A TDR credit would allow use flexibility by allowing one floor of commercial and five floors of residential).

**City/UGA Option Four<sup>4</sup>**

Sending Site: Determined by city

Receiving Site: A TDR credit increases the amount of allowed impervious surface (e.g. parking, warehouses, etc.)

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<sup>1</sup> This approach has been used in the King County-City of Seattle TDR program since 2000, in San Francisco, CA since 1985, and in Cambria, San Luis Obispo County, CA since the mid-1980s.

<sup>2</sup> This approach has been used in Calvert County, MD since 1978, Denver, CO since 1982, and Palm Beach County, FL since 1989.

<sup>3</sup> The City of Tacoma, WA is considering this approach.

<sup>4</sup> This approach has been used in Austin, TX since 1981, Redmond, WA since 1995, and Snohomish County, WA since 2007.

**City/UGA Option Five<sup>5</sup>**

Sending Site: Determined by county

Receiving Site: A TDR credit increases base density to a density that supports transit (12du/acre).

**City/UGA Option Six**

Sending Site: Determined by city

Receiving Site: The city develops a TDR receiving site(s) that advance the city’s planning goals. The program may include some, all, or none of the items contained in the above menus.

\*\* For each city menu, the city is encouraged to place an appropriate cap on the amount of bonus available through TDR.

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***County TDR Menus:***

**County Option One**

Sending Site: Determined by county

Receiving Site: The county creates a planned action ordinance for an unincorporated receiving area. The planned action ordinance authorizes allowed density without TDR and allowed density with TDR. The planned action’s upfront SEPA/EIS analysis addresses the maximum build-out allowed with TDR.

**County Option Two<sup>6</sup>**

Sending Site: Determined by county

Receiving Site: The county allows increased residential density inside master planned resorts, fully contained communities, and/or planned unit developments.

**County Option Three<sup>7</sup>**

Sending Site: Determined by county

Receiving Site: Any increase in residential density beyond the density authorized under current zoning requires TDR credits.

**County Option Four**

Sending Site: Determined by county

Receiving Site: The county develops TDR receiving site(s) that advances the county’s planning goals. The program may include some, all, or none of the items contained in the above menus.

\*\* For each county menu, the county is encouraged to place an appropriate cap on the amount of bonus available through TDR

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<sup>5</sup> This approach is used in King County, WA

<sup>6</sup> This approach is being considered in Kittitas County, WA.

<sup>7</sup> This approach is used in Montgomery County, Maryland, the New Jersey Pinelands, and Pierce County, WA.

### **SEPA/EIS requirements in TDR receiving areas**

For all TDR receiving areas, the local jurisdiction shall either 1) exempt TDR receiving areas from SEPA/EIS analysis as authorized under state law<sup>8</sup> or 2) complete SEPA/EIS analysis of the maximum build-out scenario at the policy level.

The legislature shall fund and CTED shall prioritize access to the Planning and Environmental Review Fund (PERF) for jurisdictions conducting SEPA/EIS analyses in TDR receiving areas.

Cities are authorized to charge a late-comers fee to developers in the receiving area. The late-comers fee charged to the developer is to be proportional to the SEPA/EIS costs accrued by the jurisdiction in completing a SEPA/EIS analysis of the receiving area.

### **Incentives for cities and developers**

Cities that develop TDR programs that *result in the conservation of farm and forest land located outside the city's boundaries* and in the unincorporated county shall receive:

- Priority access to state-based infrastructure funding
  - Top tier access shall be given to TDR receiving sites in regional growth centers as defined by PSRC.
  - Second tier access shall be given to TDR cities.
- Priority access to state-based clean technology incentives
- Priority access to the Planning and Environmental Review Fund (PERF) for SEPA/EIS analyses in TDR receiving areas.
- Priority access to RCO funding.

Cities located outside the PSRC region that develop TDR programs that *result in the conservation of resource lands located outside the city's boundaries* are eligible and on equal footing to receiving the incentives listed above.

### **Incentives for counties to develop robust TDR programs**

Counties that coordinate TDR program development with cities shall receive:

- Priority access to the Planning and Environmental Review Fund (PERF) for SEPA/EIS analyses in TDR receiving areas.
- Priority access to RCO funding.

### **Monitoring TDR**

- CTED shall track TDR program development and report back to legislature in 2013. The report shall include an analysis of TDR programs developed, challenges to developing TDR programs and benefits achieved through TDR.

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**Note: Consider expanding jurisdictions required to plan with TDR from PSRC region (King, Kitsap, Pierce, Snohomish) to Buildable Lands Counties (King, Kitsap, Pierce, Snohomish, Thurston, Clark. *See, RCW 36.70A.125*).**

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<sup>8</sup> It is expected that the CAT SEPA committee will recommend SEPA exemptions for development that has a net positive impact on climate stabilization and meets additional criteria to be determined by the CAT SEPA committee.