



King County

Transfer of Development Rights Program

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Chairman Flynn and TDR Policy Advisory Committee members,

King County supports regional TDR and commends the Committee's efforts to provide a set of recommendations to accomplish this. We believe the best approach to accomplish regional TDR is one that is straightforward and cost effective for the State to implement. A regional framework should be grounded in realistic goals, obtainable outcomes, and be structured in the context of local land use control as reflected by the GMA.

The following is a set of recommendations for the Committee to consider as it moves toward developing a TDR framework:

1. Regional TDR should be focused on relocating development potential out of both Rural *and* Resource lands and into incorporated cities.¹
 - o A State supported regional TDR system should defer to local governments to: identify receiving sites, choose rural and resource sending sites from which to allow development rights into their jurisdiction, and develop transfer ratios.²
2. It logically follows, then, that State supported Regional TDR should focus on three things: (a) bolstering and strengthening the four county programs that are either in place or in their early stages of development, (b) prompting cities through a system of incentives to act as receiving sites for Rural and Resource

¹ The regional approach should allow for a city, if it so desires, to accept development rights (TDRs) from a county other than the one it is located in.

² The transfer ratio is the development incentive that a TDR translates into – for example 1 TDR = some # units, square feet, height bonuses, or reduced parking etc.

TDRs³, and (c) streamlining and facilitating the process by which cities and counties enter into TDR agreements. This basic approach aligns with the consultant’s option #1 for a regional TDR market framework.

- In regards to “a”, all four counties in the study area have some semblance of TDR in various stages of development and operation. It would be more cost effective, and create more land protection and compact development, if the State were to bolster these existing TDR systems into effective and operating programs rather than try to manage a top-down regional TDR market;
- In regards to “b”, the key element to make any TDR program work is developer demand for TDRs – that is, strong “by right” development incentives in city-identified receiving areas. This needs to be accompanied with *some* defrayment of public infrastructure costs to encourage cities to make regional TDRs a density bonus option in development projects. Otherwise, cities will seek to exact from developers much of the money needed for in-city enhancements; a reduction in developer payments for public infrastructure equates to more developer dollars available for TDRs.

In short, the State should help offset public infrastructure costs in targeted areas inside cities where Rural and Resource TDRs are used. These target areas should, therefore, be prioritized for State infrastructure dollars and cities should be given credit towards their GMA growth targets for the additional density they allow via regional TDR;

It is clear that State infrastructure funds are scarce, and will continue to be so in the future. Competing programs and criteria exist for these scarce funds. However, TDR needs to be inserted into the system by which the State allocates funds to local jurisdictions. There *is* overlap between TDR and other State infrastructure funding objectives and priorities.⁴ It is in these areas of overlap where TDR needs to be included in a menu of options considered when the state allocates its infrastructure dollars to local jurisdictions. “Criteria fatigue” should not be used as an excuse to exclude TDR as a means to allocating State funds to target areas;

³ The state should encourage cities to develop TDR programs that allow within city development right transfers, but State support should only be for those cities and programs that allow development rights to be transferred in from county Rural and Resource lands.

⁴ Making TDR a component in funding allocation to PSRC’s handful of Vision 2040 Regional Growth Centers is one example; a Growth Center that pulls in Rural / Resource TDRs should receive more transportation infrastructure dollars than those that opt not to.

- In regards to “c” above, cities should be able to easily opt into an agreement with a county to transfer Rural and Resource TDRs. The agreement should trigger a higher ranking/scoring in the State’s allocation of local infrastructure dollars.⁵ The agreement would give a city the ability to identify Rural and Resource sending sites and the ability to set the TDR transfer ratio with a county.

It is imperative that cities commit in the agreement to prioritize Rural and Resource TDRs as a development incentive option in order to insure demand for TDRs and retain commodity value.⁶

3. CTED should *not* act as the issuer, tracker, and redeemer of TDRs

- There are two truly regional programs in the country – the Pinelands TDR program in New Jersey and the Tahoe TDR Program in California. Both of these are operated by regional planning agencies that have land use decision-making authority and control that trump local governments.⁷

WA State GMA is a bottom-up statute that gives local governments land use decision-making authority. The Committee seems to agree that local governments should decide sending/receiving sites and allocation ratios. Thus, the TDR commodity will represent a unit(s) of local development potential, and local governments – not CTED - should control how they are issued and where they are redeemed for additional density. It is logical, then, that the local government be held responsible for issuing, tracking, and redeeming the commodity as it is in their self interest and purview to do so.

In the proposed regional TDR program, a Rural / Resource TDR is most likely to originate from a county and be redeemed in a city. The county should be responsible for issuing the TDR certificate and the city should be responsible for redeeming it and coordinating with the county.⁸

⁵ The State also needs to be assured that with allocation of such funds the city will indeed actualize regional TDRs in projects; to this end the State may want guarantees and open-ended time frame or some amount of TDRs transferred prior to allocation.

⁶ Upon opting into a regional TDR agreement with a county, cities need to place TDR on near-equal footing with other developer options for greater density. In addition, cities should agree to limit the extent of non-TDR up-zoning in the target area so that developers have the incentive to purchase TDRs for additional density.

⁷ The NJ Pinelands Commission has land use control across the multi county Pinelands area that is the reach of the Pinelands TDR program, and the Tahoe Regional Planning Agency (TRPA) has land use control across the 4 county, 2 state Tahoe area that encompasses the TRPA’s TDR program.

⁸ The county will also be responsible for voiding TDR certificates when they are redeemed in cities so it cannot be re-used and or duplicated. This requires coordination between the county TDR program manager and the cities the county has TDR agreements with.

A significant amount of coordination occurs between building departments where TDRs are redeemed and the office where TDRs are issued – all of which occur at the local level. It is hard to imagine CTED doing a better job of this across all four counties and their cities than each county could do with the cities that lie within their respective jurisdictions. All it takes is the State bolstering the 4 county TDR programs (through grants for staff etc.) rather than setting up and staffing TDR tracking personnel at CTED.

4. We support the idea of a regional TDR Bank. However, care must be taken as to how such a Bank is structured and operated. The primary focus of a regional TDR Bank should be to opportunistically buy TDRs with State funds – not local revenue sources⁹ - hold TDRs, and sell them to developers in cities. King County wishes to maintain its autonomous TDR Bank which is funded with local revenue sources and governed by its Executive Board. If other counties opt to use local revenue sources to seed a “county account” in a regional Bank for development right acquisitions, then that specific county should have complete control over how it spends its money. Decision making authority for such an account should not be left to the regional Bank Board; this Board’s focus should only be to exercise State funds for TDR acquisition and sales.

In sum, State supported regional TDR should: encourage cities to accept Rural and Resource TDRs from the counties via allocation of State infrastructure funds, provide grant funding to bolster existing county TDR systems into effective programs that issue track and redeem their own TDRs¹⁰, streamline the process for city-county TDR partnership agreements, and operate a regional TDR Bank that uses State dollars to buy, hold, and sell Rural / Resource TDRs.

Please feel free to contact me if you have any questions.

Thank you,



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⁹ In fact for CFT, which is a major source of funds for the KC TDR Bank, State statute requires CFT revenues to only be spent in the county (and its cities) from which the funds originate.

¹⁰ This would be similar in form and substance to the State of New Jersey’s TDR legislation that was passed in 2004.