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Chapter 1. Executive Summary

At the direction of Board of County Commissioners, the Skagit County Planning and Development Services Department has been working with a Board-appointed TDR Advisory Committee to consider the possible implementation of a transfer of development rights (TDR) program in Skagit County.

This report seeks to provide a comprehensive overview of transfer of development rights programs and methods and TDR's potential application in Skagit County. It seeks to reflect the diverse views and opinions of Advisory Committee members and others who have participated in discussions of TDR through this project. It also reflects research and analysis conducted by Planning & Development Services staff with the help of two project consultants: Forterra and Heartland.

Overview of TDR

Transfer of development rights (TDR) is a market-based tool that can help a jurisdiction implement its growth and conservation goals. TDR uses the “economic engine” of new growth to conserve lands that provide public benefits, such as working farm and forest lands, environmentally sensitive areas and open space lands.

In a TDR program, a community identifies areas it wants to conserve, known as “sending areas,” and areas where additional development is appropriate, known as “receiving areas.” Receiving areas may include cities, urban growth areas or selected rural areas that have the infrastructure and services to meet the needs of increased growth.

Developers can gain access to additional development potential in receiving areas by purchasing development rights from willing sending-area landowners. The sending-area property is protected through a conservation easement that permanently prohibits residential development but leaves other uses of the land unaffected.

Why is Skagit County considering TDR?

The Skagit County Comprehensive Plan, the Countywide Planning Policies, and the Washington State Growth Management Act all encourage jurisdictions to consider the use of TDR. TDR is not a substitute for planning and zoning. In fact, many analysts report it works best in jurisdictions like Skagit County that have a strong planning framework in place. TDR can provide additional options to resource land owners interested in permanently conserving their land while offering incentives to developers to concentrate development in areas best suited for growth.

There has been a long-standing interest in exploring the use of TDR in Skagit County. A citizen advisory committee that assisted Skagit County with its 2005 Comprehensive Plan Update recommended increased use of incentive-based tools such as TDR to conserve natural resource lands. The Envision Skagit Citizen Committee also recommended implementation of TDR in its 2011
Final Report and Recommendations. The Board of Directors of Skagitonians to Preserve Farmland has recommended implementation of a TDR program in Skagit County by 2020.

In 2011, Skagit County submitted a grant proposal to the Washington State Department of Commerce to assist with a comprehensive review of TDR, including a detailed market analysis. That successful grant proposal was cosponsored by Skagitonians to Preserve Farmland, the Skagit/Island Counties Builders Association (SICBA), the City of Burlington and the Skagit Land Trust, all of whom have participated on the TDR Advisory Committee along with other community members.

**Will TDR work in Skagit County?**

TDR experts and researchers have documented numerous successful TDR programs around the country. While many of those programs are located in urban communities, some successful TDR programs are found in rural communities similar in size or other characteristics to Skagit County. At the same time, many communities have implemented TDR programs that have generated few if any transactions or land conservation. TDR programs can be complex to implement and require a direct linkage to development that is occurring in the community.

The state’s Office of Financial Management projects Skagit County’s population will grow by 36,000 people by 2036, with a corresponding increase in commercial and industrial development. If just 10% of the projected future population growth were linked to TDR purchases, the result could be 10,000 acres of land conservation, comparable to the Farmland Legacy Program’s impressive record of conservation since its creation in 1996.

However, 80% of the projected future population growth is expected to occur in cities, towns and their urban growth areas. Currently only the City of Burlington is considering partnering with Skagit County as a TDR receiving area. For TDR to have a more significant impact in Skagit County, additional cities would need to participate over time.

**Major objections to TDR**

In addition to supporters, TDR has its skeptics and critics on the Advisory Committee and within the broader community. Some believe there is too little demand for development and too few receiving areas for a program to be viable at this time. Others are concerned about TDR’s complexity and believe Skagit County may not be able to implement a successful program given limited staff and resources. Some note that TDR is typically linked to higher density residential development and that many higher density residential projects in Skagit communities have faced strong opposition from existing residents and city councils.

Some critics see more fundamental flaws in TDR and believe Skagit County should not implement a program now or in the future. They believe TDR interferes inappropriately in the private development market by requiring developers to pay to access additional development opportunities. Others say TDR is not needed because existing comprehensive plan and zoning protections adequately conserve rural and natural resource lands.
Some members of the agricultural community worry a TDR program will interfere with or draw political support from the county’s Farmland Legacy Program. (Farmland Legacy is a purchase of development rights or PDR program that uses public funds to purchase development rights from Ag-NRL lands). Some timber managers are uncomfortable with permanent TDR conservation easements, preferring a term-limited easement, or at least an opportunity to re-purchase development rights if timber management is no longer viable in the future.

**Conservation Goals and Sending Areas**

One of the Advisory Committee’s key tasks was to identify potential conservation goals for a TDR program. The Committee generally identified working farm and forest lands, and lands with significant open space value to the public, as high priorities. The Committee also discussed environmental conservation priorities including the floodplain, priority watersheds (including those that generate drinking water supplies) and wildlife habitat.

Out of the above, natural resource lands – specifically farm and forest lands of long-term commercial significance and rural lands supporting natural resource production – emerged as the most viable TDR sending areas at this time. These lands are clearly defined and mapped through the Skagit County Comprehensive Plan. Additionally, TDR is a particularly good mechanism for conserving resource lands because it retires a property’s residential development right without restricting other land uses such as farming and forestry.

Generally, the Committee felt that lands closest to cities, towns and their urban growth areas should have the highest priority for conservation. Close-in areas are more likely to experience development pressure than more remote areas, and receiving-area residents are more likely to support conservation of lands near where they live.

The most strongly recommended TDR sending areas are Secondary Forest-NRL, Rural Resource-NRL, and Rural Reserve lands with active agricultural or forestry uses that are in close proximity to urban growth areas or Interstate 5 and Highway 20 corridors.

Some Committee members supported Ag-NRL as a sending area, believing TDR would complement Farmland Legacy. Others disagreed, concerned that TDR might interfere with Farmland Legacy or that TDR should be used to conserve other resource lands.

Similarly, some Committee members supported designating Industrial Forest-NRL lands within a fire district as a sending area on the ground that all designated forest lands deserve TDR as an option. Others disagreed, saying there is very little development pressure in IF-NRL lands.

**Development Goals and Receiving Areas**

TDR programs function most effectively when they are closely aligned with a community’s vision as reflected in key planning documents such as the comprehensive plan. The Skagit County Countywide Planning Policies and Comprehensive Plan seek to direct 80% of new population growth to cities, towns and their urban growth areas.
Burlington, Mount Vernon and La Conner have participated on the TDR Advisory Committee but only Burlington is actively considering becoming a TDR receiving area at this time. (Burlington already offers the Agricultural Heritage Density Credit Program which allows additional development in parts of the city by developers who purchase density credits. The city provides revenues from the sale of those credits to the Farmland Legacy Program to conserve agricultural land surrounding the city.)

The Committee concluded that additional cities would need to participate in a county TDR program for it to have significant impact over time. Other receiving areas that may be worthy of attention include CaRD density bonuses, Rural Village infill or expansions, and urban growth area (UGA) expansions.

**Developer Incentives**

The Committee noted that TDR is entirely market driven and without development right purchases there will be no resulting conservation. Developers will only participate if there is market demand for the development incentives offered as well as a positive financial return. Similarly, a program must be easy to use. Uncertainty, risk and changing program policies are strong disincentives. Delays in the permitting process cost money.

Incentives offered through a TDR program must be compatible with other regulations. For instance, the potential to build additional commercial square footage with the purchase of TDR credits is worthless if it can't be used due to conflicting limits on impervious surface.

The most common developer incentive offered through TDR programs is increased units of residential density. However, the Committee encouraged exploring other incentives as well, including additional commercial square footage, industrial lot coverage, and reduced parking requirements.

**TDR Market Analysis**

The TDR market analysis conducted by Heartland focused on the following three potential receiving areas and zones: 1) The City of Burlington’s downtown business, commercial, and industrial zones; 2) The Bayview Ridge Urban Growth Area’s residential, industrial, and community center zones; and 3) Rural Upzones, or landowner-requested changes from one Rural zone another zone that provides additional development potential. Heartland also estimated the value of residential development rights from various potential sending areas and the exchange rates needed to make TDR transactions economically viable.

Heartland concluded that market conditions in the receiving areas analyzed will likely not support a robust TDR program in the near term. In the urban areas, a large amount of development capacity exists under current zoning that can be built without TDR purchases. Initial activity would likely consist of isolated project use of TDR where benefits exceed costs to individual developers. Changing county priorities at Bayview Ridge will preclude the use of TDR for residential development there.
However, Heartland identified several benefits to implementing a program in expectation of future utilization: it allows the County to be prepared to capture funds for conservation when development does occur and it allows the County time to work out details, fine-tune and expand awareness of the program before major utilization. Heartland indicated program usage would likely increase as the economy strengthens, existing development capacity is built out, and especially if additional receiving areas are created.

**Transaction Mechanisms: TDR and Density Credit**

The Committee considered several options for structuring a TDR program, including:

- **Conventional TDR (private buyer-seller):** This involves a private market transaction between a buyer and seller who directly negotiate the sales price. The program issues development certificates to the buyer and records a conservation easement on the seller’s property.

- **Density credit (or fee in lieu):** A developer purchases density credits to build to a higher density or intensity than baseline zoning allows. The program uses revenues from density credit sales to purchase development rights in priority conservation areas.

- **Combination TDR and density credit:** This approach offers both a private buyer-seller TDR option and a density credit option.

Committee members who supported the county implementing some type of TDR program generally preferred the combined approach. They felt providing more options to development-right purchasers would increase the likelihood of program use.

A density credit program requires a mechanism for purchasing development rights with revenues generated from the sale of those credits. The simplest option for Skagit County would be to provide those revenues to Farmland Legacy to assist with the conservation of agricultural lands.

However, several members who supported the combined approach encouraged the county to use density credit revenues to conserve forest and other resource lands, rather than providing the funds to Farmland Legacy to support additional Ag-NRL conservation.

**TDR and Existing Conservation Programs**

**FARMLAND LEGACY**

Many in the agricultural community have expressed concern that a TDR program focused on Ag-NRL could harm Farmland Legacy. At the same time, many TDR analysts suggest that TDR and PDR programs (like Farmland Legacy) can operate in a complementary manner. A PDR program, being publicly funded, can strategically conserve lands with high public benefits and under high development pressure. A TDR program, harnessing the private market, can be effective in conserving resource lands that extend beyond the focus of the PDR program, such as forest land and non-designated farm land.
Heartland did not find any inherent conflicts between TDR and Farmland Legacy in the market analysis. However, mindful of the concerns, Heartland suggested two potential options:

1) A TDR program could focus on lands not currently conserved by Farmland Legacy, such as Forest-NRL and Rural Resource-NRL. That would effectively establish a firewall between a TDR program and Farmland Legacy to prevent the negative interactions that some community members fear.

2) Alternatively, a TDR program could include Ag-NRL as a sending zone and not, in Heartland’s opinion, directly compete with Farmland Legacy. That’s because a market-based TDR program would naturally gravitate toward lower-value Ag-NRL land that would likely not qualify for Farmland Legacy purchases, acting as a secondary option open to Ag-NRL owners.

Some members of the Committee favored the first option while others supported the second.

CITY OF BURLINGTON

The TDR market analysis provides Burlington some options related to its Agricultural Heritage Density Credit program: 1) Maintain the program as is; 2) Consider raising fees for density credits based on the improving housing market; and 3) Implement a new density credit or TDR option linked to increases in commercial development potential in city commercial zones. The last action would involve implementing a Floor to Area Ratio (FAR) cap on commercial development permitted outright through zoning. The cap could be exceeded with the purchase of commercial density credits or TDRs.

Burlington is considering its options through its ongoing 2016 comprehensive plan and development regulations update.

Committee Recommendations

The Committee considered three major options related to Skagit County’s implementation of a TDR or density credit program. Those options are described below, as are the Committee members who favored each option:

1) **Take no action to implement TDR.** Rationale: inadequate demand for development, too few cities participating; the comprehensive plan provides adequate conservation of rural and resource lands. *(Insert Committee names here.)*

2) **Implement a density credit program.** Rationale: A TDR or density credit program will complement existing comprehensive plan policies and goals related to development and conservation. The density credit approach will be easiest for developers to use. Use may be limited at first but will likely expand over time. *(Insert Committee names here.)*

3) **Implement a combined TDR and density credit program.** Rationale: The same as Option 2; plus, offering both a TDR and density credit option may increase program use. *(Insert Committee names here.)*

*(COMMITTEE REVIEW DRAFT --SUBJECT TO REVISION)*
Those Committee members who support Skagit County implementing a TDR or density credit program recommended providing adequate administrative support to establish the program, with subsequent staffing depending on the level of program use. They indicated a website and marketing and matchmaking assistance between buyers and sellers could help the private TDR market function. Also important is attention on the conservation easement side, including monitoring of easements for compliance.

Next steps

This report seeks to provide the Board of County Commissioners with information to help it decide whether to move forward with a TDR legislative proposal. The report may also help cities and towns consider TDR options now or in the future. If the Board decides to move forward with a legislative proposal, the next steps would include: drafting proposed comprehensive plan policies and development regulations; any pre-release consultation as indicated by the Board (Planning Commission, etc.); SEPA review and analysis; public comment and hearing opportunities before the Planning Commission, and final action by the Board of County Commissioners.
Chapter 2. Introduction

At the direction of Board of County Commissioners (Board), the Skagit County Planning and Development Services Department (Department) has been working with a Board-appointed TDR Advisory Committee (Advisory Committee) to consider the possible development and implementation of a transfer of development (TDR) program in Skagit County.

As stated in Resolution No. R20120276 appointing the Advisory Committee, its role is to review and provide input on key policy and technical issues and TDR public outreach efforts, to the County planning staff and consultants, the Planning Commission, and the Skagit County Board of Commissioners. Specific tasks that the Board assigned to the Advisory Committee through the resolution are as follows:

a. Review technical work products developed by project staff and consultants
b. Provide input on draft work products
c. Share information with respective organizations and agencies
d. Bring forward interests, issues, concerns of respective agencies and organizations
e. Help to promote awareness and understanding about the TDR project, by distributing project information through email, word-of-mouth and other public outreach methods.

The Advisory Committee includes representatives of organizations and sectors that might directly participate in a Skagit County TDR program, including agriculture, forestry, conservation, development, real estate, banking, and urban planning. As appointed, the committee also included two at-large members to help represent the interests of Skagit County residents generally:¹

TDR Advisory Committee Members

<table>
<thead>
<tr>
<th>Charlie Boon, The Boon Team/REMAX</th>
<th>Margaret Fleek, City of Burlington</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mike Hulbert, Skagit County Conservation Futures Advisory Committee</td>
<td>Allen Rozema, Skagitonians to Preserve Farmland</td>
</tr>
<tr>
<td>Martha Bray, Skagit Land Trust</td>
<td>Charlie Guildner, People’s Bank</td>
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<tr>
<td>Paul Krieger, Skagit County Forest Advisory Board</td>
<td>Kendra Smith, Skagit County Farmland Legacy Program</td>
</tr>
<tr>
<td>Wayne Crider, Skagit Island Counties Builders Association</td>
<td>Jana Hanson, City of Mount Vernon</td>
</tr>
<tr>
<td>Bruce Lisser, Lisser &amp; Associates</td>
<td>Ed Stauffer, Skagit County resident</td>
</tr>
<tr>
<td>John Doyle, Town of LaConner</td>
<td>Jennifer Hagenow, Skagit County resident</td>
</tr>
<tr>
<td>Kim Mower, Dairy Farmer</td>
<td>Joe Woodmansee, Woodmansee Construction</td>
</tr>
</tbody>
</table>

¹ One of those at-large members, Jennifer Hagenow, moved out of Skagit County partway through the process.
Advisory Committee members have met more than a dozen times over nearly a two-year period to learn about and offer their thoughts and insights on transfer of development rights and its potential applicability in Skagit County. They have shared their diverse views and perspectives in a respectful manner and have contributed significant knowledge and insight to the Skagit County TDR project. The Board of County Commissioners and project staff and consultants thank them for their dedication to the project and to the Skagit community.

The following individuals have also assisted with the project as experts in the fields of GIS analysis, transfer of development rights, and real estate economics. They have provided technical assistance, analysis, policy guidance, and administrative support to the project:

- Josh Greenberg, Skagit County GIS, who has provided mapping and GIS analysis.
- Taylor Carroll and Nicholas Bratton, TDR policy experts with Forterra\(^2\), a conservation and community-building organization based in Seattle, with whom Skagit County contracted for TDR technical assistance.
- Doug Larson, Matt Hoffman, and Ian Loveless, real estate and economic analysts with Heartland, a consulting firm that Skagit County hired to conduct a TDR market analysis.
- Heather Ballash, senior planner with the Washington State Department of Commerce, which oversees the grant that has provided financial assistance to the project. Ballash is also the state’s coordinator of the four-county regional TDR program.
- Linda Christensen, grant manager with the Planning & Development Services Department.

Additionally, in early January 2014, Heartland staff and TDR project manager Kirk Johnson held three focus group meetings to seek input on the market and economic analysis from potential TDR program users. These included forest land managers, owners, and conservation professionals; farmers and farmland preservation advocates; and developers and potential receiving-area landowners. Skagit County also extends its appreciation to those participants, who are listed below.

Several members of the public attended and provided comments at various Advisory Committee meetings.

This report seeks to provide a comprehensive overview of transfer of development rights programs and methods and TDR’s potential application in Skagit County. It seeks to reflect the varied views and opinions of Advisory Committee members and others who have participated in project discussions about TDR.

The resolution appointing the Advisory Committee did not formally task it with developing consensus recommendations about implementation of TDR in Skagit County. However, this report does seek to identify areas of general agreement or disagreement within the Committee on key issues, including whether:

- Additional land conservation measures are warranted in Skagit County beyond those already contained in the county’s comprehensive plan and development regulations and offered by public and private programs in Skagit County.

\(^2\) Formerly the Cascade Land Conservancy.
• Some form of TDR program should be implemented in Skagit County.
• Adequate demand exists or can be created through public policy actions to make a TDR program effective here; and
• Various receiving and sending areas under consideration through this process should be included in a county TDR program is one is implemented.

Where information, data, or recommendations are derived from sources other than the Advisory Committee – for instance, from published reports, from the policy or technical analysis conducted by Forterra, Heartland, or other entities for this or other TDR projects – the report cites the origins of that material.

Advisory Committee members had an opportunity to comment on a draft of the report, both in writing and at Committee meeting held on [insert date]. They were also provided an opportunity to provide written comments for inclusion in the report. No/some/several members of the Committee submitted written comments which are included in Appendix C.

**FOCUS GROUP MEETING PARTICIPANTS**

**Forestry Focus Group**

Paul Kriegel, Goodyear Nelson  
Dave Chamberlain, C & G Timber  
Ken Osborn, Arbor-Pacific Forestry Services  
Al Craney, Skagit Conservation District

Keith Greenwood, Sierra Pacific  
Jim Owens, forest landowners  
Ryan Jepperson, forest landowner  
Martha Bray, Skagit Land Trust

**Development Focus Group**

Jack Wallace, Burlington Landowner  
Kendall Gentry, Landed Gentry Homes and Communities  
John Bouslog, Burlington and Bayview Ridge Landowner  
Bruce Lisser, Lisser & Associates  
Marianne Manville-Ailles, Skagit Surveyors and Engineers

Joe Woodmansee, Woodmansee Construction  
Wayne Crider, Skagit-Island Counties Builders Association  
Matt Mahaffie, Land Use Consultant  
Ed Stauffer, Rural Landowner

**Agriculture Focus Group**

Andrea Xaver, Farmer, Conservation Futures Advisory Committee (CFAC) Member  
Carolyn Kelly, Skagit Conservation District; CFAC Chair

Annie Lohman, Farmer, Skagit County Planning Commission Chair  
Bob Suttles, Northwest Real Estate Valuation
Darrin Morrison, Farmer, Board President, Skagitonians to Preserve Farmland (SPF)

Allen Rozema, Skagitonians to Preserve Farmland

Tim Rosenhan, Skagitonians to Preserve Farmland Land Protection Committee
Chapter 3. An Overview of TDR

What is Transfer of Development Rights?

Transfer of development rights (TDR) is a market-based tool for helping to implement a jurisdiction's growth and conservation goals. TDR uses the “economic engine” of new growth to conserve lands that provide public benefits, such as working farm and forest lands, ecologically significant areas, and open space. TDR also offers additional choices and options to resource and rural landowners interested in the permanent conservation of their land.

A transfer of development rights program contains several elements. A community identifies areas that it wants to conserve, known as "sending areas," which often include farms, forests, and open space lands. Second, the community identifies “receiving areas.” These are areas best suited for locating additional growth and are typically located in cities, urban growth areas, or carefully selected rural areas. Receiving areas should have the infrastructure capacity and services to meet the needs of increased growth.

By purchasing development rights from sending area landowners, developers gain access to additional development potential or other development incentives in receiving areas. Sending-site landowners who sell residential development rights place a conservation easement on their property that permanently prohibits residential development. The landowner retains ownership of the land and all other property and use rights other than those retired through the conservation easement.

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.

Some key features of TDR programs include:

- **TDR is voluntary.** Sending-area landowners would have complete discretion to participate in the program or not. Landowners choosing not to participate would experience no change in the zoning or use of their land. Likewise, in receiving areas, developers not participating in TDR could continue to build to current zoning. Developers wishing to build above current zoning could do so by purchasing TDR credits.

- **TDR respects property rights:** TDR provides another option for rural or natural resource landowners who want to permanently conserve their lands. A voluntary TDR program respects private property rights and can provide a new source of revenue for sending-area landowners.

- **TDR is market-based.** TDR creates a marketplace enabling 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. TDR taps the private development market to
support conservation at a time when many sources of public conservation funding are in decline and little appetite exists for tax increases.

- **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 focus on farmland and environmental conservation. The goals of each program reflect the conservation and development objectives of the jurisdiction. A key purpose of this review is to identify the specific goals a Skagit County TDR program could serve.

**Density Credit or Fee in Lieu: a variation on TDR**

Later on this report will explore a variation on TDR called density credit or fee in lieu. Under this approach, developers would purchase density credits to access additional development potential in designated areas. The county would use fees generated from the sale of density credits to conserve land in designated areas. Similarities and differences between TDR and density credit programs will be explored in more detail later.

**What is the rationale for TDR?**

TDR is a form of what is known as incentive zoning. Developers who access additional development potential through an incentive zoning program have the opportunity for additional financial gain. In return they provide a public benefit back to the community. When public policy or zoning decisions create additional development potential on a parcel of land, there is a corresponding increase in economic value associated with the land. Typically, all of that increase accrues to the private landowner. Under TDR, a majority of the increased land value accrues to the developer – providing an economic incentive for additional development – but a portion is retained for public benefit in the form of conservation.

**TDR CAN COMPLEMENT ZONING**

TDR can complement traditional zoning by compensating landowners who voluntarily chose to sell residential development rights and protecting property from development in perpetuity through a conservation easement. Some transfer of development rights critics suggest TDR is an alternative to comprehensive planning and zoning. Committee member Ed Stauffer states that early in the GMA 3 Forterra national TDR program database, updated July 2012. 4 That increase can be significant, as when land zoned for rural development at 1 dwelling unit per 10 acres is moved into an urban growth area with a minimum urban residential density of 4 dwelling units per acre, resulting in a 40-fold increase in development potential. Of course, there are also additional costs associated with urban development.
planning process, Skagit County opted to pursue zoning *instead* of TDR. However, that reflects a misunderstanding of how TDR can work with traditional zoning tools and overlooks the Skagit County Comprehensive Plan’s numerous references to TDR as an option worth exploring.

- **The Growth Management Act** states: “A comprehensive plan should provide for innovative land use management techniques, including, but not limited to, density bonuses, cluster housing, planned unit developments, and the transfer of development rights.”

- **Skagit County Countywide Planning Policy (CPP) 4.3**, used to guide development of the Comprehensive Plan, similarly states: “The Comprehensive Plan should support innovative land use management techniques, including, but not limited to, density bonuses, cluster housing, planned unit developments and the transfer of development rights.”

- **CPP 4.3 is directly quoted in Comprehensive Plan Chapter 2**, the Urban, Land Use and Open Space Element of the Comprehensive Plan (p. 2.3).

An authoritative resource on TDR program development, *The TDR Handbook*, notes: “These arguments, however, suggest that TDR is a substitute for zoning. In fact, TDR works with zoning. TDR can help make zoning more effective, and strong zoning is essential for a successful TDR program.”

On the receiving side, TDR can augment zoning by providing an incentive to developers who choose to build at densities or intensities above those allowed by a jurisdiction’s baseline zoning. This can help to concentrate development in areas best suited for growth.

In summary, TDR should not be seen as an alternative approach to achieving Skagit County’s land use goals – nor as a dramatic solution to growth and conservation challenges. Instead, it is another tool in the planning toolbox, one that works on a voluntary and incentive basis, to help jurisdictions meet the goals established through their comprehensive plans and development regulations.

**Why is Skagit County considering TDR?**

The Skagit County Comprehensive Plan does an admirable job of protecting natural resource lands, rural character, and environmental resources. As committee member Ed Stauffer has stated, “The Skagit County Comprehensive Plan is a resource conservation plan.” Skagit County went through an extensive process of developing the plan through the 1990s and the 2000s to reflect and meet local needs and achieve compliance with the Growth Management Act (GMA). The current comprehensive plan and development regulations are in full compliance with GMA.

The Skagit County Comprehensive Plan, together with the Countywide Planning Policies and the plans of other cities and towns in Skagit County, encourages the majority (80%) of new population growth to locate in cities and their designated urban growth areas. This planning framework has

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5 RCW 36.70A.090.

been effective, as 80% or more of Skagit County’s population growth from 2000 to 2010 located in cities and designated urban growth areas, according to analysis of U.S. Census data.\(^7\)

The comprehensive plan protects rural character and natural resource lands of long-term commercial significance through low residential densities and development regulations that protect the functions and values of those lands, while respecting private property rights and providing landowners with opportunities for the economic use and enjoyment of their land.

Many Skagit County rural residents are excellent stewards of their land. However, residential development in natural resource lands – even at the low densities allowed under the comprehensive plan and development regulations – can negatively affect resource management activities. Homes built in or immediately adjacent to natural resource lands can generate conflict with generally-accepted farming, forestry, or mineral resource activities – whether that’s plowing a farm field in the early morning, applying chemicals or fertilizers commonly used in farming and forestry, harvesting forest lands, or blasting and hauling activities used in mining.

For these reasons Skagit County has implemented (as required by GMA) “right to manage” rules and regulations establishing that natural resource activities are the primary and preferred uses on designated natural resource lands. While these provide some measure of protection, they are not a cure-all.

Additional residential development in natural resource lands or environmentally-sensitive areas can have unintended negative environmental impacts, due to expansion of road networks, increases in impervious surfaces, and conversion of natural landscapes.

For these and other reasons, there has been a long-standing and broad-based interest in exploring the use of TDR in Skagit County, as evidenced by the following:

- Within three years of its founding, Skagitonians to Preserve Farmland, with support from foundations and Skagit County, completed a study of farmland preservation program

options. One program recommendation was to pursue the development of a Skagit TDR program.\(^8\)

- As part of Skagit County's 2005 Comprehensive Plan Update process, a 15-member Citizen Advisory Committee developed a number of recommendations to guide that update. One of those recommendations, incorporated into the comprehensive plan through that process, reads as follows:
  
  o **Establish more and better incentives to achieve planning goals** – The toolbox for methods for achieving the County's growth management goals for the preservation of resource lands, protection of critical areas, and preservation of property rights should be expanded. These tools include the purchase and transfer of development rights as well as density “credits” for producing affordable housing and other desired results.”\(^9\)

- Skagit County hired a consultant in 2006 to conduct an initial evaluation of TDR. The consultant completed a literature review of TDR programs around the country and concluded TDR was not feasible in Skagit County at that time.\(^10\) Although it included no market analysis, the study concluded there was inadequate demand for development in Skagit County to support TDR. This was during a very active residential development market when the Mount Vernon TDR program was being used extensively (recording 70 development right purchases between 2004 and 2006). A number of observers inside and outside of Skagit County felt that study was incomplete and reached pre-determined conclusions.

- In 2008, the City of Burlington adopted a “fee-in-lieu” program which allows developers to build above base zoning in specific zones with the purchase of density credits. Skagitonians to Preserve Farmland and Skagit County helped Burlington to fund the economic analysis that led to Burlington’s adoption of the “The City of Burlington Agricultural Heritage Credit Program.”

- The Board of County Commissioners adopted amendments in 2008 to the Bayview Ridge Subarea Plan that called for creation of a similar density credit program allowing incremental increases in residential densities within the Bayview Ridge Urban Growth Area (UGA).

- In 2008, Skagit County initiated the Envision Skagit 2060 process to look at land use challenges and opportunities facing Skagit County over the next 50 years. A citizen committee appointed by the Board of County Commissioners and city mayors developed a set of recommendations for consideration by those jurisdictions, including one stating: “The

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\(^8\) *Farmland Preservation in Skagit County: Program Options and Recommendations*. Skagitonians to Preserve Farmland, 1992.


County should move forward and implement a county-wide Transfer of Development Rights (TDR) program.”

- Commissioner Ken Dahlstedt has long expressed interest in implementing a mechanism to ensure that landowners who receive additional development potential through redesignations or rezones will contribute to the conservation of natural resource lands.

- In 2013, the Board of directors of Skagitonians to Preserve Farmland adopted Resolution No. 2013-05 which, among other farmland protection goals, states: “By 2020 there shall be a functioning TDR market place in Skagit County which allows for smart community growth and economic development while protecting our important and valuable agricultural resources lands.”

Given the long-standing interest in TDR in Skagit County, and with approval of the Board of County Commissioners, Skagit County applied for a grant in 2011 from the Washington State Department of Commerce to help fund a more thorough evaluation of TDR, including a detailed market analysis that was missing from the 2006 TDR review. That successful grant application was cosponsored by Skagitonians to Preserve Farmland, the City of Burlington, the Skagit Land Trust, and the Skagit-Island Counties Builders Association (SICBA). Following the grant award, Skagit County initiated the current TDR study. In accepting the grant, Skagit County stipulated it was not obligated to implement a TDR program but only to consider TDR as an option. This report is intended to help the Board of County Commissioners decide whether to move forward with implementing a TDR program.

**What are the major objections to TDR?**

Following are some of the major concerns and objections to TDR that have been voiced by some Advisory Committee members and other members of the community during this TDR review process. Some who have expressed concerns nonetheless support Skagit County implementing a TDR program now, believing it will be successful over the long-term. Others cite these concerns as reasons not to implement a program at this time or, in the view of a few, ever. Committee members’ views on implementation of TDR program will be explored at greater length in various sections throughout this report.

Concerns or objections fall into three general categories:

- **TDR may be a useful tool, but there may not be strong enough demand** or an adequate number of receiving areas in Skagit County to make a TDR program viable or worthwhile at this time.

- **TDR may be a useful tool, but it is also a complex one.** Skagit County may not be able to implement and administer a successful TDR program at this time, given available staff and resources.

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11 *Envision Skagit Citizen Committee Final Report and Recommendations*, Skagit County, October 2011, p. 15.
• There are fundamental flaws to the entire concept of TDR, and Skagit County should not implement a TDR program now or in the future. These fundamental flaws include the belief that: TDR inappropriately interferes in the private development market by requiring developers to pay to access additional development opportunities; TDR is not needed because existing comprehensive plan and zoning protections are adequate; and TDR will not truly be voluntary and will diminish landowner property rights.

These concerns are further outlined below. They – and responses to them – will also be discussed in later sections of this report.

NOT ENOUGH DEMAND
Some Committee members have stated that Skagit County is rural whereas they believe TDR programs are more effective or appropriate in urban areas. Some have expressed concern that there are too few cities participating, too few receiving areas generally, and inadequate demand for development within those receiving areas for a program to be viable at this time. Committee member Charlie Boon has expressed his concern that Burlington, the one city considering becoming a receiving area at this time, is located at a vulnerable spot in the Skagit River floodplain which is the wrong place to be encouraging additional development through TDR. (City planner Margaret Fleek responds that Burlington has “the most assertive flood hazard mitigation plan in the area, and everyone understands the dangers of flooding, but that does not mean abandon ship, it means be prepared…..”)

URBAN DENSITY IS UNDESIRABLE
Many cities in Skagit County have faced opposition to efforts to increase residential densities. For instance, concern by residents and city council members regarding several residential development projects in Mount Vernon in the late-2000s, with densities in the range of 6 dwelling units per acre, resulted in changes to that city’s planned unit development (PUD) ordinance. Those changes lowered overall density limits and disallowed the use of TDRs in PUDs. Skagit County also heard objections as part of the 2013 Bayview Ridge Subarea Plan considerations to proposed urban residential densities at the Bayview Ridge UGA.

Some Committee members themselves have expressed a dislike of higher-density residential developments such as those cited above, due to what they characterized as the cramped look and feel of the neighborhoods, more difficult access by emergency vehicles, and inadequate on-site parking. (Other Committee members spoke in support of higher-density residential projects as meeting a need for mid-level affordable housing in Mount Vernon and being well-accepted by homebuyers in the marketplace.)

TDR IS UNNECESSARY
Committee member Ed Stauffer has repeatedly expressed his view that the Skagit County Comprehensive Plan is an effective resource management plan and, together with existing development regulations, does an adequate job of protecting rural character, natural resource lands and environmentally-sensitive areas. Stauffer states that rural landowners are stewards of their land, additional conservation through TDR is unnecessary, and TDR is a slap in the face to rural residents. He has also questioned the voluntary nature of TDR, expressing concern that county staff
might use additional regulations on rural development as a way to push rural landowners into selling development rights against their will. Although the Advisory Committee has discussed TDR as a voluntary option for sending-area landowners, Stauffer has expressed the concern that it would diminish the property rights and options of rural landowners.

**TDR WILL HARM FARMLAND LEGACY**

Some farmers and other advocates of agricultural land conservation have expressed concerns that TDR would negatively affect the Farmland Legacy Program. Many of these concerns appear related to conclusions reached by the Ag Prospects TDR study, including fears that TDR would drive up the price of Ag-NRL lands; that downzoning of agricultural land would be necessary to make TDR work; and that a successful TDR program might reduce political support or staff resources for the Farmland Legacy Program. (On the other hand, Committee member Allen Rozema of Skagitonians to Preserve Farmland has been a consistent supporter of TDR, saying it will complement Farmland Legacy specifically and agricultural land conservation generally.)

**CONSERVATION EASEMENTS SHOULDN’T BE PERMANENT**

Some forest managers who participated in the forestry focus group meeting expressed uncertainty about their companies’ participation in TDR, due to concerns over the future economic viability of forestry as an industry. Some advocated that TDR conservation easements should only apply for a certain period of time (such as 40 years) or that there should be a “buy-back” provision allowing forest landowners who sell development rights to purchase them back if commercial forestry is no longer economically viable. (On the other hand, several small, private, non-industrial forest landowners saw TDR as a way to increase their economic options, expand their holdings of forest land, and pass forest land down to younger generations of their family.)

**DEVELOPMENT OPTIONS ARE ALREADY CONSTRAINED**

Some participants in the developer focus group meeting stated that development opportunities in rural portions of Skagit County have been greatly reduced through the implementation of GMA, the Skagit County Comprehensive Plan, and increasingly strict land use regulations since then. They felt that additional limits on rural development, even voluntary ones that compensate rural landowners, are unnecessary and undesirable. Some developers questioned the overall premise of GMA and the Skagit County Comprehensive Plan that the majority of new growth should occur in cities and urban growth areas and development should be limited in rural portions of the county. Some members of the development community appeared to have a greater interest in the use of TDR to facilitate rural-to-rural development rights transfers, for instance to allow additional rural cluster development through CaRDs and additional residential infill and possible expansion of Rural Villages.

**TDR IS UNFAIR TO RECEIVING AREA LANDOWNERS**

Some developers and receiving-area landowners objected to the idea they would need to purchase TDRs or density credits to access additional development potential above baseline zoning. Some stated that impact fees and other development fees are already quite steep. Some felt the urban development they are building consistent with city policies and regulations already provides a public benefit and more should not be required through TDR. Some noted that landowners whose
property was downzoned through the implementation of GMA were not compensated financially for their economic losses, and developers and landowners should not be charged in cases where public policy actions increase development potential.

**TDR IS COMPLEX AND POLICY CAN CHANGE**

Committee member Wayne Crider of the Skagit/Island Counties Builders Association expressed concerns about the complexity of TDR and the potential for changing policy priorities. He cited the situation in Mount Vernon where a developer purchased a large number of development rights, intending to use them in PUDs, but then lost that opportunity when the PUD ordinance was changed to disallow the use of TDRs. Although TDR could be a viable tool, he worries that it might be overly complicated for Skagit County to undertake at this time, particularly in the face of other more pressing land use planning challenges.

**Will TDR work in Skagit County?**

The answer to the question “Will TDR work in Skagit County?” depends in part on how success is defined.

- If one measure of success is ensuring that recipients of rural upzones contribute to land conservation through the purchase of TDRs or density credits, then TDR can work. With the pricing data generated by the Heartland TDR market analysis, such a provision would be relatively easy to adopt and implement.

- If success means that a multi-jurisdictional TDR program is generating a large numbers of transactions resulting in a significant amount of land conservation over time, that’s a more complex question to answer.

Forterra and other TDR researchers, including those who wrote *The TDR Handbook*, have documented that TDR does work when programs are well designed and implemented. Forterra maintains a national data base of TDR programs and has provided a list of the top-performing TDR programs in the country, included as Appendix B. Although some of the most successful TDR programs are centered around large cities, a growing number of rural communities are successfully implementing TDR or density fee initiatives. Some of those successful programs in more rural areas are highlighted in the list of the 25 top programs.

Following are some of the key factors that can help determine whether a TDR program is effective or not:

**DEMAND FOR DEVELOPMENT**

One of the key requirements for TDR success is demand for development. Some local critics or skeptics of TDR say there is inadequate demand for development in Skagit County to make a program successful. Although the amount of development in Skagit County’s will never match that in Seattle or King County, the Washington State Office of Financial Management projects population growth of nearly 36,000 new residents in Skagit County by 2035, boosting the county’s population.
to nearly 154,000 (from around 118,000 today). There will be a corresponding increase in commercial development to serve that growing population.

If even 10 percent of that projected population growth were linked to TDR, the result could be almost 10,000 acres of conserved land – about the same amount of land that has been conserved by Farmland Legacy since its inception in 1996.

**LINKING DEVELOPMENT TO TDR**

The problem from the perspective of TDR effectiveness in Skagit County is not a lack of development, but rather that virtually none of the projected demand for development is currently linked to TDR. The only TDR or density credit program in place is Burlington’s Agricultural Heritage Density Credit program, which allows development above 14 residential dwelling units per acre with the purchase of density credits.

The Heartland TDR market analysis – and zoning capacity calculations conducted for Envision Skagit and the 2016 Comprehensive Plan updates – have revealed that past zoning decisions made by Skagit County jurisdictions over the past 20 years have created a sizable amount of development capacity within cities and towns. Elected officials may be reluctant to link development that is already permitted by zoning to TDR – a retroactive step that some would consider a downzone. If that’s the case, the real opportunity for Skagit County and cities interested in implementing TDR is to link future upzones or other planning actions that create new development potential to TDR. This might look something like the following:

- A city could designate new areas where multi-family development is permitted, as Burlington is currently considering doing around its downtown area. This would expand the potential receiving area for the city’s existing Density Credit Program.

- The county and cooperating cities could link the expansion of urban growth areas (UGAs) to the purchase of TDRs. In one likely scenario, the residential development potential of Rural Reserve land added to a UGA could increase from 1 residence per 10 acres to 4 residences per acre. That’s a 40-fold increase in development that would create a very viable opportunity to implement TDR.

- A jurisdiction could modify an existing zone to grant additional development potential. For instance, a city could decide to allow residential development in its downtown area alongside or above existing commercial uses. This is a common direction that cities are moving to bring more residents and more economic vitality into their downtowns. The new units of residential density could be made available through the purchase of TDRs.

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13 Assuming a household size of 2.5 persons per household, an exchange rate of 3 to 1, and an average sending area zoning of 1 dwelling unit per 20 acres (comparable to Secondary Forest).

14 A very similar scenario was analyzed by Heartland in looking at rezones from Bayview Ridge-Urban Reserve to Bayview Ridge-Residential.

15 One challenge is that most cities in Skagit County already allow mixed-use (residential and commercial) development in their downtowns outright, by code.
In summary, demand for development exists in Skagit County. The question is whether local jurisdictions are interested and willing to link that demand to TDR purchases. As Committee member Allen Rozema has said at several meetings: “It’s ultimately a public policy decision whether there will be a market for TDR in Skagit County or not.”

**TDR AND DENSITY**

As the above UGA example illustrates, TDR does not need to be linked to higher density residential development: 4 residences per acre is generally considered the minimum density for urban residential development. In addition to lower density (including some rural) residential opportunities, TDR can also be linked to increases in commercial and even industrial development potential.

However, urban residential development will be a key component of growth in Skagit County, representing perhaps the largest single opportunity to implement TDR in the coming years. Various economic and demographic forces are increasing market demand nationally and regionally for more compact, walkable, high-amenity and mixed-use communities. That trend may be less pronounced in Skagit County, where many people move to get away from rapidly-urbanizing cities and regions. However, it can still be seen here through the smaller-lot nature of new residential developments in Mount Vernon, and the construction of new cottage-housing just east of downtown Anacortes – the latter specifically marketed to homebuyers seeking walkable access to the downtown, library, parks and waterfront.

Whether it’s in relation to TDR or simply meeting the evolving market needs of homebuyers, Skagit County cities will need to find the right formula for fostering attractive and affordable urban residential development. Logical partners in this process would include neighborhood groups, builders and developers, affordable housing providers, architects and planners.

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and Realtors. In fact, the National Association of Realtors Smart Growth Program might be a forum for bringing those entities together.17

**EFFECTIVE TDR PRICING**

Estimating the market value of additional units of development potential in receiving areas and of residential development rights in sending-area zones was a major focus of the TDR market analysis conducted by Heartland and summarized in Chapter 7. In a traditional TDR program, the county would use these values to establish exchange rates for different sending and receiving zones to place buyers and sellers in the same price ballpark. Buyers and sellers then negotiate directly with each other to establish a mutually agreeable TDR sales price. In a density credit or fee-in-lieu program, such as Burlington’s Density Credit Program, the county would set the price of density credits based on the market analysis. Exchange rates or density fee prices should be periodically reviewed to make sure they are generally tracking the market. Potential developer interest in TDR will be discussed further in Chapter 6, Development Goals, Receiving Areas and Development Incentives, and the TDR market analysis in Chapter 7.

**SENDING AREA LANDOWNERS**

Another key component of a successful TDR program is sending area landowners who are interested in selling residential development rights in order to permanently conserve their land. Comments from some of the focus group meetings and experience in Skagit County with other conservation programs suggests there would be interest among some landowners over time.

- In the first several years of the Farmland Legacy Program’s operations, few farmland landowners participated in the program. The concept of purchase of development rights (PDR) was new and many landowners were nervous about stepping into unfamiliar territory. Once a few willing landowners sold development rights to the program, and the sky didn’t fall, interest steadily increased. Now Farmland Legacy receives more applications from interested landowners than it has funds for development right purchases. Since its creation in 1996, more than 100 property owners have placed conservation easements on their land through the Farmland Legacy Program.

- The Skagit Land Trust works with many rural landowners interested in placing their land in permanent conservation status. Some are willing to do so without compensation, donating easements to the land trust, but most seek financial remuneration. Skagit Land Trust conservation deals range from fee-simple (outright) purchases of properties to the purchase of conservation easements on lands which remain in private ownership. Like Farmland Legacy, the Skagit Land Trust reports more interest from property owners than it has funds for property and conservation easement purchases.

Of the landowners who participated in the focus group meetings conducted for this project, small family forestland owners appeared most interested in TDR. They felt TDR could help them expand their forest landholdings or pass land down to their children or grandchildren. Several forest

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17 See: [http://www.realtor.org/programs/smart-growth-program](http://www.realtor.org/programs/smart-growth-program). The Realtors’ Smart Growth Program was the focus of a well-received sponsored locally by the North Puget Sound Association of Realtors (NPSAR) in the spring of 2012.
company representatives also expressed a potential interest in participating in TDR, particularly if there were an option to buy back development rights if circumstances on the ground changed significantly. Potential farmer interest in TDR has been expressed by Skagitonians to Preserve Farmland, whose Board of Directors has recommended creation of a Skagit County TDR program.\(^\text{18}\)

**LONG-TERM PROSPECTS FOR SUCCESS**

As described above, there are many factors that would affect the long-term success broadly defined of a TDR program in Skagit County.

The TDR market analysis by Heartland indicates that given projected demand for development, and the existence of significant amounts of development capacity created by current zoning in the receiving areas it analyzed, the use of TDR would be limited in the near term on individual projects where the costs/benefit analysis worked in the developer’s favor. Factors that could increase TDR use over time would include an increase in development activity, utilization of existing development capacity, and an increase in the price of land relative to the price of purchasing TDRs.

**Recommendation 3-1: Creation of Additional Receiving Areas**

- Perhaps the key factor for significantly expanding the use of TDR would be the creation of additional receiving areas, particularly in the cities that are expected to accommodate 80% or more of Skagit County’s future growth.

In the four Central Puget Sound counties (King, Snohomish, Thurston and Pierce), the creation of a county TDR program has often preceded or stimulated city interest in TDR. Once the county has put a multi-jurisdictional TDR framework in place, cities have developed their own TDR programs that link to it, allowing the transfer of development rights from the county to the cities. Increasingly in fast-growing cities in the Central Puget Sound, having a TDR program linked to higher development potential, particularly in downtowns, is viewed as a key element of economic competitiveness.

Although city interest in linking to a Skagit County TDR program has been limited to Burlington at this time, this nearby example suggests this situation could evolve over time. Issues related to the cities’ interest or lack thereof in working with the county on a multi-jurisdictional TDR program are discussed in greater detail in Chapter 6 beginning on page 49.

\(^{18}\) Skagitonians to Preserve Farmland Resolution No. 2013-05.
Chapter 4. Conservation Goals and TDR Sending Areas

TDR conservation goals

An important element of identifying TDR sending areas is clarifying what conservation goals the county is seeking to advance through TDR. The Advisory Committee’s initial discussion of conservation focused on the following resources and the broad range of values they provide to the community:

- Natural resource lands (working farm and forest lands).
- Environmental resources.
- Open space areas.

In many cases, conservation of a particular parcel of land may achieve multiple conservation goals.

The typical mechanism for conservation through a TDR program is the purchase and transfer of a property’s residential development right or rights. Using this mechanism:

- Property conserved through TDR would remain in private ownership.
- The residential development right would be retired on the sending site through a conservation easement, and
- Other uses of the sending site property allowed by its zoning and not restricted by the conservation easement would remain.

Initially the Committee discussed whether the TDR conservation easement should go beyond retiring the residential development right and stipulate additional resource management or conservation requirements on the land. However, it quickly became apparent that trying to be more specific about land management practices either required or restricted through a TDR conservation easement could easily splinter the general agreement.

Some public benefits of natural resource, environmental and open space conservation:

- Flood control, water supply and quality, air quality
- Physical separation of people and structures from natural hazards
- Wildlife and habitat
- Commercially significant resources including agricultural products, forestry, fisheries, minerals
- Economic development based on a high quality of life
- Natural features and spaces important to defining community image and distinctive character
- Healthy lifestyles
- Historic and cultural preservation opportunities

Adapted from the Skagit County UGA Open Space Concept Plan, p. 1

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19 Although mineral resource lands were generally not a part of the discussion, they logically should be. Mineral resource lands of long-term commercial significance are identified by the Mineral Resource Overlay (MRO) and may be found on any of the County’s Natural Resource Land designations.
among resource management practitioners and conservation advocates about the benefits of conserving lands through the voluntary retirement of residential development rights. Given this mechanism, the Committee discussed what can TDR realistically be expected to achieve from a conservation perspective?

- If the reduction in residential development and its associated impacts supports the desired conservation goal, then TDR is probably a good fit. For instance, retiring residential development rights from forest or agricultural resource lands can help support ongoing natural resource management activities due to the reduced potential for conflicts with homes built in resource lands.

- However, beyond retiring the residential development right, the TDR easement would not grant public access or require or limit uses of the property beyond what is allowed by the underlying zoning. For this reason, TDR is probably not an effective conservation tool where the desired goal is public access or ownership (for instance, with a park) or other more prescriptive uses of the land.

### PUBLIC INTEREST IN RESOURCES TO BE CONSERVED

The Committee heard from Forterra and others that TDR programs work best where residents of receiving areas have a strong interest in the lands and resources being conserved. For instance, Burlington has identified agricultural lands immediately surrounding the city as its priority for conservation through the Agricultural Heritage Density Credit Program. Because proximity to cities and other population centers may be a key component for TDR success, the Committee felt it should be an important criterion when establishing TDR sending areas:

- Areas closer to large population centers are more likely to experience rapid population growth than more remote areas.

- Conservation of these areas is also likely to generate more support among receiving-area populations than would more remote sending areas.

At the same time, the Committee recognized that where there’s more demand for development, prices to purchase development rights are likely to be higher.

To help prioritize potential TDR conservation areas, the Committee reviewed maps produced by Skagit GIS showing 2 and 4 mile bands around cities, other UGAs, and heavily traveled road corridors. The prioritization of potential sending areas will be discussed in greater detail starting in Chapter 5, Selection of Sending Areas.

### EXISTING RESOURCE PROTECTION

Another important question to consider is the degree of existing protections for the lands or resources of interest. Are there other efforts in place – such as restrictive zoning or other conservation mechanisms (such as purchase of development rights) – that provide effective protection already? If so, TDR might not be necessary or might be better applied elsewhere. If not, TDR may be able to contribute to the desired conservation goals.

(Committee Review Draft -- Subject to Revision)
FARMS, FORESTS AND OPEN SPACE LANDS

From these initial discussions, three conservation priorities rose to the top:

- Designated agricultural natural resource land, and rural land supporting active agricultural uses, even if those rural lands are not identified as having the most highly-productive agricultural soils.

- Designated forest natural resource lands, and rural land with active forestry uses or predominant forest cover, even if those rural lands they are not rated as having the most highly-productive forest soils.

- Lands identified as having significant open space value to the public, particularly within or immediately surrounding cities, towns and urban growth areas.

Recommendation 4-1: Top Conservation Priorities are Resource Lands and Open Space Around UGAs

The strongest committee consensus regarding TDR sending areas appeared to be for resource or open space lands within or immediately surrounding urban growth areas. Committee members generally felt receiving-area residents would have the greatest interest in supporting conservation of these lands and they are among the most likely to be developed.

Of these, designated Natural Resource Lands – specifically farm and forest lands of long-term commercial significance – and rural lands supporting natural resource production have emerged as the most viable TDR sending areas at this time. This is because

- They are clearly defined and mapped through the Skagit County Comprehensive Plan.

- TDR is a particularly good mechanism for conserving working natural resource lands because it retires a property's residential development right while leaving it in private ownership and not affecting other permitted uses.

- There is a relatively high level of agreement in Skagit County about the importance of conserving productive natural resource lands.

More specific discussion of how these conservation goals would be implemented through TDR sending areas is discussed in greater detail in Chapter 5

OTHER CONSERVATION PRIORITIES

The Committee discussed environmental and open space conservation priorities that might also be advanced through TDR. One challenge is the general lack of delineation and mapping of environmental and open space conservation priority areas at both the countywide as well as the parcel-specific level as has been done for Natural Resource Lands. This makes their designation as TDR receiving areas more challenging without additional work through this or other projects.

In some instances environmental conservation priorities are clearly mapped at a more localized level. One possibility may be to use these areas that have been clearly delineated as an overlay that, along with designated natural resource lands, identify areas where conservation through TDR can provide multiple conservation benefits.
Open Space Lands, particularly within or adjacent to cities, towns, and UGAs.

Skagit County developed and adopted the Skagit County UGA Open Space Plan in close consultation with the cities and towns. That plan and most of the city and town comprehensive plans that it draws on identify and map open space conservation areas at a broad, conceptual level. However, few if any of the municipalities have mapped their open space conservation priorities areas at a parcel-specific level, within or around their UGAs. The county also has not done so beyond the realm of designated natural resource lands and existing public parks and open spaces.

Until this step is taken – which would be the next logical step in implementing the UGA Open Space Plan – it would be difficult to designate specific open space areas around UGAs as TDR sending areas. Also, because TDR leaves sending area properties in private ownership, TDR may not be an effective or appropriate tool for conserving lands intended for public access such as parks or trails.

Floodplain, including areas of high risk, and those that provide important floodplain functions.

Two processes are moving forward that may help identify priority floodplain areas that could serve as TDR sending areas:

- First, Skagit County continues to progress with flood protection planning through the General Investigation study with the Army Corps of Engineers and through a Comprehensive Flood Hazard Management Plan.
  - If the Army Corps through the GI process develops a plan that includes raising and widening certain levies, that can transfer flood risk to other areas through what’s called induced flooding. Those areas could be included as TDR sending areas, allowing interested landowners to sell unexercised development rights.
  - Another consideration could be areas that are inundated by “minor” (the most frequent) flood events: 2-yr, 5-yr, 10-yr, 25-yr events.

- Second, the Shoreline Master Program Update will consider designation of a Channel Migration Zone on the Skagit River, above Sedro-Woolley, where development may be particularly subject to flood risk over time.
  - If and when designated, the channel migration zone may be a logical TDR sending area, providing landowners the opportunity to voluntarily sell their unutilized development rights rather than develop in a high-risk flood area.

Priority watershed areas

The Washington State Department of Ecology has developed a series of “watershed characterization” models for watersheds throughout the Puget Sound. The watershed characterization models draw on a variety of scientific assessments and data sources in an effort to characterize lands as most suitable for protection, restoration, conservation, or development. These characterizations are based on the land’s importance, and sensitivity to degradation, across a variety of ecological functions: including water quality and flow; freshwater habitats; and terrestrial wildlife habitats.
While the watershed characterization models and data may in the future help to identify areas in Skagit County that are important for conservation, those models are quite complex. To date, TDR project staff have not been able to determine how to use the models to determine potential conservation priorities in Skagit County.

As an alternative, the County could emphasize watersheds that already have been prioritized locally, and where significant public resources are already being invested to address issues including water quality, habitat restoration, and recovery of threatened and endangered species. For instance, TDR receiving areas could be located on natural resource lands on some or all of the following watersheds:

- Nookachamps Creek
- Hanson Creek
- Samish River
- Colony Creek
- Carpenter Creek/Hill Ditch
- Maddox Creek/Big Ditch
- Fisher Creek

**Water supply**

One Committee member suggested that the watershed or stream corridors that feed Judy Reservoir (the major source of water for Skagit PUD #1) may be a worthy area for conservation through TDR. However, initial contact with Skagit PUD indicates that they do not believe that residential development at currently allowed densities threatens the Judy Reservoir water supply or quality.

**Wildlife habitat**

It has been difficult to locate data that clearly and credibly delineate wildlife habitat areas and corridors at a landscape level that warrant additional conservation through TDR. Both natural resource managers and conservation professionals on the committee were cautious about trying to use Washington State’s Priority Habitat and Species data for broad designation of TDR sending areas. They noted that the data is better at the site level.

**Site-specific critical areas**

The County could consider a process whereby individual properties that don’t fall within a designated TDR sending area could be considered for eligibility on a site-specific basis. Applications could be initiated by property owners who determine that site conditions and the County’s critical areas regulations make their property more hazardous, difficult, or expensive to develop than they anticipated.

For instance, a property owner might apply after discovering through a geological site assessment that their property is located in an area subject to hazards such as landslides. The recent fatal mudslide along the Stillaguamish River brings this scenario to mind.

This would build upon an existing code provision, SCC 14.24.170, which identifies “incentives... intended to minimize the burden to individual property owners from application of the provisions of this Chapter and assist the County in achieving the goals of this Chapter.” One of the options listed is sale of the development rights on property containing critical areas to the Conservation
Futures (Farmland Legacy) program. That option could be expanded to sale of development rights through a TDR program.

Is additional conservation needed?

The Skagit County Comprehensive Plan has strong protections for conserving natural resource lands and rural character. In fact, Skagit County is frequently cited as having among the strongest protections for prime agricultural lands (Ag-NRL) in the state and nation.²⁰

The Natural Resource Lands Element of the Comprehensive Plan, Chapter 4, reads as follows: “Natural Resource Lands are the cornerstone of Skagit County’s economic, community, and history. As such, their protection and enhancement is of paramount importance to Skagit County and its citizens.”

The primary purpose for Natural Resource Land designations (Ag-NRL, Industrial Forest-NRL, Secondary Forest-NRL, and Rural Resource-NRL) is natural resource management and production. At the same time, most resource lands allow some level of residential development, as illustrated in the table to the left.

<table>
<thead>
<tr>
<th>NRL Designation</th>
<th>Residential Density</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ag-NRL</td>
<td>One residence/40 acres, only as an accessory use to farming</td>
</tr>
<tr>
<td>IF-NRL</td>
<td>One residence/80 acres, only if property is within a fire district</td>
</tr>
<tr>
<td>Secondary Forest-NRL</td>
<td>One residence/20 acres</td>
</tr>
<tr>
<td>Rural Resource-NRL</td>
<td>One residence/40 acres, or 4 residences/40 acres through a clustered Conservation and Reserve Development (CaRD)</td>
</tr>
</tbody>
</table>

Natural Resource Lands are the cornerstone of Skagit County’s economic, community, and history. As such, their protection and enhancement is of paramount importance to Skagit County and its citizens.”

—Skagit County Comprehensive Plan

Agriculture, forestry, and mining, as well as commercial and creational fishing and shellfish harvesting, tourism and other economic sectors related to Skagit County’s natural landscape are important contributors to Skagit County’s economy. For instance:

- Agriculture in Skagit County produces more than $300 million in annual gross farm income from crops, livestock and dairy products each year.²¹ The more than 1,200 farms in the county employ about 2,400 workers and generate an additional 883 to 1,718 jobs in agricultural support sectors. ²²
- There are nearly 700 direct jobs in forestry in Skagit County, and more than 1,800 total jobs (including direct, indirect and induced), resulting in wages of more than $70 million


²¹ Skagit County Comprehensive Plan, Natural Resource Lands Profile, p. 4-2.

²² Economic Indicators of Agriculture’s Future in Skagit County, Tasks 1 & 2 Final Report, prepared by ECONorthwest for Envision Skagit 2060, November 2010.
annually. Taxes and fees generated by forestry in Skagit County amount to more than $3.9 million annually, and nearly $3 million of that went directly to Skagit County in 2013.\(^\text{23}\)

Various fiscal analyses indicate that natural resource industries produce a net fiscal gain for Skagit County (generating more revenues than costs), whereas dispersed residential development can generate more costs than revenues due to the various public services and infrastructure needed to serve residential development.\(^\text{24}\)

As the Skagit County Comprehensive Plan indicates, residential development in resource lands above certain densities can conflict with the continued use of the land for its primary intended purpose: natural resource production. Development in forest lands can also introduce a greater risk of fire hazards.

**Threats to resource lands**

Numerous research studies from a range of organizations involved in natural resource management and land conservation have raised concerns about loss of resource lands in Washington State, the Puget Sound Region and – where specific data is available – Skagit County. According to the *Future of Washington Forests Report*, developed by the University of Washington College of Forest Services with significant input from the forest products industry:

Expanding exurban populations are placing increased development pressures on Washington’s working forests and are changing these forested landscapes into non-forestry uses. Much of this change is from privately-owned forests converting into residential and commercial development, resulting in significant implications for Washington state, such as the potential decline in a readily available and sustainable timber supply for the forest products industry; a decrease in the quality and quantity of forests available for wildlife habitat, clean water production and storage, carbon sequestration and decreased recreation opportunities.”\(^\text{25}\)

The report continues:

According to Washington’s forest industry, land conservation organizations and county resource managers, forestland along the I-5 corridor will likely undergo the most conversion. For the westside of the Cascades, they identified Clark, King, Pierce, Snohomish and Thurston counties as those likely to see the greatest change....while Stein et al. (2005) reported in *The Forests on the Edge* report that areas in Whatcom and Skagit counties are likely to have housing densities increase by 20-40 percent on private forestlands...\(^\text{26}\)


\(^{26}\) Ibid, p. 273.
Similarly, the Puget Sound Action Agenda reports:

Development in rural areas presents a particularly concerning pressure on the ecosystem because it is in those rural areas (including both forested and agricultural lands) where high-quality habitat and significant ecological processes remain partially or largely intact. Rural area forest cover and agricultural land is being converted to housing and other uses in five-acre and smaller patchwork patterns. The network of infrastructure (primarily roads, but also other utilities) constructed to serve such development further fragments the landscape, and interrupts or modifies the delivery, movement, and storage of water, sediment, woody debris, and nutrients, and impairs functions of fish and wildlife habitats for feeding, breeding, rearing, and migrating for numerous species.27

The Skagit County Natural Hazard Mitigation Plan notes the wildfire risks generated by increasing residential development in forested lands:

One challenge Skagit County faces regarding the wildfire hazard is from the increasing number of homes being built in the urban/rural fringe (known as the wildland-urban interface) as well as the industrial forest. Due to a growing population and the desire of some persons to live in rural or isolated areas or on forested hillsides with scenic views, development continues to expand further and further into traditional forest resource lands.28

PUBLIC SUPPORT FOR CONSERVATION

Skagit County residents have consistently shown a strong interest in land conservation going back several decades. Skagit County residents’ concerns about loss of agriculture land, forest land and open space areas due to development has been documented in public opinion surveys conducted by Elway Research, Inc., in 1996 for the Economic Development Association of Skagit County and Skagitonians to Preserve Farmland; and in 2005 for the Skagit Watershed Council.29 A telephone survey of registered voters conducted during development of the Skagit County UGA Open Space Plan found similar concerns over the loss of farm, forest and open space lands. Similar sentiments were shared by members of the public and documented through Envision Skagit’s 11 public visioning sessions.

As noted earlier, not all Committee members agree with the assessment that additional conservation tools are needed in Skagit County. Ed Stauffer has asserted passionately in virtually every meeting of the Advisory Committee that the existing comprehensive plan and development regulations are adequate to protect Skagit County’s natural resource lands and rural character. That view was shared by some participants in the development focus group meeting.


28 Skagit County Natural Hazard Mitigation Plan, Skagit County Department of Emergency Management, September 2008, Section 2, p. 26. Wildland-urban interface is a term commonly used by firefighting professionals who work in rural areas.

It is important to remember that TDR would not require participation by any rural or natural resource landowners nor would it affect the development potential of those choosing not to participate. Instead, TDR is being proposed as non-regulatory, incentive-based approach allowing willing landowners to permanently conserve their lands by selling residential development rights. In that context, it would appear TDR could provide additional options to rural and natural resource landowners, rather than taking options away. In doing so, it would help to contribute to the protection of important resource lands in the county, which is a clearly stated priority of the Skagit County Comprehensive Plan and a documented priority of many county residents.

SKAGIT COUNTY DEVELOPMENT TRENDS

To date, Skagit County has not seen the rate of loss of resource lands and open space areas that some counties to the south have experienced. This is likely a result of the county’s strong policy commitment to protecting its natural resource lands as well as its relative distance from the Seattle metropolitan area. However, Washington State and Skagit County are projected to continue to grow over time. Local economic development officials frequently point out that 6.5 million people live within a 100 mile radius of Mount Vernon. The regional economies around Seattle and Vancouver, B.C. remain strong and dynamic. The State Office of Financial Management’s current medium growth projection estimates Skagit County will grow by 36,000 residents in the next 20 years. The County’s historic growth rate since 1960, carried forward, would result in more and faster population growth over that period.

The table below indicates the number of residences built in Skagit County’s natural resource land designations from 2000 to 2012

Table 4-1. Homes Built on Skagit County NRLs 2000 to 2012

<table>
<thead>
<tr>
<th>Zoning</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ag-NRL</td>
<td>162</td>
</tr>
<tr>
<td>IF-NRL</td>
<td>2</td>
</tr>
<tr>
<td>SF-NRL</td>
<td>43</td>
</tr>
<tr>
<td>RRc-NRL</td>
<td>63</td>
</tr>
</tbody>
</table>

The county saw strong residential growth between 2000 – 2007 (see Table below), but development dropped sharply in 2008 and remained low through 2012. Skagit County implemented the requirement that Ag-NRL landowners demonstrate three years of farm income to obtain a residential building permit (to demonstrate that a proposed residence is accessory to farming) in 2008. The number of residences built on Ag-NRL dropped considerably after that but it’s still too early to distinguish the effects of that requirement from the significant drop in residential development in the county overall.

Appendix D illustrates the estimated number of developable lots in rural Skagit County by zone, as well as a map indicating their location on the landscape.

Table 4-2: Residences built in Skagit County, 2000-2010 [rural county only, or cities as well?].

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Chapter 5. Selection of Sending Areas

Through its discussions, the Committee evaluated all of Skagit County’s Natural Resource Land (NRL) designations for possible inclusion as TDR sending areas: Agriculture-Natural Resource Land (Ag-NRL); Industrial Forest-NRL (IF-NRL); Secondary Forest-NRL (SF-NRL), and Rural Resource-NRL (RRc-NRL). The Committee also discussed the potential for conserving land not designated as natural resource land where there is active natural resource uses (primarily farming or forestry). The main designation where this would occur is Rural Reserve (RRv).

Each designation’s suitability as a potential TDR sending area is discussed below. The order in which they are listed generally reflects the level of support among Committee members for including the designation as a sending area.

There was general (although not unanimous) support among the Committee for Secondary Forest-NRL; Rural Resource-NRL; and Rural Reserve lands with active agriculture or forestry uses. Committee members had more mixed feelings regarding Ag-NRL and Industrial Forest, with some believing they should be included in a TDR programs and others believing they should not.

Secondary Forest - NRL

Secondary Forest is one of two Forest Resource Land designations in the Skagit County Comprehensive Plan. Out of the initial land base meeting forest resource designation criteria, Skagit County designated a roughly quarter-mile band on the outer edge as Secondary Forest, to provide a buffer between Industrial Forest lands and Rural (non-resource) lands.

The major distinction between Industrial Forest and Secondary Forest lands is the average parcel size. While Industrial Forest has an 80-acre minimum parcel size, Secondary Forest land may be divided down to 20 acre parcels.

Secondary Forest has a development potential of 1 residence per 20 acres. The Future of Washington Forests report notes that “Forest parcelization is ....thought to affect the cost of forest management activities by reducing the size of forested tracts (Munn et al. 2001). As an example, Harris and DeForest (1993) found that harvesting costs are inversely related to tract size, escalating for stands less than 40 acres in size.” (p. 244)
Increased parcelization in Secondary Forest not only appears to increase the cost of forest management activities, it also increases the potential for conflicts between those activities and residents living on and adjacent to Secondary Forest lands.

**DEVELOPMENT PRESSURE**

Secondary Forest lands are located on the outer edge of designated Forest Natural Resource Lands, typically adjacent to higher-density Rural areas. Compared to Industrial Forest, they generally have easier access to the public road network, allow higher residential densities, and are not subject to the same prohibition on development if located outside of a fire district. All of these factors would indicate that of the Forest Resource Lands, Secondary Forest would experience a greater likelihood of development than Industrial Forest land.

Skagit County Assessor’s data indicate that 43 residences were built in Secondary Forest between 2000 and 2012. GIS analysis estimates a total of 973 unexercised development rights in Secondary Forest.

**EXISTING CONSERVATION PROTECTIONS**

Secondary Forest lands benefit from GMA-compliant land use policies and development regulations intended to protect resource lands of long-term commercial significance, including the Right-to-Manage provisions of Skagit County Code 14 SCC 14.38.010. Secondary Forest lands are also eligible for, and many are enrolled in, Open Space Timber tax status. Beyond that, programs or funding sources that encourage the conservation of Secondary Forest while leaving them in private ownership and in productive use for forest management purposes are limited to non-existent.\(^\text{31}\)

**LANDOWNER INTEREST**

Several individual private forest landowners who participated in the Forestry Focus Group discussion were very supportive of the idea of a TDR program that would support voluntary conservation of forest lands. One suggested the most likely participants would be individual forest land owners who own in the range of 5 to 40 acres. TDR could be a means for small landowners to expand their ownership, or to retain that ownership for succeeding generations by helping to cover estate taxes. Jim Owens, president of the local chapter of the Washington Family Forestry

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\(^{31}\) Skagit County’s Forest Advisory Board has criticized what they see as a proliferation of organizations purchasing forest resource lands for conservation or environmental mitigation purposes, removing them from active resource management and timber production.
Association, talked with 7 or 8 local landowners from that organization. Most thought TDR was an excellent idea and none was opposed. Mr. Owens said the organization’s members tend to be older, land rich and cash poor, and the money would be a welcome addition.

Some representatives of larger forest land owning companies also expressed interest in participating in TDR. Some did not have a concern with the permanent nature of TDR conservation easements. One suggested a landowner who was unsure about the future viability of forestry could opt not to sell development rights or hedge their bets by selling some and retaining others.

However, other representatives of forest land owning companies expressed concern about a future where forest management and timber production are no longer economically viable, due to continued loss of the land base, increasing regulations, and loss of infrastructure such as mills. Some said they would have more interest in a TDR program that offered non-permanent conservation easement (like DNR’s 50-year riparian easements). Another alternative suggested was a buy-back option – the ability to buy back development rights, previously sold, at a later date. If that option were not available, some of those forest managers would not be interested in participating in TDR.

Kittitas County has implemented a buy-back option into its TDR conservation easements in cases where resource management of the land is no longer viable due to circumstances outside of the landowner’s control. This will be discussed in greater depth on page 46 at the end of this section.

Rural Resource-NRL

Rural Resource-NRL is another resource land of long-term commercial significance. These lands have combined land and land-use characteristics of long-term agricultural, forest or mineral lands, and have the potential for multiple use or smaller scale resource management.

Rural Resource lands have a density of 1 residence per 40 acres, or 4 residences per 40 acres when developed as a CaRD (clustered) land division. Through the CaRD process, Rural Resource allows the most intensive residential development of any designated Natural Resource Land. This reflects the fact that much of today’s Rural Resource land was previously zoned Rural, allowing 1 residence per 5 acres. The county sought to comply with

<table>
<thead>
<tr>
<th>Rural Resource-NRL</th>
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</thead>
<tbody>
<tr>
<td>Rural Resource lands are, generally, areas that have the combined land and land-use characteristics of long-term agricultural, forest or mineral lands, and have the potential for multiple use or smaller scale resource management. Rural Resource lands generally are not managed for industrial-scale farming or forestry but nevertheless contribute to the natural resource land base. Where the Mineral Resource Overlay designation is also applied, industrial-scale mining can occur. Skagit County Comprehensive Plan, p. 4-22</td>
</tr>
</tbody>
</table>

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32 A Kitsap County TDR program that sought to use non-permanent easement was found not to comply with the Growth Management Act.

33 This CaRD density bonus is not available within ¼ mile of a Mineral Resource Overlay area in order to reduce the potential for conflicts between mining activities and residential development.
GMA by designating certain lands Rural Resource-NRL while retaining a residential development potential similar to what those property owners previously had.

Advisory Committee Kim Mower stated that land being productively farmed in Skagit County has some of the world’s best farm soils – even if they are not designated Ag-NRL – and should be conserved wherever possible. Additionally, Rural Resource lands can provide a less expensive entry into farm ownership than Ag-NRL. Many Rural Resource lands are also forested and contribute to the timber supply and to the environmental benefits that forested land provides.

DEVELOPMENT PRESSURE
Rural Resource land is often situated near Secondary Forest land and shares many similar characteristics, including ease of access to the public road network. The potential to obtain bonus residential densities through a CaRD is another factor encouraging development in Rural Resource. Skagit County Assessor’s data indicate that 63 new residences were built on RRc-NRL lands between 2000 and 2010. GIS analysis estimates a total of 1,572 unexercised development rights in Rural Resource, with CaRD density bonuses representing between 800 and 1,100 of that total.

OTHER CONSERVATION PROTECTIONS
As with the other Natural Resource Lands, existing conservation measures provided for Rural Resource include:

- GMA-compliant designation policies and development regulations intended to protect resource lands of long-term commercial significance.
- Right-to-Manage provisions of Skagit County Code 14 SCC 14.38.010.
- Eligibility for enrollment in Open Space Ag or Timber taxation.

Beyond that, programs or funding sources for conservation of Rural Resource lands, particularly for the purposes of keeping them in private ownership and in productive use for agricultural or forest management purposes, are limited to non-existent.

LANDOWNER INTEREST
It’s unclear if any Rural Resource landowners have been directly consulted through the course of the TDR project. Since Rural Resource lands are located in close proximity to Secondary Forest lands and are relatively similar in parcel size and site characteristics, there may well be Rural Resource land owners who have a similar outlook toward conservation and TDR as the small private forest land owners consulted through the Forestry Focus Group meeting.

Rural Reserve Lands in Active Agricultural or Forest Use
The Comprehensive Plan identifies Rural Reserve as “one of the three main rural residential land use designations in the Rural area.” Rural Reserve allows a density of 1 residence per 10 acres, or 2 residences per 10 acres with a CaRD. Rural Reserve is not a designated resource land of long-term commercial use and does not warrant, as a whole, designation as a TDR sending area. Generally speaking, these are some of the most suitable lands in Skagit County for rural residential development.
Some Committee members advocate identifying Rural Reserve lands in active agricultural or forest use as potential TDR sending areas. Doing so would allow willing landowners to "opt in" to a Natural Resource Land designation after selling residential development rights. Supporters of this approach say Rural Reserve lands:

- Have significant agricultural and forestry value, even if they are not the most productive agricultural or forest soils in Skagit County;
- Can help to stabilize the agricultural and forest land base against unavoidable losses to resource lands over time; and
- Can be more accessible and affordable than Ag-NRL to new farmers.
- Can provide forest habitat, watershed and open space benefits that may be diminished through residential development.

Although these lands may be less significant to forestry production than SF-NRL and RRc-NRL, Rural Reserve lands meet the ownership size range (5 to 40 acres) identified as most common among private non-industrial forest landowners in the Forestry Focus Group meeting. In fact, Jim Owen, the president of the local chapter of the Washington Farm Forestry Association, owns forested land in Rural Reserve.

**Recommendation 5-1: Allow Rural Landowners to Opt In to TDR**

The Committee was generally supportive of an approach used in the Snohomish County TDR program that enables an interested property owner to participate in the TDR program if their land meets certain criteria. In Snohomish County, the rural property must:\nsnohomish county Code section 30.35A.025(2).

1) Meet minimum parcel size requirements (5 acres for farmland and 40 acres for forest land)
2) Be enrolled in or meet the eligibility requirements for Open Space Ag or Open Space Timber tax status,
3) Be in active commercial agriculture or forest use.

Properties that meet these criteria are eligible to participate in TDR, and once development rights are sold the land is redesignated and rezoned to farm land or forest land use.

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34 Snohomish County Code Section 30.35A.025(2).
Industrial Forest-NRL

Industrial Forest lands can be quite similar in terms of site productivity characteristics to Secondary Forest although the average parcel size of Industrial Forest lands is larger. Industrial Forest lands have a density of 1 residence per 80 acres. Residential development is only permitted if the parcel is located within a fire district and within 200 feet of a public road. This is intended to reduce the risk of forest fires in Industrial Forest lands that would be difficult to fight due to limited access to the property. If the entire parcel of Industrial Forest is located outside of a fire district, residential development is not permitted.

DEVELOPMENT PRESSURE

Industrial Forest lands do not face as much development pressure as Secondary Forest or Rural Resource lands. This is because of their more remote location, more difficult access, lower residential density, and the fact that much of the Industrial Forest land is located outside of fire districts. Assessor’s data indicates that only two residences were built on industrial forest land between 2000 and 2012. GIS analysis indicates there are approximately 400 potentially buildable residential development rights in Industrial Forest. These are from Industrial Forest parcels located in fire districts and any adjacent Industrial Forest parcels under the same ownership.35

Some committee members saw little rationale for including Industrial Forest as a TDR sending area because of the limited development pressure and the low residential density. Others supported designating Industrial Forest as a TDR sending area on the basis that:

- Current policies and regulations applicable to Industrial Forest land could become less restrictive over time, whereas conservation easements provide permanent protection36 and
- Because of their lower development potential, Industrial Forest lands could be among the least expensive development rights to be purchased through TDR.

OTHER CONSERVATION PROTECTION

As with the other Natural Resource Lands, existing conservation measures provided for Industrial Forest includes:

- GMA-compliant designation policies and development regulations intended to protect resource lands of long-term commercial significance.
- Right-to-Manage provisions of Skagit County Code 14 SCC 14.38.010.
- Industrial Forest lands are also eligible for, and many are enrolled in, Open Space Forestry taxation.

35 It appears that the county’s development regulations would allow the transfer of residential development rights in such instances from the area outside of the fire district to the area inside the fire district, provided that all required development standards could be met on the land located within the fire district.

36 Although many of the larger forest land managers were uncomfortable with permanent conservation easements.
Beyond that, programs or funding sources for conservation of Industrial Forest lands – particularly for the purposes of keeping them in private ownership and in productive use for agricultural or forest management purposes – are limited.37

**LANDOWNER INTEREST**

While larger forest landowning companies were generally less enthusiastic about TDR than small non-industrial landowners, at least two foresters who participated in the focus group discussions and own or manage Industrial Forest lands expressed interest in potential utilization of TDR.

**Agriculture-Natural Resource Land**

Agricultural-Natural Resource Lands are designated based on the presence of “prime farmland soils” and their location the 100-year floodplain. The soils found in Agriculture-NRL are considered among the best farm soils in the world.

Agricultural Natural Resource Lands (Ag-NRL) have a density of 1 residence per 40 acres. The code has long required that residences built on Ag-NRL must be accessory to farming operations, but the County had not found a way to implement that rule until recently. In 2008, with support from the agriculture sector, Skagit County implemented a requirement that landowners who want to build a residence on Ag-NRL must demonstrate 3-years’ farm income from the subject parcel, to document the proposed residence is accessory to an agricultural use.

**DEVELOPMENT PRESSURE**

In the decades before GMA, there was a significant loss of agricultural land in Skagit County to development. The American Farmland Trust reports that Skagit County lost 52,622 acres of farmland from 1950 to 2007.38 Skagit County farmland is considered highly developable for residential and commercial uses because it is flat and relatively inexpensive compared to other land, and easy access to major roads such as I-5 and Highway 20 and beautiful views of the surrounding landscape. Concerns over Ag-NRL led to the creation of the Farmland Legacy Program in 1996 and to the implementation of the 3-year farm income rule in 2008. The agricultural community remains concerned about continued conversion of Ag-NRL lands for habitat and environmental restoration purposes.

37Some conservation groups or entities (such as dam operators needing to provide project mitigation) have made large fee simple purchases of Industrial Forest lands. This frustrates some in the timber industry because it removes those lands from contributing to the timber supply processed by local mills.

OTHER CONSERVATION PROTECTIONS

As with other Natural Resource Lands, conservation of Ag-NRL is encouraged through:

- GMA-compliant designation policies and development regulations intended to protect resource lands of long-term commercial significance;
- The Right-to-Manage provisions of Skagit County Code 14.38.010; and
- Eligibility for Open Space Ag taxation.

Additional conservation protections include:

- The three year farm income to demonstrate that a proposed residence is accessory to an agricultural use.
- The Farmland Legacy Program, which uses public funds to purchase residential development rights from Ag-NRL and has conserved more than 8,000 acres of Ag-NRL since 1996. Once the residential development rights are retired, the land remains in private ownership and continues to be used for farming.

LANDOWNER INTEREST

Landowner interest in applying TDR to Agricultural lands has been split both within and outside of the Committee. Skagitonians to Preserve Farmland has been supportive in recent years of Skagit County implementing a TDR program. Committee member Allen Rozema, Skagitonians’ executive director, has made the case as follows:

- TDR can supplement the Farmland Legacy Program and, if properly designed, will not compete with or undermine it.
- TDR will provide an additional option to farmland owners who have not qualified to sell development rights to Farmland Legacy, or who are interested in a less restrictive conservation easement.
- Federal funds currently available for Farmland Legacy are on the decline and now come with additional stream buffer requirements; and
- Ag-NRL lands are located in the floodplain, which provides another public policy rationale for discouraging residential development.

Committee member Mike Hulbert, a farmer who serves on the Conservation Futures Advisory Committee which advises the Farmland Legacy program, has advocated against applying TDR to Ag-NRL on the following basis:

- Farmland Legacy is one of the most successful purchase of development rights (PDR) programs nationwide and is doing a good job of permanently protecting Ag-NRL land.

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39 In 2013, the Board of directors of Skagitonians to Preserve Farmland adopted Resolution No. 2013-05 which, among other farmland protection goals states: “By 2020 there shall be a functioning TDR market place in Skagit County which allows for smart community growth and economic development while protecting our important and valuable agricultural resources lands.”
• By contrast, TDR is an untested program in Skagit County. Extending TDR to Ag-NRL lands may lessen political support for Farmland Legacy on the belief, correct or note, that TDR will adequately protect Ag-NRL.

A few other Committee members have also questioned application of TDR to Ag-NRL, for the following reasons: Ag-NRL lands have very limited residential development potential due to the three-year farm income rule. Farmland Legacy focuses entirely on Ag-NRL, whereas there is no comparable program for other resource lands. Additionally, the Heartland market analysis indicates that Ag-NRL would be the most expensive to purchase through TDR. TDR transactions will achieve more conservation if focused on less expensive resource lands other than Ag-NRL.

The Committee discussed several options for considering Ag-NRL as a TDR sending area but, given the two divergent opinions of key agricultural representatives on the committee, did not reach an overall consensus. The options considered are:

1. **Include all Ag-NRL lands in TDR**, on the basis that TDR will complement Farmland Legacy.

2. **Include selected Ag-NRL lands outside of the Farmland Legacy Program “footprint” (generally east of Sedro-Woolley)**. The geographic separation would minimize potential for interference with Farmland Legacy, while providing a conservation option to some farmland owners.

3. **Exclude Ag-NRL from TDR**. This will eliminate concerns over potential negative interactions between TDR Farmland Legacy and TDR, while allowing TDR to work on behalf of other resource lands.

### Prioritization of Sending Areas

The Committee considered whether all lands within a particular designation should be identified as sending areas, or whether some further prioritization should occur so that the program focuses on the highest priority lands or achieves a more significant conservation impact in a given area.

Including all lands within a designation is the most equitable approach, providing all landowners within the zone equal opportunity to participate in TDR. It is also important to have a broad enough base of landowners to ensure a healthy market dynamic. If a sending area includes only a few landowners none may be interested in participating. Or collusion could occur among landowners seeking to increase the price of their development rights.

At the same time, in a county as large as Skagit – and with a large number of potential sending areas under consideration – identifying all Natural Resource Lands throughout the county would greatly disperse the impact of any conservation achieved. Also, more distant properties outside of the path of development may be quick to participate in the program even though their actual prospect for development may be slim.

**Recommendation 5-2: Proximity to Growth Areas**

The Committee discussed several methods for prioritizing sending area lands (see table below). The one that received the greatest Committee attention was **proximity to urban growth areas or corridors**.
Committee members generally agreed that public support in TDR receiving areas will likely be greater for conservation of nearby lands, and areas closer to existing development are likely to face stronger development pressure than more distant parts of the county.

Skagit County GIS produced maps showing 2 and 4 mile buffers around urban growth areas and “growth corridors” defined by I-5 and Highway 20, as a potential way to define sending areas by geography. Those maps are included in Appendix E.

The Board of County Commissioners, the Planning Commission, potential TDR users and the general public will likely have more to say about prioritization of sending areas if a TDR proposal moves through the legislative process.

Potential Prioritization Methodologies

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Rationale</th>
</tr>
</thead>
</table>
| • Proximity to urban growth areas or growth corridors | • Likely greater public support in TDR receiving areas for conservation of nearby lands.  
• Areas close to existing development will face stronger development pressure than more distant areas, therefore conservation need is greater. |
| • Areas with the highest priority natural resource lands or those most important to the resource industry's long-term viability | • Conservation efforts should focus on lands with the most strategic importance to a particular natural resource. Advocated by some participants in the forestry focus group meeting.  
• Existing prioritization examples include Farmland Legacy Program criteria which provide points for “fringe” and “core” lands. Skagitonians to Preserve Farmland focuses its conservation efforts the I-5 and Highway 20 growth corridors.  
• While a valid approach, it may be difficult and time consuming to achieve consensus on which lands are most valuable or most strategically important for TDR sending areas, particularly given the wide range of resource types being considered. |
| • Resource lands with overlapping environmental or open space conservation values. These might include resource lands that also contain habitat for threatened or endangered species; watersheds where significant restoration activity is underway; or agricultural areas with high floodplain value or high flood risk. | • This approach would generate overlapping public benefits (natural resource, open space and environmental conservation).  
• The public may place the greatest value on conserving lands that provide multiple benefits. |
Process for determining development right eligibility for sale through TDR

The Committee reviewed and generally supported the following proposed process for determining whether a sending site property has a development right eligible for sale through TDR. The process would follow several of the review steps currently used to determine whether a parcel can be built upon for residential purposes, including the following:

1. **Lot certification for development purposes.** Used to determine if a lot is eligible to be considered for development permits. Evaluates whether a lot meets a minimum required size for its zone or, if not, meets one of several exemptions related to how it was created or whether certain property improvements were made by a certain date indicating an intent to develop.

2. **Review for easements, plat restrictions or other encumbrances.** Part of the development review process, done to determine if the lot is already subject to a conservation easement or other private restriction that would prohibit residential development of the property.

3. **Review for zoning or other County code restrictions prohibiting development.** Also part of the standard development review process, done to determine if there are code restrictions that apply to a class of properties that prohibit residential development or limit the number of residential development rights that may be exercised.

   Examples of such restrictions include the prohibition against construction of a new residence in the floodway (SCC 14.34.190), or on Industrial Forest-NRL outside of a fire district (SCC 14.16.410). This review does not require special on-site surveys or assessments.

Under the proposed process, properties that are prohibited from residential development at this level of review would **not** be eligible for the sale of development rights through TDR.

Development review not applicable to TDR

An additional level of review conducted for actual residential development permits that **would not** be applied to determine if residential development rights are eligible for sale through TDR.

This is review conducted to determine how a residential development project would meet County code requirements for critical areas, shorelines, sanitation (sewer or septic), water, road access, and others. Typically this requires on-site assessments and can cost several thousand dollars to complete. Rarely if ever do the above-mentioned code requirements outright preclude residential development, although in some cases they may significantly increase development costs.

A residential development right on a difficult-to-develop parcel would not be precluded from sale through a TDR program; however, the price negotiated between buyer and seller might be lower than for a residential development right that did not face similar constraints.
Following are two examples where development potential may be constrained, but not outright prohibited. Therefore development rights would be eligible for sale through TDR if the properties were located within designated TDR sending areas:

- **Ag-NRL**: Residential development is allowed only as accessory use to farming, based on demonstration of 3-years’ farm income. The number of residential permits on Ag-NRL has declined since this rule was implemented but are still being issued to those who meet the 3-year farm income test.

- **Skagit River basin (outside of areas with piped water)**: Residential development on new wells is only allowed with a state-recognized water right or state-approved mitigation plan or alternative water source. There is likely a pathway to development for landowners in the basin. For some it will be easier and less expensive; for others more difficult and more expensive.

Development rights from these areas would be eligible for sale through TDR if they are located in a designated TDR sending area.

**Other TDR eligibility considerations**

**Minimum property size for TDR participation**

TDR programs often establish a minimum size for properties (a parcel or collection of parcels) that are eligible to participate. TDR transactions will involve some administrative costs to applicants and the county and a minimum parcel size helps to ensure that any TDR transaction achieves a minimum acceptable level of acreage in conservation status. For discussion purposes, minimum property sizes by zone are proposed as follows.

In the left-hand column is the standard parcel size for each sending area zone. In the right-hand column is the proposed minimum property size for TDR participation. (This could be met by a single parcel or by a collection of parcels that total this amount.) Twenty acres is proposed as the minimum size for the four Natural Resource Lands (NRL) designations – consistent with the standard lot size for Secondary Forest, the smallest of all of the NRLs. Ten acres is proposed for the minimum property size for Rural Resource land participating in TDR – consistent with its standard lot size.

Project staff did not have the opportunity to vet this issue or proposal with the Advisory Committee, which did not have the opportunity to discuss it. Therefore, the below proposal is intended to start a conversation on this issue that will continue if a TDR proposal moves forward for further, legislative consideration.

**Proposed minimum property size for TDR participation**

<table>
<thead>
<tr>
<th>Designation</th>
<th>Standard Lot Size (acres)</th>
<th>20-Acre Minimum - NRLs 10-Acre Minimum - Rural Reserve</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ag-NRL</td>
<td>40</td>
<td>20</td>
</tr>
<tr>
<td>Industrial Forest-NRL</td>
<td>80</td>
<td>20</td>
</tr>
<tr>
<td>Secondary Forest-NRL</td>
<td>20</td>
<td>20</td>
</tr>
</tbody>
</table>
Determination of number of development rights

The working assumption in discussions with the Committee has been that the number of TDR credits available to be certified for sale through TDR is the same as the number of dwelling units allowed under the property’s zoning. For example, if a landowner has a 40-acre parcel in Secondary Forest-NRL (zoned for 1 residence per 20 acres), there would be 2 development rights available to be sold through TDR. Rights would not be issued for existing dwelling units or encumbered properties. Property owners could choose to retain some development rights and sell others or, of course, sell none at all.

Recognizing CaRD density bonus rights or not?

Another important question is whether a TDR program would allow the sale of development rights provided by base zoning only or – in those designations that allow CaRD density bonuses – would also recognize and allow the sale of bonus development rights.

Allowing the sale of CaRD density bonuses through TDR would be a strong incentive for those landowners because it could double or, in the case of RRc-NRL, quadruple the number of eligible developments rights they could sell. On the other hand, it would increase the number of eligible development rights in designated sending areas, requiring more TDR transactions to conserve a given acreage of land.

Committee member Bruce Lisser was the most outspoken on the subject, suggesting that only those landowners who went through the considerable time and expense of designing and gaining County approval of a CaRD development should be able to sell the development rights created by the CaRD bonus density.

Perhaps reflecting similar logic, Heartland recommended in the market analysis that the county should only make the base zoning density eligible for sale through TDR based on the following reasoning: The additional development potential of land in designations that provide CaRD density bonuses is already reflected in Heartland’s estimated value of the residential development rights from those lands. Developing an eligible lot as a CaRD would increase the landowner’s or developer’s potential economic return – but it would also significantly increase his or her costs and risks. Allowing the sale of development rights available through CaRD would grant additional economic value to the landowner – which is already reflected in the estimated value of those development rights – without any of the costs or risks associated with an actual CaRD development.

TDR conservation easements

The Committee discussed and agreed that that the mechanism for conservation through a TDR program should be the retirement of a property’s residential development right.
As a result, property conserved through TDR would remain in private ownership. The residential development right would be retired on the sending site through a permanent conservation easement, held by the county, and the development potential would be transferred to a receiving area. Other uses of the sending-site property allowed by its zoning would not be affected by the conservation easement.

Initially the Committee discussed whether the TDR conservation easement should go beyond retiring the residential development right and stipulate additional resource management or conservation requirements on the land. It discussed examples including the Farmland Legacy Program easement which establishes a maximum impervious surface limit of 2% and 5% on the property and limits activities on the property to only those necessary for agriculture. A conservation easement could also require more restrictive resource management practices, such as stricter riparian protections or more restrictive forest management practices than are otherwise required by code and law.

It fairly quickly became apparent that trying to be more specific about land management practices that might either be required or limited through a TDR conservation easement could easily splinter the general agreement among resource managers and conservation advocates over the benefits of conserving lands through the voluntary retirement of residential development rights.

Focusing the TDR program only on the retirement of residential development rights should help maintain a broader range of support for a TDR program than seeking to implement more specific conservation or resource management goals. In keeping with the voluntary nature of the program, it would leave decisions about more specific land management activities in the hands of the private landowners.

**Buy-back provision**

Kittitas County, with the help of Forterra, has implemented a buy-back option in its TDR conservation easement. Something similar to this might help address concerns expressed by some forest landowners and managers about having no economic options if the practice of forestry becomes unviable over time.

The Kittitas County provision applies in cases where resource management of the land is no longer viable due to circumstances outside of the landowners' control. Kittitas County Code Section 17.13.060, TDR Documentation of Restrictions, paragraph 3, reads as follows:

3. A TDR conservation easement permanently encumbers a sending site, excepting extraordinary circumstances and a determination of public benefit. The associated process for opting out of a TDR conservation easement for those qualifying shall include a finding by the Board of the following:
   1. Demonstration of a hardship beyond the land owner's control; and
   2. Purchase equivalent transfers of development rights; and
3. Adoption of a resolution by the Board finding that there is an equivalent or better public benefit to exchange the previously held easement for the easement described above in KCC 17.13.060(3)(b).

4. At the discretion of the Board, Kittitas County may elect to secure an appropriate land management nonprofit or quasi-governmental organization to receive, manage, and steward TDR conservation easements. (Ord. 2013-001, 2013; Ord. 2010-006, 2010; Ord. 2010-02, 2010; Ord. 2009-25, 2009)

This or a similar provision could be considered for a Skagit County TDR program to address the concern raised by some forest land owners.

On the other hand, a 40-year conservation easement, as advocated by some participants in the Forestry Focus Group meeting, does not appear feasible. Kitsap County adopted 40-year conservation easements as part of its TDR program, but that provision of the program was subsequently invalidated by the Central Puget Sound Growth Management Hearings Board as being inconsistent with GMA and not achieving permanent conservation of the land.40

**Standardized conservation easements**

Finally, the Committee recommended using standardized easements for all TDR transactions, as opposed to negotiating unique conservation easements for each one. The latter would significantly increase the time and expense of TDR transactions for the landowners and the county.

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Chapter 6. Development Goals, Receiving Areas and Development Incentives

Receiving areas are the locations to which development potential is transferred in the form of TDR credits. They can be located within city limits, unincorporated urban growth areas, or in selected rural areas. Within these areas developers may access additional development potential by purchasing TDR credits. Because of the market-driven nature of TDR, viable receiving areas are a key component of effective TDR programs.

Aligning receiving areas with development goals

Forterra and other TDR experts recommend that communities select receiving areas consistent with their development goals. A TDR program will function most effectively when closely aligned with the community’s vision and goals as reflected in key planning documents such as the comprehensive plan and development regulations.

The Skagit County Countywide Planning Policies (CPPs) establish the framework for county, city and town comprehensive plans. 41 Countywide Planning Policy 1 “Encourage(s) urban development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.” CPP 1.2 states that “Cities and towns and their urban growth areas, and non-municipal urban growth areas...shall include areas and densities sufficient to accommodate as a target 80% of the county’s 20 year population projection.”

Given these goals – and the fact that slightly more than 80% of the Skagit County’s new population growth between 2000 to 2010 occurred in cities, towns and urban growth areas (UGAs) – urban areas offer the greatest long-term potential as TDR receiving areas. 42 At the same time, for reasons discussed later in this chapter, several developers interviewed as part of this process appeared most interested in using TDR in the rural portions of Skagit County.

At the beginning of this TDR planning process, Skagit County invited all of the major cities and towns to participate. The planning directors from Burlington, Mount Vernon and La Conner agreed to serve on the TDR Advisory Committee. At present, only Burlington is actively considering being a

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41 The county and the cities and towns developed the Countywide Planning Policies in the early 1990s as an initial step in implementing the Growth Management Act.

receiving area as part of County TDR program. Burlington already offers the Burlington Agricultural Heritage Density Credit program which, like TDR, links additional residential development potential in certain city zones with the conservation of Ag-NRL lands surrounding the city through the county’s Farmland Legacy Program.

Encourage greater city participation

From the start of the process, Committee members have emphasized that participation by other cities in addition to Burlington will be important for the long-term success of a county TDR program.\(^4\) A limited number of receiving areas will likely not generate significant demand for development right purchases, especially considering the wide range of potential sending areas in Skagit County. Some Committee members also suggested a TDR program will be more successful if it is coordinated among the various cities in Skagit County, creating a more even playing field in terms of development costs across jurisdictions.

In response, several city planners suggested that TDR supporters should encourage city and town elected officials to identify TDR as an item for consideration through the cities’ 2016 Comprehensive Plan updates which are currently underway.

Look beyond residential density

The Committee has also urged consideration of more than residential density as a developer incentive under TDR. As discussed in earlier sections, proposals to increase residential density are often controversial among existing city residents and elected officials in Skagit County.

Some other developer incentives used by TDR programs in the Puget Sound region and nationally include:

- Additional square footage, floor-to-area ratio (FAR), or height in commercial areas
- Additional lot coverage in industrial areas (see example this page)

\(^4\) One Committee member, Charlie Boon, has repeatedly expressed concern about Burlington as a receiving area due to its location at a vulnerable spot along the Skagit River.

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TDR and Industrial Development

Industrial Land is rarely used as a TDR receiving area because price is often a major factor in a company’s selection of industrial development locations. However, Warwick Township (pop. 17,000), in Lancaster County, Pennsylvania, has established a TDR receiving area in its Campus Industrial Zone, a 163-acre site within the township. According to The TDR Handbook:

“The program’s baseline is 10 percent lot coverage – in other words, no TDRs are required to cover up to 10 percent of a lot in this zone. To exceed that baseline, developers must buy one TDR for each four thousand additional square feet of lot coverage above baseline, up to a maximum coverage of 70 percent.” The zone, created out of rural land, represented a significant increase in development potential even with the 10 percent lot coverage limit. The Warwick program has preserved 20 farms with a total of 1,318 acres.
• Reduced parking requirements in residential or commercial zones
• New or additional residential development potential in commercial zones resulting in “mixed use” residential and commercial areas.

The initial phase of the project’s TDR market analysis evaluated the potential for linking TDR to industrial development in the Bayview Ridge UGA and to commercial and mixed use development in the City of Burlington. The analysis of commercial and mixed use development in Burlington was carried through to the final and more detailed phase of the market analysis. Those findings are discussed in Chapter 7 summarizing the market analysis results.

City interest in TDR

The Committee discussed why a city or town would be interested in participating in a county TDR program.

One Committee member asked: Can’t a city simply increase the amount of development it allows by changing its zoning code, with no linkage to a county (or city) TDR program?

The answer, of course, is yes.

Cities and towns have sole land use jurisdiction within their corporate limits. They can change their comprehensive plan policies and zoning regulations as they see fit. The reason a city or town would partner with the county on a TDR program is if it has an interest in conserving land outside of the city’s limits and thus outside its land use jurisdiction. This could include land within the unincorporated portion of the city’s urban growth area (which falls under county land use jurisdiction) or land beyond its UGA boundaries.

Committee member Margaret Fleek, who is Burlington’s planning director, explained that Burlington sees TDR as an opportunity. The city needs affordable housing for people who work there. The city’s base density under its zoning code is 14 residences per acre, which translates into 3,000 square foot lots.

The Burlington Agricultural Heritage Credit Program allows development at higher densities in certain zones which is one means to encourage affordable housing for city residents. Fleek says city residents value the agricultural landscape and other types of open space around them. Agriculture is a key part of Burlington’s heritage and identity and the city wants to help ensure the permanent protection of working farm lands around it. Because those farmlands are outside of Burlington’s city limits, the city has formed a partnership with the county's Farmland Legacy Program to further shared conservation goals.

--Burlington Planning Director
Margaret Fleek

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**Financial incentives for cities**

A city may object to being a TDR receiving area due to concerns over higher densities, greater congestion, or increased costs for local infrastructure.

To address such concerns, King County has provided infrastructure and “amenity” funds to cities that participate in the county’s multi-jurisdictional TDR program. Cities may use those funds to finance city amenities including parks, streetscape and transit-related improvements, and cultural facilities.\(^{44}\) King County has determined that shifting residential development from the county’s natural resource lands into cities provides a net fiscal benefit to the county, warranting these economic contributions to participating cities.

A recent state law enables cities participating in certain county or regional TDR programs to use a form of tax increment financing for infrastructure improvements such as parks, plazas, sidewalks and roads. At the current time, the Landscape Conservation and Local Infrastructure Program (LCLIP) only applies to the four central Puget Sound counties: King, Snohomish, Pierce and Thurston.

**Recommendation 6-1: Recommendation**

Although Skagit County may not have the financial resources of a King County, or access to the LCLIP program, it could look for other opportunities to assist cities who participate in a county TDR program with infrastructure needs.

For instance, Skagit County distributes the portion of the state sales tax rebated to the County (.09%) for city, town, county or port infrastructure projects that create or retain family wage jobs, per RCW 82.14.370.\(^{45}\) The county establishes the criteria it uses to rank and select these projects, and it could include points in the ranking process for cities or towns that participate as receiving areas in a county TDR program.

**Developer incentives**

The Committee felt strongly that to be successful, a TDR program will need to appeal to developers. TDR is entirely market driven and without development right or density credit purchases there is no resulting conservation. Market demand needs to exist for the development incentives offered, and those incentives need to be available at a price that provides an economic benefit for the developer to pursue them.\(^{46}\) A TDR program must also be easy to use, as delays in the permitting

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\(^{45}\) RCW 82.14.370, “Sales and use tax for public facilities in rural counties.”

\(^{46}\) Although purchase and sales prices are privately determined in a traditional TDR program, the exchange ratios established by the program have a significant impact on whether TDR transactions work financially

(COMMITTEE REVIEW DRAFT --SUBJECT TO REVISION)
process cost developers money. Uncertainty and risk are strong disincentives as are changes in program parameters – such as the changes to the Mount Vernon TDR program affecting where purchased development rights could be used.

Cities can encourage TDR use by advance-planning activities such as subarea plans or a planned action Environmental Impact Statement (EIS) that remove some of the risk and streamline the permitting process for developers. Burlington is considering a planned action EIS for possible changes in zoning in and around its downtown area that may increase opportunities for use of its density credit program.

Finally, the Committee emphasized that developer incentives offered through a TDR program must be compatible with other development regulations in the receiving area. For instance, the potential to build additional commercial square footage through the purchase of TDR credits would be of no value to a developer if it could not be used due to conflicting limitations on impervious surface.

**Developer focus group meeting**

Many of these same issues were raised by developers and receiving area landowners who participated in the Developer Focus Group meeting with Heartland.

The majority of meeting participants appeared to view TDR as an undesirable means to place additional costs on landowners and developers, resulting in a disincentive rather than an incentive for the desired development. For this group of TDR skeptics, the major exception was for additional development opportunities in rural Skagit County, where comprehensive plan policies and development regulations often limit development potential below market demand.

A smaller number of the development group appeared to support the goals and premises of the comprehensive plan and TDR, including that:

- The majority of new development should occur in urban areas.
- More compact urban development is helpful for conserving rural and resource lands.
- The development market is moving in the direction of greater urban infill and intensification; and
- TDR, if properly designed, can balance the financial needs and goals of sending and receiving-area landowners and developers.

Whether they were generally for or against TDR, most participants in the developer meeting agreed the density fee approach would be simpler for developers and provide more certainty by informing them up front about the cost of accessing additional development potential, in contrast to a traditional TDR program where a developer would need to search out willing sellers and negotiate a sales price.

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for both buyers and sellers. Under a density fee program, the jurisdiction operating the program – whether a city or the county would establish the price of the density credits based on market data.
Potential TDR Receiving Areas

The TDR market analysis conducted by Heartland and summarized in Chapter 7 evaluated three areas for detailed consideration as potential TDR receiving areas. Selection factors included the jurisdiction’s interest in being considered as a TDR receiving area, the amount of funds available for the market analysis, and the overall project schedule. The three areas and the zones within them that were analyzed are:

- The City of Burlington’s downtown business, commercial, and industrial zones.
- The Bayview Ridge UGA’s residential, industrial, and community center zones; and
- Rural Upzones, or landowner-requested changes from one Rural zone another zone that provides additional development potential.

Following is a brief discussion of each of the potential receiving areas:

City of Burlington

The Burlington Agricultural Heritage Density Credit Program allows additional residential development in a 49-square-block downtown area through the purchase of density credits. The program applies to residential development in the following zones: Downtown Business District (B-1); Medium Residential Neighborhood Business (MR-NB); General Commercial (C-1); and Multi-Family (R-3).

The TDR market analysis should help Burlington consider whether and how to expand the scope and use of the Density Credit Program or create a linkage with a newly created Skagit County TDR program. Specifically, the market analysis provides updated data and analysis regarding long-term market demand for density credits in Burlington; developer willingness or ability to pay for density credits to inform credit pricing decisions; and how the density credit program (or TDR) could be applied to commercial development in the city.

Skagit County also has provided planning funds to Burlington to help the city engage its residents, business owners and elected officials in planning for the future, in preparation for a state-required comprehensive plan update by 2016. Those funds helped Burlington draw on the expertise of the Urban Land Institute-Northwest and the University of Washington’s Green Futures Lab to develop specific implementing recommendations to move the community’s vision forward.47

Burlington is focusing on the interrelated goals of expanding affordable housing opportunities for the city’s workforce and increasing the economic vitality of the downtown. One outcome might be zoning changes to allow two-story mixed use (commercial and residential) buildings along Fairhaven Avenue – the main downtown thoroughfare – and three and four-story residential buildings in surrounding blocks. Over the long-term, those zoning changes could help to generate demand for the purchase of additional density credits or TDRs.

The city has complete discretion to decide whether or how to implement any changes to its Density Credit Program or create a new linkage to a Skagit County TDR program (if one is created) as a result of this process.

**Bayview Ridge UGA**

Skagit County governs land use within the non-municipal Bayview Ridge Urban Growth Area a few miles west of Burlington. The UGA includes the Skagit Regional Airport and Port of Skagit and private industrial lands, an existing urban residential community and golf course, and hundreds of acres of mostly vacant land planned for future development. When the TDR planning process started in 2011, Skagit County was developing a Planned Unit Development (PUD) ordinance to guide future residential development at Bayview Ridge. Policies included in the Bayview Ridge Subarea Plan in 2008 called for the use of density credits to allow moderately higher urban residential densities in the Bayview Ridge Residential zone. The county’s intent was to use the TDR market analysis to flesh out the details and economics of those policies.

Initially the TDR market analysis evaluated the potential for linking TDR or density credit sales to additional residential and industrial development opportunities at Bayview Ridge. The initial phase of the market analysis showed that residential development held the most promise as a driver of TDR and later phases explored those residential TDR opportunities in greater depth.

However, the county's policy direction on Bayview Ridge changed significantly in 2013 and early 2014. The county has moved toward expanding the acreage available for industrial development, while eliminating planned future urban residential areas. This is due to concerns about conflicts between the Skagit Regional Airport and proposed new residential development, and the costs of serving that development particularly associated with the need for a new school.

The Heartland analysis revealed that urban residential development at Bayview Ridge was a fairly promising TDR market opportunity. However, that appears no longer to be an option due to the county's changing policy direction at Bayview Ridge. The Bayview Ridge analysis does help to illustrate how TDR could be applied other comparable urban residential situations, whether linked to incremental increases in residential densities within cities or expansions of urban growth areas to accommodate residential growth.

**Rural Upzones**

Skagit County has had a long-standing interest in exploring TDR or density credit purchase options as part of upzones in rural portions of the county. Commissioner Ken Dahlstedt has said many times: “It makes no sense on one hand to use public funds to buy development rights from ag lands, through the Farmland Legacy Program, then to give them away for free through rural upzones.”

He has advocated linking rural upzones to a TDR or density purchase program so that landowners who obtain increased development potential on their land help to contribute to the conservation of Natural Resource Lands. Several counties have similar provisions in place, including Pierce, Kittitas, and Snohomish. Generally, the County must approve the requested upzone on its own merits, consistent with the applicable comprehensive plan designation criteria. If approved, the owner or
developer of the land may access the increased development potential granted by the upzone through the purchase of TDRs or density credits.

**Additional receiving area opportunities**

Some members of the Advisory Committee and participants in the Developer Focus Group meeting encouraged exploration of other receiving area opportunities as well, including the following:

**RURAL OPTIONS**

Some of the greatest interest in TDR among developers interviewed appears to be in rural rather than urban area uses. This likely results because GMA requires urban jurisdictions to plan for 20 years – resulting in a great deal of existing urban development capacity – whereas growth management requires counties to substantially limit development in rural areas, often below what the market would typically produce. Developers naturally see rural development opportunities beyond what is allowed by county codes.

At same time, allowing more rural development through TDR than either the comprehensive plan or GMA allow could work against the plan's fundamental goals of protecting natural resource lands, rural character, and environmentally sensitive areas. Some additional rural TDR opportunities may exist but they would need to be carefully crafted.

**CaRD bonus density**

Several members of the development community expressed interest in obtaining additional development potential for a Conservation and Reserve Development (CaRD) with the purchase of TDRs. One participant described a situation where a project was short a small amount of acreage needed to obtain an additional development right. The developer may have been willing to purchase a TDR credit in order to obtain one additional lot as part of the CaRD. This additional lot would have utilized infrastructure already being provided to the other clustered CaRD lots and could have resulted in the removal of a development right from Industrial or Secondary Forest land.

Such a provision would likely generate both support and opposition: the former from those who want to see more flexibility in rural development opportunities; the latter from people who view the existing CaRD ordinance as flawed and resulting in developments that they believe detract from rural character rather than protecting it.

Heartland did not specifically analyze the economics of CaRD bonus densities. However the market analysis did include estimate development right values on rural and resource lands as part of the Rural Upzone analysis and could be adapted to the above CaRD scenario.

**Rural Village Infill or Expansion**

Several participants in the developer meeting showed interest in increased development potential within Rural Villages through the purchase of TDRs. Rural Villages are “limited areas of more intensive rural development” or LAMIRDs under the comprehensive plan and GMA. They allow more intensive development than is otherwise permitted in the rural area but that development must be consistent with what generally existed when GMA was adopted in 1990. New development
must consist primarily of infill rather than outward expansion and be located within “logical outer boundaries.”

Supporters of creating additional development potential in Rural Villages say they are the logical locations for more intensive rural development because of their existing density and presence amenities and services – in some instances including of sewer and public water. Some suggested that additional population in selected Rural Villages such as Big Lake, Clear Lake and Edison could help to fund infrastructure improvements that already are needed.

The best opportunity to consider allowing additional development through TDR in a particular Rural Village would be a subarea planning process, where the above issues and residents’ desired could be explored in greater detail.

Committee member Ed Stauffer lives in the Alger area and participated in the Alger Subarea Planning process in 2006 and 2007. Generally local residents who participated in that process expressed a desire not to see the Rural Village and surrounding rural area grow in size or intensity. However, the county did approve a few upzones (adding land to Rural Intermediate and the Alger Rural Villages) as a result of the Alger Subarea Plan. Those upzones could have been linked to TDR density credit purchases if the county had a TDR program in place at the time.

Transfers from Resource to Rural Lands

Some meeting participants suggested allowing even broader transfers from Resource to Rural lands. Currently, Skagit County Code allows a single property owner who owns adjacent Resource and Rural parcels to transfer development rights from the former to the latter. Such transfers are not currently allowed among different property owners.

One developer described a project where he could have extended public water to a particular rural site by increasing the number of development lots through the purchase of TDRs. This would have moved development rights off Resource lands (or Rural lands with restricted water access) to a rural site more suitable for residential development.

This idea is similar to a concept recommended by the Envision Skagit Citizen Committee and also to a proposal for “Conservation Villages” developed by the Cascade Land Conservancy (now Forterra) and considered but not adopted by the Washington State Legislature in 200_.

This concept has too many significant implications (including whether it would be permissible under GMA or achievable with the County’s existing CaRD ordinance) to implement at this time. However, if and when the Board of County Commissioners authorizes a comprehensive evaluation of the CaRD ordinance and its implementation, the idea could be explored in greater detail.

Recommendation 6-2: One-to-one exchange rate for Rural-to-Rural transfers

- One feature that might reduce concern over rural-to-rural transfers would be the stipulation of a one-to-one exchange ratio, so that such transfers create no additional development potential in rural Skagit County. Instead, they would move existing development potential from resource lands or environmentally sensitive areas to rural areas better suited for development. The Heartland market analysis suggests that in some cases such one-to-one transfers would be economically viable.
UGA EXPANSIONS:

Several counties link purchase of development rights to expansions of urban growth areas. Examples include Snohomish and Pierce counties. Under Snohomish County’s TDR program, the additional development potential granted when Rural land is added to a UGA may be accessed through the purchase of TDRs.

A significant increase in development potential occurs when land is moved from rural zoning – for instance Rural Reserve, which allows 1 residence per 10 acres – to an urban residential zone, typically allowing a minimum density of 4 units per acre. This particular example represents up to a 40 fold increase in development potential and would generate a sizable increase in property value as well.

At the same time, the resulting 4 units per acre of residential density remains relatively low by urban standards – in fact, 4 units per acre is generally the minimum urban density allowed by GMA. This example illustrates how TDR could be applied to a receiving area using fairly standard (for Skagit County) urban densities rather higher residential densities that have generated conflict in some local communities.

Some might object that linking UGA expansions to TDR purchases might discourage development within the urban growth area by making it more expensive. This could be addressed by an appropriate exchange rate (or pricing of density credits) to ensure that the UGA expansion option remains an economically favorable one for the landowner or developer.

Recommendation 6-3: Explore Application of TDR to UGA Expansions

The recommended approach for implementing a TDR provision linked to UGA expansions would be in consultation with the affected cities. Among other things, this would allow identification of appropriate sending areas for TDR transactions that would conserve lands of importance to the city and its residents.

The Heartland analysis of upzones from Bayview Ridge Urban Reserve to Bayview Ridge Residential is very similar in nature to a rezone from Rural Reserve (which surrounds many city and town UGAs) to urban growth area. It could be adapted to specific UGAs based on more localized analysis.

MUNICIPALITIES IN ADDITION TO BURLINGTON

The Advisory Committee strongly encouraged Skagit County to talk with other cities about participating in a countywide TDR program. Of course, the county has no ability to require cities and towns to do so. Following is a brief discussion of some apparent opportunities for and constraints to participation by various cities and towns:

Anacortes

Anacortes is the second largest city in Skagit County (Mount Vernon being the first) with an estimated 2012 population of about 16,000. Gty Council member Erica Picket participated in the Advisory Committee’s February 2013 discussion of potential TDR receiving areas and shared some thoughts on possible opportunities and obstacles to implementing TDR in the city:
Opportunities

- Anacortes residents are very concerned about preserving the shoreline, small farms on South Fidalgo Island and forest lands within and surrounding the city limits.
- Many city residents have financially supported the expansion of the Anacortes Community Forest Lands through contributions to the purchase of conservation easements, demonstrating their commitment to land conservation.

Constraints

- Finding the right situations where increased residential densities (or other forms of development incentives) are supported by the community could be a challenge.

Others have suggested that the area around downtown Anacortes could be a prime location for additional small-lot residential development, appealing to those who want walkable access to shops, restaurants, parks, the library and the marina. Commercial and industrial developers have also shown significant interest in recent years in building in Anacortes, due to the city's unique location and amenities. This creates opportunities for linking TDR to types of commercial and industrial development that are consistent with the city's vision and goals which it's currently exploring through its comprehensive plan update process.

La Conner

Town administrator and planning director John Doyle is a member of the TDR advisory committee. He is supportive of TDR but sees limited opportunities for La Conner to serve as a receiving area due to its small size, its limited projected population growth, and limited opportunities for infill development.

Opportunities

- With an average residential density of about 9 dwelling units per acre, town residents are quite comfortable with the relatively higher (for Skagit County) residential densities and mixed use development already present in the town.

Constraints

- However, the town has very limited infill potential and no outward expansion opportunity given its location in the floodplain and surrounding agricultural lands.
- Constraints limiting additional infill development include a lack of area for parking, and a desire to maintain the small-town scale and proportion of buildings, which generally are limited to 2 stories in height – or 3 stories if the developer is “very creative.”

Mount Vernon

Mount Vernon is the largest city in Skagit County with a 2012 estimated population of 32,000 residents. It is home to about 40% of the urban population in Skagit County and is projected to receive about 40% of the projected urban residential growth in coming years. Planning and economic development director Jana Hanson is a member of the TDR Advisory Committee.
Opportunities

- Mount Vernon is the largest single development market in Skagit County.
- The city’s existing TDR program has successfully facilitated development right transfers from agricultural land (within the city limits) to residential neighborhoods.
- The city is very interested in encouraging commercial and mixed-use development in its historic downtown along the Skagit River. The city's economic analysis for the downtown area shows more long-term demand for development than there is capacity – suggesting a market opportunity for TDR.

Constraints

- The 2008 collapse of the housing market and changes to the city’s PUD ordinance have left the city’s TDR program mostly inactive in recent years.
- Mount Vernon is not interested in linking with a county TDR program at this time, particularly one focusing residential development.
- Downtown development is a top priority for the city but Hanson is concerned that TDR would create a disincentive rather than an incentive for the development the city wants to see.

Sedro-Woolley

Sedro-Woolley is the third largest city in Skagit County, with an estimated 2012 population of about 11,000. The city has not participated on the TDR Advisory Committee.

Opportunities

- The city’s mayor has touted major recent investments in infrastructure suggesting that Sedro-Woolley is ready for and interested in population and employment growth.
- The Sedro-Woolley School District has recently completed improvements to its middle school and has reported sufficient capacity for future growth. A strong school district can be a draw for residential development.
- Sedro-Woolley, Skagit County, and the Port of Skagit are evaluating redevelopment opportunities for the Northern State campus just north of the city. Conceivably that could result in a receiving-area opportunity like the Warwick Township example profiled on page 50.

Constraints

- The city faced challenges implementing a PUD ordinance that allowed lots down to 3,000 square feet, including more vehicles than residents could park on their property.
- The city’s zoning already allows relatively high residential densities outright: up to 7 residences per acre in certain single family zones, 15 units per acre in multi-family zone, and up to 20 units per acre in various zones allowing mixed use development.
The towns of Lyman, Hamilton and Concrete are not discussed here because of their small size and very limited planning resources.
Chapter 7. TDR Market Analysis

The executive summary from the TDR market analysis conducted by Heartland is included here in full:

Scope of Analysis

Heartland was contracted by Skagit County to undertake a market analysis to inform transfer of development right (TDR) policy. The project scope included analyses of both pre-defined Candidate Receiving Areas (CRAs) and pre-defined potential sending area zoning districts:

Candidate Receiving Areas
1. Bayview Ridge Residential & Commercial Development
2. Burlington City-Center Residential & Commercial Development
3. Rural Upzone Areas

Sending Zoning Districts
1. Ag-NRL
2. RRc-NRL
3. RRv
4. SF/IF-NRL

The first phase of analysis (Phase II) provided a high-level look at supply and demand characteristics within each CRA and summarized the analyses which had been conducted to-date on sending and receiving area economics. The second phase (Phase III) of analysis leveraged the Phase II findings to inform an in-depth TDR exchange rate analysis which looked at the economic dynamics at play within the CRAs and within the potential sending areas. Additionally, Heartland endeavored to understand how a hypothetical TDR program, informed by the results of this market analysis, could interact and align with the existing density credit and purchase of development right programs in the County.

Phase II Summary

The Phase II analysis focused on understanding the supply and demand dynamics of each CRA to inform areas of concentration for the in-depth Phase III market study. Heartland utilized a macro capacity analysis to determine annual supply and demand for land within the CRAs and to project the relative capacity within each CRA to accommodate projected growth (both household growth and growth of commercial space requirements). This macro analysis produced a “Capacity Threshold Year”, which is the year when land capacity would be extinguished based on projected growth patterns. The Capacity Threshold Year can be thought of as a relative indication of land scarcity and demand for density above base levels, which subsequently are indications of implied
market demand for a TDR program. The results of this analysis are summarized on the following page.

The macro capacity analysis determined that there would be relatively little demand for above-base commercial density in the Bayview Ridge CRA, therefore this CRA was not included in the Phase III analysis. The Burlington residential/commercial and the Bayview Ridge residential CRAs were determined to have relatively the greatest potential under this macro capacity analysis and therefore were analyzed further in Phase III. The Rural Upzone CRA is not a geographically-defined area; therefore a macro capacity analysis was not applicable. Demand for TDR in this CRA was inferred from past use of the upzone program, therefore the CRA was analyzed further in Phase III.

Phase III Summary

TDR is a process of transferring density from sending area property to receiving area property. This density has value both to the sending property owner and to the receiving property owner (or developer). Understanding value expectations on each side of this equation is an important component to structuring a TDR program, and was the focus of Heartland’s Phase III analysis.

Receiving Area Ability to Pay

To determine whether a property owner on the receiving end of a TDR program has the ability to pay for additional density it is necessary to understand the property’s value before and after receiving the additional density. In a market with sufficient land sale activity at all levels of zoned density, this can be accomplished by analyzing recent comparable sales of properties at both the pre and post-TDR density levels. However, in the absence of this dataset, it is necessary to use a residual land value (RLV) modeling approach to establish the value lift associated with TDR density.

Heartland determined that the dataset of sales in Skagit County was not sufficient for a strictly sales-based analysis, therefore RLV was the primary method used to calculate receiving area ability to pay. A RLV approach determines land value by modeling a hypothetical development project and determining how much a developer could “afford” to pay for land and still have the development make economic sense.
The RLV analysis estimates the total value lift that the receiving land owner/developer achieves when receiving TDR density credits. This value lift may or may not be what a developer should be charged for the density. To determine a fee inference from this value, Heartland incorporates a fee as percentage of value metric of 50%. This means the fee inference, or amount a developer should be asked to pay per density credit, is 50% of the value they receive from that credit. This fee as percent of value metric is meant to provide a margin of error in the analysis and to make the TDR density credits more attractive to developers relative to a next-best option (buying more land).

The detailed results of Heartland’s ability to pay analysis can be found on slides 17, 19, and 21 of the accompanying presentation.

BRIEF SUMMARY OF FINDINGS

- Bayview Ridge Fee Inference: $6,600 to $7,350 per unit
- Burlington Residential Fee Inference: $3,800 per unit
- Burlington Commercial Fee Inference: $17.50 per square foot of density
- Rural Upzone Fee Inference: $12,460 to $17,025 per unit
- Higher Bayview Ridge and Rural Upzone fees are associated with the ground-related nature of development in those CRAs relative to the more vertical-related increased density in the Burlington CRA.

One note is that Burlington does not currently have a maximum allowable density for commercial development. For a TDR program to function there would need to be a base density which could be exceeded with TDR bonus density credits. In order to make a fee inference for the Burlington commercial CRA, Heartland set a hypothetical base density at a 0.30 floor-area-ratio (FAR, gross building square feet per land square feet). This figure was determined to be approximately what the market is currently demanding for commercial space. The ability to pay analysis focused on the value created by going above this hypothetical base density. In the context of Burlington’s market, this would entail reducing the amount of a development site that is allocated to surface parking and replacing that area with an expanded building structure.

Sending Area Value

Establishing a range of sending area values for multiple zones throughout for conservation land that may be located throughout the county is challenging for a number of reasons. These include the quality of the land and amenities on it, the location of the property, the level of development pressure it faces, and so on. In an ideal situation, the value of the development right would be estimated using comparable transactions. One set would be valuation of land unencumbered and then this value would be compared to sales of similar quality land after the development rights are extinguished. The difference between these two reconciled sets (before less after) would be the value of the development rights. Using County assessor sales data, we had a sufficient set of transactions that did not involve easements for each zone; however, the set of sales to gauge the “after” value was limited in every zone except for the Ag-NRL, which had roughly 60 transactions dating back to 2007. Because conservation easements that have been acquired though the Farmland Legacy Program (FLP) program are likely more restrictive than easements that would be
transferred in a TDR transaction, the value of a TDR development right is less than one secured in the FLP. Given this background, we based our sending value range estimates in the following manner:

1. Assembled sales data for each sending area.
2. Estimated the average value of a development right for FLP transactions to be approximately 30%. This formula is the development right value divided by the unencumbered value.
3. A second set of information from Snohomish County and Forterra was reviewed regarding its PDR vs anticipated TDR pricing relationship.
4. Blending these two relationships with our assessment of the impact on value resulting from fewer restrictions on TDR easements compared to PDR easements, we estimated the average development right would be roughly 20% of the unencumbered value.
5. Applied this ratio to the assembled County sales data for each sending area zone.
6. This output resulted in a range of sending site values per development right for each zone that a party seeking the purchase of a development right may pay.
7. Assumed TDR purchases would be in the first or second quartile of the resulting TDR values as buyers would likely gravitate towards the lower cost credits unless policy decisions influenced their decision.
8. TDR values for RRv and RRe-NRL include the value of the CaRD density bonus potential
9. Refer to slide 24 for results

**Exchange Rate Reconciliation**

An exchange rate is needed in a TDR program when the value of one credit on the receiving side is not equal to the value of one credit on the sending side. Without an exchange rate in this scenario, transactions would not occur because one side of the deal would not be receiving adequate compensation for the density that they are either sending or receiving. In this analysis, we calculated exchange rates by dividing the sending area per credit value by the receiving area per credit value, which determines the number of receiving area credits required to extinguish one sending area credit. Detailed results of these calculations can be found on slides 25 to 27 of the accompanying presentation.

**BRIEF SUMMARY OF FINDINGS:**

- Bayview Ridge Exchange Rates: 3 to 6 receiving units per sending credit
- Burlington Residential Exchange Rates: 6 to 10 receiving units per sending credit
- Burlington Commercial Exchange Rates: 1,200 to 2,200 receiving square feet per sending credit
- Rural Upzone Exchange Rates: 1 to 3 receiving units per sending credit
- CRA ability to pay is set, therefore exchange rates fluctuate based on differing values in the sending area zones
• Receiving area credits have highest “buying power” in sending zones with the lowest development right values (SF/IF-NRL) and the lowest buying power in sending zones with the highest development right values (Ag-NRL). Therefore, assuming a fixed demand for density credits on the receiving side, the opportunity to extinguish the most sending credits would be in these low cost sending zones.

Analysis Recommendations

1. **Macro-Level Considerations**: Heartland determined that the current CRA market environments will most likely not support a robust TDR program in the near term. The initial program would likely consist mainly of isolated project utilizations of TDR, where benefits exceed costs to individual developers. However, there are several benefits to implementing a program in expectation of future utilization: it allows the County to be prepared to capture funds for conservation when development does occur and it allows the County time to work out details, fine-tune and expand awareness of the program before major utilization. We anticipate use will increase as the economy strengthens, existing capacity is utilized, and especially if additional receiving area opportunities are created.

2. **Sending Areas**: The County needs to determine its conservation priorities so that the sending areas can be focused on conserving high-priority land. The sending areas in this analysis were broad zoning districts, which could be refined to target specific conservation goals. Since the Ag-NRL zone already has several conservation programs in place and has more expensive development rights relative to other potential sending zones, a TDR program could focus on lands outside of the Ag-NRL zone. Stakeholder meetings indicated that general interest exists in providing these zones, which are currently left out of programmatic conservation efforts, with a conservation outlet.

3. **Farmland Legacy Interaction**: As indicated above, a program could be structured to focus on conserving lands not currently conserved by the FLP, which focuses on the Ag-NRL zone. However, a TDR program could also include Ag-NRL as a sending zone and not be directly competing with the FLP. A market-based TDR program would naturally gravitate towards lower-value AG-NRL land that would likely not qualify for the FLP, acting as a secondary option open to Ag-NRL owners.

4. **Receiving areas**: Bayview Ridge residential development would be urban (encouraged by Growth Management Act) and have good TDR buying power relative to Burlington, but it appears that the county is re-evaluating moving in that direction. Other ground-related residential applications could be similarly promising; but the County would need to find another appropriate city/area. There was substantial interest in the development community in rural to rural density transfers, which would also have high conservation buying power. However, increasing density in rural zones has not been a County priority. On the commercial side, a commercial TDR program in Burlington would require placing a limitation on commercial density that is not currently in place, which necessitates a discussion of the City’s priorities.

5. **Program Structure**:

(COMMITTEE REVIEW DRAFT --SUBJECT TO REVISION)
• **Traditional Program**: Private market transactions between buyers and sellers, where the price of credits can be negotiated directly between the two parties. This system creates a potential for economies of scale, which can lead to larger-scale conservation. The County would set the guidelines for the program and record the easements. Additionally, most successful traditional TDR programs will also utilize a financial intermediary, which can logistically align the buyers and sellers. The intermediary could be run by the County or by a third party.

• **Fee-in-Lieu Program**: Developer purchases density from a financial intermediary at a set price. Revenues from density purchases are aggregated by the intermediary and used for targeted conservation purposes.

• **Preferred Option- Blended Program**: A program which allows for both direct TDR transfer and a fee-in-lieu density purchase option would provide developers with flexibility to choose which method makes the most sense for their project. Sending areas for this program could include SF-NRL, IF-NRL, RRc-NRL and targeted RRv lands. Additionally, Ag-NRL could either be excluded or included, with the TDR program complementing the existing Farmland Legacy Program. Burlington’s existing fee-in-lieu program (Agricultural Heritage), which provides funds to FLP, could remain in place, with fees updated per this analysis. The County could determine additional receiving areas for the TDR fee-in-lieu component aimed at conserving land outside of FLP’s target area.

6. **Exchange rates**: In a traditional program it is important for the County to set an exchange rate to align value expectations on the sending and receiving ends of the transaction. The exchange rate can either be fixed or floating. A fixed exchange rate stays constant, while a floating exchange rate fixes one side of the equation (either sending or receiving) and fluctuates based on the appraised value of the unfixed side. Based on the large variation in sending site geography, we would advise a floating exchange rate for Skagit County’s program with a fixed receiving value and a sending value based on appraisal. The disadvantage of this system is increased administration costs related to the appraisal process. However, we see these costs as necessary unless sending areas become more defined.

7. **Areas for Further Consideration**: Additional receiving areas could increase program utilization and the extent of conservation from TDR transactions. Heartland’s analysis of Bayview Ridge indicated that an opportunity exists for areas with a maximum density in place of 4 units per acre or less that could be exceeded with TDR purchase. Ideas for potential receiving areas include involving more cities or applying TDR to UGA expansions. Our stakeholder meetings indicated an interest in rural-to-rural density transfers. Potential receiving areas in this vein include integration of TDR with the CaRD program or allowing higher-density infill development in rural villages.
Chapter 8. Transaction Mechanisms: TDR and Density Credit

The Committee discussed several options for “transaction mechanisms” or the means of conducting the purchase and sale of development rights or density credits. The major options considered include:

1. Conventional TDR (private buyer-seller)
2. Conventional TDR with public support
3. Density credit or fee in lieu, and
4. A combination of TDR and density credit options

Taylor Carroll and Nicholas Bratton from Forterra were extremely helpful in describing each of these options to the Committee, explaining their advantages and disadvantages and providing existing examples of each. The following descriptions draw heavily on their work.\(^4^8\)

Conventional TDR (private buyer-seller)

In a conventional TDR program, an eligible landowner sells development rights or credits directly to a buyer. The two parties negotiate the sale terms and price, which can vary depending on market conditions. The landowner sells an easement, which is recorded on the property from which the development rights have been severed. The buyer can apply the rights towards a development project on the receiving site. The local government managing the program issues, tracks and redeems TDR certificates.

Advantages:

- This mechanism relies heavily on the private market.
- A transaction can take any form agreed to by buyer and seller.
- Public costs are the lowest of any alternative presented.

Disadvantages:

- The limited availability of information is often a major obstacle to buyers and sellers finding each other, especially at the outset when the marketplace is not well established.
- Buyer and seller interests may not align over time. Developers may need to act quickly in a rapidly growing real estate market, while sellers might want to time their sale to maximize their financial advantage.

\(^{48}\) This section is adapted from *A Resource Guide to Designing Transfer of Development Rights Programs in Washington State*, Cascade Land Conservancy, pp. 42-45.
• The private market may not be effective in protecting larger contiguous areas of land, since individual developers may need to purchase only a portion of the development rights from a large sending site.

• Development projects requiring the purchase of a large number of development rights may require the negotiation of several development rights transactions, creating added burdens for participating developers.

• Because transactions may occur anywhere within designated sending areas, land protected via this mechanism may not reflect the community’s highest conservation priorities.

**Buyer-seller with public support**

An agency managing a TDR program can take several steps to improve the transparency and ease of buyer-seller transactions. These mainly involve enhancing the availability of information about the process and include maintaining public registries of eligible landowners and interested buyers; publishing historical data about the program (details of past transactions); and marketing the program to eligible participants.

**Advantages**

• This mechanism helps interested buyers and sellers to find each other, increasing marketplace efficiency.

• Public agency support reduces uncertainty and streamlines decision-making for the participants. As players know more about market conditions, they are better prepared to make decisions about entering the market.

• Public agency support helps address market timing issues in simple buyer-seller transactions by better connecting buyers who need to act quickly with sellers.

**Disadvantages**

• The higher level of service provided by the managing agency requires an increase in resources.

**Density credit**

A density credit or fee in lieu mechanism may be used as an alternative to other incentive mechanisms like TDR. Developers pay a fee to the sponsoring public agency to build to a higher density or intensity than baseline zoning allows, or take advantage of other incentives set forth by the program, like building to greater heights than otherwise allowed. Funds collected are used by the jurisdiction to fund the purchase of development rights in high priority conservation areas. Density fees can be set to a specific dollar amount per additional unit of incentive.

A density credit mechanism has many similarities to a conventional TDR transaction. The chief difference is whom the developer pays - in this instance payment is made directly to the government instead of a private landowner.
Advantages

- This alternative is simple to administer and has a short transaction time for the developer.
- A fee provides certainty for developers.
- This approach allows the managing agency to make purchases that target high priority areas for conservation.
- A fee can be coordinated with a purchase of development rights (PDR) program, like Farmland Legacy, leveraging public resources for additional development right purchases.

Many committee members felt a density fee approach would be more understandable to the public compared to a traditional TDR program where one sending area development right is often exchanged for multiple receiving area development rights or other development incentives.

Disadvantages

- A density fee may be perceived as “selling zoning.”
- There is a time lag between when the fee is charged and when the funds are expended for conservation.

Using the density fee approach creates a need for a mechanism to purchase development rights with the fees that are generated. Options for doing so are discussed below starting on page 70.

Combination TDR and density credit

The Committee also considered the option of a program that offers both a private buyer-seller TDR transaction option and a density credit option. Heartland recommended this approach as a way to make program participation as attractive as possible for developers and receiving area landowners.

- Among those committee members supportive of county action to establish a TDR-type program, the combined approach was generally their preferred option. They saw it as providing more options for development-right purchasers, therefore increasing the likelihood of program use.
  - Several members who supported the combined approach emphasized if there is a density credit component, they would like to see the county develop a mechanism to use revenues from density credit sales to conserve forest land and other resource lands, rather than simply providing the funds to Farmland Legacy to support additional Ag-NRL development right purchases.

Options for achieving conservation with density credit revenues

If the county were to create a density credit program or a combined program that includes a density credit component, it will need a mechanism for purchasing development rights with the revenues raised. Initially at least, the amount of fee revenues generated would likely be low. The challenge would be pooling and using fee revenues for development right purchases with as little administrative cost as possible.
The Committee considered several options for how this could be done. These options are briefly described below, along with some potential advantages and disadvantages of each option:

1. **Provide funds to the Farmland Legacy Program for purchases of Ag-NRL development rights**

   **Advantages:**
   - This would appear to be the simplest approach, making use of an existing program that has a proven track record of land conservation. It would reassure those in the ag community who fear that a new TDR or Density Fee program would harm Farmland Legacy.

   **Disadvantages**
   - Agricultural land conservation would be the only beneficiary – and Ag-NRL lands already have the Farmland Legacy Program solely dedicated to their conservation. Other resource and conservation groups have expressed interest in seeing a TDR/density credit program used to assist in the conservation of forest and other resource lands.

2. **Broaden the focus of the County’s current Conservation Futures program**

   Under this approach, the Farmland Legacy Program, which operates under the Conservation Futures “umbrella,” would continue its work with its current priorities and program structure. A counterpart program or function would be created under Conservation Futures to use density fee revenues for conservation of other natural resource lands.

   **Advantages:**
   - By being housed within the Conservation Futures program, a new program or function would benefit from the 18 years of successful conservation experience developed by Farmland Legacy. The new program could start small and receive staff and administrative support from the existing Conservation Futures/Farmland Legacy program.

   **Disadvantages:**
   - Farmland Legacy Program supporters might see this as drawing resources away from Ag-NRL conservation, and possibly as the beginning of an effort to redirect Conservation Futures tax dollars toward other conservation uses. Those interested in conservation of lands in addition to Ag-NRL may worry that the Conservation Futures/Farmland Legacy Program’s agricultural land emphasis would unduly influence the use of new density fee revenues.

3. **Create a new County program or function to use density fee revenues to purchase development rights from priority conservation areas**

   The program would be operated separately from Conservation Futures and Farmland Legacy, perhaps within the Public Works Department’s Natural Resources division.
Advantages

- Independence from the Conservation Futures/Farmland Legacy Program might be preferable both for advocates of ag land conservation and those who support conservation of other resource lands in addition to Ag-NRL.

Disadvantages

- Establishing a new conservation program or function would require some level of staff support which may not be warranted until density fee revenues reach a certain annual dollar amount.

4. Contract with a separate entity, such as a land trust, to purchase development rights from designated sending or conservation priority areas using density fee revenues

The County would contract program functions out to an organization with a proven track record in land conservation. That organization would prioritize and purchase development rights and monitor compliance, although to avoid a “gift of public funds” the easements themselves would likely need to be held by Skagit County.

Advantages:

- This option might be more efficient than creating a new county conservation program.

Disadvantages:

- Even with a tightly-worded cooperative agreement and county-established criteria and priorities for development right purchases, the county would likely experience some loss of control and potentially public accountability. Some members of the public might be uncomfortable with a private organization administering a public conservation program.

Recommendation 8-1: Create a New County Conservation Mechanism

The most feasible approach appears to be a variation on Option 3, above. When adequate fee revenues were accumulated, the county could issue a call for applications from property owners interesting in selling development rights (as is done twice per year through the Farmland Legacy Program). Properties could conceivably be selected in one of the following ways:

- **First-come, first-served:** proposals that meet the basic eligibility requirements can could be accepted in the order that are received, until all available funds are used for that selection period.

- **Ranking of properties:** proposals received during a given application period could be reviewed and ranked for their conservation value based on established selection criteria (as is done by Farmland Legacy). Those receiving the highest rankings would be recommended for purchase.

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49 NEED TO DISCUSS THIS CONCLUSION WITH THE ADVISORY COMMITTEE
• **Reverse auction**: this would select the proposal or proposals that provide the most conservation benefit to the County for the lowest cost.\(^{50}\)

A ranking process could be conducted by staff or by an advisory committee. An advisory committee would provide more public input and oversight than staff alone. It would also likely slow down the process and make it more expensive due to the cost of providing administrative support to the committee.

The county could determine the price it would offer for development rights through one of several ways. However it was determined, the offering price would need to meet the legal test of not constituting a gift of public funds (which in the end might require an appraisal):

- A set fee, based on the TDR market analysis (as updated periodically over time).
- Professional appraisal (as is done by Farmland Legacy, in part due to a requirement that comes with the use of federal and state funds);
- A pricing formula that seeks to account for the many factors considered in an appraisal but that would be less expensive than a full appraisal (again, Farmland Legacy uses a pricing formula for initial pricing that is quite accurate when compared to appraised values).

The selection body (whether staff only or an advisory committee with staff support) could make selecting and purchasing recommendations to the Board of County Commissioners who would make the final purchase decisions.

** Conservation Futures tax questions**

Two questions were raised during the Committee’s discussions related to the Conservation Futures tax that Skagit County collects that helps to fund the Farmland Legacy Program:

- Is the Conservation Futures Tax set at the maximum amount allowed by law? and
- Can Conservation Futures Tax dollars be recycled, essentially creating a revolving loan fund for conservation purchases.

** Levy amount**

When Skagit County established the Conservation Futures program in 1996, the Board of County Commissioners set the levy rate at the maximum amount allowed of $0.0625 per $1,000 of assessed value in the county. Property values have increased in Skagit County since then but the County’s overall ability to raise property tax revenues was limited by Initiative 747 to 1% per year plus new construction.\(^{51}\)

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\(^{50}\) The reverse auction concept is attractive because it uses market forces to find the lowest price among willing sellers. However, a reverse auction process may be more complex that it appears at first blush. Whatcom County is considering the use of a reverse auction process for conservation of agricultural lands. When that process is farther along, Skagit County may be able to learn from Whatcom County’s experience to determine if a reverse auction would be feasible and desirable for this particular use.

As property values have increased faster than the county’s ability to raise property tax revenues, the Conservation Futures levy rate has automatically adjusted downward to $0.0559 per $1,000 of assessed value. In 2014, the Conservation Futures Tax generated $803,530 for the Farmland Legacy Program. If the County Commissioners raised the levy rate back to the original $0.0625, an additional $95,000 would have been generated. However, that would put the county over the 1% property tax revenue threshold allowed by Initiative 747. In order raise the Conservation Futures levy rate back to the original $0.0625, it appears the county would need to reduce property tax revenues generated through another source by a comparable amount.

The Committee did not discuss or offer an opinion on the advisability of seeking to return the Conservation Futures levy rate back to the original $0.0625.

**Reuse of Conservation Futures tax funds**

Committee member Allen Rozema asked: can the County use Conservation Futures Tax dollars to purchase development rights and then resell them through a TDR program?

Rozema suggested this was one way in which the County could act as a TDR intermediary, helping to bridge the gap between private development right buyers and sellers. The other potential benefit would be the ability to reuse Conservation Futures Tax revenues as a revolving fund for conservation purchases:

- The County would purchase development rights with Conservation Futures dollars, sell those development rights to private developers, and use the proceeds from those sales to purchase additional development rights. The advantage would be the ability to use Conservation Futures tax revenues multiple times over – which would support the efficient use of public tax dollars.

Currently Skagit County uses all Conservation Futures tax dollars to match federal and state conservation funds for the purchase of Ag-NRL development rights through the Farmland Legacy Program. The federal conservation funds prohibit the resale of development rights purchased with their use. Therefore, the reuse of Conservation Futures tax dollars has not been explored to date by the Farmland Legacy Program.

If Skagit County used some Conservation Futures funds by themselves for development right purchases on Ag-NRL or other resource lands – then successfully sold those development rights to private developers through a TDR program – the proceeds from those sales could be used again (and again) for additional development right purchases.

King County uses its Conservation Futures dollars in this manner based on a determination that such use is consistent with the state law authorizing the Conservation Futures tax. Skagit County has not done its own independent legal research on this issue.

The Advisory Committee did not develop a recommendation on this matter.

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52 Tax revenue data from Skagit County Assessor’s Office and County Budget Director Trisha Logue.
Chapter 9. Interaction of TDR and Existing Conservation Programs

A key focus of this project has been to evaluate how a Skagit County TDR or density credit program might interact with existing public conservation and incentive zoning programs. In particular, the project has sought to ensure that a new program would not harm – and instead might complement – Farmland Legacy. This section discusses potential interactions between TDR and the Farmland Legacy and Burlington Density Credit programs. Also included are much briefer discussions of the Mount Vernon TDR program and the now-tabled density credit proposal at Bayview Ridge.

Farmland Legacy

Many members of the Skagit County agricultural community have expressed concern about the potential impacts of TDR on Farmland Legacy. That concern was fueled by a TDR study conducted for Skagit County by the consulting firm Ag Prospects in 2006. That report suggested that TDR programs have not worked to protect agricultural lands in other communities; that a program could drive up the cost of Ag-NRL lands; and that downzones of agricultural land might be necessary to make TDR successful. Others have expressed the opposite concern that a successful TDR program could draw county political or financial support away from Farmland Legacy.

Farmland Legacy Program coordinator Kendra Smith provided an overview of that program to the Advisory Committee at its September 2012 meeting: Farmland Legacy was created in 1996 based on numerous surveys showing that the Skagit County public strongly supported farmland protection. Known as a purchase of development rights (PDR) program, Farmland Legacy makes use of a state law allowing the county to create a Conservation Futures Tax for the acquisition of land or development rights to protect open space including farmland. Skagit County has selected farmland protection as the primary goal of the Farmland Legacy Program (FLP) and the sole recipient of the local Conservation Futures Tax revenues. The program has also succeeded in attracting federal and state conservation dollars.

By 2012, Farmland Legacy had purchased development rights on 8,000 acres of Ag-NRL land. Participation in the program is voluntary and optional for landowners. Originally the county’s offering price for development rights was based on the number of points a particular property scored in a ranking process. More recently, the program has partnered with state and federal funding sources which require appraisals to determine the fair market value of development rights purchased. Development rights purchased with federal funds cannot be resold. Farmland Legacy also partners with other conservation organizations including Ducks Unlimited, The Nature Conservancy, and the Skagit Land Trust.

The program has a seven-member board called the Conservation Futures Advisory Committee that makes recommendations on development right purchases to the Board of County Commissioners.

**Figure 1: Comparing PDR and TDR**

<table>
<thead>
<tr>
<th></th>
<th>PDR</th>
<th>TDR</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Funding Source</strong></td>
<td>Public</td>
<td>Private</td>
</tr>
<tr>
<td><strong>Use of development rights</strong></td>
<td>Extinguished</td>
<td>Transferred to areas appropriate for growth</td>
</tr>
<tr>
<td><strong>Conservation outcome</strong></td>
<td>Strategic, high value lands</td>
<td>Determined by market, within designated sending area</td>
</tr>
</tbody>
</table>

**Comparing PDR and TDR**

PDR and TDR programs are similar in purpose but have important differences as well, as illustrated in Figure 1. Both share the goal of permanent conservation of resource lands through voluntary transactions in which landowners sell the development potential from their properties. Under both approaches, permanent conservation easements are held by the sponsoring agency. Differences between the two include funding sources, how the development rights are used after purchase, and how conservation is targeted.

**FUNDING SOURCES**

PDR transactions are generally financed with public funds. Funding sources may include grants from state or federal agencies, local tax revenue, or bonds. In contrast, TDR transactions are generally market-based or may include a mix of privately and publicly financed exchanges.

**USE OF DEVELOPMENT RIGHTS**

In the most common form of PDR program, development rights are purchased from resource lands and then extinguished (as is done by Farmland Legacy). In a TDR program, development rights are moved from resource lands or other sending areas to receiving areas where infrastructure and services can better accommodate additional development.

Less frequently, the two types of programs work together as follows: a PDR program may retain the value of the development rights it purchases and make them available for resale to private developers through a TDR bank or intermediary. A developer may buy development rights from the bank as an alternative to locating and conducting a private transaction with a landowner.

**TARGETING CONSERVATION**

PDR and TDR programs share the goal of conserving resource lands, but exactly which lands the programs focus on may vary. Due to the market-based nature of a TDR program, a jurisdiction cannot know which properties will ultimately be conserved—it depends on the coming together of private parties. The resulting pattern of TDR conservation will reflect some of a jurisdiction’s

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54 This section, including Figure 1, draws heavily on *Snohomish County Purchase of Development Rights and Transfer of Development Rights, Strategic Opportunities for Conservation and Growth Management*, prepared for Snohomish County Council by Cascade Land Conservancy, May 2011, pp. 20-22.
priorities generally, but may not conserve specific top-priority lands. PDR programs, however, can be more strategically targeted and can focus on buying development rights from high-value lands that otherwise might be passed over in the private market.

COMPARING TDR AND FARMLAND LEGACY
The TDR Advisory Committee’s discussions and the Agriculture Focus Group meeting with Heartland helped to draw the following comparisons between the Farmland Legacy and a potential Skagit County TDR program:

Farmland Legacy (PDR)

- The program has benefited from steady dedicated public funding sources over the years, specifically the Conservation Futures tax and state and federal agricultural land conservation dollars. At the same time, this reliance on public funding could make the program vulnerable to federal or state budget cuts or changes in policy in the future.

- The program focuses on purchasing development rights from the highest priority Ag-NRL lands, including those most likely to convert and those determined to have the highest value for agricultural production. This is done by evaluating all applications received against a set of selection criteria.

- The Farmland Legacy Program easement is more restrictive than a standard TDR easement would be. TDR easements typically retire only the residential development right but don’t place additional restrictions on the land. The Farmland Legacy easement requires that the land be kept in agricultural use in perpetuity (precluding certain other uses allowed in the Ag-NRL zone such as conservation or habitat enhancement); and places a strict impervious surface limit on the property.

- Farmland Legacy has a successful track record of Ag-NRL conservation since its creation in 1996, conserving more than 8,000 of land.

- Development rights purchased through the program are extinguished, not resold. Because appraisals are required with the use of public dollars, landowners who sell development rights are assured of fair market value.

- At the same time, some project participants from the agricultural community raised concerns over recent restrictions placed on federal conservation dollars requiring buffer strips along drainage ditches. Some saw these requirements as “very undesirable” and a reason why farmers may be much less interested in selling development rights to Farmland Legacy in the future. The new restrictions have been put in place by federal agencies responding to concerns raised by Northwest federal treaty tribes that agricultural land conservation using federal funds is not doing enough to protect salmon habitat.

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55 Application to the program is voluntary and at the initiative of the private landowners.
Competing or Complementary?

Although the Ag Prospects study suggested that TDR could harm the Farmland Legacy Program, other analysts of both PDR and TDR view the two program types as potentially complementary. According to *The TDR Handbook*:

**A Strong Connection.** Effective TDR programs include PDR as part of an overall plan to preserve landscapes or sites, as evidenced by the most successful TDR programs in the Country: Boulder County, Colorado; the New Jersey Pinelands; Montgomery County, Maryland; and King County, Washington, all have major PDR program as well. This correlation suggests that communities considering TDRs should also consider PDR programs and that communities with only a TDR program should consider launching a PDR program. The presence of both PDR and TDR programs signals the community’s commitment to achieving its preservation goals. (p. 42)

A 2011 study by the Cascade Land Conservancy (now Forterra) for the Snohomish County Council that made recommendations to improve the County’s PDR and TDR programs concluded the following:

The PDR program, being publicly funded, can strategically target lands with high public benefits and under high development pressure for conservation. The TDR program, harnessing the private market, can be effective in conserving resource lands that extend beyond the focus of the PDR program, such as forest land and non-designated farm land, as well as designated agricultural land. One way to maximize the effectiveness of both programs is for each to target conservation of lands best suited to the tool and identify areas in which use of both may be [sic] increase opportunities for landowners. (p. 40)

The TDR market analysis by Heartland conducted for this process also found no inherent conflict between TDR and PDR programs and also suggested the two could be complementary in Skagit County:

**Farmland Legacy Interaction:** As indicated above, a program could be structured to focus on conserving lands not currently conserved by the FLP, which focuses on the Ag-NRL zone. However, a TDR program could also include Ag-NRL as a sending zone and not be directly competing with the FLP. A market-based TDR program would naturally gravitate towards lower-value Ag-NRL land that would likely not qualify for the FLP, acting as a secondary option open to Ag-NRL owners. (Executive Summary, p. 5)

TRANSFER OF DEVELOPMENT RIGHTS

The following observations relate to how a TDR program differs from and might interact with Farmland Legacy and Ag-NRL lands or other lands that support agricultural production:

- Because TDR is market-driven, it requires an active development market to work. It may take some time for the TDR market in Skagit County to mature and start generating significant support for land conservation. At the same time, because TDR transactions are market-funded, they do not require tax dollars – although a TDR program would require some level of administrative support.

(COMMITTEE REVIEW DRAFT --SUBJECT TO REVISION)
Typical of many TDR programs nationwide, the proposed TDR conservation easement would be simpler and less restrictive than the Farmland Legacy Program easement, focusing only on retiring residential development rights. This may be more attractive to some landowners than the Farmland Legacy Program easement, although it would also generate a lower sales price than a more restrictive easement.\(^\text{56}\)

The County would likely have less administrative cost in offering a conventional private buyer-seller TDR program but also less control over the location of conservation purchases. That's because the location of development right purchases would be dictated more by market choices than by prioritization – other than the policy choices that establish eligible sending areas.

A TDR program could complement Farmland Legacy by providing additional options to landowners. Some landowners whose properties haven’t been selected by Farmland Legacy may find willing buyers through a TDR program. TDR could also focus on conserving active agricultural lands in the Rural Reserve and Rural Resource-NRL zones whereas Farmland Legacy currently applies only to Ag-NRL lands.

**RESPONSES TO ADDITIONAL CONCERNS**

Following are brief responses to some of the additional fears that have been raised about TDR and its potential effect on the Farmland Legacy.

- **TDR would increase the price of agricultural land for farmers and the Farmland Legacy Program (asserted by the Ag Prospects study).**
  - Several Committee members who have experience with the Mount Vernon TDR program said this would be very unlikely. The TDR transactions that occurred in Mount Vernon generated nowhere near the average of $100,000 that Farmland Legacy pays for a development rights on 40 acres of Ag-NRL. TDR purchasers would more likely look for lower priced development rights on non-Ag-NRL land.

- **A highly successful TDR program could draw political support away from Farmland Legacy.**
  - This is conceivably possible. However, given the results of the Heartland market analysis and the limited number of potential receiving areas currently under review, it is unlikely for the foreseeable future. Another possibility is that the two approaches could be additive, achieving more conservation together than either program could achieve alone.

- **A new TDR program could draw staff resources away from the Conservation Futures and Farmland Legacy programs.**
  - Potentially this is true. Skagit County has limited staff resources particularly since the economic downturn. Staff support for the Farmland Legacy Program and the Agricultural Advisory Board has been reduced in recent years.

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\(^{56}\) The easement would place fewer restrictions on the land, leaving more options to the landowner, who would therefore retain more economic value and receive less financial compensation.
Services staffing has also been significantly reduced. The department with the most resources for administration of the Farmland Legacy Program and a new TDR program (if one were created) might be the Public Works Department (Natural Resources Division). The Board of County Commissioners will need to weigh staffing resources when considering possible creation of a TDR program. This would be one reason to choose a program option requiring minimal administrative support.

**Recommendation 9-1: TDR and Farmland Legacy**

Heartland recommended two approaches for preventing negative interactions between TDR and Farmland Legacy. One would essentially creating a firewall between the two, while the other would integrate them in a manner that Heartland suggested would be complementary, not conflicting:

1. Since the Ag-NRL lands already receive conservation support from Farmland Legacy and those lands generally have more expensive development rights relative to other potential sending area zones, a TDR program could focus on lands outside of Ag-NRL (including Rural Resource-NRL and Rural Reserve lands with active agricultural uses).

2. Alternatively, Heartland suggested, a TDR program could include Ag-NRL as a sending zone and still not directly compete with Farmland Legacy. A market-based TDR program would naturally gravitate toward lower-value Ag-NRL land that would likely not qualify for Farmland Legacy Program purchases, acting as a secondary option available to Ag-NRL land owners.

The Advisory Committee is relatively evenly split on these two options, with strong advocates on both sides.

**Burlington Agricultural Heritage Density Credit Program**

Committee member Margaret Fleek provided an overview of the Burlington Agricultural Heritage Density Credit Program, also at Committee’s September 2012 meeting:

The Burlington City Council implemented the program in 2008 just as the economic and housing downturn began. The program drew on extensive economic research funded by Skagitonians to Preserve Farmland, the Skagit Conservation District, and Skagit County in 2006.57

Developers may purchase density credits to place additional dwelling units in a 49-square-block area downtown in the Medium Residential Neighborhood Business (MR-NB) and Downtown Business District (B-1) zones. Density credits may also be used for additional units of residential development in the Retail Core Zone (C-1) and scattered locations of Multi-Family (R-3) zoning.

Burlington’s base zoning allows residential development at up to 14 units per acre in all of the above zones. This is based on the 3,000 square foot platting pattern of Burlington, Vermont, on

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57 Demand for & Value of Density (Heritage) Credits, prepared for Skagitonians to Preserve Farmland, City of Burlington, and Skagit County Planning Department, Thomas/Lane & Associates, Bill Mundy & Associates, June 2009.
which Burlington, Washington is patterned. The program does not allow placement of apartments in single family residential zones.

The city substantially decreased parking requirements in the downtown area to encourage infill and redevelopment. The city does not currently allow density credit purchases to increase commercial development potential in commercial zones. When the city implemented the density credit program it didn’t want to create any disincentives to commercial development. However, Fleek said that’s a policy decision the city may revisit as the commercial market picks up and the city moves through its current comprehensive plan and development regulations update.

To date, the program has sold only two density credits, which Fleek attributes to the economic downturn that hit just as the program was put in place. The city is currently reviewing a multi-family project that could purchase as many as 46 density credits, and another project that could use density credits is potentially in the pipeline.

Burlington provides funds generated through the sale of density credits the Farmland Legacy Program to assist with the purchase of development rights in an 1,800-acre area of Ag-NRL surrounding the city. The goal is to create a ring of permanently protected agricultural land around Burlington, which takes great pride in its agricultural heritage.

Burlington and the TDR market analysis

The TDR market analysis focused on the same geographic areas and zones where the Burlington Density Credit Program currently applies. It evaluated the pricing of density credits for residential development in these zones and the application of density credit purchases to access additional commercial development potential in these same commercial zones.

FEE PRICING

Heartland recommended the following density credit fees based on their analysis of developers’ ability to pay for additional development potential:

- **Burlington Residential Fee Recommendation**: $3,800 per additional residential development unit. This compares to Burlington’s current density credit fee schedule which prices fees at $2,500 per unit to begin with, declining as more credits are purchased.  
- **Burlington Commercial Fee Recommendation**: $17.50 per square foot of additional commercial development potential above a .30 Floor to Area Ratio (FAR) (or $17,500 for an additional 1,000 square feet). Burlington currently does not have a density credit program that applies to commercial development.

Heartland’s higher residential fee recommendation than the density credit price Burlington currently has on the books results from several factors, including more recent economic analysis than the 2006 analysis used to establish the program and Heartland’s conclusion that developers would be willing to pay a higher amount for each unit of additional density than the 2006 analysis concluded. Fleek says that because the housing market was weakening when Burlington

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implemented the program, the city chose to establish the fees at the lower end of the spectrum recommended by the earlier analysis.

**TDR EXCHANGE RATES**

If Skagit County established a TDR program and Burlington chose to offer a TDR option to developers in addition to the current density credit option, Heartland recommended the following exchange rates. Ranges are provided below depending on which County sending area is involved in the TDR transaction, as different sending area zones have different average development right values:

- Burlington Residential Exchange Rates: 6 to 10 receiving units per sending credit.
- Burlington Commercial Exchange Rates: 1,200 to 2,200 receiving square feet per sending credit.

**BURLINGTON OPTIONS**

What to do with these results is up to the City of Burlington. The city’s options include:

1. Maintain the Burlington Density Credit Program as is.
2. Keep the program in place, but consider raising the fees for density credits based on the Heartland analysis and the improving housing market.
3. Expand the program to other zones, or add additional land to one or more of the zones where density credits may be used.

   For instance, Burlington is considering adding additional land around the downtown to the Multi-Family (R-3) zone, both to create additional affordable housing opportunities and to revitalize the downtown by encouraging a larger residential population base that would frequent downtown businesses.

4. Implement a new density fee or TDR option linked to increases in commercial development potential in various city commercial zones.

As described in the market analysis, the last action would involve implementing a cap on commercial development potential permitted outright through zoning. That cap could be exceeded with the purchase of commercial density credits or TDRs. As Heartland explains in the market analysis executive summary:

"For a TDR program to function there would need to be a base density which could be exceeded with TDR bonus density credits. In order to make a fee inference for the Burlington commercial [receiving area], Heartland set a hypothetical base density at a 0.30 floor-area-ratio (FAR, gross building square feet per land square

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59 As discussed in greater detail in the TDR market analysis, an exchange rate is needed in a TDR program when the value of one credit on the receiving side is not equal to the value of one credit on the sending side. Without an exchange rate in this scenario, transactions would not occur because one side of the deal would not be receiving adequate compensation for the density that they are either sending or receiving.
feet). This figure was determined to be approximately what the market is currently demanding for commercial space. The ability to pay analysis focused on the value created by going above this hypothetical base density. In the context of Burlington’s market, this would entail reducing the amount of a development site that is allocated to surface parking and replacing that area with an expanded building structure.

**DEVELOPER IMPACTS**

Several Burlington landowners and developers participated in the Developer Focus Group meeting with Heartland. They commented that establishing a FAR cap on commercial development that could be exceeded with the purchase of commercial density credits would amount to a downzone. Heartland noted that the current market is not generating commercial development in excess of the .30 FAR, so that cap would only affect development that might occur in the future, as existing commercial land is more intensively built out.

**DISCUSSION (RECOMMENDATION ??)**

Of all of the cities in Skagit County, Burlington would appear to be the one with the greatest potential to link TDR or density credit purchases to commercial development opportunities. Since the construction of the Burlington Mall in the early 1990s, the city has seen a dramatic expansion of its commercial and industrial land base, the vast majority of which replaced very fertile agricultural lands. In 2012 Burlington accounted for about 35% of the taxable retail sales that occurred in Skagit County, despite having only about 7% of the county’s population. Burlington consistently generates the highest per capita retail sales of any jurisdiction in Washington State, and the city recently reported that three new retail stores are locating there.

**BURLINGTON CONSERVATION PRIORITIES**

Burlington’s conservation priorities under the current density credit program are Ag-NRL lands surrounding the city. If Burlington expanded the density credit program in a way that generated additional financial resources, it would have discretion in determining how to use those funds. They could potentially be used for conservation or water quality improvements within the city limits; to increase the rate of purchase of Ag-NRL development rights around the city through Farmland Legacy; or to conserve other resource or open space lands in the county also in partnership with the county.

**Mount Vernon TDR**

Mount Vernon has indicated through its planning director Jana Hanson that it is not interested in becoming part a county TDR program at this time.

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60 Washington State Department of Revenue: [http://dor.wa.gov/docs/reports/Local_Retail_Sales/allcal12.pdf](http://dor.wa.gov/docs/reports/Local_Retail_Sales/allcal12.pdf)

The city established its own TDR program in 1999. It sought to permanently conserve approximately 90 acres of agricultural land located in the southwest portion of the city, within the city limits. The program started seeing transactions in the mid-2000s, with the greatest amount of activity occurring in 2004 through 2006. That was near the height of the residential development boom in Skagit County and large residential development projects were being planned and built in east Mount Vernon, many under Mount Vernon’s planned unit development (PUD) ordinance.

At the time the PUD ordinance allowed increases in residential density through the purchase of TDRs, as well as through other density incentive and clustering mechanisms. All told, developers purchased 70 residential development rights from the sending area, and a total of 40 of those have been used to increase densities in PUDs or standard subdivision projects. At that point, according to Hanson, the city began to receive complaints regarding smaller lots and higher densities than those found in existing residential neighborhoods. Additionally, narrower streets with restricted parking created issues for residents and enforcement problems for the city.

The city council responded by placing a moratorium on PUDs in 2008, followed by a series of significant changes to the PUD ordinance. One of them precluded the purchase and transfer of development rights for use in PUDs. The Council also restricted the use of TDRs in the lowest density district within the city in order to maintain residential districts with larger lots.

The Mount Vernon TDR program still allows TDR purchases to increase residential densities in several single-family zones by one additional residential unit per acre. This is similar to the proposed use of density credits for incremental increases in residential densities at Bayview Ridge. To date there has been no use of TDRs to add densities in these zones, only in larger projects such as subdivisions and PUDs. The TDR program has seen no recent activity but some projects that received previous plat approval and incorporate the use of TDR credits are once again moving forward with the upturn in the housing market.

**Linkage to County program**

If Skagit County created a TDR program, there would be no linkage with the Mount Vernon program unless Mount Vernon changed its current thinking. None of the outstanding TDR credits purchased through the Mount Vernon program could be used through a Skagit County program. If a county TDR program allowed inclusion of other cities over time, Mount Vernon could opt to join the program later. The county would likely defer to the city in selecting conservation priorities and corresponding sending areas which might logically include areas within or immediately surrounding the Mount Vernon UGA.

**Bayview Ridge Density Credits**

The Board of County Commissioners approved updates to the Bayview Ridge Subarea Plan in 2008 allowing incremental increases in residential densities in the Bayview Ridge Residential zone with the purchase of density credits. Residential development at Bayview Ridge – including the use of density credits – was to be implemented through a PUD ordinance the county worked on through the middle of 2013.
The current TDR project provided an opportunity to explore the mechanics and economics of implementing the density credit policies. The Heartland market analysis evaluated the economics of adding two additional units of density in Bayview Ridge Residential, and well as the pricing of density credits associated with rezoning land from Bayview Ridge Urban Reserve to Bayview Ridge residential.

However, Skagit County’s plans for Bayview Ridge took a significant turn in the fall of 2013. The Board of County Commissioners directed the release of a proposal to increase Industrial zoned land in the UGA while withholding the proposed PUD ordinance that was to guide significant new residential development. That change in policy direction has continued in early 2014 with the Board proposing to convert more land within the Bayview Ridge UGA from residential to industrial zoning, while removing from the UGA boundary any undeveloped land not suitable for industrial development. If this measure moves forward to adoption as proposed, it will preclude the implementation of the residential density credit concept at Bayview Ridge.

**Bayview Ridge Residential**

Ironically, the Heartland analysis found that Bayview Ridge residential development had been perhaps the most promising of the three receiving areas analyzed. Ground-level, single-family, urban residential development is a familiar development type in Skagit County, creating a greater level of familiarity and certainty for developers. Heartland indicated the proposed increase from 4 to 6 units per acre represents a relatively incremental increase in density that was likely to find positive acceptance in the marketplace – in the same way that PUD projects and subdivisions of similar density were accepted among developers and the home-buying public in Mount Vernon, if not by the city council or residents of surroundings neighborhoods.

Heartland has suggested that a similar application of TDR could work well from a market perspective in other cities in Skagit County, if any were interested. The Bayview Ridge analysis would be instructive but additional analysis would be needed for the specific market being considered.

**Bayview Ridge Industrial**

The initial phase of the Heartland analysis also looked at the potential for applying TDR to industrial development at Bayview Ridge. It found that the market conditions were not as supportive as for residential development, due to the relative large supply of industrial-zoned land at Bayview Ridge compared to the recent (past 12 years) pace of industrial development there. If the county’s increased policy emphasis on industrial development results in a greater rate of industrial growth at Bayview Ridge than has occurred in the recent past, it might warrant a re-look at opportunities to link industrial development to TDR.
Chapter 10. Program Administration

A final important consideration is how much time and effort would be required to implement a TDR or density credit program and manage it over time. The answer would depend in part on the scale and complexity of the program that was implemented; how active the county chose to be in providing information about it to potential users; and of course its level of use.

The Advisory Committee considered these issues at its March 2014 meeting. Nick Bratton provided examples of different levels of support that Forterra has observed in the TDR programs it has analyzed:

- **Low**: typically the program establishes governing policies and code and tracks transactions, certifying development credits and recording conservation easements.
  - In a conventional TDR program, private buyers and sellers find each other, negotiate sales prices, and conduct transactions.
  - In a density credit program, the program establishes a fee schedule, processes density credit purchases, and provides fee revenue to a third party or conducts its own conservation purchases.
  - For Skagit County, the lowest level of administrative support in this instance would involve providing fee revenues to the existing Farmland Legacy Program for Ag-NRL conservation.

- **Medium**: to facilitate private market transactions, the program may provide a website, post historic sales data, market the program to potential buyer and seller groups (Realtors, farm and forestry organizations), and may offer a market exchange – what Bratton likened to a Craig’s list for potential TDR buyers and sellers.
  - For Skagit County, establishing a new program or mechanism to pursue conservation of lands other than Ag-NRL – instead of providing those revenues to the Farmland Legacy Program – would involve an additional level of administrative support.

- **High**: this may involve also offering a TDR bank, which can serve as a market participant, buying and selling development rights to assist with large transactions, smooth out market fluctuations, or facilitate transactions that achieve priority public goals.
  - Few jurisdictions with TDR programs operate TDR banks. The required investment of public resources makes the most sense where there is a large amount of TDR market activity already.

**Recommendation 10-1: Low to moderate level of administrative support**

Those Advisory Committee members who support the county implementing a TDR or density credit program at this time also expressed support for a low to moderate level of county administrative support. They felt a website and marketing and matchmaking assistance between buyers and sellers could help the private TDR market function.
They recommended providing an adequate level of administrative support up front to establish a program, then allowing it to evolve over time depending on use. One member said: “Don’t throw a whole bunch of FTEs at it now as the amount of amount of market activity won’t justify that.” The county would ramp up support to a moderate level as the program matured. Another Committee member emphasized the importance of attention on the conservation easement side, including monitoring of easements for compliance.

Bratton said the following are also common features among TDR or density credit programs:

- **A method to track the movement of development rights.** This is important for measuring program activity and the marketplace and also to prevent the same rights from being sold multiple times. Maintaining a database with seller and buyer information is a common practice. An effective way to track the application for, issuance of, and use of development rights is to assign them serial numbers.

- **A feedback and evaluation mechanism.** A TDR program should include a way to measure its progress against stated policy objectives and a means to modify the design to better meet established goals. Regularly scheduled program evaluations can be established along with a set of criteria measuring effectiveness.

- **Periodic evaluation of TDR exchange rates or density credit fees.** Updates may be required over time, perhaps on a 2 to 5 year basis, depending on the amount of development activity in the community, program usage, and other factors.

**Estimated staffing requirements**

Staffing of city and county TDR programs in Washington State ranges from a small percentage of an FTE (Full Time Equivalent employee) in many cases, to two or more full-time employees for the very active King County TDR program. That is one of the largest and most active in the nation and includes a TDR bank function and a dedicated GIS analyst.

On the low end of the spectrum, Margaret Fleek reports that after setting up the Burlington Density Credit Program staff time has been minimal, involving a review of the density credit option with new applicants at the permit counter. Similarly, Jana Hanson reports that the Mount Vernon TDR program, even at its most active, was staffed by the planner handling whatever development projects the TDR credits were being applied to. It has not required separate administrative support beyond that.

For comparison purposes, staffing of the county’s very active Farmland Legacy Program requires up to 1.5 FTEs for a program manager, administrative support, and program monitoring. This not only involves processing applications, supporting the Conservation Futures Advisory Committee in the evaluation process, and implementing and monitoring conservation easements, but also an active grant-writing effort to raise additional conservation funds.

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62 Estimate by Skagit County Public Works director Dan Berentson.
Whether a TDR or density credit program were housed in Planning and Development Services or elsewhere, such as Public Works, the Department estimates staffing would likely involve a small portion of an FTE: perhaps 5% (2 hours per week) for a program that primarily responds to public inquiries, or 10% (4 hours per week) for a program that provides a website and actively seeks to promote awareness and encourage usage. However, if the only county receiving area to begin with is Rural Upzones through annual comprehensive plan amendments, those would be landowner-initiated and processed by staff handling the comprehensive plan amendment process.

With a density credit option, establishing a new mechanism to purchase development rights with fee revenues would require more administrative support, particularly up front, than simply providing those revenues to the Farmland Legacy Program. Once program policies and procedures were established, administrative support would rise and fall with the level of use.
Chapter 11. Final TDR Project Recommendations

Following are the three options considered by the TDR Advisory Committee on whether Skagit County should implement a TDR or density credit program, or a program that provides both transaction options. These options generally represent the range of views among Advisory Committee members. Also provided are some of the major reasons articulated in support of each recommendation. Where the recommendations do not reflect the nuances of individual Committee members’ views, members were provided the opportunity to submit supplemental written comments. Any comments submitted are found in Appendix C.

[Note: Committee members are tentatively listed below as supporting certain recommendations based on comments made at various meetings indicating their views on TDR. These will be updated and corrected where needed based on the June 4 TDR Advisory Committee meeting.]

Option 1: No Action

Committee members in support of this option: Ed Stauffer; Charlie Boone; Wayne Crider (?); others?

Option elements:

1. Take no action to implement TDR at this time.

Rationale:

- Skagit County is rural, whereas TDR programs are more effective and appropriate in urban areas.
- There are too few cities participating, too few receiving areas, and inadequate demand for development within those receiving areas for a program to be viable at this time.
- The Skagit County Comprehensive Plan and development code do a successful job of protecting natural resource lands, rural character and environmentally sensitive areas. Additional conservation through TDR is unnecessary.
- Development opportunities in rural areas have been greatly reduced through the implementation of GMA and the comprehensive plan, and through increasingly strict environmental and land use regulations since then. More limits on rural development, even voluntary ones that compensate rural landowners, are unnecessary.
- Receiving-area landowners subject to planning and zoning decisions that increase the development potential and associated economic value of their property should receive the full economic benefit of that “upzone”; a portion of that value should not be retained for conservation in the public benefit.
- The two examples of TDR and density credit programs active in Skagit County have both faced serious challenges. The Mount Vernon’s TDR program added density to controversial
residential development projects in the city and has been curtailed. Burlington’s density
credit program has seen only two density credit purchased to date.

- TDR may sound good in concept but it is overly complicated for Skagit County to undertake
  at this time, particularly in the face of other, more pressing land use planning challenges.

**Option 2: Implement a density credit program**

Committee members in support of this option 63 (some of whom also support option 3): Martha
Bray, John Doyle, Margaret Fleek, Bruce Lisser, Kim Mower, Allen Rozema, Kendra Smith; Paul
Kriegel? Joe Woodmansee?

Option elements:

1. Establish a policy framework and implementing code for a Skagit County density credit
   program.

2. The two receiving areas at this time would be Rural Upzones (through comprehensive plan
   amendments) and the City of Burlington.
   a. Work with Burlington to continue or expand that city’s Agricultural Heritage
      Density Credit Program consistent with the policy direction set by the Burlington
      City Council.

3. Encourage other cities and towns to consider implementing TDR or density credit
   programs. Establish a policy framework enabling those cities to link with the Skagit County
   program to achieve conservation of lands outside of city or town limits where desired by
   the municipality.

4. Use revenues from sale of density credits for conservation of designated Natural Resource
   Lands, and Rural Reserve lands with active agricultural or forestry uses, in close proximity
   to urban growth areas and growth corridors (I-5 and Highway 20).
   a. Possibly excluding Ag-NRL and Industrial Forest-NRL.
   b. See discussion in Chapter 8, page 70 for possible mechanisms for purchasing
      development rights from those lands.
   c. Conservation easements would retire residential development rights, leaving other uses
      of the land unaffected.
   d. Participation by sending area landowners is entirely voluntary.

5. Explore the broader application of a density credit program in the future, including possible
   linkage to UGA expansions, other city receiving areas, and additional units of development
   potential through Conservation and Reserve Developments (CaRDs).

**Rationale:**

- Skagit County and other local organizations have expressed long-standing interest in TDR
  (or TDR variations like density credit). The Skagit County Comprehensive Plan encourages

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63 Support was expressed at the January 2014 Advisory Committee meeting (except for John Doyle and Joe
Woodmansee).
the use of innovative tools like TDR to complement the county’s existing land use policy and regulatory framework. Having invested the time and resources to evaluate the concept in detail, now is the appropriate time to put a program in place.

- Although some of the most successful TDR programs are centered around large cities, a number of rural communities have also successfully implemented TDR or density fee programs.
- It’s not too early to implement such a program. Jurisdictions that plan under the Growth Management Act – including Skagit County and the cities and towns within the county – must plan on a 20-year horizon. Planning decisions made today will guide land use and conservation patterns over the next 20 years. If a density credit program is to be successful in the future, it needs to be incorporated into the planning framework now.
- A density credit program would provide additional options for rural and natural resource land owners who want to permanently conserve their lands. Such a program would be landowner friendly, respect private property rights, and provide a new source of revenue for landowners. A well-designed program can also provide an economic incentive for desired development while tapping the private market to support conservation at a time when many sources of public conservation funding are in decline.
- Starting with a limited number of receiving areas is a way to gain experience and public familiarity with the density credit concept and its implementation. Additional county and city receiving areas can be added over time.
- A density credit program will likely be simpler for Skagit County to implement than TDR (at least on the receiving-area or purchasing side of the equation) and easier for most developers to use.

Option 3: Implement a combined TDR and density credit program

Committee members in support of this option also support option 2): Martha Bray, Margaret Fleek, Bruce Lisser, Kim Mower, Allen Rozema, Kendra Smith; John Doyle? Paul Kriegel? Joe Woodmansee?

Option elements:

1. This option is similar to Option 2 except that the county would implement a TDR transaction mechanism along with the option for purchasing density credits described above.
2. This would provide developers seeking access to additional development potential the option of purchasing density credits from Burlington or Skagit County, or seeking out private landowners who are interested in selling development rights through a private market transaction.
3. TDR exchange rates would be based on the TDR market analysis conducted by Heartland.

64 Also expressed at the January 2014 Advisory Committee meeting.
4. TDR sending areas would include designated Natural Resource Lands, and Rural Reserve lands with active agricultural or forestry uses, in close proximity to urban growth areas and growth corridors (I-5 and Highway 20) – with the same conditions identified in 5(a) above.

5. TDR receiving areas would be: Rural Upzones and the City of Burlington zones where the Agricultural Heritage Density Credit program is currently offered. Policy language would encourage and enable other receiving areas to be added over time.

Rationale:
The rationale for Option 3 includes all of the bullets under Option 2, plus the following:

- Option 2 is a good start but it does not provide a TDR transaction option, which some developers might find preferable or more advantageous over paying a set fee to purchase density credits.

- Particularly developers looking to purchase a large number of development rights may prefer the TDR option. It may allow them to negotiate a better price than working through a set fee schedule. Offering both density credit and TDR transaction options may increase participation among developers.

- Implementing a TDR option could facilitate the conservation of Natural Resource Lands other than Ag-NRL without the need to create a new conservation mechanism comparable to Farmland Legacy Program for those other lands. Once sending areas are established, it is the responsibility of developers looking to purchase development rights to find a willing buyer and negotiate a sales price.
Chapter 12. Conclusion

Concluding comments, expected to be one page or less.
Appendix A. Resolution Appointing TDR Advisory Committee
## Appendix B. Top 25 Transfer of Development Rights Programs[^1]

<table>
<thead>
<tr>
<th>City or County</th>
<th>State</th>
<th>Population</th>
<th>Pop. Density/sq mile</th>
<th>Year Began</th>
<th>Acres Conserved</th>
</tr>
</thead>
<tbody>
<tr>
<td>King County</td>
<td>Washington</td>
<td>2,044,449</td>
<td>912.9</td>
<td>1993</td>
<td>141,400</td>
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<tr>
<td>Montgomery County</td>
<td>Maryland</td>
<td>1,016,677</td>
<td>1,978.20</td>
<td>1980</td>
<td>52,052</td>
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<tr>
<td>Palm Beach County</td>
<td>Florida</td>
<td>1,372,171</td>
<td>670.2</td>
<td>1980</td>
<td>31,000</td>
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<tr>
<td>Caroline County</td>
<td>Maryland</td>
<td>32,693</td>
<td>103.5</td>
<td>1989</td>
<td>28,264</td>
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<tr>
<td>Calvert County</td>
<td>Maryland</td>
<td>90,484</td>
<td>416.3</td>
<td>1978</td>
<td>24,723</td>
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<tr>
<td>Howard County</td>
<td>Maryland</td>
<td>304,580</td>
<td>1,144.90</td>
<td>1994</td>
<td>19,362</td>
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<tr>
<td>Indian River County</td>
<td>Florida</td>
<td>141,994</td>
<td>274.5</td>
<td>1985</td>
<td>11,914</td>
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<tr>
<td>Hillsborough Township</td>
<td>New Jersey</td>
<td>38,303 (2010)</td>
<td>702.3</td>
<td>1975</td>
<td>10,571</td>
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<tr>
<td>Sarasota County</td>
<td>Florida</td>
<td>390,429</td>
<td>682.6</td>
<td>2004</td>
<td>8,199</td>
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<tr>
<td>Queen Anne County</td>
<td>Maryland</td>
<td>48,517</td>
<td>128.5</td>
<td>1987</td>
<td>8032</td>
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<tr>
<td>Blue Earth County</td>
<td>Minnesota</td>
<td>65,528</td>
<td>85.6</td>
<td>1970</td>
<td>6,160</td>
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<tr>
<td>Pitkin County</td>
<td>Colorado</td>
<td>17,389</td>
<td>17.7</td>
<td>1994</td>
<td>5,840</td>
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<tr>
<td>San Luis Obispo County</td>
<td>California</td>
<td>276,443</td>
<td>81.7</td>
<td>1996</td>
<td>5,464</td>
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<tr>
<td>Charles County</td>
<td>Maryland</td>
<td>152,864</td>
<td>320.2</td>
<td>1992</td>
<td>5,274</td>
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<tr>
<td>Boulder County</td>
<td>Colorado</td>
<td>294,567</td>
<td>405</td>
<td>1981</td>
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<tr>
<td>Payette County</td>
<td>Idaho</td>
<td>22,623</td>
<td>55.6</td>
<td>1982</td>
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<tr>
<td>Rice County</td>
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<td>Douglas County</td>
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<td>47,118</td>
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<tr>
<td>Adams County</td>
<td>Colorado</td>
<td>469,193</td>
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<td>Collier County</td>
<td>Florida</td>
<td>339,642</td>
<td>160.9</td>
<td>1974</td>
<td>3,612</td>
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<tr>
<td>Marion County</td>
<td>Florida</td>
<td>337,362</td>
<td>209.1</td>
<td>2005</td>
<td>3,580</td>
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<tr>
<td>Churchill County</td>
<td>Nevada</td>
<td>24,063</td>
<td>5</td>
<td>2006</td>
<td>3,468</td>
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<tr>
<td>Town of Southampton</td>
<td>New York</td>
<td>56,790</td>
<td>190</td>
<td>1972</td>
<td>2,800</td>
</tr>
<tr>
<td>Chesterfield Township</td>
<td>New Jersey</td>
<td>7,699</td>
<td>360.9</td>
<td>1975</td>
<td>2,231</td>
</tr>
</tbody>
</table>

Jurisdictions highlighted in blue are rural in character based on overall population size or population density. For comparison purposes, Skagit County’s population is approximately 118,000, with a population density of 67.5 persons/sq. mile. Mount Vernon’s population is approximately 33,000.

[^1]: Forterra national TDR program database, updated July 2012
Appendix C. Committee Member Written Comments
Appendix D. Estimated Number of Unexercised Residential Development Rights by Zone

Also a “dot map” showing where those development rights are located.
Appendix E. Map of Potential TDR Sending Areas

[This will be the map provided to the Committee at the March and April 2013 meetings]
Appendix F. Notes from TDR Focus Group Meetings
Appendix G. Additional Appendix if Needed