



**CTED** |

Community, Trade and  
Economic Development

# Creating a Regional Transfer of Development Rights Program for Central Puget Sound

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Recommendations from the Transfer of Development Rights Policy Advisory Committee

**December 2008**

Report to the Legislature

Juli Wilkerson, Director

## **ACKNOWLEDGEMENTS**

### **Washington State Department of Community, Trade and Economic Development**

Karen Larkin, Assistant Director, Local Government Division  
Leonard Bauer, Managing Director, Growth Management Services  
Heather Ballash, Program Manager/Writer

### **Transfer of Development Rights Policy Advisory Committee**

Mike Flynn, Washington Association of Realtors, Chair  
Judd Kirk, Port Blakely Communities  
The Honorable Steve Bauer, Kitsap County Commissioner  
The Honorable Margaret Larson, Mayor of Arlington  
Nathan Torgelson, City of Seattle Office of Policy and Management  
Michelle Connor, Cascade Land Conservancy  
Mary McCumber, Futurewise  
Dick Carkner, Terry's Berries LLC, An Organic Farm  
Don Stuart, American Farmland Trust  
Ivan Miller, Puget Sound Regional Council  
Leonard Bauer, Washington Department of Community, Trade and Economic Development

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Washington State Department of Community, Trade and Economic Development  
Growth Management Services  
906 Columbia Street  
P.O. Box 42525  
Olympia, WA 98504  
[www.cted.wa.gov](http://www.cted.wa.gov)

To obtain a copy of this report in an alternate format, please call (360) 725-2895 or TTY/TDD (800) 634-4473 or FAX (360) 586-7176.

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## EXECUTIVE SUMMARY

A typical transfer of development rights (TDR) program is a market-based mechanism that encourages the voluntary transfer of growth from places where a community would like to see less development, referred to as sending areas, to places where a community would like to see more development, referred to as receiving areas.

The Washington State Department of Community, Trade and Economic Development (CTED) was directed by legislation in 2007 to work with an advisory committee to develop a regional TDR marketplace in central Puget Sound that includes, but is not limited to, supporting strategies for financing infrastructure and conservation<sup>1</sup>. The program includes conservation of rural, agricultural and forest land in King, Kitsap, Pierce and Snohomish Counties. Recommendations are due December 1, 2008, to the Governor and the Legislature<sup>2</sup>. This report proposes the following recommendations of the advisory committee and CTED.

### **Recommendations<sup>3</sup>**

The Policy Advisory Committee supports the concept of creating a voluntary, incentive-based regional TDR program in the central Puget Sound region that is separate, but compatible, with existing local TDR programs. However, given the financial status of cities and counties, the Committee believes that the state will need to provide some financial and technical assistance incentives in order for the program to generate a sufficient number of transactions to address the conservation need. The following recommendations, not listed in priority order, identify the scope and scale of the regional TDR program recommended by the Committee:

1. **Participation by Cities and Counties:** The regional program should be voluntary, with incentives for counties and cities to participate.
2. **Conservation Priorities and Sending Areas:** For purposes of the regional TDR program and state incentives, conservation priorities for sending areas should be regionally and locally determined with guidance from the state, similar to the goals of the GMA. Broad statutory criteria should be provided.
3. **Jurisdictional Level for Transfer of Development Rights (Receiving Areas):** The regional program should be limited to inter-jurisdictional transfers, such that sending areas will be in counties and receiving areas will be in cities consistent with the Puget Sound Regional Council's multi-county planning policies adopted in VISION 2040 under the Growth Management Act. Cities should be able to choose from which sending areas they will receive TDRs.

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<sup>1</sup> RCW 43.362.020(1)(a)

<sup>2</sup> 2SHB 1636, Section 4 (this section was not codified).

<sup>3</sup> The key recommendations are summarized here. See "Recommendations" starting on page 30.

4. CTED Technical Assistance and Public Outreach: CTED should provide technical assistance to counties and cities and public outreach, with a focus on implementing the regional TDR program. The four counties should issue and track TDR certificates.
5. Transaction Mechanisms: Private transactions should be allowed and encouraged. Use of a pre-purchase of development rights should be encouraged by CTED in technical assistance. A regional bank should be created when state funding becomes available.
6. Allocation Ratio: An allocation ratio should be determined by counties and cities through negotiation. Developers of larger projects should be able to negotiate a ratio with the city and county. The allocation ratio should allow translation to other commodities than density, such as building height and commercial floor area.
7. Incentives for Cities and Counties:
  - Tier 1 – Technical assistance from CTED for local jurisdictions to voluntarily develop TDR programs and funding for the Planning and Environmental Review Fund (PERF).
  - Tier 2 – Economic incentives for cities to accept density from sending areas based on actual transfers of development rights – “accountability with benefits.” All funds described must be invested in infrastructure improvements in TDR receiving areas.
  - Tier 3 – Consideration of TDRs in conjunction with a number of funding sources being considered by various committees and interest groups, such as the Climate Action Team.
8. Alternative to Interlocal Agreement: Provide statutory authority for CTED to adopt a rule that cities and county can adopt by reference as an alternative to an interlocal agreement. Participation in the program should be as simple as possible.
9. Incentives for Developers: The intent language in proposed legislation and CTED technical assistance for the regional TDR program should encourage streamlined permitting and environmental review for TDRs. The PERF should be funded. Ensuring that TDRs bring value and certainty to developers is key to creating demand for TDR.
10. TDRs and Downzones: The intent language in proposed legislation and CTED technical assistance for the regional TDR program should discourage downzones in sending and receiving areas solely for the purpose of creating a TDR right.
11. Performance Measures: Performance measures should be established for the regional TDR program. The counties and cities should be required to report biannually to CTED for a biennial report to the Legislature and the Governor. After two biennial cycles of measuring performance of the regional TDR program, CTED should form a Policy Advisory Committee to assist in evaluating the program.

# INTRODUCTION

## **Background**

The population in Puget Sound is expected to increase to 5 million by the year 2025. Between 2000 and 2006, Puget Sound counties added 315,965 people, a rate of more than 50,000 people per year. Many farm and forest land areas are being converted to residential and commercial development. Between 1991 and 2001, 190 square miles of forest land in the Puget Sound basin was converted to other uses, equaling 2.3 percent of remaining forests.<sup>4</sup>

Local governments need as many land use tools as possible to slow the conversion of rural, farm, and forest land. Upcoming updates to land use plans and regulations, starting in 2011 in central Puget Sound, provide an opportunity for counties and cities to consider new or to enhance existing conservation tools. The current economy and housing market provide an opportunity to put in place market-based tools that will be available when the market improves.

The legislature finds that current concern over the rapid and increasing loss of rural, agricultural, and forested land has led to the exploration of creative approaches to preserving these important lands. The legislature finds also that the creation of a regional transfer of development rights marketplace will assist in slowing the conversion of these lands.<sup>5</sup>

A typical<sup>6</sup> transfer of development rights (TDR) program is a market-based mechanism that encourages the voluntary transfer of growth from places where a community would like to see less development, referred to as sending areas, to places where a community would like to see more development, referred to as receiving areas.

Through individual transactions, development rights are transferred from privately owned farmland, forestland, and natural areas (known as *sending sites*) to areas that can accommodate additional growth (known as *receiving sites*). Landowners in sending areas receive compensation for giving up their right to develop, while developers in receiving areas pay for the right to develop at greater densities or intensities than would otherwise be allowed. When development rights are removed from a sending site, a conservation easement is placed on it, allowing for permanent protection of the parcel (unlike zoning regulations, which can be changed). The conservation easement removes the

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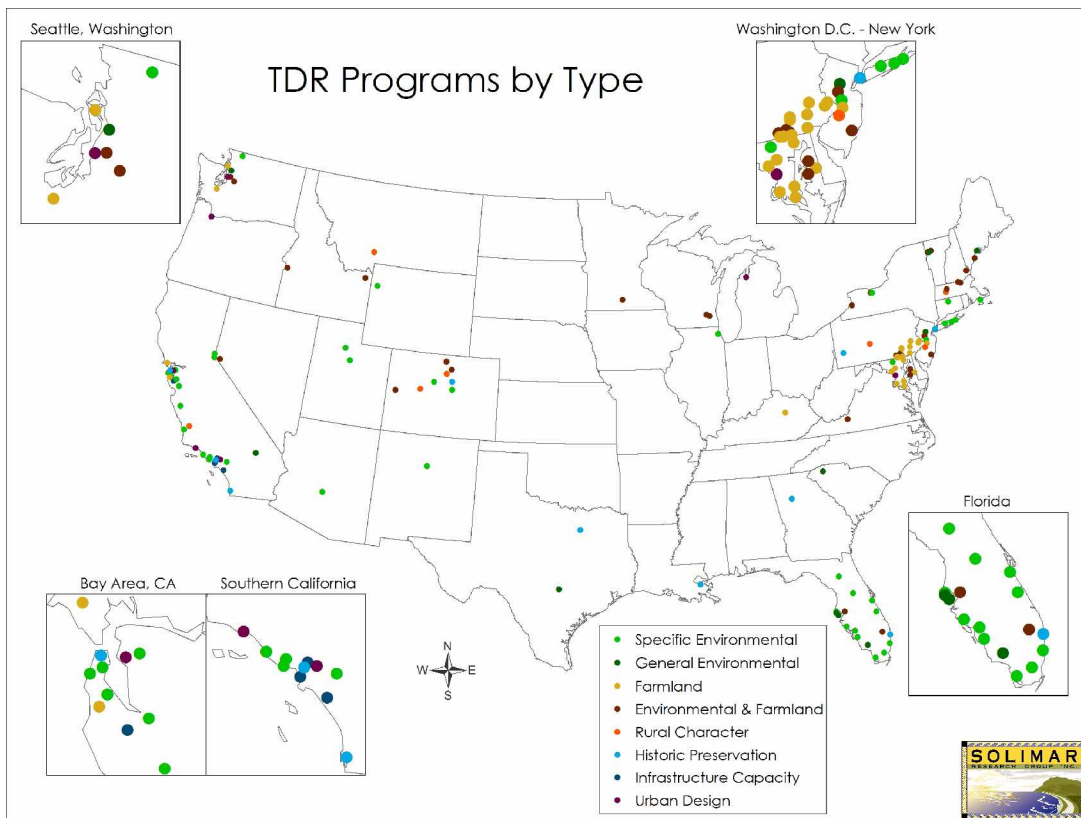
<sup>4</sup> *State of the Sound 2007*, Puget Sound Action Team.

<sup>5</sup> RCW 43.362.005.

<sup>6</sup> For a comprehensive inventory and discussion of the diverse types of TDR programs around the United States, see [\*Beyond Givings and Takings\*](#), by Rick Pruett, Arje Press, 2003.

development right while allowing the landowner to continue to manage their land for farming or forestry.<sup>7</sup>

The benefits of a successful transfer of development rights program will be to conserve rural, agricultural and forest lands. Buying the development rights from these lands will help keep them in farming and forestry. It will also help provide drinking water and aquifer protection. Transferring growth to urban areas where public facilities and services are available will ensure vibrant, economically viable compact communities. Directing growth to compact communities where people can live close to where they work or have access to transportation choices will reduce vehicle miles travelled, reducing fuel consumption and emissions that contribute to climate change. Compact communities will help reduce the impacts of stormwater runoff to Puget Sound.



Among the approximately 200 programs in the United States, program designs differ greatly.<sup>8</sup> The results have varied from no transfers at all, to the preservation of 49,000

<sup>7</sup> For more information about TDR programs in Washington State see [Transfer of Development Rights \(TDR\) in Washington State: Overview, Benefits, and Challenges](#), Cascade Land Conservancy, October 2008.

acres (under easement in Montgomery County), and 6,269 rights severed from sending properties and 51,819 acres of land permanently protected in the New Jersey Pinelands.

In 2007, the Legislature passed and the Governor signed into law legislation that directed CTED to fund a process to develop a regional TDR program that comports with Chapter 36.70A RCW (Washington State Growth Management Act). The program includes conservation of rural, agricultural and forest land in King, Kitsap, Pierce and Snohomish Counties. The legislation was codified at Chapter 43.362 RCW.<sup>9</sup>

The Washington State Growth Management Act (GMA) requires the four central Puget Sound counties and the cities within them to adopt comprehensive plans and development regulations that meet 14 goals and a number of requirements. The goals include conservation of productive forest and agricultural lands and discouragement of incompatible uses;<sup>10</sup> encouraging development in urban areas where adequate public facilities and services exist or can be provided efficiently;<sup>11</sup> and reduction of sprawl.<sup>12</sup>

TDR programs are recognized and encouraged in the Washington State Growth Management Act (GMA) as an innovative land use management technique<sup>13</sup> that transfers development from areas a community wants to conserve to urban areas where growth should be encouraged, consistent with GMA goals. All four central Puget Sound counties have adopted a TDR program, as have a number of cities. Statewide, 14 programs have been adopted.<sup>14</sup>

Most of the Washington State programs are aimed at agricultural land preservation or environmental protection. Some reflect other goals, such as affordable housing (Seattle), historic preservation (Seattle and Vancouver), and watershed protection (Whatcom County). Programs that have protected the greatest amount of acreage for conservation are located in King County.

King County adopted a pilot program in 1998, making it permanent in 2001. It is the most well established program, with over 92,000 acres of land preserved. It conserves rural, agricultural and forest land. King County currently has an inter-local agreement with the City of Issaquah to receive development rights from the county. The cities of Issaquah, Redmond and Seattle all also have TDR programs internal to the city. Issaquah and Redmond's programs conserve environmentally sensitive lands. Seattle's program includes affordable housing, open space, and historic preservation.

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<sup>8</sup> Fulton, William, Jan Mazurek, Rick Pruetz, and Chris Williamson. *TDRs and Other Market-Based Land Mechanisms: How They Work and Their Role in Shaping Metropolitan Growth*. Washington: Brookings Institution, 2004.

<sup>9</sup> See Appendix A, [2SHB 1636](#), codified as [Chapter 43.362 RCW](#).

<sup>10</sup> RCW 36.70A.020(8)

<sup>11</sup> RCW 36.70A.020(1)

<sup>12</sup> RCW 36.70A.020(2)

<sup>13</sup> RCW 36.70A.090

<sup>14</sup> For an inventory of TDR programs adopted in Washington State, [Transfer of Development Rights \(TDR\) in Washington State: Overview, Benefits, and Challenges](#), Appendix B.

Kitsap County adopted a program to conserve rural and forest land. The county came into compliance with a hearings board order in March 2008, and is looking at how to move forward with the program.

Pierce County adopted its PDR and TDR program to conserve rural, agricultural and forest land in November 2007, with an effective date of April 2008. They are working on implementation of the program.

Snohomish County adopted a TDR program under an interlocal agreement with the City of Arlington to protect farmland surrounding Arlington. The County is working with the City of Arlington and the development community to implement the program. The County also considered adopting a county-wide program in 2008, but decided to work through interlocal agreements, development agreements and code changes. Everett has a TDR program for environmentally sensitive areas as part of its critical area regulations and historic preservation as part of its downtown plan.

The regional TDR legislation included a finding that it is good public policy to build upon existing transfer of development rights programs.<sup>15</sup> The legislation also directs CTED to encourage participation by the central Puget Sound counties and cities to participate in a regional TDR framework, as well as to encourage and embrace the efforts of these counties and cities to develop their own TDR programs.<sup>16</sup>

### **TDR Policy Advisory Committee**

CTED was directed to work with an advisory committee to develop a regional TDR marketplace that includes, but is not limited to, supporting strategies for financing infrastructure and conservation.<sup>17</sup> The Policy Advisory Committee convened by CTED consists of nine stakeholders with representatives of the following interests:

- Two qualified nongovernmental organizations with expertise in the transfer of development rights: Michelle Connor, Cascade Land Conservancy, and Mary McCumber, Futurewise.
- Two representatives from real estate and development: Judd Kirk, Port Blakely Communities, and Mike Flynn, Washington Association of Realtors.
- One representative with a county government perspective: Steve Bauer, Kitsap County Commissioner.
- Two representatives from cities of different sizes and geographic areas within the four-county region: Mayor Margaret Larson, City of Arlington, and Nathan Torgelson, City of Seattle Office of Policy and Management.

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<sup>15</sup> RCW 43.362.005

<sup>16</sup> RCW 43.362.020(1)

<sup>17</sup> RCW 43.362.020(1)(a)

- Two representatives of the agricultural industry: Dick Carkner, Pierce County farmer, and Don Stuart, American Farmland Trust.

Ivan Miller, Principal Planner for Puget Sound Regional Council’s Growth Management Planning, and Leonard Bauer, Managing Director for CTED Growth Management Services, sat on the Policy Advisory Committee as ex-officio members.

CTED also convened a Technical Advisory Committee<sup>18</sup> through email to solicit advice and assistance to the agency and the Policy Advisory Committee. Sixty-five members of the public, private, and non-profit sectors were consulted by email and many participated.

Recommendations developed by CTED and the Policy Advisory Committee are required to.<sup>19</sup>

- (a) Identify opportunities for cities, counties, and the state to achieve significant benefits through using transfer of development rights programs and the value in modifying criteria by which capital budget funds are allocated, including but not limited to, existing state grant programs to provide incentives for local governments to implement transfer of development rights programs;
- (b) Address challenges to the creation of an efficient and transparent transfer of development rights market, including the creation of a transfer of development rights bank, brokerage, or direct buyer-seller exchange;
- (c) Address issues of certainty to buyers and sellers of development rights that address long-term environmental benefits and perceived inequities in land values and permitting processes;
- (d) Address the means for assuring that appropriate values are recognized and updated, as well as specifically addressing the need to maintain the quality of life in receiving neighborhoods and the protection of environmental values over time;
- (e) Identify opportunities and challenges that, if resolved, would result in cities throughout the Puget Sound region participating in a transfer of development rights market;
- (f) Compare the uses of a regional transfer of development rights program to other existing land conservation strategies to protect rural and resource lands and implement the growth management act; and

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<sup>18</sup> See Appendix B for a list of technical advisory committee members.

<sup>19</sup> RCW 43.362.020(2).

- (g) Identify appropriate sending areas so as to protect future growth and economic development needs of the sending areas.

The Committee met eight times from October 2007 to September 2008 to develop recommendations for a program.<sup>20</sup> The Committee will continue to meet to work on the non-legislative details of the program through June 2009.

The Policy Advisory Committee accomplished the following in preparation for developing its recommendations:

- Adopted ground rules and a set of working principles to guide their work.
- Advised CTED and a consultant hired by CTED on conducting a market analysis of TDRs.
- Discussed the results of the market analysis and possible transactional mechanisms for a regional TDR program with the consultant.
- Discussed strategies for addressing issues of certainty for buyers and sellers of TDRs.
- Heard from a panel of state and regional infrastructure and transportation funding programs regarding possibilities for funding a TDR program.

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<sup>20</sup> Link to all information about the [Policy Advisory Committee's meeting materials](#) including agendas, materials, public comment letters, and meeting summaries.

## **Puget Sound Regional Council**

CTED was directed to work with the Puget Sound Regional Council (PSRC)<sup>21</sup> and its growth management policy board to develop a process to create a regional TDR program. In the development of a process, the PSRC was directed to develop policies to discourage, or prohibit if necessary, the transfer of development rights from a sending area that would negatively impact the future economic viability of the sending area.

The PSRC adopted as part of its Vision 2040 update to the multi-county planning policies the following regarding transfer of development rights:

**MPP-DP-48** Encourage the use of innovative techniques, including the transfer of development rights, the purchase of development rights, and conservation incentives. Use these techniques to focus growth within the urban growth area (especially cities) to lessen pressures to convert rural and resource areas to more intense urban-type development, while protecting the future economic viability of sending areas and sustaining rural and resource-based uses.

Under the GMA, multi-county planning policies adopted by PSRC establish a framework from which county and city comprehensive plans are developed for the four counties and the 82 cities within them.<sup>22</sup>

In addition to adopting policies, Puget Sound Regional Council staff also participated as an ex-officio member of the Policy Advisory Committee.

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<sup>21</sup> The Puget Sound Regional Council is a multi-county regional transportation planning organization that is recognized under the GMA as a growth management regional planning agency for the four central Puget Sound counties and cities within them. The elected leaders of King, Kitsap, Pierce and Snohomish counties, the region's cities and towns, port districts, transit agencies, and tribes direct the agency's activities.

<sup>22</sup> RCW 36.70A.210(7)

## **TDR Policy Advisory Committee Working Principles and Goals**

The TDR Policy Advisory Committee began its work by adopting the following set of working principles or goals for the program with an introductory statement.

The Department of Community, Trade and Economic Development (CTED) is directed to fund a process to develop a regional transfer of development rights (TDR) program that comports with the Growth Management Act (2SHB 1636 – Chapter 43.362 RCW).

Consistent with the Legislature’s intent, the Policy Advisory Committee finds that a TDR program is a creative approach that will assist in slowing the conversion of rural, agricultural and forested lands. It is good public policy to build upon existing TDR programs, pilot projects, and private initiatives that foster effective use of transferred development rights through the creation of a market-based program that focuses on the central Puget Sound Region.

These goals are proposed only for the regional TDR program and not intended to apply to other programs that local governments may choose to adopt. These principles may need to be revisited because the development of a TDR program is an iterative process.

1. The focus of this Committee is to make TDR programs work.
2. TDR programs should be included in local comprehensive land use plans and development regulations, including zoning ordinances.
3. Sending areas should be designated to preserve forests, farms, and open space in rural and resource areas. Designation of sending areas should support local farming and forestry industries.
4. Designation of receiving areas will be guided by the priorities in the Puget Sound Regional Council’s VISION 2040.
5. Prior to designation, receiving areas should have adequate infrastructure planned and funding identified for development at densities consistent with what can be achieved under the local transfer of development rights (TDR) program.
6. Designation of sending and receiving areas should include significant public outreach.
7. Work toward the creation of a marketplace that builds on and enhances existing TDR and other open space programs.
8. Develop a regional approach that provides a common process that is flexible enough to accommodate the unique circumstances and needs of individual counties and cities.
9. Develop a process that results in actual transfers from sending to receiving areas within two years of its establishment.

The final section of this report, which contains the committee's recommendations, notes the relationship of the recommendations to these working principles.

## MARKET ANALYSIS: TDR'S IN CENTRAL PUGET SOUND

CTED and the Policy Advisory Committee were tasked with addressing challenges to the creation of an efficient and transparent TDR market, including the creation of a TDR bank, brokerage, or direct buyer-seller exchange. The statute provided authority for CTED to contract for expertise in this and the other tasks.<sup>23</sup>

CTED hired a consultant team<sup>24</sup> in January 2008 to provide the following:

- A study of the feasibility of establishing one or more TDR market mechanisms in the four central Puget Sound counties, including a TDR bank, brokerage, or direct buyer-seller exchange.
- An analysis of the market for acquiring and selling TDRs in the four central Puget Sound counties.
- Assess the feasibility of inter-jurisdictional transfers of development rights relative to intra-jurisdictional transfers.
- A methodology for determining exchange rates that would support the successful transfer of development rights from designated sending areas in one jurisdiction to receiving areas in another.

The consultants met with the Committee to receive input on conducting the market analysis in January 2008.

Sending areas for the study were based on approximately 372,000 acres of TDR sending areas designated under the existing county programs. The sending areas included part of the sending areas in King and Pierce Counties, and all of the Snohomish and Kitsap sending areas. The consultants did an analysis of land values to determine the value of development rights in sending areas. The analysis is based on assessed land values and recent undeveloped parcel sales, but includes a mix of zones in rural, agricultural and forest land.

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<sup>23</sup> RCW 43.362.020(2)(b)

The consultant team hired by CTED consisted of:

- Bill Fulton, Aaron Engstrom and Jessica Daniel with \*Solimar Research Group, Ventura, California
- Chris Mefford, Community Attributes, Inc., Seattle, Washington
- Michael J. McCormick, FAICP, Olympia, Washington
- Roger Wagoner, FAICP, BHC
- Anthony Gibbons, Re-Solve, Seattle, Washington
- Heartland LLC, Seattle, Washington

\*Prior to the conclusion of the contract, Solimar Research Group merged with and became part of Design, Community and Development, San Francisco, California.

In general, the consultants concluded that the range of values for development rights in the central Puget Sound region varies widely between and within counties. The range of values are approximately as follows, based on 2006-2008 market sales:

**\$5,050 and below:** Low density farm and forest land.

**\$7,000 to \$11,500:** Higher-value farmlands and most rural land in Kitsap.

**\$14,500 to \$22,000:** Most rural land in King County and the highest-density rural Kitsap lands. This range represents lands that are under development pressures yet still within a feasible value range to effectively allocate development right ratios.

**\$30,000 and up:** Land selling for a premium under current market conditions, the highest of which is five acre lots outside Redmond.

Based on a set of criteria developed with the Committee and designed to provide geographical and a wide variety of markets and regulatory situations, nine receiving areas were selected for market analysis. These nine receiving areas were in:

- King County: Redmond, Tukwila and Carnation.
- Kitsap County: Downtown Bremerton.
- Snohomish County: Downtown Everett and the urban growth area for Arlington.
- Pierce County: Downtown Tacoma and the Martin Luther King district in Tacoma.

The consultants analyzed the receiving areas for how much developers are “willing to pay” for more density or other “conversation commodities”.<sup>25</sup> Although traditional TDRs are based on additional density, the report recognizes that TDRs from sending areas could be converted into a wide variety of other “commodities” that buyers can use in receiving areas, including commercial floor area, lower parking ratios, the ability to create more impervious surface, higher buildings, and other benefits. The “willingness to pay” methodology was to identify a prototypical development project for each receiving area in each receiving area in consultation with local real estate experts and the local government, and then conduct a financial pro forma analysis to determine whether such a project would be feasible. Part of the pro forma analysis is to determine how much value receiving-area developers would place on the additional density or other benefits they would receive by purchasing TDRs.

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<sup>25</sup> Please see page 2-51 of [Market Analysis for Regional Transfer of Development Rights in Central Puget Sound](#), dated June 13, 2008, for a more complete discussion of conversion commodities.

**Willingness to pay table**  
**TABLE 1: ESTIMATED CAPACITY AND REVENUE FOR TDR LINKED UNITS**  
**TO BE DEVELOPED IN RECEIVING AREAS<sup>A</sup>**

Receiving Area	TDR Units at Buildout	Max WTP	Max WTP – 20%	Revenue Estimate
<b>Number of TDR Linked Units at Prototype Buildout – Floor Area Bonuses</b>				
Bremerton DC	767	–	–	–
Tacoma DR	8,854	\$105,422	\$84,338	\$746,692,501
Tacoma MLK NCX	1,037	\$1,721	\$1,377	\$1,427,538
Everett CBD B-3	4,722	–	–	–
Redmond OBAT	N/A	N/A	N/A	N/A
Carnation CBD	138	\$12,957	\$10,366	\$1,429,614
<b>Number of Parking Spaces Reduced at Buildout</b>				
Tukwila <sup>a</sup>	3,224	\$1,936	\$1,549	\$4,994,292
<b>Number of Single-Family TDR Units with Upzone</b>				
South Hill MSF <sup>b</sup> (0.25)	9,340	\$36,981	\$29,585	\$276,322,032
South Hill MSF <sup>b</sup> (0.5)	9,340	\$13,365	\$10,692	\$99,863,280

<sup>a</sup> Descriptions of the receiving area zones are located in section 2-C, Receiving-Area Economic Analysis.

<sup>b</sup> Tukwila analyzed 600ft radii around transit stations.

<sup>c</sup> South Hill analyzed 2 scenarios, one 0.25 miles and the other 0.5 miles from infrastructure hook up.

## **Study Results**

The preliminary results of the study were presented by the consultants to the Committee on May 1, 2008. *Market Analysis for Regional Transfer of Development Rights in Central Puget Sound*, was completed on June 13, 2008. Key results of the study include:

- The range of values for sending areas parcels vary greatly both within and between the four counties. See the quartile values above.
- In most of the nine receiving areas studied, developers were willing to pay some amount for the ability to build additional density.
- The amount developers were willing to pay per unit also varied considerably, but was much lower than most of the sending area values.
- TDRs often would have to compete with other local density bonus programs.

## **Consultant Recommendations**

The consultants' recommendations were as follows:

- The regional program should be designed to facilitate selected inter-county transfers. Create a regional program that builds on the existing county programs and permits selected inter-county transactions.
- Due to the discrepancy between sending area values and willingness to pay in receiving areas, some market players should be able to buy and sell TDRs in fractions to allow more market activity on both the sending and receiving side. At a price of about \$5,000 per fractional TDR, all receiving-area projects that were found feasible in the analysis can afford to purchase TDRs.
- The value of sending-area rights should be based on an appraisal value with the “use” subtracted. If the landowner is able to continue to harvest the land for timber or agricultural production, the monetary value of the production should be reduced from the appraised value of the property.
- Sending-area land use regulators should be required to adopt a standard method of identifying TDR rights and issuing TDR certificates to standardize the regional program mechanics and streamline the process.
- A regional clearinghouse should be created to track the issuance of TDR certificates; track transactions; provide information on how both regional and local TDR programs work; and conduct outreach to landowners, developers, land speculators and real estate brokers with the goal of stimulating transactional activity on the part of private market players.

## TRANSACTION MECHANISMS

CTED and the Policy Advisory Committee were tasked with addressing challenges to the creation of an efficient and transparent TDR market, including the creation of a TDR bank, brokerage, or direct buyer-seller exchange.<sup>26</sup>

The importance of the transaction mechanism in a TDR program is manifold. First, the process by which development rights are transferred must meet the needs of both buyers and sellers. Without this element of basic function a marketplace for transactions won't exist, rendering TDR programs ineffective. Some programs have not completed any transactions because of this issue. Secondly, the mechanism must be affordable for the sponsoring jurisdiction and practical to administer. If the costs outweigh the public benefit of the conservation achieved, the program will not be sustainable. Likewise, if the program is too complex it will create barriers to participation which will diminish its effectiveness. Third, it is essential that the choice of transaction mechanism reflects local context and priorities. One community might place a high priority on simplicity, while the conservation of large, contiguous parcels is paramount in another. The choice of the appropriate transaction mechanism is an essential element of designing a TDR program that will function effectively, be sustainable, and match the local context and priorities.

In many cases TDR transactions are similar to standard (fee simple) real estate transactions. First a buyer and seller come together to transfer property ownership at an agreed upon price. Second, payment is made, typically through an escrow process. Third, a public agency documents the transfer of the property and maintains records of the transaction. Typically, the instrument for a transfer of development rights is a conservation easement on the sending property. In legal and financial terms, TDR transactions can be just as consequential for buyers and sellers as a standard real estate transaction. Landowners incorporate the process into their estate plans, retirement investments, or use it as a way to keep their land in the family. Developers can invest in development rights to increase their returns through increased densities.

Cascade Land Conservancy evaluated a number of transaction mechanisms<sup>27</sup>, including:

- Private market transactions between individual buyers and sellers;
- Private market transactions with transaction support from a public agency;
- TDR brokerage system for matching up compatible buyers and sellers and facilitating their transactions;
- TDR bank: a public or private, non-profit entity authorized to buy and sell development rights;
- Private investment corporation; and

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<sup>26</sup> RCW 43.362.020(2)(b)

<sup>27</sup> See [Alternative Transfer of Development Rights Transactions Mechanisms](#), Cascade Land Conservancy, July 10, 2008.

- Density fee in lieu of TDR.

The Conservancy provided an analysis of the pros and cons of each type of mechanism, but made no recommendations to the Committee. The table below summarizes the evaluations of the mechanisms. Each alternative is scored qualitatively on a scale of low to high across the four criteria. “Low” denotes a poor performance, indicating obstacles to participation, expensive costs to the public, ineffective conservation, and an unfavorable political response, respectively. “High” denotes a good performance, indicating greater ease of participation, increased cost effectiveness, improved achievement of conservation goals, and broad political acceptance relative to other mechanisms.

### ANALYSIS OF MARKET MECHANISMS

	<b>Ease of participation for buyers and sellers</b>	<b>Cost effectiveness for public and ease of administration</b>	<b>Effectiveness in implementation of conservation priorities</b>	<b>Political feasibility</b>
<b>Private market transactions</b>	Low Limited availability of information	High Minimal government involvement and expense	Low Conservation priorities may not match market demand	High Minimal government involvement and expense
<b>Private transactions with public support</b>	Medium Improved availability of information	Medium Increased government involvement and expense	Low Conservation priorities may not match market demand	High Moderate government involvement and expense
<b>TDR brokerage</b>	Medium Marketplace infrastructure improves information	Medium Public sector increases bureaucratic complexity	Low (if private) High (if public) Conservation priorities may differ	Medium Variable level of government involvement
<b>TDR bank</b>	High Market timing issues resolved, strong public support	Medium Higher administrative and capital costs	Medium-high Bank can target priority areas for conservation	Medium Increased government involvement and expense
<b>Private investment corporation</b>	High Corp. will seek out participants	High Minimal government involvement and expense	Low Profit goals may not match conservation goals	Medium Min. govt. involvement, but prices could be higher
<b>Density fee</b>	High Participation requirements predictable and defined.	Medium Increased administrative costs	High Complete public control over choice of land conservation	Low High level of bureaucracy and govt. involvement

The consultant team was asked to make a recommendation regarding a transaction mechanism for the regional program. The consultants advised that, to be successful in the marketplace, a TDR program usually has the following attributes:

- Low administrative cost for sponsoring entity.
- Procedural transparency to landowners and developers.
- Market information readily available to players.
- Ease of participation by buyers and sellers.

The consultants stated that it is important to note that the function of a market mechanism is different than the function of the policy or regulatory aspects of a TDR program. In fact, to succeed, a TDR program must have three well-operating functions:

- Consistent regulation.
- Transparent information.
- Active transactional players.

The consultants considered several mechanisms on the information and transactional side of the TDR equation. These included:

- Information clearinghouse.
- Active transaction players.
  - Chartered banks.
  - Real estate brokers
  - Private investors
- Alternatives to a TDR market
  - Fee in lieu of TDRs

The consultants recommended that a regional bank be created and capitalized. The role of the bank would be to stimulate market activity when the bank is first set up and then use its future activity to smooth out ups and downs in the market. Major capitalization would be required. The bank could be capitalized by the state with the understanding that the capitalization would be used as a revolving fund. The bank might also be capitalized with a revenue stream from the real estate excise tax.

Because the bank must operate as a nimble market player, the consultant stated that it should not be housed within a government agency. The bank should be chartered by the state but operated as an independent nonprofit organization. The state could contract with a land conservation nonprofit to operate the bank.

The consultant recommended that the bank play an exclusively transactional role, and the bank needs to be completely separated from other functions, including the creation, revision, and implementation of the TDR programs and policies themselves. The state legislation establishing the bank should also specify the members of the bank's board,

which should include representatives from both of the state and of the local government agencies that sponsor and regulate TDR programs.<sup>28</sup>

The consultant recommended against the use of fee-in-lieu<sup>29</sup> instead of a regional program because a fee program always create the problem of “lag time.” That is, it could delay the conservation of land or increase the cost. Fees also work better when the fee is mandatory rather than voluntary. The City of Redmond supports this recommendation. The City considered the issue of fee-in-lieu in the past for its TDR program and has consistently favored a market-driven approach instead. Just like other property markets, the TDR market rises and falls. Offering a fee-in-lieu option signals to TDR purchasers that they can bypass a challenging market. The City noted that it undermines TDR sellers by create an implicit price ceiling. Delays in actual conservation can also increase the cost of conservation.

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<sup>28</sup> Please see pages 7-3 to 7-17 of [Market Analysis for Regional Transfer of Development Rights in Central Puget Sound](#), dated June 13, 2008, for a more complete discussion of the consultant’s research of other programs.

<sup>29</sup> A “fee-in-lieu” allows a developer to pay a fixed fee into an account rather than buying development rights.

## CERTAINTY FOR BUYERS AND SELLERS

CTED and the Committee were tasked with addressing issues of certainty to buyers and sellers of development rights that address long-term environmental benefits and perceived inequities in land values and permitting processes.<sup>30</sup>

CTED staff conducted a series of interviews with farm and forest landowners and developers in January and February 2008 in the four central Puget Sound counties.<sup>31</sup> Landowners and developers were asked what they needed in a TDR program in order to participate – what aspects of a program would provide the certainty they need. Key results of the interviews were:

- The driver is economics for both the landowner and the developer. Landowners need an open, transparent valuation process that is realistic. The main motivation to sell will be profit rather than conservation. For developers, the TDR and permit process must be certain and cost effective enough for the project to pencil out.
- The biggest challenge is the political will for jurisdictions to take more density in receiving areas.
- It is important to put as few restraints on the process as possible to get the program started. The program can always be changed over time.
- There really are four parties to consider – seller, buyer, sending jurisdiction, and receiving jurisdiction.

The Committee heard a presentation by Committee member Judd Kirk, Port Blakely Communities, on August 14, 2008, regarding what would make TDRs work in the marketplace.<sup>32</sup>

From the view of a developer, a new project is like planning an expedition – predicting the risks and everything that will be needed to get to your destination is critical because it is difficult to go back for more supplies. The starting point is the project pro-forma and projections for the highest and best use that is allowed. Exact numbers vary with many factors, but the following example shows the main components and rough proportions.

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<sup>30</sup> RCW 43.362.020(c)

<sup>31</sup> A full summary of the interviews is in the Meeting Materials of the Policy Advisory Committee for the March 13, 2008, meeting; [Certainty for Buyers and Sellers of TDRs](#).

<sup>32</sup> The full presentation handout is in the Meeting Materials of the Policy Advisory Committee for the August 14, 2008, meeting; Presentation by Judd Kirk, Port Blakely Communities, ["TDRs that Work in the Marketplace"](#).

### SAMPLE PRO FORMA OF A PROJECT

Revenue	100%	Market studies
Land	-20%	Purchase price – usually fixed number
Development Costs	-60%	Predictions of actual costs that are variable
Mitigation		
Soft Costs – design, engineering		
Process – legal, studies		
Hard Construction Costs		
Project mgmt., overhead		
Financing costs, debt and equity		
Contingency	-10%	Insurance for uncertainty
Gross profit	10%	Prediction

Mr. Kirk’s key message was that it would not make sense for a developer to buy a TDR unless the risk-adjusted profit is projected to be the same or better than it would have been without the TDR. Ideally, the buyer would either have predictability on the assumptions or the assurance that the price changes to the extent the assumptions change. Items that trigger additional cost:

- Parking is usually the biggest cost factor in valuing new density in an urban area.
- Residential construction above a certain height (usually more than six stories) triggers significant additional code requirements.
- Mitigation triggers can either hold up the project or significantly increase cost.
- The State Environmental Policy Act (SEPA) environmental review process or other zoning thresholds can impose additional costs and delays.
- Predictability and risk – some levels of additional density or change of use can provoke neighborhood or other opposition that reduces predictability and increases risk.

## INFRASTRUCTURE FUNDING FOR RECEIVING AREAS

CTED and the Committee had a dual charge to find opportunities and address challenges to city and county participation in a regional program. They were tasked with identifying opportunities and challenges that, if resolved, would result in cities throughout the Puget Sound region participating in a TDR market.<sup>33</sup> They were also charged with identifying opportunities for cities, counties, and the state to achieve significant benefits through using TDR programs and the value in modifying criteria by which capital budget funds are allocated, including but not limited to, existing state grant programs to provide incentives for local governments to implement TDR programs.<sup>34</sup>

Conversations with cities and with the consultants who have developed a number of TDR programs indicate that a city and its citizens need to see a clear benefit to taking more density or intensity in their community. The benefit can be a direct benefit to a community from conservation of the sending area. For example, the citizens of Arlington see a direct benefit from the conservation of farm land surrounding their city. Funding for infrastructure or amenities such as parks and streetscape improvements for the receiving community would be another benefit. Citizens need to see that acceptance of increased density or intensity will improve their community. For Arlington, assistance with infrastructure costs in a receiving area will allow a receiving-area landowner to forward those savings on by providing the sending-area landowner the value necessary for them to give up their development rights.

Cascade Land Conservancy has spoken with a number of cities through its work on TDR programs around Washington State. The Conservancy drafted a paper that reports the results of those conversations as consistent with the cities' need to see some benefit of TDRs in their community.<sup>35</sup>

Many studies on the status of infrastructure funding in Washington exist. These studies are comprehensive and provide thoughtful recommendations to improve existing infrastructure funding mechanisms.<sup>36</sup> Conversations between Cascade Land Conservancy and cities in the Puget Sound region corroborate the findings of these studies. Further, Cascade Land Conservancy found that cities embrace the policies and goals outlined in Vision 2040.

Cities understand that growth is coming and they need to plan for it. However, cities are skeptical over policies that may potentially derail current development. Cities view infrastructure funding as necessary for effective planning to attract and direct the type of

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<sup>33</sup> RCW 43.362.020(2)(e)

<sup>34</sup> RCW 43.362020(2)(a)

<sup>35</sup> See [Capital Funding for Infrastructure and Other Amenities in Cities – Incentives for Participation in a Transfer of Development Rights Program](#), Cascade Land Conservancy, July 2008.

<sup>36</sup> For a summary of infrastructure studies in Washington since 1999, see CTED's 2008 report, *Meeting the Growth Management Challenge in Washington's Growing Communities*, December 2008.

development that is consistent with Vision 2040 and GMA. To further effect this type of growth, the cities need access to substantial funding. Alone, TDR programs are not viewed by cities as a strong enough incentive for stimulating economic growth. Cities agree that TDR programs are needed and can be used to encourage and steer growth to appropriately planned urban areas. In light of those statements from cities, infrastructure funding incentives for cities to participate in a TDR program is key to the success of a regional TDR program.

CTED staff prepared a matrix of state programs for the Committee to review. A panel of funding program staff was invited to the Committee's July 17, 2008, meeting to explain their programs and discuss how they might fit with TDRs.<sup>37</sup> The panel included:

Kelly Snyder, Public Works Division, CTED

Steve Carley, Water Quality Program, Centennial Clean Water Fund and Water Pollution Control, Department of Ecology

Steve Gorcester, Transportation Improvement Board

Karen Richter, Transportation Planning, Puget Sound Regional Council

Jim Fox, Washington Wildlife and Recreation Program, Recreation and Conservation Office

Some key themes that emerged from the presentations:

- The state is having a broader conversation right now about how to allocate state infrastructure funds. Committee recommendations for any state infrastructure funding need to consider any recommendations from the Office of Financial Management regarding fund allocation. The Office of Financial Management must come up with a plan by December 2008.<sup>38</sup>
- All funds are suffering from “criteria fatigue” where criteria keep getting added to their programs that result in dilution of their funds and mission.
- The need for funds substantially exceeds the amount of funding available. Some funding sources are decreasing, such as state gas tax funds for the Transportation Improvement Board.
- There are issues of customer fairness if not every city has a receiving area.

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<sup>37</sup> See Meeting Materials of the Policy Advisory Committee for the July 17, 2008, meeting: State Capital and Transportation [Funding Program Matrix](#); and the July 1, 2008, [Meeting Summary](#).

<sup>38</sup> The Washington State Office of Financial Management (OFM) was charged by the Legislature in the 2008 supplemental budget to develop an implementation plan for the allocation of state infrastructure funds. OFM must work with CTED and the Department of Ecology, Department of Health, the Transportation Improvement Board, and the Office of the State Treasurer. Among other things, the plan must promote strategic investments of state resources that are aligned with state policy goals. The plan must be based on analysis, including a comparison of state policy goals, which are primary considerations in determining project funding decisions, with the actual funding decisions, the criteria used to rank proposals, and the performance measures used to monitor the success of the program. The plan also needs to look at new and existing local and state revenue sources to address unfunded local infrastructure needs. ESHB 2765, Section 1022.

- There are challenges to adding criteria and determining competitiveness for only a portion of the state, four central Puget Sound counties and the cities and towns within them, with a statewide program.
- There are some opportunities within these programs for TDRs. TDRs may be a tool that meets some of their program and mission objectives.

Based on the presentations, staff prepared further analysis of these programs and the pros and cons of the use of their funding for TDRs as follows:

### **CTED Public Works Board**

Construction Loan Program, Pre-Construction Loan Program, and Drinking Water State Revolving Fund

Opportunities:

- Loans can be used to fund infrastructure for growth – TDRs are designed, in part, to encourage growth in urban areas.
- Could tie funding to TDRs through bonus points for projects in designated receiving areas.
- Could tie funding to broader policy goals through bonus points for adopted programs, such as TDRs, that further those goals – Puget Sound recovery, Climate Change adaptation, etc. For example, if adoption of a TDR program meets goals in the Puget Sound Partnership’s action agenda, a jurisdiction could get additional points per the existing criteria in the statute.
- Bonus points for TDRs that conserve natural resource lands could be viewed as supporting program mission goals of environmental protection through conservation of natural resource lands and support for economic development in natural resource industries.

Challenges/limitations:

- Adding more criteria to a program that is seen by some as underfunded could be perceived as further diluting the program’s mission to address critical public health and safety issues.
- The program primarily funds wastewater treatment plants. Even with added criteria, they don’t fund much past the health and safety goals because of the amount of funding available and the demand.
- Adding criteria may disadvantage certain jurisdictions unable to accommodate receiving areas and that may need health and safety improvements.
- Adding criteria may have limited impact for TDR’s depending how many points are assigned. Recently criteria were added for urban forestry and one or two points out of 100 may be added.

## **Ecology Water Quality Program**

Centennial Clean Water Fund (grants and loans) and Water Pollution Control Revolving Fund Program (loans)

Opportunities:

- Could add criteria for TDR programs where the applicant can demonstrate that redirection of development from the sending area will result in a reduction in water pollution and improved water quality protection. If TDRs can be tied to a water quality plan, such as a watershed or stormwater plan, they could further program goals.
- An applicant might be able to make the case now that they were addressing stormwater impacts under current program criteria. For example, if the Puget Sound Partnership were to identify forestland that needs to be conserved to control stormwater runoff, a project receiving TDRs from that forestland could make the claim that it was addressing stormwater issues. The applicant would need to demonstrate a direct water quality benefit.

Challenges/limitations:

- Adding more criteria to the program for TDRs could be perceived as diluting the program's mission to improve and protect the state's water quality.

## **Recreation and Conservation Office**

Washington Wildlife and Recreation Program (grants)

Opportunities:

- The policies for the Washington Wildlife and Recreation Program could be revised to allow acquisition and sale of TDRs on a revolving basis.
- Local parks and habitat acquisition programs could be revised to provide preference in the grant evaluation process and/or to lower the match requirement if the park were within a TDR receiving area, or the conservation land within a TDR sending area.
- Farmland and conservation land grant program evaluation criteria could be revised to give preference to lands within or adjacent to TDR sending areas or to recognize preservation of land through TDR in a sending area as a match to a WWRP grant.

Challenges/limitations:

- Allowing the use of WWRP funds for TDRs would require a policy change found to be consistent with the program mission and approved by the Recreation and Conservation Funding Board. Also, a legal analysis would very likely lead to the conclusion that there is no way to do this with tax-exempt bonds.

- The program is funded through legislative appropriation of federal tax-exempt bond revenues. Federal regulations prohibit benefit to private business, therefore any rights transferred through a WWRP project could not be used for private development.
- The state constitution prohibits “lending of the state’s credit,” therefore a revolving fund would have to be scrutinized to ensure it cannot be interpreted as a loan program.
- Reducing the minimum match would require a statutory change.
- Adding more criteria to a program that is highly competitive and seen by some as underfunded, could be perceived as further diluting the program’s mission and could discriminate against smaller jurisdictions, and/or those that do not have TDR programs.
- A key constituent of this program is the Washington Wildlife and Recreation Coalition that strives to keep the program focused on its core mission.

## **Washington Transportation Improvement Board**

Urban corridor program (grants)

Opportunity:

- Current Growth and Development Criteria for new or existing activity centers currently include increases in permitted employment center square footage, and increases in permitted residential density. Additional points could be given for these two criteria where they are increased as a result of using TDRs. Further increases in density and intensity of development using TDRs could support program goals of growth and development by linking transportation funding with compact development.

Challenges/limitations: Principal problems with adding any of the policy objectives described below under TDR Opportunities to TIB’s already long list of directives are, most importantly:

- TIB programs already have too many policy objectives (“criteria fatigue”), causing additions to the selection criteria to be only somewhat effective at achieving added goals.
- TIB revenue has been hard hit by skyrocketing gas prices and project costs have increased accordingly. For these reasons, the effectiveness of TIB programs is eroding and may not be a significant incentive as the number of funded projects wanes.
- TIB serves many areas of the state where TDRs may not play much of a role. Customer fairness then becomes an issue unless all jurisdictions have designated receiving areas.

## **Puget Sound Regional Council**

Distribution of federal highway and transit funds (grants)

Opportunity:

- Give consideration to jurisdictions that have TDR programs and/or for projects in designated TDR receiving areas that are also designated centers in Vision 2040.

Challenges/limitations:

- Allocation to Vision 2040 designated centers would be consistent with the program purpose to improve the transportation system consistent with regional priorities and with the Policy Framework. Consequently, adding consideration for designated centers would probably not change the current allocation of funds.

CTED staff also prepared a list of local funding ideas for the Committee to consider.<sup>39</sup>

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<sup>39</sup> See the Policy Advisory Committee meeting materials for the August 14, 2008, meeting entitled [TDR Funding Opportunities](#), and [Estimates of Revenues for Local Funding Opportunities](#) for the options presented, and a one-year forecast of what these options might generate in revenue for local governments. If these proposals were to move forward to the Legislature, the Department of Revenue would be required to do six-year forecasts.

## RECOMMENDATIONS

The Department of Community, Trade and Economic Development (CTED) is required to submit recommendations, findings, and legislative recommendation according to the following schedule:<sup>40</sup>

- By December 1, 2007, CTED shall notify the Governor and the appropriate committees of the Legislature of any recommended actions for advancing the purposes of this act.
- By December 1, 2008, CTED shall notify the Governor and the appropriate committees of the Legislature of findings and legislative recommendations to implement a regional transfer of development rights program.

In consultation with the Policy Advisory Committee, CTED determined that it did not have enough information to recommend any actions by December 1, 2007.

The Committee and CTED have developed a series of findings and recommendations for implementing a regional TDR program in central Puget Sound. Recommendations include both legislative and non-legislative actions as follows. The Committee will continue to meet through June 2009 and may have additional recommendations to further the program.

At this time, the Policy Advisory Committee supports the concept of creating a voluntary, incentive-based regional TDR program in the central Puget Sound region that is separate, but compatible, with existing local TDR programs. However, given the financial status of cities and counties, the Committee believes that the state will need to provide some financial and technical assistance incentives in order for the program to generate a sufficient number of transactions to address the conservation need. The following recommendations identify the scope and scale of the regional TDR program. The Working Principles adopted by the Committee are referenced and can be viewed on pages 12 to 13 of this report.

### **1. Participation by Cities and Counties**

The Committee discussed the merits of a mandatory versus a voluntary program. The consultants advised the Committee that they were not aware of any regional program that was not mandatory for local jurisdictions. However, counties and cities are already working to meet state and federal requirements. They felt that they should not be required to do more than they are trying to do. Counties and cities indicated that they would oppose a mandate. The consensus of the Committee was that the program should be voluntary.

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<sup>40</sup> 2SHB 1636, Section 4. This section of the bill was not codified in statute.

### **Recommendation – Participation by Cities and Counties**

The regional program should be voluntary, with incentives for counties and cities to participate meaningfully, such that their programs result in development rights being transferred.

## **2. Conservation Priorities and Sending Areas**

CTED and the Policy Advisory Committee were tasked with identifying appropriate sending areas so as to protect future growth and economic development needs of the sending areas.<sup>41</sup> Designation of sending areas also sets the conservation priority for the program.

Each of the four counties has designated sending areas in their existing programs. King and Pierce Counties have designated as sending areas rural land, and agricultural and forest land of long-term commercial significance. Snohomish County has designated agricultural land of long-term commercial significance. Kitsap County has designated rural and forest land of long-term commercial significance. Of the four counties, only Pierce County has prioritized some sending areas over the others.

Conservation of the best agricultural and forest resource lands is a high priority for the Committee. This is noted in Working Principle #3 related to sending areas.

There was a concern regarding inclusion of rural lands as a regional priority because a small number of farm and forest transfers may result in a lot of conservation in terms of acreage. Conversely, smaller rural lots may result in very little in conservation in terms of acreage and at likely a higher cost.

However, conservation of rural land is also important, especially for King County. In King County, there needs to be a benefit to small landowners because many have critical lands far from forest zones. Also, King County is focused on removing development potential from the rural area. The Legislature clearly found concern over the loss of rural land, in addition to agricultural and forest land. Also, the enabling legislation and the Committee's Working Principle #7 encourage the program to build on existing programs.

The Committee agreed that, 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.

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<sup>41</sup> RCW 43.362.020(2)(g)

## **Recommendation – Conservation Priorities and Sending Areas**

For purposes of the regional TDR program and state incentives, 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 should be developed in statute. Criteria should 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 policy on state allocation of infrastructure funds.)

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

### **3. Jurisdictional Level for Transfers of Development Rights (Receiving Areas)**

Transfers to receiving areas in rural lands were discussed by the Committee in developing the Working Principles. The Committee did not reach consensus about the potential eligibility of rural receiving areas or about requiring TDRs for expansions of the urban growth area. The Committee agreed to focus its efforts on addressing the barriers to transferring development into cities, guided by the priorities in the Puget Sound Regional Council's VISION 2040, as reflected in Working Principle #4 adopted by the Committee.

Transfers within counties to a receiving area in an unincorporated UGA are allowed under most of the county programs now. King County has accepted TDRs within its unincorporated UGA, but is pursuing receiving areas in cities because the expectation is that those UGAs will all be annexed by a city. King County has adopted a pilot program for the use of TDRs to expand the UGA. Pierce County requires the use of TDRs for any expansion of the UGA or upzone. The City of Arlington's UGA was expanded under an interlocal agreement with Snohomish County to receive TDRs. Expansion of the UGA is a complicated process that requires compliance with population allocation, land capacity, and capital facilities requirements. The Committee did not reach consensus on requiring TDRs for expansions of the urban growth area.

Consistent with Working Principle #4, the focus of the program will be on transfers from a county to a receiving area in a city. The Committee agreed to allow transfers between a county and a city in another county. But, they felt that it was important for a city to select the sending area from which it would receive development rights. Perceived benefit to a city and its citizens is key to city participation as a receiving area. This addresses, in part, CTED and the Committee's task to identify opportunities and challenges that, if resolved, would result in cities throughout the Puget Sound region participating in a TDR market.<sup>42</sup>

### **Recommendation – Jurisdictional Level for Transfers of Development Rights (Receiving Areas)**

- The incentives associated with a regional program should be limited to transfers of development rights into cities. Counties may allow transfers into the unincorporated UGA under their programs, but the transfers will not be supported by state funding under the regional program.
- Transfers should not be restricted to within a county.
- Cities should be able to choose from which sending areas outside of the UGA they will receive TDRs.
- While cities and counties will not be prevented from having internal TDR programs if they choose, state incentives will be for transfers from:
  - 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).
- Consistent with Working Principle #7 and the legislation, the Committee recommends that CTED be directed to encourage and enhance existing programs.

## **4. CTED Technical Assistance and Public Outreach**

CTED is the state's lead agency charged with providing financial and technical resources to build livable and sustainable communities. The department administers the state's GMA. Its role is to assist and enable local governments to design their own programs to fit local needs and opportunities, consistent with the GMA and with Working Principle #8. Consistent with this role, the expertise in TDR programs developed through this process is expected to result in direct CTED technical assistance and guidance materials for counties and cities to develop and implement local TDR programs. If the

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<sup>42</sup> RCW 43.362.(2)(e)

recommendations in this report are enacted, CTED would continue statewide TDR technical assistance with a focus on central Puget Sound.<sup>43</sup>

The consultant team recommended that the state create a regional clearinghouse to track the issuance of TDR certificates; track transactions; provide information on how both regional and local TDR programs work; and conduct outreach to landowners, developers, land speculators and real estate brokers with the goal of stimulating transactional activity on the part of private market players.

Based on its experience, King County indicated that issuance and tracking of TDR certificates should stay with land use decision-making authority at the counties. A significant amount of coordination occurs at the local level between the regulators and the issuers and redeemers of certificates. The only programs where certificates are issued and tracked regionally are where land use authority is regional in the New Jersey Pinelands and Lake Tahoe programs. The City of Arlington and Snohomish County agreed that this function should stay with the counties, and pointed out that the county and city have the relationship with local landowners and developers. They noted that a clearinghouse may simply add a third layer of bureaucracy as both the county and cities will have to coordinate tracking and approval of development rights created and released.

In consultation with the counties, it is clear that public outreach must be done at the local level consistent with Working Principle #6. This is best done by counties, cities and conservation districts. However, the state could provide resources and coordination for local outreach through CTED and the Conservation Commission. The City of Arlington noted that a regional program would be most efficient if coordinated with other state programs sharing the mission to protect agriculture, open space and natural resource lands of all values.

### **Recommendation - Technical Assistance**

Consistent with this role, CTED staff should:

- 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.

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<sup>43</sup> The City of Redmond also noted in a letter to the Committee that a critical role for CTED is to craft legislation that leads to a successful regional TDR program. See [meeting materials for September 22, 2008](#).

- Work with counties and cities to inform elected officials, planning commissions, and the public regarding TDR programs and how they might work for a community. Information provided should address the importance of preserving farmland and farming, and forestland and forestry, to cities and the local economy.
- Collect data from the counties to monitor transfers of development rights, and post the information on a web site. CTED should also maintain a list of willing buyers and sellers of TDRs on the web site.

### **Recommendation – Issuance and Tracking of TDR Certificates**

Issuance and tracking of TDR certificates 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 that is part of its technical assistance and program monitoring.

### **Recommendation – Public Outreach**

CTED should coordinate with the Conservation Commission and others to do public outreach at the state and local level. Most of the outreach must occur at the community level by nonprofit organizations, landowner associations, and counties, cities and conservation districts because local entities know how to market to their stakeholders and to market their local programs.

## **5. Transaction Mechanisms**

There was considerable discussion by the Committee as to how a TDR bank would be set up in relation to each of the counties, especially King County's existing bank. Pierce County's program includes a bank, but the bank has not been created and no funding has been identified to capitalize it. Should there be one regional bank, a regional bank with programs and accounts for each county, or one bank in each county?

The Committee provisionally agreed that, 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. Private transactions would be allowed and encouraged.

The role of the bank is dependent upon the source of funding for capitalization. If the bank is capitalized with state funds, then the Committee thought that the bank would control how funds were used for the acquisition and sale of development rights. However, given the current state revenue forecast, the Committee agreed that the timing for state capitalization of a bank was not right.

If the bank were to be funded by local funds from each of the counties, then each county would want to control how it was spent. They would not want a board with representation from other counties deciding how and when to buy and sell TDRs.

The Committee then decided that there needs to be a regional bank when funding becomes available from the state consistent with its previous decision and the consultant's recommendation. The structure of the bank and its functions should be discussed further should establishment of a bank become feasible. Private transactions should be allowed and encouraged, and would be the only form of transaction mechanism pending creation of a bank.

A proposal was made for a local funding source for the bank. It was proposed that jurisdictions should consider using the strategy pioneered by King County of banking development rights purchased through existing conservation funding sources. The Committee agreed that this could be considered.

A recommendation regarding the use of a fee in lieu was deferred for consideration with a future recommendation regarding creation of a bank. However, a proposal to encourage the use of a "pre-purchase of development rights" was also made. In addition to a simultaneous purchase and sale of TDR's, a governmental agency could facilitate transactions where there is a delay in either the purchase or sale side of the transaction. Much like a facilitator for tax free (section 1031) exchanges or a bank, it could acquire and hold TDR's for later sale to receiving sites. Similarly, it could issue and sell TDR certificates to a receiving site that needs but can't find qualifying TDR's, on the understanding that it will hold and use the proceeds to purchase qualifying TDR's. At any point in time, it could be holding a mix of TDRs it acquired and is seeking to sell and/or proceeds that represent the pre-purchase of TDR's from qualified sites not yet ready to sell. It would not be dependent upon creation of a bank or state legislation, just a governmental agency willing to do what is indicated for transactions. Thus, it would not require legislation but could be encouraged in CTED technical assistance. The Committee agreed that this could be encouraged by CTED

### **Recommendation – Transaction Mechanisms**

- Emphasis should be placed on encouraging and facilitating a private TDR market place. In order to ensure a fluid marketplace and make the best use of existing public conservation funds, local banks and/or a regional bank should be considered.
- A regional bank should be considered when state funding becomes available; the specific design and framework for a regional bank needs further consideration.
- Consideration of allowing a fee-in-lieu should be deferred for consideration in conjunction with the creation of a TDR bank when funding becomes available.

- Jurisdictions should consider using the strategy pioneered by King County of banking development rights purchased through existing conservation funding sources.
- Use of a pre-purchase of development rights should be encouraged by CTED in technical assistance to counties and cities.

## 6. Allocation Ratio

Given the disparity between sending and receiving values in the study, the consultants recommended that TDRs be broken into fractional TDRs that function as a currency to transfer development rights from sending to receiving areas.

The Committee agreed that an allocation ratio for TDRs based on fractional TDRs in receiving areas should be established between individual jurisdictions. Because values vary across both sending and receiving areas, the allocation ratio needs to be negotiated between the sending and receiving jurisdictions.

Typical TDR programs allow additional residential units with the purchase of a development right. However, the development right for sale can be converted into another type of commodity in the receiving area. For example, a TDR created by extinguishing the right to build a residential unit in the sending area could be converted into the right to build additional commercial floor area or additional building height in the receiving area.<sup>44</sup> The City of Issaquah allows the use of TDRs for additional residential density, peak hour trips, impervious surface, building height, and floor area. The City of Redmond allows the use of TDRs for additional floor area, to meet requirements for parks, impervious surface, building height, and parking. The City has decided not to require TDRs for additional residential floor for new housing because it would not help the Redmond achieve its housing goals.

The Committee agreed not to limit the allocation ratio to residential density in a receiving area. They agreed to allow translation to additional floor area ratio, additional building height, parking, carbon offsets, and other conversion commodities.

### Recommendation – Allocation Ratio

- 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.
- Developers of larger projects should be able to participate in the negotiation of 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.
- The allocation ratio should not be limited to residential density in the receiving area. Translation to additional commercial floor area, building height, more or less parking, carbon offsets, etc. should be allowed.

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<sup>44</sup> See [Market Analysis for TDR in Central Puget Sound, June 13, 2008](#), pages 2-51 to 2-61 regarding a discussion of "conversion commodities".

## 7. Incentives for Cities and Counties

CTED and the Committee have been consistently advised that the biggest challenge to establishing a TDR program is designation of receiving areas. Cities are not willing to take more density or intensity unless their citizens can see some benefit to the community. Citizens either need to see a direct connection to the land being conserved or some benefit to the community for taking additional development.

The Committee agreed that incentives should be provided to cities who agreed to be receiving areas for TDRs under the regional program. However, it is also important that cities understand the reason for the program. They need to understand the connection to land that will be conserved and what they are being asked to do.

There was broad consensus that funding for infrastructure and amenities needs to be provided to cities. However, the Committee also recognized that constraints on the state budget may limit the state's ability to provide incentives at this time. The Committee agreed to a number of incentives, many of which could be phased in over time as state funding becomes available.

The Committee focused on a tiered approach that it felt would recognize immediate opportunities and opportunities that may arise in the future.

### **Recommendation – Incentives for Cities and Counties**

The state and counties should consider creating incentives for cities, as receiving sites are a critical barrier to a TDR marketplace. While many factors will need to be in place, including a strong nexus between receiving and sending areas, the following incentives should be considered, to help encourage cities to participate.

**Tier 1** – Funding and technical assistance from CTED for counties and cities 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 areas. TDR programs need to support and implement Vision 2040. First steps for CTED would include:

- Economic resources to local jurisdictions, primarily to cities, to develop TDR programs (general fund).
- Model ordinances or guidance that can be tailored for local needs (general fund).
- Funding for 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 the Planning and Environmental Review Fund (PERF)<sup>45</sup> that could be repaid by a city with charge-back fees from developers.

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<sup>45</sup> The PERF was established as a CTED grant program in RCW 36.70A.490 and 500 in 1995. The fund was established as the result of recommendations from the Regulatory Reform Task Force. PERF funding

The PERF statute would need to be amended from a grant to a revolving loan program. Cities would need legislative authority to charge a fee for environmental review already completed. (This is a longer term recommendation based on when state general funds would become available.)

**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 must 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 supports this approach.
- Percent of sale of TDR credits paid to a city. If a county wishes to encourage a city to accept TDRs from its potential sending areas, it could establish an incentive award (for example 10 percent or 20 percent as the sending jurisdiction chooses) that would be granted to a city upon purchase of TDR credits (whether from the regional TDR bank or from a private transaction) 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 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.

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was provided for up front environmental review of plan policies and development regulations to ensure more certainty of environmental review at the project level. \$3 million was appropriated for the 1995-1997 biennium to fund a number of projects were funded. Funding has not been appropriated to PERF since then. For more information about the benefits of up front environmental review, please see the study commissioned by CTED, [\*SEPA and the Promise of the GMA: Reducing the Cost of Development\*](#), 2003.

- Retention of state real estate excise tax (REET) revenues from TDR sales. The state REET on TDR sales should be directed toward infrastructure in the receiving area where the credits are to be used. 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 by the city for infrastructure investment in the receiving areas. The city would be required to allocate these funds to receiving area infrastructure uses according to guidelines for use of the public works trust for sanitary sewer, domestic water, bridges, storm sewer and solid waste or recycling. This would require legislation.
- Retention of state sales tax on construction. The state should provide revenues generated by improvements in the receiving area (state sales tax on new construction in the receiving area) to the receiving city for enhanced infrastructure that benefits the receiving area. Tax-shift revenues would be targeted to the receiving areas, rather than to the general fund of the governing jurisdiction. As with the state REET, the funds would be placed in a separate account for infrastructure in the receiving areas. This creates focused local benefit, as discussed. This would require legislation.

**Tier 3** – A suite of incentives for local jurisdictions that meet TDR performance standards. The Committee recommends that TDRs be considered in eligibility or scoring requirements in conjunction with any of the following ideas if they result in recommendations that are proposed to the legislature. If any of these ideas go forward, additional state grant funding criteria points should be awarded to infrastructure projects that are located in or serve PSRC Vision 2040 regional growth centers that accept TDR from outside city limits. Additional points should be considered regarding allocation of federal funds upon establishment of a TDR program and requests from receiving cities for priority.

- 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.
- Housing Everyone Financing Tool (HEFT) - consider allowing use of TDR to count towards local matching requirements.
- Methods for prioritizing TDR-receiving cities for transit services, such as within the METRO or Sound Transit Operating System.
- 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.
- State infrastructure funding that is aligned 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.

- Additional points should be awarded for access to state infrastructure dollars to PSRC Vision 2040 regional growth centers that accept TDR from *outside* city limits. Additional points should be considered regarding allocation of federal funds for TDRs by PSRC upon establishment of a TDR program and requests from receiving cities for priority.

## **8. Alternative to Interlocal Agreement**

Another incentive that can be provided to cities and counties to participate in the regional program is to make participation as simple as possible. An alternative to entering an interlocal agreement to facilitate participation in the regional program was presented by CTED staff. The Committee supported and counties and cities expressed an interest in providing counties and cities an alternative to the process of entering into interlocal agreements. In consultation with staff at the Municipal Research and Services Center and CTED's assistant attorney general, CTED staff developed a proposal for adopting a rule containing interlocal "terms and conditions" that a local government could adopt by reference. The Committee agreed that this was a good alternative and was consistent with Working Principle #8.

### **Recommendation – Alternative to Interlocal Agreement**

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. Statutory authority would be provided 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. 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 adopts by reference 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 TDR policies and ordinances.

## **9. Incentives for Developers**

The key factor for developers is cost. A developer will calculate what the revenue and cost impacts are of a TDR and decide what can be paid based on a set of assumptions. It would not make sense to buy a TDR unless the risk-adjusted profit is expected to be the same or better than it would have been without the TDR. Ideally, the buyer would either have predictability on the assumptions, or assurance that the price changes to the extent the assumptions change. The value of more density, or other conversion commodities, equals the increased revenue minus the increased costs.

The Committee discussed a variety of strategies to reduce cost for the developer through streamlined permitting and environmental review, including:

- A “by right” permit process for TDRs – projects that include TDRs consistent with development regulations would be administrative rather than discretionary to provide certainty to a developer. The developer needs some guarantee that the project will be approved before they take the risk of buying TDRs. For example, the use of a TDR could be permitted outright versus as a conditional use or some other use that requires more process. Additional design standards can be developed to address the increased density. While they may seem burdensome, at least developers will know the rules. If those rules are followed, developers should know that their projects will be approved in a reasonable amount of time and with costs that can be estimated at the start of project development.<sup>46</sup> This would be consistent with Working Principle #2.
- Relief from the environmental review process under the State Environmental Policy Act (SEPA), including:
  - Categorical exemptions for projects using TDRs, provided that adequate environmental review had been conducted in a comprehensive or subarea plan for the receiving area.
  - Adoption of a planned action<sup>47</sup> for the receiving area that includes analysis of the impacts of projects using TDRs and provides for mitigation of those impacts. TDR projects found consistent with the planned action would not have to undergo environmental review and would not be subject to appeal under SEPA.
- Funding to cities for environmental review of receiving areas from the PERF fund. PERF would be amended from a grant program to a revolving loan fund. Cities would be authorized to charge developers using TDRs in a receiving area for environmental review already conducted by the city using PERF funds. The city could use the developer fee to repay the PERF loan.

The Committee recognized that it would not be appropriate to impose specific permitting requirements for TDRs on local government in legislation. However, they could be encouraged in the intent language of proposed legislation, and CTED could be directed to encourage them through technical assistance. This would be consistent with Working Principle #8.

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<sup>46</sup> See [Beyond Givings and Takings](#) by Rick Pruetz, Arje Press, 2003, page 154, regarding review of receiving site projects.

<sup>47</sup> Planned actions are authorized by SEPA under RCW 43.21C.031(2). Planned actions adopted by a county or city have undergone significant environmental review. Projects designated a planned action are not subject to environmental review or appeals at the project level because all environmental impacts have been addressed and mitigation identified.

There was not consensus to explore categorical exemptions from SEPA at this time. There was consensus to encourage up-front environmental review in receiving areas, including planned actions that address the use of TDRs, through funding from PERF. The Committee recognized that other committees were also looking at this idea and hoped that they could support parallel recommendations from these other committees.<sup>48</sup>

### **Recommendation – Incentives for Developers**

- Include intent language in proposed legislation for the regional TDR program that encourages the use of streamlined permitting such as “by right” for projects using TDRs.
- Include language in the proposed legislation that directs CTED to provide technical assistance for streamlined TDR permit review.
- Revise the PERF statute to authorize its operation as a revolving loan fund for use by cities to conduct environmental review in receiving areas. Environmental review using PERF would include base zoning and build out that includes the use of TDRs.
- Authorize cities to charge developers for the cost of environmental review already completed in a receiving area. The “charge-back” fee can be used to repay the PERF loan.

## **10. TDRs and Downzones**

Downzones in sending areas adopted in conjunction with a TDR program have raised concern and opposition from sending area landowners. In receiving areas, developers are also concerned about downzones coupled with a requirement for TDRs to build at a higher density or intensity. The Committee agreed that downzones in sending or receiving areas that are used to create a TDR market, with transferable development rights, should be discouraged.

### **Recommendation – TDRs and Downzones**

- The intent language in proposed legislation for the regional TDR program should discourage downzones in sending and receiving areas that are solely used to create a TDR market with transferable development rights.

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<sup>48</sup> The Climate Action Team (CAT) was created by Governor Gregoire’s Executive Order 07-02. Led by the Directors of CTED and the Department of Ecology, the CAT is charged with developing policies and strategies to meet adopted economic and emission reduction goals, and to determine specific steps to prepare for the impact of global warming. Enacted in 2008, Senate Bill 6580 (partly codified in RCW 36.70A.580) directs CTED to convene a Land Use and Climate Change Committee to recommend any changes to the Growth Management Act and other relevant statutes that would enable state and local governments to address climate change issues and the need to reduce dependence on foreign oil through land use and transportation planning processes. Both the Climate Action Team’s SEPA Work Group and the Land Use and Climate Change committee are looking at funding from PERF for up-front environmental review similar to what the Committee is recommending.

- CTED should be directed to discourage through its technical assistance program downzones in sending and receiving areas that are solely used to create a TDR market with transferable development rights.

## **11. Performance measures**

The Committee agreed that it will be important to establish measures to monitor the performance of the regional TDR program. If legislation is introduced to establish a regional TDR program, the Legislature and the Governor will want to know what results they should expect before investing in the program. The counties could report to CTED biannually on these measures. CTED would compile the data and report to the Governor and Legislature. The data would be posted on CTED's web site.

### **Recommendation 11 – Performance Measures**

Quantitative and qualitative performance measures should be established for the regional TDR program. Reporting on performance measures should inform the state, the counties and the cities as to how successful the program is in conserving land, in creating compact communities, and in increasing opportunities for affordable housing and economic development in receiving areas.

The counties and cities should be required to report biannually to CTED on the following. CTED should compile the data for a biannual report to the Legislature and the Governor. After two biannual cycles of measuring performance of the regional TDR program, CTED should form a Policy Advisory Committee to assist in evaluating whether the basic parameters of the voluntary, incentive-based program are generating a sufficient number of transactions to address the conservation need. And if not, then address what changes should be made to enhance the program and whether there is a feasible alternative or supplemental approach that would better meet the need.

1. The number of counties and cities participating in the program.
2. The number of TDRs transferred annually under the program, by county, including:
  - The number of transactions using different types of mechanisms. For example, how many private transactions occurred versus how many were acquisitions and sales by a bank.
  - The number of transactions using different processes (negotiated interlocal agreement between a city and a county, or adoption by reference of CTED's "terms and conditions" rule.
3. The number of acres of rural, agricultural and forest land under conservation easement under the program, by county.

4. Annual amount of conversion of rural, farm, forest land before and after the regional program. This would include the amount of remaining development rights on the regional TDR conservation priority lands:
  - 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).
  
5. Using TDRs in receiving areas – the baseline would be TDRs used to build before the regional TDR program, against which would be measured the annual number of new residential units built with TDR after the regional program. This information would not be used to judge local programs, but to manage for the unanticipated consequences of the program. For example, the regional TDR program as a whole must generate enough urban residential units to offset the number of development rights extinguished in rural and natural resource lands. If fewer units are generated than extinguished after four years of transfers, the regional program would evaluate the system, incentives, etc
  - Number of new residential units – the measure would start with a baseline of units built prior to the program.
  - Number of residential units created in receiving areas in relation to number of residential units development rights extinguished in sending areas, by county.
  - Amount of additional commercial floor area.
  - Amount of additional building height.
  - Number of required parking spaces reduced.
  - Number of additional parking spaces allowed.
  - Amount of additional impervious surface allowed.
  - Amounts of any other “conversion commodities” allowed using TDRs.
  
6. The reduction in carbon footprint of the development happening in the receiving area.
  
7. Qualitative evaluation of the program based on surveys of the cities and counties regarding their experience with the program:
  - Describe your experience in establishing a regional TDR program: How much did establishing a Program and receiving area cost your jurisdiction?

What has worked well? What has not worked well? What changes, if any, will be made to the local program?

- As a city, what difficulties, if any, did you encounter in identifying receiving areas in your community? How did residents in these areas respond to projects that used TDRs?
- What has been the experience of the development community in using TDRs? If few or no developers have taken advantage of this program, what concerns have been raised? Do you have suggestions for solutions to these concerns?
- How has the regional TDR bank worked? What has worked well and what will you recommend be changed?
- What suggestions do you have for others contemplating establishment of a local or regional program?

## APPENDICES

## APPENDIX A

### CHAPTER 43.362 RCW

#### Chapter 43.362 RCW Regional transfer of development rights program [Chapter Listing](#)

#### RCW Sections

[43.362.005](#) Findings.

[43.362.010](#) Definitions.

[43.362.020](#) Regional transfer of development rights program.

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#### 43.362.005

##### **Findings.**

The legislature finds that current concern over the rapid and increasing loss of rural, agricultural, and forested land has led to the exploration of creative approaches to preserving these important lands. The legislature finds also that the creation of a regional transfer of development rights marketplace will assist in slowing the conversion of these lands.

The legislature further finds that transferring development rights is a market-based technique that encourages the voluntary transfer of growth from places where a community would like to see less development, referred to as sending areas, to places where a community would like to see more development, referred to as receiving areas. Under this technique, permanent deed restrictions are placed on the sending area properties to ensure that the land will be used only for approved activities such as farming, forest management, conservation, or passive recreation. Also under this technique, the costs of purchasing the recorded development restrictions are borne by the developers who receive the building credit or bonus.

Accordingly, the legislature has determined that it is good public policy to build upon existing transfer of development rights programs, pilot projects, and private initiatives that foster effective use of transferred development rights through the creation of a market-based program that focuses on the central Puget Sound region.

[2007 c 482 § 1.]

### **43.362.010**

#### **Definitions.**

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Department" means the department of community, trade, and economic development.
- (2) "Nongovernmental entities" includes nonprofit or membership organizations with experience or expertise in transferring development rights.
- (3) "Transfer of development rights" includes methods for protecting land from development by voluntarily removing the development rights from a sending area and transferring them to a receiving area for the purpose of increasing development density in the receiving area.  
[2007 c 482 § 2.]

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### **43.362.020**

#### **Regional transfer of development rights program.**

Subject to the availability of amounts appropriated for this specific purpose, the department shall fund a process to develop a regional transfer of development rights program that comports with chapter 36.70A RCW that:

(1) Encourages King, Kitsap, Pierce, and Snohomish counties, and the cities within these counties, to participate in the development and implementation of regional frameworks and mechanisms that make transfer of development rights programs viable and successful. The department shall encourage and embrace the efforts in any of these counties or cities to develop local transfer of development rights programs. In fulfilling the requirements of this chapter, the department shall work with the Puget Sound regional council and its growth management policy board to develop a process that satisfies the requirements of this chapter. In the development of a process to create a regional transfer of development rights program, the Puget Sound regional council and its growth management policy board shall develop policies to discourage, or prohibit if necessary, the transfer of development rights from a sending area that would negatively impact the future economic viability of the sending area. The department shall also work with an advisory committee to develop a regional transfer of development rights marketplace that includes, but is not limited to, supporting strategies for financing infrastructure and conservation. The department shall establish an advisory committee of nine stakeholders with representatives of the following interests:

(a) 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;

(b) Two representatives from real estate and development;

(c) One representative with a county government perspective;

(d) Two representatives from cities of different sizes and geographic areas within the four-county region; and

(e) Two representatives of the agricultural industry; and

(2) Allows the department to utilize recommendations of the interested local governments, nongovernmental entities, and the Puget Sound regional council to develop recommendations and strategies for a regional transfer of development rights marketplace with supporting strategies for financing infrastructure and conservation that represents the consensus of the governmental and nongovernmental parties engaged in the process. However, if agreement between the parties cannot be reached, the department shall make recommendations to the legislature that seek to balance the needs and interests of the interested governmental and nongovernmental parties. The department may contract for expertise to accomplish any of the following tasks. Recommendations developed under this subsection must:

(a) Identify opportunities for cities, counties, and the state to achieve significant benefits through using transfer of development rights programs and the value in modifying criteria by which capital budget funds are allocated, including but not limited to, existing state grant programs to provide incentives for local governments to implement transfer of development rights programs;

(b) Address challenges to the creation of an efficient and transparent transfer of development rights market, including the creation of a transfer of development rights bank, brokerage, or direct buyer-seller exchange;

(c) Address issues of certainty to buyers and sellers of development rights that address long-term environmental benefits and perceived inequities in land values and permitting processes;

(d) Address the means for assuring that appropriate values are recognized and updated, as well as specifically addressing the need to maintain the quality of life in receiving neighborhoods and the protection of environmental values over time;

(e) Identify opportunities and challenges that, if resolved, would result in cities throughout the Puget Sound region participating in a transfer of development rights market;

(f) Compare the uses of a regional transfer of development rights program to other existing land conservation strategies to protect rural and resource lands and implement the growth management act; and

(g) Identify appropriate sending areas so as to protect future growth and economic development needs of the sending areas.

[2007 c 482 § 3.]

## APPENDIX B

### Regional TDR Technical Advisory Committee

Jeff Churchill, City of Redmond  
Andrea Spencer, City of Bremerton  
David Swindale, City of Puyallup  
Tom Utterback, City of Puyallup  
Allan Giffen, City of Everett  
Dennis Meier, City of Seattle  
Rose Feliciano, City of Seattle  
Kamuron Gurol, City of Sammamish  
Peter Huffman, City of Tacoma  
Elliott Barnett, City of Tacoma  
Corbitt Loch, City of Snohomish  
Bill Blake, City of Arlington  
Debra Kirac, City of Issaquah  
Libby Hudson, City of Bainbridge Island  
Debi Bent, City of Kenmore  
Carl Smith, City of Fife  
Joe Tovar, City of Shoreline  
Dave Williams, Association of Washington Cities

Darren Greve, King County  
Mark Beardslee, Snohomish County  
Tom Niemann, Snohomish County  
Brynn Brady, Pierce County  
Scott Diener, Kitsap County  
Eric Johnson, Washington State Association of Counties

Ivan Miller, Puget Sound Regional Council

Rick Dunning, Washington Farm and Forestry Association  
Dan Wood, Washington State Farm Bureau  
John Stuhlmiller, Washington State Farm Bureau  
Bill Knudsen, Knudsen Farms  
Mary Heinrich, Washington Agricultural Institute  
Mark Rundlett, Western Washington Agricultural Association

Bryan Wahl, Washington REALTORS  
Bill Clarke, Washington REALTORS  
Jeanette McKague, Washington REALTORS

Sam Anderson, Master Builders of King and Snohomish County

Tiffany Speir, Master Builders of Pierce County  
Peter Orser, Quadrant Homes  
Pete Lymberis, Quadrant Homes  
Jay Allen, Allen LLC  
Brian McCabe, Investco  
Bruce Lorig, Lorig  
Gary Young, Polygon Homes  
Mark Mauren

Carla Okigwe, Housing Consortium  
Kelly Mann, Urban Land Institute

Brad Collins, Perteet  
Mike McCormick

Heath Packard, Audubon Washington  
Jeremy Eckert, Cascade Land Conservancy  
Tim Trohimovich, Futurewise

Karena Houser, Washington State Department of Transportation  
Elizabeth Robbins, Washington State Department of Transportation  
Kammie Bunes, Washington Recreation and Conservation Office  
Jennifer Hayes, Washington State Department of Fish and Wildlife  
Craig Partridge, Washington State Department of Natural Resources  
Mark Clark, Washington State Conservation Commission  
Ron Shultz, Washington State Conservation Commission  
Tom Clingman, Washington State Department of Ecology  
Lee Faulconer, Washington State Department of Agriculture  
Bill Cole, Washington State Department of Community, Trade and Economic  
Development, Public Works Board  
Nick Demerice, Washington State Department of Community, Trade and Economic  
Development, International Trade and Economic Development Division, Community and  
Financial Assistance  
Lisa Vatske, Washington State Department of Community, Trade and Economic  
Development, Housing Division, Housing Trust Fund