

**Proposal for CTED to provide technical assistance, issue and track
TDR certificates, and provide outreach to buyers and sellers of TDRs
September 16, 2008**

The transfer of development rights (TDR) Policy Advisory Committee has requested that the Department of Community, Trade and Economic Development (CTED) draft a proposal for its consideration. The proposal would require CTED to:

- Provide technical assistance statewide to local government to enhance existing TDR programs and develop new TDR programs;
- Issue and track certificates of transferable development rights in the central Puget Sound region; and
- Provide outreach to buyers and sellers of TDRs to participate in a regional TDR program.

Technical assistance

Consistent with its current role regarding implementation of the Growth Management Act (GMA), CTED staff would:

- Provide direct technical assistance statewide to counties and cities to develop new TDR programs or to enhance existing programs.
- Develop written guidance for developing a TDR program consistent with and complementary to the GMA that could be used statewide.
- Work with counties and cities to educate elected officials, planning commissions, and the public regarding TDR programs and how they might work for a community. Education should include information regarding the importance of preserving farmland and farming, and forestland and forestry, to cities and the local economy.
- *Develop a rule that includes terms and conditions similar to an interlocal agreement for counties and cities to adopt by resolution as an alternative to entering an interlocal agreement (see staff proposal under Question #4(c)).*

Issuance and tracking of TDR certificates

Issuance and tracking of TDR certificates will require some legal and real property expertise. The issuer would also be the redeemer of certificates when they are used to ensure that certificates are used correctly. The issuer and redeemer would have to have significant knowledge of local planning requirements related to TDRs, and would need to coordinate closely with local planning departments. The issuer of TDRs would maintain a web site of willing buyers and sellers to facilitate private transactions. Key steps in the transaction process are for the certificate issuer's staff:

- Determine TDR allocations – determine the number of TDRs that could be transferred from a sending landowner's site at their request.
- Conduct title search – an owner must have clear title to the sending site in order to place an easement on the property.
- Submit draft deed restriction – sending site owners should be encouraged to submit draft deed restrictions to ensure that allowed uses are consistent with the program before the document is executed and recorded.

- Record deed restriction – once information in the draft is checked, the actual deed restriction can be executed and recorded.
- Issue TDR certificate – once the deed restriction is recorded, the certificate can be issued to the sending site landowner.
- Transfer TDR certificate – when the certificate is sold, the buyer completes the information on the back of the certificate and sends it to the issuer. The issuer issues a new certificate bearing the name of the new owner. Certificates can be bought and sold indefinitely using this system.
- Redeem TDR certificate – when the community approves a project in the receiving area that will be using the certificate, the developer completes the back of the certificate and sends it to the issuer. The issuer notifies the receiving area community and the developer that the certificate has been redeemed and the developer is allowed to build the receiving site project with whatever is permitted by TDRs in that community.

CTED would have a number of options for issuance and tracking of TDR certificates, including:

- Issuance and tracking could be contracted out to a private entity, such as a title company.
- Issuance and tracking could be contracted out to a non-profit entity.
- CTED could hire staff to issue and track TDR certificates.
- CTED could contract with the Puget Sound Regional Council to issue and track TDR certificates.
- Issuance and tracking of TDR certificates could be handled by staff of the four counties for their respective county.

Regarding the first four options, a central administrator of certificates would ensure consistency and conformity within the regional system. It would provide a service to the counties that would not require county resources. CTED could compile and post the data on its web site.

Regarding the last option, the counties have a relationship with landowners and developers that would be important to the success of the program. The counties would also be better able to work directly with their planning departments and the city planning departments. The counties could still report certificate issuances and redemptions to CTED for posting a compilation of the data on a web site.

All options could allow collection of a processing fee to cover the cost of issuing, redeeming and tracking of certificates.

Outreach to buyers and sellers of TDRs

As noted under technical assistance, CTED would need to begin outreach with counties and cities to educate and encourage them to participate in the regional program. Public education and outreach to landowners and developers will be needed to inform participants of the benefits of the program and facilitate participation. CTED would need

to work directly with the Puget Sound Regional Council (PSRC), and the counties and cities to develop a public outreach and communications program. This could be done in partnership with PSRC, counties, cities and conservation districts. CTED would also need to work with forestry and agricultural associations.

The Office of Farmland Preservation, housed in the Washington State Conservation Commission, is tasked with serving as a clearinghouse for incentive programs that would consolidate and disseminate information relating to conservation programs that are accessible to landowners and assist owners of agricultural lands to secure financial assistance to implement conservation easements and other projects. For example, CTED could enter into a memorandum of agreement to partner with the Office of Farmland Preservation and the conservation districts in the four counties to provide outreach on the TDR program as a conservation incentive program.

The CTED outreach program would:

- Develop brochures and other materials to inform and educate willing buyers and sellers on how to participate in the program.
- Develop a workshop presentation to be used with landowners and developers.
- Develop materials that could be used at a county or multi-county level.
- Develop materials for a web site that would provide information on the regional and local programs, link to the web site of willing buyers and sellers, and provide information on the TDR bank.¹
- Provide a single point of contact for each county that buyers and sellers could go to for more detailed information in their county.

¹ The PAC has provisionally decided to create a regional TDR bank that would buy and sell TDRs to address issues of timing.