

## Meeting summary

### Regional Transfer of Development Rights Policy Advisory Committee

Monday, September 22, 2008

Attendees: Chair Mike Flynn, Mary McCumber, Judd Kirk, Michelle Conner, Nathan Torgelson, Mayor Margaret Larson, Don Stuart, Ivan Miller, Leonard Bauer. Commissioner Steve Bauer and Dick Carkner were unable to attend.

Staff: Heather Ballash

Guests: Mark Beardslee, Bill Blake, Jeanette McKague, Pete Lymberis, Darren Greve, Brad Collins, Josh Giuntoli, Carl Schroeder, and Elizabeth Robbins.

#### **Public comment**

Prior to the meeting, comments were submitted to the Committee for consideration as follows:

- Letter from the City of Redmond by Rob Odle.
- Letter from King County by Darren Greve.

A letter from the City of Arlington was submitted to the Committee at the meeting.

Jeanette McKague presented oral comments on behalf of the Washington Association of Realtors. Ms. McKague complimented the Committee on its work on a complex program. She stated that the Realtors are very concerned about the use of the real estate excise tax (REET) for the program. With the current market problems, equity is tight and people are using their equity. It is not the time to look at REET. It is too cyclical a funding source for funding ongoing programs such as this one. Ms. McKague said that the TDR program should be voluntary for jurisdictions and should provide incentives for cities and developers.

Mark Sollitto with Yarrow Bay Development commended the Committee for its work. He supported the comments submitted by the City of Arlington. Cascade Land Conservancy is working on this with the City. The infrastructure costs are telling – funding is important. Mr. Sollitto also supported the comments by Mr. Greve in the letter from King County.

Darren Greve from King County urged the Committee to take a simple, straightforward approach. He summarized his letter as follows. The TDR program should include rural and resource lands. A regional program should focus on transfers from counties to cities. However, it is okay to have county receiving areas. Strengthen the existing county program. The challenge is how to get cities to be receiving areas – they need state support. Don't avoid asking for state funding due to criteria fatigue – find areas of overlap such as Vision 2040 designated centers. CTED should disseminate market and

program information, but should not be the issuer and tracker of certificates. However, CTED could gather information from the counties and create an information clearinghouse. King County cautiously supports the idea of a regional TDR bank. The King County TDR bank needs to remain autonomous. There needs to be a benefit/burden analysis – need to have an overriding benefit for King County to support the CLC proposal of one bank. They don't see the benefit so cannot support it now.

### **Staff report**

Leonard Bauer reported that although a budget placeholder had been sent to the Governor's office for funding the program, no placeholder for money in the capital budget to fund a TDR bank had been submitted.

Heather Ballash reported on a number of other work groups and committees that are looking at TDRs. Other groups looking at TDR programs include the Climate Action Team's Forestry and SEPA Implementation Work Groups, and the Land Use and Climate Change advisory committee. Heather also noted a number of presentations CTED was making on TDRs, including presentations to the Puget Sound Regional Council's regional staff meeting, the Washington Chapter of the American Planning Association's conference, the Farmland Preservation Task Force, and the statewide meeting of metropolitan and regional transportation planning organizations.

Heather noted that she had talked to Kenny Pittman with the City of Seattle about the proposal for a Housing Everyone Financing Tool (HEFT). It was Mr. Pittman's advice that it is too complicated and that the retention of the state sales tax on construction is a much simpler tool for funding.

### **Market Framework for a regional TDR program**

Prior to the meeting, Michelle Connor distributed a proposal from the Cascade Land Conservancy (CLC) to the Committee members for their consideration (posted to web site). The proposal follows the questions outlined in the document provided to the Committee entitled *Outline for a Regional Program* and *TDR Funding Opportunities*. The Committee used both documents to continue its discussion from the August 14 meeting regarding a market framework for the regional TDR program. The Committee started with the unanswered questions from the last meeting, and then revisited and made decisions on previously discussed questions that had provisional consensus.

The Committee noted that they need to think about what to do this session (a few things), and then what to keep working on.

Note: recommendations with an \* will require legislation.

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

### Committee discussion

There are different kinds of incentives. Some are fiscal and some are not.

In looking at the tiered approach proposed by CLC, Tier 3 should be part of future work.

The first need is to sort out receiving areas – this will be a lot of work for cities. Need to start the discussion with future benefits.

Some won't want to do it and it will cost a lot, some will want to do it and it will cost a lot, and some will want to do it and it won't cost a lot. Find the last and reduce the barriers for them. Make it as easy as possible for cities to do it and then get them involved. Triage and put the energy there with limited funds.

If some cities were at the top of the list, they are at a tipping point. If Arlington can make it work, it can get others going.

We really need a positive way for counties and cities to discuss it together - a Vision 2040 discussion to make it work with the promise of benefit. People who are taking the growth need to be there. County planning groups are where it should be discussed. It will be about what we know, so it should be later when we have more details on the program.

We should also focus on things other than density. Higher density may not be the preferred benefit for all transactions involving TDR. It is less clear about the infrastructure costs for these TDRs. They won't all turn into housing. TDRs haven't seemed to work with residential housing. Need to think about this with incentives.

Realistically, what incentives are available for cities now? What do we do to get something done?

Regarding CLC's Tier 3 proposal for funding, a transit-oriented development (TOD) proposal is being worked on. TDRs should be included for additional points. We could support other existing efforts.

We don't want to start with outlying low density areas. We want to be in the cities. We need to find ways to make it work in designated centers – not willing to give up on that yet. We are not asking to give anything up. It is just easier to create values in those areas. Density is just a hard sell. The timing is good for compact communities as part of the climate change effort, including incentives. TDRs can be the tool.

The reason we are here is try to save something. We need to start with that. We need the connection to land being saved and need a PAC commitment as to why this is important. Citizens know – there are more farmers markets than ever. There is agreement on what

we want to save, so what do you do with it? Make it clear in the rationale for the recommendations why we are asking for funding.

If the Farmland Preservation Task Force recommends a state-funded purchase of development rights program (PDR), then a county could be eligible or get priority only if they have a robust TDR program.

### Consensus

The Committee then focused on the tiered approach in the CLC proposal in response to question #5 and came to consensus as follows.

Tier 1 – Funding and technical assistance for local jurisdictions to voluntarily develop TDR programs and for cities to complete a SEPA/EIS analysis at the policy level of the maximum build-out scenario for TDR receiving sites. TDR programs need to support and implement Vision 2040.

\*First steps for CTED:

- Economic resources to local jurisdictions, with priority for cities to develop TDR programs (general fund). The need for/use of economic resources include: a) ensuring that development standards are in place to support the proposed receiving area use of TDRs; and, b) determining that the market supports development in the proposed receiving area through the use of TDRs. For example, discussion between the jurisdiction and the development, real estate and finance communities. This would get to the heart of a "market-driven" program.
- Model ordinances that can be tailored for local needs (general fund).

\*Longer term recommendation when funding is available:

- Up front environmental review that would provide a procedural incentive for developers to build in TDR receiving areas, and that would ensure neighbors receive a thorough environmental analysis before construction begins (provide revolving funds from Planning and Environmental Review Fund (PERF) that could be repaid with charge-back from developers).

Tier 2 – Economic incentives for cities to accept density from sending areas. All Tier 2 funding comes solely through and as a result of the sale of TDRs. Tier 2 funding is based on actual transfers of development rights – “accountability with benefits.” It should be invested in infrastructure improvements in receiving areas.

- \*Carbon Offset Credits. The Forest Sector Workgroup may recommend to the Climate Action Team (CAT) that cities be allocated revenue from the sale of carbon offset credits based on TDR received from forest land. The TDR Policy Advisory Committee would recommend support for this approach.
- Percent of sale of TDR credits from the Public Regional TDR Bank. If a county wishes to encourage a city to accept TDR from its potential sending areas it could establish an incentive award (for example 10% or 60%, as the sending jurisdiction chooses) that would be granted to a city upon purchase of

TDR credits from the Regional TDR Bank for a development project in that city. The city could then use the funds for infrastructure improvements in the TDR receiving area. To illustrate with a simple scenario: Snohomish County uses the Conservation Futures tax to purchase one development right for \$50,000 from an Arlington sending site in the unincorporated county. Snohomish County places the TDR credit in the Public Regional TDR Bank. An Arlington developer purchases the right for \$50,000 from the Public Regional TDR Bank. \$45,000 is placed into Snohomish County's account. \$5,000 is forwarded to Arlington as an infrastructure incentive. This approach could be encouraged through technical assistance. No legislation is required.

Counties and cities both benefit in this scenario, because this approach:

- Creates additional receiving sites for development rights.
  - Provides infrastructure incentives for jurisdictions which might otherwise be reluctant to accept development rights from lands in the unincorporated county.
  - Establishes a self-sustaining economic incentive fund.
  - Does not require state funding.
- State REET from TDR sales allocated to receiving site. State's share of REET from TDR sales should be directed toward infrastructure in the receiving area where the credits are to be used. The use of REET in receiving areas should be consistent with the use of REET under RCW 82.46.035(5). Under this incentive, there is nominal loss of revenue for the state since the current amount of REET on TDR credits would be extremely limited. This recommendation will require legislation. The state should provide revenues generated by improvements upon the receiving land (state sales tax on new construction) to the receiving city for enhancing infrastructure that benefits the receiving land.
  - Retention of state sales tax on construction. The state should provide revenues generated by improvements upon the receiving land (state sales tax on new construction) to the receiving city for enhanced infrastructure that benefits the receiving land. Tax-shift revenues would be targeted to the receiving areas, rather than to the general fund of the governing jurisdiction. The funds would be placed in a separate account for infrastructure in the receiving areas. This creates focused local benefit, as discussed. This recommendation requires legislation.

Tier 3 – A suite of incentives for local jurisdictions that meet TDR performance standards. The Committee would recommend that TDRs be considered in conjunction with any of the following ideas if they result in recommendations that are proposed to the legislature:

- \*State-based economic incentives to fund Transit Oriented Development projects that advance affordable housing and TDR.
- \*New financing mechanisms for projects in TDR receiving areas based upon projected future revenue.
- \*If HEFT is authorized, consider allowing TDR to count towards local matching requirements.

- Seek methods for prioritizing TDR-receiving cities for transit services, such as within the METRO or Sound Transit Operating System.
- \*Seek methods for supporting improvements to local streets if a jurisdiction accepts TDRs from areas that can be determined to relieve specific Washington Department of Transportation infrastructure improvement requirements.
- \*Align state infrastructure funding to advance state policy goals of climate change, Puget Sound cleanup, transportation, or affordable/workforce housing. The Puget Sound Partnership will have the ability to prioritize funding. The Committee should send a message to the Puget Sound Partnership Leadership Team regarding prioritization of federal and state funding.
- \*Provide priority access of state infrastructure dollars to PSRC Vision 2040 regional growth centers that accept TDR from *outside* city limits. Priority access to federal funds for TDRs should be considered by PSRC upon establishment of a TDR program and requests from receiving cities for priority. (Consensus not yet achieved. Still under consideration by the Committee.)

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

Committee discussion

Cities would love funding from PERF.

Get new funding to pay for it, or reduce the cost to do it. Use TDRs to cut through some of it. Where TDRs are involved, it could be considered mitigation or SEPA breaks.

The intent language for proposed legislation should encourage cities to streamline the permit process. The intent should not be to downzone. Local governments have downzoned under GMA. But they could do more for a different reason than TDRs.

If a city designates a receiving area, do the environmental review with the code change so it benefits the developer. It can be costly, so ask area property owners to help pay.

Cities have to work with the development community on where receiving areas should be.

Consensus

The Committee came to consensus on recommendations to:

- Include legislative intent language that encourages local jurisdictions to streamline the permit and environmental review process for TDRs. For example, allowing projects using TDRs “by right.”
- Direct that the technical assistance from CTED include encouragement and advice on how to streamline the permit and environmental review process for

TDRs. The technical assistance should provide education to elected officials and citizens as to what density means and help on urban design.

- Fund the Planning and Environmental Review Fund (PERF). Access to PERF should be prioritized to receiving areas per Vision 2040.

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

Consensus

The Committee reached consensus that no pilots are needed at this time. However, if the recommendations to fund infrastructure and PERF are too big, the Committee could recommend that modest funding be provided as a pilot on those ideas for city receiving areas using TDRs.

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

Committee discussion

It may be a good idea in the future, but not now. This is not the year for it.

In a robust TDR market, there would be no need for it. The key is to help buyers and sellers find each other. That could be done through a multiple listing service. We have a robust MLS now. They could get interested in TDRs as they already have included LEED and green built homes.

Consensus

The consensus was that this is not necessary to include in the recommendations.

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The Chair then led the Committee through a review of the provisional consensus previously reached on questions #1 – 4 at the August 14, 2008, meeting.

- 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?<sup>1</sup>**

Committee discussion

CLC proposed that rural land being farmed or managed for forestry not be included in the regional program with priority for incentives. Where state funding is involved, rural land would not be included.

It was noted that Kitsap County has no designated agricultural land and that most of the sending area is designated rural. Also, that there is no GMA authority to designate natural resource lands without criteria.

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<sup>1</sup> Questions #1 and #2 had significant overlaps, and so are treated together.

We want the priority to be the best agricultural and forest land. Kitsap County has been the exception because the land is very parcelized.

Darren Greve noted that there needs to be a benefit to small landowners. Many have critical lands away from forest zones. The rural area is important for King County. Also, the receiving area jurisdictions are going to determine sending areas. The regional TDR program should not preclude rural sending areas. Rural lands that have been prioritized by the counties should be eligible. King County has not prioritized among their different sending areas. Cities should choose the sending area. For example, the only way to get a deal with city may be to include the rural area just outside the city.

The concern with including all rural lands is that a small number of farm and forest land gets a lot of conservation in terms of acreage. Rural gets very little in conservation in terms of acreage and costs a lot. Rural areas are designated for 12- 15% of the growth.

The enabling legislation for the program includes rural land.

It is critical that farmland be contiguous. Spot farms won't work.

King County's focus is to move development potential out of the rural area. Supply is an issue. Very few landowners have enrolled in the program.

#### Consensus

The Committee reached consensus with one revision for keeping rural lands as working farm and forest land as follows:

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:

- Designated natural resource lands of long-term commercial significance, and land designated rural that is being farmed or managed for forestry. If TDRs are sold from rural land that is being farmed or managed for forestry, then the county must include the land in any support programs it currently administers for conservation of working agricultural or forest land.
- 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).

Then, local governments with receiving areas can prioritize within these lands, which they prefer to receive 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?**

Consensus

The Committee affirmed consensus that transfers should not be restricted to one county. Receiving areas are in cities and they should be able to choose which sending areas they will receive TDRs from, outside of the UGA. State incentives will be for inter-jurisdictional programs, but cities and counties will not be prevented from having internal TDR programs if they choose. Working Principle #7 and the legislation direct CTED to encourage and enhance existing programs.

Consensus was also reached that the regional program will be limited to inter-jurisdictional transfers, such that receiving areas will be limited to cities. Counties may allow transfers into the unincorporated UGA, but the transfers will not be supported by state funding.

Regarding linking UGA expansions to TDRs, no consensus was reached. Pierce County's program may provide some experience with this to consider.

**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.**

*Technical assistance*

Consensus

The Committee agreed that, 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. The focus of CTED assistance and majority of staff time would be devoted to working with the central Puget Sound counties and cities to implement the regional TDR program. However, CTED would respond to other requests for assistance from around the state.
- 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 Question #4).*

### ***Issuance and tracking of TDR certificates***

#### Consensus

Based on input from the counties, the Committee agreed that the issuance and tracking of TDR certificates function should be performed by each of the counties. However, CTED will need to coordinate with these counties in order to provide the data and analysis (i.e., program monitoring) that is part of its technical assistance role.

### ***Public outreach***

#### Consensus

The Committee agreed that CTED could coordinate and fund others to do public outreach. However, most of the outreach must occur at the community level because local governments know how to market their own programs.

### **c. A bank to purchase and sell TDRs.**

#### Committee discussion

There was quite a bit of discussion about how a regional bank would operate without state funding. If it were funded by local revenue, each county could have a separate account that they would manage. King County wouldn't oppose a regional bank, but thinks that the state would need to fund the administrative costs for counties that use the bank.

A regional bank could bank the development rights that counties are currently buying and extinguishing.

#### Consensus

The Committee ended up deciding that there needs to be a regional bank in the event the state provides funding. The recommendation would be for a bank only if funding is made available by the state.

### **d. Private transactions.**

#### Consensus

The Committee affirmed that private transactions should be allowed. These will be the only transactions pending creation of a bank.

**e. A fee in lieu of purchase of TDRs.**

Committee discussion

The Committee agreed that rather than using a fee in lieu program, there should be a mechanism that would allow a developer to pre-purchase TDR's. There was not consensus as to whether the pre-purchase of rights should be allowed. [I thought there was consensus, but lets find out – does anyone oppose this?] There was concern that somebody would have to establish the price that would set the market. However, it would make it easy for a developer to get going on a project.

An alternative would be for a city to take TDRs from another sending area if no TDRs are available from their designated sending area. There are political problems with this approach.

Setting the price for TDRs doesn't set the price for the landowner. The pre-purchase would accelerate things.

Consensus

This idea is dependent upon the creation of a TDR bank. It should be considered in conjunction with a recommendation for the creation of a bank.

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

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.
- Local governments should determine the allocation ratio through negotiation between sending and receiving jurisdictions.
- Larger projects should be able to negotiate an allocation ratio. 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.**

Consensus

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.

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The Committee did not get to the two remaining questions.

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

Staff has proposed recommendations that are under discussion by the Committee and will be included in the report.

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

- a. Final estimate to fund the program based on Committee recommendations.  
What are estimated costs of:
  - 1. CTED technical assistance program
  - 2. CTED rule making process for an alternative to interlocal agreements.
  - 3. Developing TDR programs at the city level.
  - 4. Conducting SEPA/EIS analyses for TDR receiving areas.
  - 5. Cost of creating an administrative framework for a Regional TDR Bank
- b. Any additional information about funding for incentives.
- c. Need information about system-wide infrastructure costs not paid by a developer as impact fees or cost of project development to construct portions of infrastructure required by the jurisdiction. (This might be high in, say Arlington, and far less so in a dense urban environment. This would affect our understanding of true project –related infrastructure costs and funding need.)
- d. How should REET funding be collected and distributed as an economic incentive?
- e. How should state sales tax on construction be collected and distributed as an economic incentive?
- f. What legislative authority must be granted for to implement these recommendations?

Note: After the meeting during review of the summary, a few concerns and ideas were floated by Committee members. To the extent they were appropriate to include in the meeting summary, they have been included as follows. The remaining comments will be addressed in the report.

- Ivan Miller proposed that CTED technical assistance be prioritized for cities as each of the counties has already adopted a program.

- Dick Carkner proposed that retention of the state sales tax on construction be limited to receiving areas where TDRs from agricultural lands are being used. There was not consensus to support this proposal. However, Mr. Carkner agreed to still support using the state sales tax on construction in receiving areas.
- Under Tier 3 incentives for counties and cities, Mary McCumber proposed that federal transportation funds also be targeted to TDR receiving areas. After some negotiation with Mr. Miller, language was added to that effect. However, Nathan Torgelson has indicated the City of Seattle may have some concerns with allocation of state and federal funds to PSRC Vision 2040 regional growth centers that accept TDR from *outside* city limits. This discussion will continue and be addressed in the report.
- Michelle Connor proposed that the legislative intent language discourage counties and cities from downzones in both sending and receiving areas in conjunction a TDR program. Ivan Miller was more comfortable with language to discourage downzones done solely to create a TDR right. (This was not added to the summary, but will be included in the report and proposed legislative language).

Appropriate changes have been made to the summary.

**Next Meeting:**

**November 13, 2008, 2:00 p.m. – 5:00 p.m., (Puget Sound Regional Council)**