

**Central Puget Sound Regional TDR Program
TDR Policy Advisory Committee
Provisional Recommendations and
Possible Options for Remaining Legislative Recommendations
September 16, 2008**

Background

At the August 14, 2008, Policy Advisory Committee meeting, the Committee began to make some decisions regarding what a regional TDR marketplace might look like for central Puget Sound. The Committee reached provisional consensus around some of the elements of the marketplace, such as a bank and clearinghouse. Recommendations regarding incentives for counties and cities to participate in a regional TDR program, incentives for developers, funding sources for the program, and a couple of other items still need to be discussed.

This is an updated version of the paper prepared for the August 14 meeting to continue to assist the Committee in moving forward with decisions. It identifies:

- Areas of agreement, labeled as “provisional consensus” for final decision by the Committee;
- Some additional questions for the Committee to consider and address about those provisional decisions in italics; and
- Identifies decisions still to be made, including options for committee discussion where appropriate.

- 1. What is the conservation goal of the program? For example, is it to conserve the highest priority lands or the maximum amount of acres?**
- 2. Who should be designating sending areas?¹**

Provisional consensus

Conservation priorities for sending areas should be regionally and locally determined with guidance from the state similar to the goals of the GMA. Broad criteria for sending area designation would be developed in statute. For example, criteria could include:

- Type of land - natural resource lands, including land designated rural that is being farmed or managed for forestry.
- Land whose conservation meets other state and regionally-adopted priorities (for example, state and regional priorities adopted as a result of the Puget Sound Partnership action agenda, salmon habitat plan, Climate Change Challenge, and state allocation of infrastructure funds).

¹ Questions #1 and #2 had significant overlaps, and so are treated together.

Then, local governments with receiving areas can prioritize within these lands, which they prefer to receive TDRs from. And, they can still have their own local programs addressing other priorities such as critical areas, open space, salmon habitat, etc.

3. Given the market analysis for central Puget Sound, at what jurisdictional level is it appropriate to create a market for TDRs? I.e., what should be the focus of an effective program that meets the Working Principles?

Provisional consensus

Inter-jurisdictional transfers should be allowed as follows:

- Transfers of development rights from a county to a city in another county should be allowed.
- Receiving area cities should be able to choose which sending areas they will receive development rights from, outside of the UGA.
- State incentives should be for inter-jurisdictional programs, but cities should not be prevented from having internal TDR programs if they choose. Working Principle #3 and the legislation direct CTED to encourage and enhance existing programs. The state would have to figure out how to allocate funding based on TDRs received from a priority sending area.

Outstanding question raised by Committee member in reviewing the meeting summary: Have we decided to restrict receiving areas to cities, or are we going to include unincorporated UGAs?

4. What are the key elements/functions needed to make a regional TDR program function? Which are needed to build upon existing programs?

- a. **Technical assistance with the development and implementation of TDR programs**
- b. **A clearinghouse that would issue and track TDR certificates, provide outreach, and bring together buyers and sellers of TDRs.**

Provisional consensus

There was provisional consensus that it would be simpler to have the same entity provide technical assistance and the clearinghouse functions. CTED would control these functions, but could contract some of them out (for example, it may work through a contract with PSRC or another entity). This would allow easier expansion to the rest of the state. CTED would work directly with the counties and cities to market the program. CTED would also work with the county and city associations, the family forest landowners association, etc. Some TDRs could be sold to get the program going, and possibly to get the bank going. The Committee asked staff to flesh out what this program would look like in CTED. (See attached proposal).

c. A bank to purchase and sell TDRs.

Provisional consensus

Per the consultant's recommendation, CTED should contract with a private nonprofit to operate the bank. The bank should be governed by a board consisting of representatives from CTED and local governments in central Puget Sound. The bank would have a limited role in enabling private transactions by addressing timing issues. It would not be active in buying rights and would not influence existing county banks. It would address issues of equity in where the funding is spent among the different jurisdictions.

Outstanding question: What should the configuration of the board look like?

If the state is funding the bank, then the state should have representatives on the board. If state funding is not provided, then state agency members may not be needed. Members of the board could include all or some of the following:

- (i) Four members representing county government, one from each of the county governments in the central Puget Sound, King, Kitsap, Pierce and Snohomish Counties;*
- (ii) Six members representing city government in the four central Puget Sound counties, including at least one city from each county;*
- (iii) Two members representing of the agricultural industry;*
- (iv) One member representing the forestry industry;*
- (v) One member representing family forest land owners;*
- (vi) Two members representing the real estate and development industries;*
- (vii) Two qualified nongovernmental organizations with expertise in the transfer of development rights. At least one organization must have a statewide expertise in growth management planning and in the transfer of development rights and at least one organization must have a local perspective on market-based conservation strategies and transfer of development rights;*
- (viii) One member representing the department of community, trade and economic development;*
- (ix) One member representing the department of agriculture; and*
- (x) One member representing the department of natural resources.*

d. Private transactions

Provisional consensus

Private transactions should be allowed and encouraged.

e. A fee in lieu of purchase of TDRs

Provisional consensus

A fee in lieu of purchase of TDRs would be allowed as an option for developers. Payments in lieu would be made to the bank. The consultant recommended that the regional program not use a fee in lieu because it could delay conservation of land and increase the cost. However, the consultant did not address whether it would be appropriate to include as an option in addition to purchasing TDRs.

Issues raised in staff conversations with counties and cities: The ability to pay fee-in-lieu would be based on the unavailability of TDRs for sale. This can be difficult to define. It may just be that there are no TDRs for sale at the price the developer is willing to pay and that they need to keep negotiating until there is a deal.

f. A framework for establishing an allocation ratio(s).

Provisional consensus

- An allocation ratio should not be included in legislation. It would be too difficult to come up with a single ratio and could not be easily changed to respond to the market.
- No allocation ratio should be established for the private market. Buyers and sellers should be able to freely negotiate a price.
- The TDR bank should establish an allocation ratio framework that would apply to small projects. However, larger projects should be able to negotiate an allocation ratio with the sending and receiving jurisdictions. The framework should be kept flexible to allow values to be defined locally, depending on sellers' asking price and developers' willingness to pay.
- Don't limit the allocation ratio to residential density. Allow translation to floor area ratio, parking, carbon offsets, etc.

g. Statutory authority for local governments to transfer TDRs without an interlocal agreement.

Staff proposal based on conversations with Municipal Research and Services Center staff and assistant attorney general:

Provide statutory authority for counties and cities in central Puget Sound to opt in to the regional TDR program by resolution as an alternative to entering an interlocal agreement to send or receive TDRs. CTED would be directed to adopt a rule that sets out terms and conditions for participation in the program similar

to those in an interlocal agreement. The resolution adopted by a participating county or city would state that it had adopted a TDR program that designates sending or receiving areas consistent with the TDR statute and GMA, has adopted an allocation ratio in cooperation with the other sending or receiving jurisdiction, and that it agrees to abide by the terms and conditions for transfers set out in the CTED rule. The rule would not specifically set out an allocation ratio, but would leave adoption of an allocation ratio up to the cities and counties in their respective ordinances.

5. What incentives should be provided to cities and counties to encourage them to designate receiving areas and accept TDRs?

Options:

For more specific information regarding possible state and local funding sources, please see the paper on *TDR Funding Opportunities*.

(1) Provide state funding through allocation criteria for existing state infrastructure funds to counties and cities with receiving areas.

Pros:

- *State funding would provide encouragement to counties and cities that are already behind in being able to address infrastructure needs.*
- *State funding would encourage more compact development in urban areas.*

Cons:

- *The State Office of Financial Management is engaging in an effort to more efficiently and effectively allocate state infrastructure funding. The Committee recommendations would need to consider and respect those allocation recommendations.*
- *Existing state funds are suffering from “criteria fatigue.” Adding more allocation criteria dilutes the effectiveness of oversubscribed funding sources in meeting their program missions/goals.*

(2) Provide new state funding for infrastructure and amenities

Pros: Creating a new funding source for cities and counties would ensure that existing funding programs and priorities are not diluted. New funding could help cities and counties accommodate projected growth through TDRs.

Cons: New funding requests will have to compete with other requests for funding from a variety of committees and interest groups.

(3) Provide new authority for raising local revenue or encourage the use of existing revenue authority.

Pros: New revenue authority provides counties and cities with more choices for funding infrastructure.

Cons: New taxes may be difficult to sell to citizens who do not see direct benefits to their neighborhood as a result accepting TDRs.

6. What incentives should be provided to developers to participate in a TDR program (that would require state legislation)?

Options:

- a. Intent language in the regional TDR legislation that encourages receiving counties and cities to allow permitting of projects using TDRs “by right”, and other permit process streamlining to save on development costs.
- b. Create a SEPA categorical exemption for receiving areas that have undergone a programmatic EIS that includes analysis of TDRs.
- c. Fund and prioritize access to the Planning and Environmental Review Fund (PERF) for SEPA environmental analysis in TDR receiving areas, including planned actions.

7. Should the state consider facilitating and funding a series of pilot projects?

In the 2005-2007 biennium, two pilot projects were funded by the state in Snohomish and Pierce Counties. Snohomish County developed a county-wide TDR program for consideration, but decided to try and make the current program with Arlington work before adopting a county-wide program. Pierce County developed and adopted a TDR program.

This biennium, Cascade Land Conservancy was provided funding in the state budget to do a series of pilot projects around the state that conserve family forest lands. They are working with a number of jurisdictions to develop some pilot projects.

Are further pilot projects needed?

Options:

- a. The state can use the experience and lessons learned from the pilot projects that have already occurred to develop a regional program. No more pilot projects are needed before launching a regional program.
- b. Rather than launching a regional program, the state should continue to fund pilot projects that will further inform development of a regional program. The

state needs more experience with TDR programs before launching a regional program.

8. Should the state be supporting private initiatives that foster TDRs?

The private sector is a key component to the success of a market-driven program. To what extent should the state be encouraging or supporting private initiatives that foster TDRs?

Options:

- a. The state should invest in private initiatives that foster TDRs. State investment could help get the program running.
- b. The state should encourage but not fund private initiatives. State investment in private initiatives would distort the market for TDRs and impact the capacity of the program to respond directly to the market.

9. How do we define success? What are the performance measures we would be using to determine whether the program is effective?

If legislation is introduced to establish a regional TDR program, the Legislature will want to know what results it should expect before investing in the program. The Committee should establish performance measures for the success of the program.

Options:

- a. The number of TDRs transferred annually under the program, by county.
- b. The number of acres under conservation easement under the program, by county.
- c. Using TDRs in receiving areas, the:
 1. Number of new residential units;
 2. Amount of additional commercial floor area;
 3. Amount of additional building height;
 4. Number of required parking spaces reduced;
 5. Number of additional parking spaces allowed;
 6. Amount of additional impervious surface allowed; and
 7. Amounts of any other “conversion commodities” allowed using TDRs.
- d. Other ideas?

10. What additional information do we need to support our recommendations?

- a. Final estimate to fund the program based on Committee recommendations.
- b. Any additional information about funding for incentives.