

What is TDR?

Transfer of development rights (TDR) is a market-based tool for helping implement a jurisdiction’s growth and conservation policies. TDR uses the “economic engine” of new growth to conserve lands with public benefits, such as working resource lands (farms and forests), ecologically significant areas, or open space.

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 site areas receive compensation for giving up their right to develop, while developers in receiving sites pay for the right to develop at greater densities/intensities than would otherwise be allowed by zoning. 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).

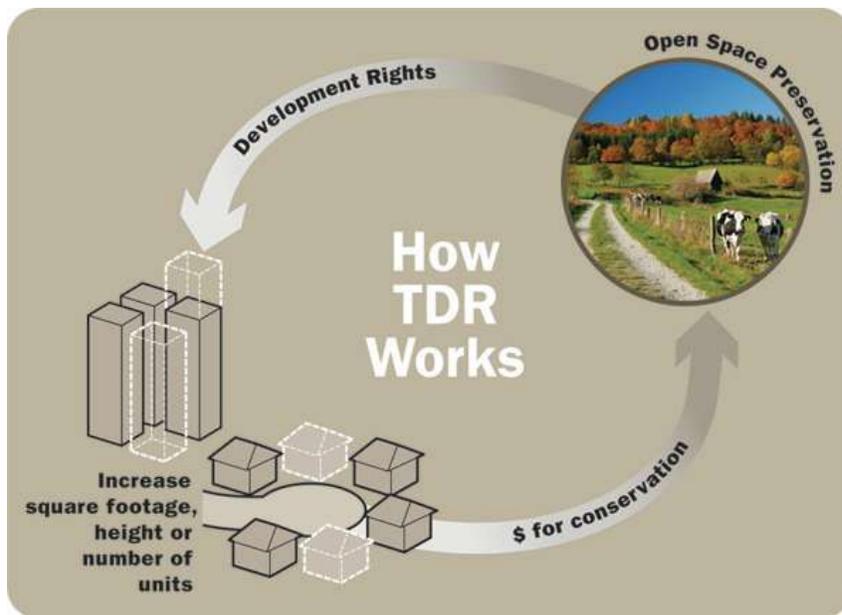


Figure 1: How TDR works¹

¹ Image credit: King County TDR website, accessed 8/21/12

TDR does not limit growth; rather, it allows communities to plan more effectively by directing that growth into areas most appropriate for it. In their comprehensive plans and development regulations, communities can identify which areas are suitable to receive development rights and how much additional development is appropriate.

Three key features of TDR programs include:

- ***TDR is voluntary.*** If landowners in sending areas choose not to participate, they are entitled to develop as permitted by current zoning. Likewise, in receiving areas, developers not participating in TDR are allowed to build to current zoning. Developers wishing to build above current zoning may do so by purchasing TDR credits.
- ***TDR is market-based.*** TDR creates a marketplace that allows property owners to buy and sell development rights to one another. Individual property owners may freely negotiate prices for the purchase and sale of these rights. Growth thus pays to conserve resource lands and open space.
- ***TDR is flexible.*** TDR can be designed to accommodate the needs of each community. Of the more than 200 TDR programs in the United States, the majority are oriented toward farmland and environmental conservation.² The goals of each program reflect the conservation and development objectives of the jurisdiction.

² Forterra national TDR program database, updated July 2012

How Does TDR Work?

Once a TDR program is in place, the process for completing a transaction may involve two main players—a landowner and a developer. Conceptually, a TDR deal between these two takes the following steps, which are also illustrated in Figure 2 below.

1. A property owner voluntarily decides to sell development rights from a parcel. The number of development rights for sale, or the number of units the landowner has a right to build (but has not executed) under zoning can be considered in terms of TDR credits. For this example, zoning would allow the landowner to build one house on the parcel.
2. A developer decides to pursue a project requiring one TDR credit. The developer contacts the landowner to negotiate a price for the TDR credit available for sale.
3. The landowner and developer negotiate. The transaction moves forward if both parties agree on a price.
4. The landowner places a conservation easement on the property and the county grants the landowner a certificate representing the development right.
5. The landowner and developer close the sale.
6. The developer turns the certificate in to the county and is able to move forward with the receiving site project.
7. A government agency, nonprofit organization, or quasi-governmental organization, such as a conservation district, occasionally monitors the sending site to ensure no homes have been built on the sending site.

A notable aspect of the TDR process is the flexibility available to landowners and developers in whether and how they participate in the program. Because TDR is voluntary, property owners can choose to sell all, some, or none of their development rights now or anytime in the future. Sellers choosing to sell their development rights can likewise choose to sell them in a one-time deal or over a series of individual deals. Similarly, a developer choosing to purchase development rights can buy a single TDR credit from one seller or multiple credits from one or more sellers. Negotiations between a seller and developer determine whether the transaction takes place—without a favorable, agreed upon price, either party can choose not to participate in a deal.

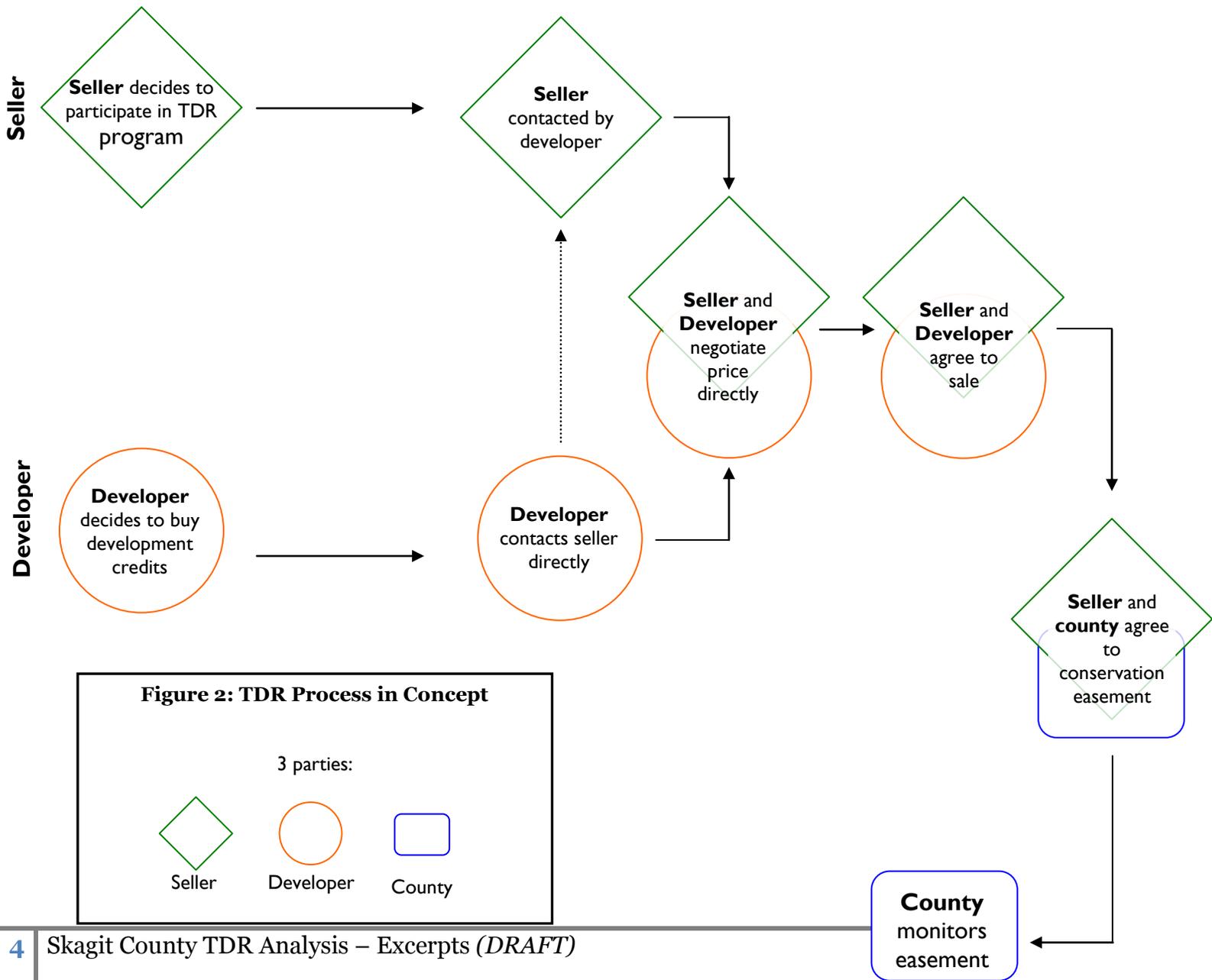


Figure 2: TDR Process in Concept

3 parties:

Seller Developer County

Does TDR Work?

A commonly asked question is: does TDR work? The answer is it depends; TDR has worked well in some communities and has been ineffective in others. TDR works when it is well planned in the context of a community's land use policies and goals. A survey of programs across the country shows that, generally speaking, TDR has been quite successful; the top 25 programs have helped to conserve more than 450,000 acres.³ Programs in Washington alone have protected over 146,000 acres of rural, farm and forest land.

From the West Coast to the East Coast, in both rural and urban areas, well planned and implemented TDR programs have helped local and regional jurisdictions accomplish a variety of land use goals. Reflecting the flexibility of the tool, the top 25 programs focus on a range of issues, from conserving farmland to protecting historic buildings. Twenty of the top 25 programs include an agricultural conservation component. Examples of successful programs in different regions of the country include the following: ⁴

- ***New Jersey Pinelands, New Jersey*** conserves specialty agriculture and environmentally sensitive land in a one million acre area by encouraging property owners to transfer development rights to growth centers.
- ***Calvert County, Maryland*** conserves farmland while providing flexibility for development in rural areas by allowing for additional development in rural communities, residential districts, and in town centers with the purchase of TDR credits.
- ***Boulder County, Colorado*** uses TDR in conjunction with an open space sales tax and purchase of development rights program to conserve land. The program has voluntary agreements with nearby cities to transfer development rights from rural to urban areas.
- ***Redmond, Washington*** offers developers increased height, the elimination of a requirement to provide open space, and increased surface-cover allowances when they purchase development rights from farmlands and critical habitat areas.⁵
- ***Kittitas County, Washington*** conserves rural farm and forest lands while providing additional density for developers within the Urban Growth Area, Planned Unit Developments, and Rural Rezones.⁶

³ Top programs refers to number of acres conserved, Forterra national TDR program database, updated July 2012

⁴ Unless noted otherwise, examples from: Pruetz, Rick. 2003. *Beyond Takings and Givings*. Marina Del Rey, California: Arje Press.

⁵ City of Redmond. Department of Planning and Community Development. "[Comprehensive Planning: Transfer of Development Rights Frequently Asked Questions](http://www.redmond.gov/cms/One.aspx?portalId=169&pageId=3372)", accessed August 2012: <http://www.redmond.gov/cms/One.aspx?portalId=169&pageId=3372>

⁶ Kittitas County Code. Title 17 Zoning.

- **Pierce County, Washington** designates resource areas or rural farms as eligible to participate in TDR, as long as preservation results in the protection of farm land, forest land, public trails, or the habitat of endangered species. Increased density is provided within incorporated cities (contingent on details of interlocal agreements), sites where amendments to the Comprehensive Plan have been granted resulting in increased density, and Planned Unit Developments.
- **Collier County, Florida** protects and conserves large connected wetland systems and significant areas of habitat for listed species by allowing development rights to be transferred to more suitable lands such as Rural Fringe Mixed Use Districts and Non-Rural Fringe Mixed Use Districts. Receiving Lands are allowed increased density of dwelling units per acre.⁷

⁷ Collier County. Comprehensive Planning Section. "TDR Program – Rural Mixed Use Fringe District," accessed August 2012: <http://www.colliergov.net/Index.aspx?page=270>

Table 1: Top 25 Transfer of Development Rights Programs⁸

City or County	State	Year Began	# of Acres Conserved
King County	Washington	1993	141,400
New Jersey Pinelands	New Jersey	1980	58,005
Montgomery County	Maryland	1980	52,052
Palm Beach County	Florida	1980	31,000
Caroline County	Maryland	1989	28,264
Calvert County	Maryland	1978	24,723
Howard County	Maryland	1994	19,362
Indian River County	Florida	1985	11,914
Hillsborough Township	New Jersey	1975	10,571
Sarasota County	Florida	2004	8,199
Queen Anne County	Maryland	1987	8032
Blue Earth County	Minnesota	1970	6,160
Pitkin County	Colorado	1994	5,840
San Luis Obispo County	California	1996	5,464
Charles County	Maryland	1992	5,274
Boulder County	Colorado	1981	5,000
Payette County	Idaho	1982	4,113
Rice County	Minnesota	2004	4,074
Douglas County	Nevada	1996	4,003
Adams County	Colorado	2003	4,000
Collier County	Florida	1974	3,612
Marion County	Florida	2005	3,580
Churchill County	Nevada	2006	3,468
Town of Southampton	New York	1972	2,800
Chesterfield Township	New Jersey	1975	2,231

⁸ Forterra national TDR program database, updated July 2012

TDR in Context

When carefully designed, TDR can be an effective conservation tool. It is, however, important to measure success in the appropriate context. TDR should not be expected to achieve land conservation goals overnight or in isolation. It is a long-term conservation solution that performs best in conjunction with other tools, such as zoning or purchase of development rights (PDR), to achieve long-term land use goals. As a market-based tool, participation will fluctuate depending on prevailing market conditions. As a voluntary tool, TDR also cannot guarantee conservation of specific sites or substitute for public land acquisition programs.

With this in mind, TDR can and should be viewed as a source of additional income for private landowners interested in conserving their land. In some cases, this may translate to landowners conserving working land, such as farms and forests that they intend to own and work with or without TDR. For others, TDR may provide an alternative means of earning money from land they may otherwise have chosen to develop or sell. On the receiving side, TDR provides developers flexibility and incentives to build beyond zoning allowances. In all cases, the voluntary, private decision to utilize TDR results in not only private, but also public benefits—conserving resource lands while accommodating growth supports economic development and helps retain quality of life.

TDR and Taxation

Removing the development potential from a property may have a number of implications for property, excise, income, and inheritance taxes. Such tax considerations are important for those considering TDR as an option.

- **Property Taxes.** Removing the development potential from land effectively reduces its “highest and best use” value to its “current use” value. For those landowners not enrolled in “current use” taxation, property taxes would in most cases lessen accordingly when removing development potential.⁹
- **Excise Taxes.** The sale of development rights is considered to be a real estate transaction, and—as is the case with other types of real estate transactions in Washington—is subject to the state real estate excise tax (REET). State REET is currently 1.28% of the sale price with a local rate of 0.50% in Skagit County.¹⁰
- **Income Taxes.** Income from the sale of development rights is, in most cases, considered a capital gain for federal income tax purposes.
- **Inheritance Taxes.** Federal inheritance taxes are also based on “highest and best use” values associated with land, which typically are higher for land with development potential.¹¹ Consequently, land with its development rights removed has a lower taxable value than land with its full development potential.

The specific tax implications associated with TDR will vary on a case-by-case basis. As with all financial decisions, it is highly recommended that landowners consult a tax expert to understand the tax effects of a given transaction.

⁹ Those enrolled in “current use” taxation are already taxed at resource value levels. As assessors may be unaware of a transfer of development rights when assessing a given property, the prudent landowner will either proactively bring this fact to the assessor’s attention and/or appeal a misinformed assessment.

¹⁰ See RCW 82.45.060.

¹¹ Byers, Elizabeth and Karen Marchetti Ponte. 2005. *The Conservation Easement Handbook*. Washington, D.C. and San Francisco, CA: The Land Trust Alliance and The Trust for Public Land.

II. TDR Basics

TDR Fundamentals

While no two TDR programs are exactly alike, certain features are common to most programs. The following provides an overview of key TDR program elements.¹²

A. Goals. TDR is a flexible planning tool that can and should be customized to support the planning goals of each individual community. Clear community goals with public support are essential to a successful TDR program. Clear goals help focus the program marketplace on lands that are most important for conservation and areas where growth is desired.

B. Sending areas. A critical step in designing a TDR program is the identification and mapping of sending areas from which development rights can be sold. In determining the size and location of sending areas, a number of factors must be considered: the community's conservation goals, the number of development rights that could be transferred, the availability of receiving areas to accept the rights, the extent to which existing zoning supports land conservation, and the relative priority of conserving sites experiencing strong development pressure vs. those experiencing less development pressure.

C. Receiving areas. Designating viable receiving areas is one of the most critical and challenging aspects of TDR program development. Key factors in the designation include market demand for development, availability of infrastructure and services to support development, and community support for or opposition to increased development. While some programs establish both sending and receiving areas within a single jurisdiction, others have established cross-jurisdictional exchanges through interlocal agreements. Skagit County is considering both approaches. Receiving areas may be designated by identifying specific geographies or established by criteria. Likewise, receiving areas may be designated through an initial planning process or added through incremental designations over time.

D. Development bonuses. Within receiving areas, developers can build beyond zoning allowances or receive other benefits in exchange for purchasing development rights. While most TDR programs offer increased residential density (either single family or multi-family) as a bonus, several programs have elected to award different types of bonus, such as increased floor area (e.g. Redmond, WA), added height (e.g. Sammamish, WA), increased lot coverage (e.g. Miami-Dade County, FL), or reduced limits on impervious surfaces (e.g. Issaquah, WA). This is a sample of available options

¹² See Appendix A for a glossary of related terms.

and a more thorough examination of policy alternatives are presented later in this report.

E. Allocation and exchange rates. Two elements directly affect the price of development rights: the allocation rate (or number of development rights each sending site can potentially sell) and the exchange rate (the number of added units or other incentives available to a developer who purchases a development rights). These rates need to be calibrated to make sure there are incentives for both buyers and sellers to participate. In some jurisdictions, allocation of development rights to sending areas is based on how many units would be allowed under current zoning; other programs allocate additional development rights (e.g., 2-5 times what zoning would allow) to provide further financial incentive for landowners to participate in the program.

F. Transaction mechanisms. Many programs offer some form of public support for TDR transactions, such as providing an information clearinghouse to help link potential buyers and sellers. Other jurisdictions have created TDR banks to help facilitate private transactions and to act as the buyer or seller of last resort. In some cases, seed money has been provided to initiate a TDR bank and to make initial purchases of development rights; in such cases, the credits may be subsequently sold to developers, enabling the bank to create a revolving fund available for future TDR purchases.

G. Conservation easements. Once development rights have been sold from a sending site, those rights are relinquished and a conservation easement is placed on the property. These easements are generally held and enforced either by the city or county sponsoring the program or by a non-governmental organization such as a land trust. Responsibilities for monitoring and enforcing conservation easements over time must be clearly assigned and funded.

H. Program administration. Staffing and administrative procedures are needed for successful operation of a TDR program. These include outreach to landowners and developers, facilitation of transactions, recording of conservation easements, tracking of development rights, and coordination of TDR transactions with a jurisdiction's zoning and permitting processes. TDR programs should also be regularly evaluated and updated over time.

Limiting Factors

While many TDR programs have been enacted, not all have been successful. In considering options for Skagit County’s program, it is important to be mindful of the factors that have limited TDR program effectiveness elsewhere as well as to identify those factors that have contributed to the success of certain programs. Following are some of the most significant obstacles that appear to have limited TDR implementation.

A. *Inadequate receiving areas.* Without adequate receiving areas, there is no market demand for development rights and a TDR program cannot succeed. A robust TDR program needs to have sufficient market participants (on both the sending and receiving sides) to generate transactions and to stabilize the market for and price of development rights. While lands to be conserved can be easy to identify, many jurisdictions have found it difficult to designate viable areas to receive the development rights. Communities are often reluctant to accept additional density without assurances of adequate infrastructure and protections for neighborhood character; there is familiarity with the status quo while the changes that growth brings are unknown. The presence or lack of a consensus on appropriate locations for growth can significantly affect a jurisdiction’s ability to designate adequate receiving areas—especially where the resources to be conserved lie in one jurisdiction, and the appropriate areas for development are inside a neighboring municipality.

B. *Insufficient demand for growth.* TDR is a market-based mechanism and, as such, can succeed only if there is demand for growth. If demand does not exceed the base zoning established for receiving areas, the marketplace for development rights will be limited. While local jurisdictions do not control the market, their zoning decisions have a substantial impact on developer interest in development rights. In areas where zoning already allows development beyond what the market can support, TDR offers no value to a developer. Similarly, if rezones to higher densities can be achieved without participation in TDR, interest in TDR will be significantly undercut. Some newer programs attempt to address these issues by focusing on where and how development is occurring in both urban and rural areas. Programs are also tapping into developer demand for flexibility in development standards other than density, such as floor area ratios, impervious surfaces, and parking requirements.

C. *Lack of infrastructure and amenities to support increased density.* If the areas designated to receive development rights lack the infrastructure needed to support added growth—for example, roads, utilities, and storm water facilities—supporting TDR-driven development becomes a challenge. If significant infrastructure upgrades are needed, the cost may be prohibitive to a developer, even with the added development density enabled through TDR.

D. *Weak financial equation for buyers and/or sellers.* Neither buyers nor sellers will participate in TDR transactions unless they have a financial incentive to do so. The demand for selling and purchasing rights—and therefore their price—is

determined in large part by the allocation and exchange rate for TDR credits. If the price is too low, few landowners in sending areas will be motivated to sell development rights. If the price is too high, developers in receiving areas will have little interest in purchasing credits, since they would not create additional value for their projects.

In its simplest form, TDR follows a 1-to-1 exchange of TDR credits from a sending area to a receiving area. This ratio, however, rarely results in equivalent values for both areas, because the right to build one house in a low-density area is generally worth more than the right to build one additional unit in a higher-density area. A more sophisticated approach involves creating an exchange rate greater than 1-to-1 for development rights, so that purchasing one TDR credit would provide a developer the right to build more than one additional unit in a receiving area.

E. Lack of program leadership and transaction support. A review of TDR history reveals that adopting legislation is not enough, by itself, to ensure TDR program success. Active support is needed to foster a robust marketplace for TDR transactions. Especially at the outset of a program, support is needed to overcome the natural uncertainty that property owners may feel in considering a new and unfamiliar form of real-estate transaction, and the unease that developers may feel about a new step or option in the development permitting process. Public education, program advocacy, and transaction support are key ingredients in successful programs.

Success Factors

In reviewing the national experience with TDR to-date, three factors stand out as key elements in highly successful programs. Skagit County has an opportunity to build on other jurisdictions' experience by focusing on these elements to make TDR a more effective land management tool than it has to date.

A. Ensure Zoning Compatibility

The underlying zoning and development regulations in sending and receiving areas may be the most potent factor in the success of a TDR program. Zoning regulations can either create or undermine landowner and developer interest in the program. Property owners in sending areas are more likely to participate if a TDR sale can provide enough financial gain to offset a need or desire to develop their property under existing zoning regulations. Developers will participate if TDR incentives offer significant financial value beyond what can be achieved under baseline zoning regulations.

Some jurisdictions have launched TDR programs with a large-scale downzoning of resource lands to be conserved, using TDR as a means of compensating landowners for development restrictions and creating a strong incentive for participating in the TDR marketplace. On the receiving side, zoning that matches or exceeds market demand for development negates the profit a developer might achieve through TDR. Enforcing or reducing the base zoning in TDR receiving areas is an option to reinforce this profit incentive; however, as in sending areas, downzoning is often not feasible and may conflict with planning objectives or be unpopular among landowners as it affects property rights.

A more reasonable approach is to incorporate TDR provisions into zoning regulations. This type of approach could be applied to urban fringe situations, such as urban growth area expansions, or rural scenarios. Any rezoned area approved by the county, whether through a comprehensive plan update or through individual requests for zoning reclassification could be subject to a TDR requirement. This approach provides a process which incentivizes developer participation. The jurisdiction allows additional density, while a portion of the increased value created by the increase in development potential supports conservation goals. If, on the other hand, developers are successful in achieving rezones without TDR, this will reduce demand in the TDR marketplace.

B. Support Market Studies to Fine-Tune TDR Programs

TDR programs founded on a clear understanding of the local real-estate market are more likely to generate transactions than those without a basis in market dynamics. Without such an assessment, TDR values may not generate interest from potential buyers and sellers. Assessing the value of development rights from both a seller's and buyer's perspective is critical to the design of workable allocation and exchange rates, to

effectively calibrate the economic equation for TDR transactions, and to thereby generate an active market.

Market studies to support TDR program design must be tailored to local market conditions. Critical elements include calculating developers' willingness to pay for bonuses and estimating values of development rights. Local jurisdictions are encouraged to review mechanisms and establish protocols for updating TDR values over time.

C. Facilitate TDR Transactions

Many jurisdictions with successful TDR programs have recognized the need to help buyers and sellers connect. In some cases, these jurisdictions have created a bank to facilitate transactions. Public support for TDR transactions can take a variety of forms, depending on the types of transaction mechanisms established. Even when programs rely strictly on individual private transactions (rather than a bank) to accomplish TDR sales, the sponsoring agency can encourage participation by conducting outreach to eligible landowners and developers, by providing information for interested parties, and by providing technical support for transactions. TDR banks go further by acting as a buyer and a seller, and by helping to even out economic cycles that may favor purchases at one time and sales at another.