

A Resource Guide to Designing Transfer of Development Rights Programs in Washington State



Cascade Land Conservancy
for

Washington State Department of
Community, Trade, and Economic Development

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Introduction¹

The Washington State Growth Management Act (GMA) requires all fully planning counties and the cities within them to adopt comprehensive plans and development regulations that meet 14 goals and a number of requirements. The goals include conservation of productive forest and agricultural lands and discourage incompatible uses (RCW 36.70A.020(8)); encouraging development in urban areas where adequate public facilities and services exist or can be provided efficiently (RCW 36.70A.020(1)); and reduction of sprawl (RCW 36.70A.020(2)).

Transfer of development rights (TDR) programs are recognized and encouraged in the Washington State Growth Management Act (GMA) as an innovative land use management technique (RCW 36.70A.090) that transfers development from areas a community wants to conserve to urban areas where growth should be encouraged, consistent with GMA goals.

CTED has produced a collection of resources, in conjunction with the Cascade Land Conservancy, that local governments can draw upon for guidance in developing TDR programs. This guide is one component of the TDR information portfolio.

How to Use This Guide

This guide is intended to serve as a practical source of information and guidance for planning staff, elected officials and policy makers who are considering adopting a transfer of development rights program or want to design one in their jurisdiction. It can also be used to help inform an updating process for existing programs.

This guide explains the fundamental concepts of TDR. It introduces and discusses technical and policy issues local governments should address when considering the adoption of a new program or revisions to an existing one. Information contained in this guide is drawn from a variety of sources, including Cascade Land Conservancy's research on TDR, reviews of programs in Washington State, reviews of other programs from around the country, and resources produced by CTED.

This guide walks officials and staff through the steps necessary to design and implement a successful TDR program. It examines many questions that are likely to arise and presents objective analysis to help planners and officials decide how to answer those questions. This guide covers many of the complex details of TDR and provides an extensive list of references to more comprehensive sources of information. Other practical resources included are samples of ordinances, agreements, and contact information for technical assistance.

¹ Adapted from CTED report "[Creating a Regional Transfer of Development Rights Program for Puget Sound](#)," December 2008.

What is TDR?²

TDR stands for transfer of development rights, a market-based land use tool for helping implement a jurisdiction's growth policies. A transfer of development rights program contains several elements. A community identifies areas that it wants to conserve, known as "sending areas." For conservation purposes, these can be privately owned farms, forestland, open space, or other types of property. Landowners in these sending areas may request certificates representing the land's development potential be issued from their county or city, which they can choose to sell. These certificates are purchased by developers who wish to increase the development potential of projects in "receiving areas." These areas are identified by the community as being better suited for locating additional growth, and are often located in urban cores or suburban cities. Receiving areas have the infrastructure capacity and services to meet the needs of increased growth.

By purchasing the development potential from a sending area, developers gain access to incentives for projects in receiving areas. In return for compensation from the sale of development potential, a sending site landowner places a conservation easement on the property that permanently prohibits development of the land. The landowner retains ownership of the land and may continue to use it for other purposes, such as forestry or agriculture.

A TDR program does not limit growth; rather, it allows communities to plan more effectively by directing that growth into areas most appropriate for it. In comprehensive plans and development regulations, communities can identify which areas are suitable to grow at higher intensities and how much additional development is desired.

From a policy point of view there are three key features of a TDR program:

- **It is voluntary.** In a TDR program transactions take place between willing buyers and sellers. If landowners in sending areas choose not to participate, they are entitled to develop as permitted by current zoning and development regulations. Likewise, in receiving areas, developers not participating in TDR are allowed to build to current zoning. To receive development incentives such as additional density or height, developers must purchase TDR credits.
- **It is market-based.** TDR programs create a marketplace that allows property owners to buy and sell development rights to one another. Individual property owners, developers, or other parties may freely negotiate prices for the purchase and sale of these rights.
- **It is flexible.** TDR programs can be designed to accommodate the needs of each community. Jurisdictions can customize the elements of the program to reflect their conservation and development objectives. Furthermore, flexibility means that TDR

²This section adapted from [Transfer of Development Rights \(TDR\) in Washington State: Overview, Benefits, and Challenges](#), Cascade Land Conservancy, October 2008

programs can be adapted to suit market conditions and growth patterns unique to a particular area.

Why Washington Communities Would Consider a TDR Program³

In response to public concern about population growth and the impacts of development, the Growth Management Act (GMA), Chapter 36.70A RCW, was enacted in 1990 and subsequently amended. The GMA requires fully planning local governments to adopt comprehensive growth management plans and development regulations in accordance with the act's provisions. The GMA recognizes and encourages "innovative land use techniques" such as TDR to help local governments achieve their planning goals.

TDR goes beyond traditional zoning by compensating landowners who give up their right to develop, by protecting property from development in perpetuity, and by engaging the market to generate private funding for land conservation. By helping to concentrate development in areas best suited for growth, TDR can help mitigate many of the public costs and impacts of sprawl. These include:

Loss of farm and forest lands. While the GMA requires designation and protection of productive agricultural lands, Washington continues to lose farmland (including ranchland) at the rate of about 23,700 acres per year.⁴ Since the late 1980s, Washington's forest land area has declined by over 17%.⁵ In addition, forestlands on or near the urban-rural fringe now have a development value of 15-20 times their value as forests.⁶ This suggests that as the region grows, an even greater percentage of working forests will be at risk for conversion.

Infrastructure costs. Following a pioneering study for the federal government in 1974,⁷ numerous studies have documented the public costs of sprawl. In 2005, the Puget Sound Regional Council reviewed these studies and concluded that, while methodologies vary, sprawl is more costly than compact patterns of development.⁸ Savings on the capital costs of infrastructure are particularly significant with compact development.

³ This section adapted from [Transfer of Development Rights \(TDR\) in Washington State: Overview, Benefits, and Challenges](#), Cascade Land Conservancy, October 2008,

⁴ USDA Census of Agriculture data, 1997 and 2002.

⁵ College of Forest Resources, University of Washington. *The Future of Washington's Forests: Washington Department of Natural Resources Report*. 2007.

⁶ Ibid.

⁷ Real Estate Research Corporation. *The Costs of Sprawl: Environmental and Economic Costs of Alternative Residential Development Patterns at the Urban Fringe*. 3 vols. Washington, D.C.: U.S. Government Printing Office, 1974.

⁸ Puget Sound Regional Council. *VISION 2020 + 20 Update: Information Paper on the Cost of Sprawl*. Puget Sound Regional Council, December 19, 2005.

Environmental quality. The environmental impacts of sprawl are well documented. Compact growth patterns use up to 21% less acreage than sprawling development.⁹ Sprawling development leads to the creation of new impervious surface, increased flooding and increased stormwater management costs. Sprawl also contributes to loss of wildlife habitat and other environmental impacts.

Jobs and the economy. Loss of forest and farmland associated with sprawl could significantly affect these sectors of the economy. Some key indicators include:

- The value of Washington's food and agricultural production (including food processing) was assessed at \$5.6 billion in 2001.¹⁰
- Farms and farm-related activities provide more than 523,000 jobs in Washington State.¹¹ Farm employment represents over 82,000 jobs.¹²
- Total employment in the state's forest products industries was approximately 45,000 in 2005.¹³
- The 2005 gross business income for the Washington forestry and forest-products sector was about \$16 billion.¹⁴

Climate change. The link between sprawl and global warming has only recently come to the forefront of public consideration. A book published by the Urban Land Institute analyzed scores of academic studies and concluded that compact development could do as much to lower emissions through reduced vehicle miles traveled as many of the climate policies now promoted by state and national politicians.¹⁵

⁹ Robert W. Burchell, Anthony Downs, Samuel Seskin, et al. *Costs of Sprawl 2000*. Washington, D.C.: Transit Cooperative Research Program, Transportation Research Board, National Research Council: TCRP Report 74, 2002.

¹⁰ Municipal Research and Services Center of Washington, [Agricultural Lands Introduction Web page](#).

¹¹ [USDA Website](#). Accessed December 5, 2007.

¹² Ibid.

¹³ [Washington State University Website](#): accessed December 10, 2007.

¹⁴ College of Forest Resources, University of Washington, op. cit.

¹⁵ Smart Growth America Website, "Growing Cooler: The Evidence on Urban Development and Climate Change" accessed January 1, 2008.

Goals and Requirements of the Growth Management Act

The Growth Management Act outlines 14 planning goals that counties and cities must consider in adopting comprehensive land use plans and implementing development regulations. The goals are:¹⁶

1. Encourage development in urban areas where adequate public facilities and services exist or can be provided.
2. Reduce sprawling, low-density development.
3. Encourage efficient multimodal transportation systems.
4. Encourage the availability of affordable housing to all economic segments of the population.
5. Encourage economic development.
6. Protect private property rights.
7. Process permits in a timely and fair manner.
8. Maintain and enhance natural resource industries.
9. Retain open space and habitat areas and develop recreation opportunities.
10. Protect the environment and enhance the state's high quality of life.
11. Encourage citizen involvement in the planning process.
12. Ensure adequate provision of public facilities and services to support development.
13. Encourage historic preservation.
14. The goals and policies of the Shoreline Management Act.

The benefits of TDR programs for local jurisdictions meet a number of these goals. For example, a TDR program can enhance agricultural and resource industries by allowing a landowner to sell the development rights, invest the proceeds from the sale, and keep the land in production. It can also encourage development in urban areas and reduce sprawl by transferring development potential from rural areas.

The Washington State Office of Financial Management calculates population projections that extend 20 years for counties fully planning under the GMA. The counties must use these projections as planning targets. During the planning process, counties consult with cities and decide how these growth projections are allocated in designated urban growth areas and rural areas. The outcome of this allocation process can inform the decision to adopt a TDR program.

Community Comprehensive Land Use Plan Policies and Goals

Counties and cities considering a TDR program need to review their policies and goals for how they plan to grow. Many jurisdictions' comprehensive plans already include discussion of TDR as a possible means to achieve desirable growth and conservation

¹⁶ RCW 36.70A.020 and 36.70A.480.

patterns. Review of these policies and goals can help determine whether a TDR program is an appropriate tool to achieve adopted policies and goals.

One example of the role of the review process can be seen in Pierce County. The county had a policy in its comprehensive plan to develop a TDR program, but did not act upon this policy for several years. Throughout the county's comprehensive plan are policies to use a TDR program to protect farmland, forestland, parks, endangered species habitat, and recreational land. The comprehensive plan identified Major Urban Centers, Mixed Use Districts, and Community Centers as appropriate TDR receiving areas for additional development¹⁷. The county acted upon these goals in 2007 by designing and adopting a TDR program that emphasized the protection of agricultural land, forest land, endangered species habitat, land contributing to public trail systems, and recreational land.

Alternatively, TDR can be a driver for how land use policies and goals are revised during the update process. Experience gained through designing and applying a TDR program can help a jurisdiction articulate these policies and goals and understand how they change over time.

Existing Programs for Conservation and Growth

Counties and cities need to review other adopted programs to ensure consistency with a proposed TDR program. The evaluation for consistency should be made in two ways: how would a TDR program influence existing programs and how would existing programs influence the functioning of a future TDR program?

One element would be reviewing existing conservation programs with regard to sending areas. For receiving areas, it might include existing incentive programs that apply in the receiving area. The City of Bremerton already has a Bonus Amenity Program in place, for example, and downtown Tacoma has Design Standards for Increasing Allowable Floor-Area Ratio. In addition to reviewing existing programs, jurisdictions should consider the effects of proposed programs. In Redmond, the Bel-Red Overlake Transportation Study proposes measures that will influence the market for development rights. Understanding how current or proposed development bonus programs will interact with a TDR program will help inform the design process.

Market Conditions

Because TDR is a market-based program, adequate demand for increased density (or other development incentives) is essential to the emergence of a robust TDR marketplace. The nature of the housing and commercial real estate markets is another consideration in weighing the appropriateness of TDR. What kinds of development are occurring? The decision to adopt a TDR program does not need to depend on short-term growth in the real estate market. A jurisdiction can design and implement a

¹⁷ Pierce County Code. Comprehensive Plan, Title 19A.

program during any part of a real estate market cycle. Long-term growth and planning goals are more important to consider in a TDR program than short-term fluctuations. Guidelines for assessing market conditions are covered in the [Market Analysis](#) section.

Landowner Willingness

As a voluntary program, a key to success is a supply of development rights that landowners are willing to sell. Understanding perspectives of landowners is essential to informing the decision to adopt a TDR program. Likewise, landowners should understand the opportunities a TDR program will offer them in terms of new land use options and adding value to existing resources. Outreach is critical to creating this understanding.

As part of an outreach effort, the jurisdiction should seek to answer a few questions, which include, but are not limited to:

- Do farmers and foresters want to keep their land in production?
- What views do landowners hold towards conversion pressures?
- Are landowners concerned about conservation or incompatible land uses?
- What are other land use options for landowners?
- What is the relationship between rural or resource landowners and the government?
- Do landowners view their property as an investment they plan to sell?
- What are landowner opinions on conservation easements?

Learning the answers to these questions is important in the early stages of program design and will help jurisdictions to cater the program to the interests of the constituents it will serve. Landowner perspectives can be measured in a variety of ways, including surveys, interviews, and public meetings. It is important to recognize the subjectivity of these questions. They can be framed and interpreted in different ways, and the responses to these questions could vary depending on how they are worded, who is asking them, and who is answering them. When conducting outreach, the jurisdiction should expect a wide range of answers, and should weigh these in the context of the community's planning goals.

Developer Demand

One of the factors determining the success of TDR programs is the demand for growth, and hence development, in urban areas. In order to best understand this demand, local government should seek to involve developers in the program design process. Local governments should make a priority of reaching out to developers and determining what their needs are, what they think the market is or will be doing, and where the demand for growth and economic development is in the community. Beyond the immediate advantages of learning their perspective on the market, there are other important reasons to approach developers.

Creating and maintaining positive relationships with developers will have beneficial effects on adopting a TDR program and how a program functions in the long term. With any publicly adopted program, local support is key to actually adopting a TDR program. Developers are typically well connected in the community and ensuring their support for TDR will help build broader support. One of the fundamental tenets of TDR is that it is a demand-driven process, and developers are part of the engine driving demand for higher density and other development incentives. Program design will be improved by considering their input and understanding their concerns, particularly around certainty and risk. The objective is to identify ways in which the demand for development can advance conservation goals while adding value for developers and communities. This subject is covered in greater depth in the [Market Analysis](#) section.

Benefits to Receiving Area Community

One element that is key to a successful TDR program is tangible benefit to the receiving area community. The idea of TDR can be abstract, and some communities may not find the notion of protecting land “out there” to be sufficient motivation to accept higher density. Identifying a direct connection between the sending sites and receiving areas can strengthen community interest in conservation. Protecting a drinking water watershed, conserving farms that supply local farmers’ markets or grocers, or improving recreational opportunities all provide concrete benefits to which the public can relate. Other benefits include contributing to climate change solutions and creating a sense of place in the community. If a community has a vested interest in conserving resource land, it may be more open to accommodating changes to the community that would be ushered in by higher density development. Similar to landowner attitudes, the local government should measure community interest in conservation through outreach.

Policy Decisions

Once a local government has made the decision to adopt a TDR program, it should start a design process to ensure that the program incorporates elements that will effectively accomplish the policy objectives identified by the jurisdiction. Designing a TDR program involves a number of steps, including, but not limited to:

1. Define the program's goals
2. Conduct public outreach and policy/data research
3. Evaluate interaction of TDR with other programs and regulations
4. Perform market analysis
5. Identify sending areas
6. Identify receiving areas
7. Determine incentives
8. Select a transaction mechanism

Program Goals

Clear goals are important to a TDR program because they define its intent and help create benchmarks by which success can be measured. In defining the scope of a TDR program a community should start by answering questions about what outcomes it wants to achieve, including:

- What are the community conservation goals?
- What are the community's planning goals for growth?
- What scale of program is appropriate to achieve planning goals?

Answers to these questions are interrelated. Clearly articulating conservation and planning goals will help a jurisdiction identify what scale of program will achieve the best results.

Conservation Goals

In identifying conservation goals, a jurisdiction should aim to answer the question of what types of land or areas does it want to protect? Outreach is essential to gain input from residents in both sending and receiving areas. A TDR program should conserve land that citizens and the government have identified through their comprehensive plan policies as being important to the community. A public dialog will help inform policy makers what conservation priorities they should set.

Planning Goals

On the other end of the process, jurisdictions must have a clear vision of where and what types of development they want to promote using a TDR program. Some questions to consider include:

- Where does the community want to encourage growth?
- Is it interested in establishing or revitalizing a downtown, or encouraging development in designated centers for growth?
- What is the desired community composition of the receiving area?
- What type of development is the community interested in? Is the emphasis on office buildings in commercial centers, single family housing, multi-family housing, or mixed-use centers?
- How will the receiving area change over time as the TDR program is used?
- What infrastructure needs will the receiving area face?
- What quality of life issues are important to the citizens who will be affected by changes in the receiving area?

Community input in determining the future character of the receiving area is crucial. Public meetings, surveys, and requests for comments are starting points for an outreach process to determine clear growth goals.

Program Scale

What geographical area should the program encompass? Generally there are four scales at which a TDR program can operate in Washington:

Scale	Description	Sending Sites	Receiving Sites	Notes
City	Transfers occur entirely within city limits.	Within city limits	Within city limits	Smallest scale, limited supply of sending sites.
County	Transfers occur entirely within a county.	Unincorporated county (open space, resource lands)	Within urban growth areas, fully contained communities (FCC)	Large scale, potentially wide ranging demand from UGA receiving sites.
Inter-jurisdictional	Transfers occur between counties and cities.	Unincorporated county (open space, resource lands)	Incorporated cities or towns.	Medium to large scale, can involve an interlocal agreement between city and county.
Regional	Transfers occur between counties and cities, can cross county lines.	Resource and rural lands in Pierce, King, Snohomish, and Kitsap Counties.	Incorporated cities or towns in these counties.	Large scale, interjurisdictional transfers happen without interlocal agreement.

Table I: Comparison of different TDR program scales.

Each of these scales has advantages and limitations, and should be weighed accordingly.

Intrajurisdictional - City

Pros:

- Effective on a small scale for conserving open space, historical sites, and affordable housing within a limited area;
- Citizens can see a direct benefit for a sending area within their community such as open space or habitat.

Cons:

- Supply of sending sites may be constrained;
- Sending sites are not a good match for cities wanting to conserve resource lands.

Examples: Cities of Seattle and Redmond (WA)

Intrajurisdictional- County

Pros:

- Sending area supply of development rights is large and potential market players more numerous;
- Greater range of sending sites can contribute to a more efficient market by offering buyers more choices;
- Strong nexus between conservation of sending sites and development in receiving areas.

Cons:

- Demand in receiving areas may be constrained by lower limitations on maximum densities in the county than within a city;
- Increased density or intensity inconsistent with city plans prior to annexation may create inconsistencies;
- Resulting development patterns may not reflect long term growth goals of the county and its cities as density transfers are not going into cities.

Examples: King County and Pierce County (WA)

Interjurisdictional

Pros:

- Sending area supply of development rights is large and potential market players more numerous;
- Demand for development incentives may be higher in cities;
- Urban receiving areas are better suited to higher intensity development;

Cons:

- Interlocal agreements between cities and counties may be complex and create administrative burden;
- Cities may be reluctant to accept additional density from outside their borders.

Examples: Cities of Arlington and Issaquah (WA)

Taken together, the consideration of conservation goals, planning goals, and program scale will shape the overall policy objectives of a TDR program. Once these goals are outlined, more specific decisions about its design will define the ways in which the scale of the program advance these policy objectives.

Market Analysis

A market analysis is one of the most important steps in establishing a successful TDR program. Understanding the factors driving demand on the receiving side and the issues of supply on the sending side will help the jurisdiction establish transfer mechanisms that will be equitable and will encourage all stakeholders to participate in the program. Given the complexity of conducting a market analysis and to avoid bias or the perception of bias, some jurisdictions may elect to hire an independent specialist to perform the study.

A market analysis should examine at a minimum:

- Supply of development rights in sending areas.
- Values of development rights in sending areas.
- Determining the market price for TDR credits.
- Exchange rates (see [Exchange Rates](#) section).

Supply of Development Rights

In order to estimate the number of potential development rights available for transfer, planners should first have an idea of how the sending areas will be designated (i.e. map, criteria; see [Establishing Sending Areas](#)). Based on the designations and other factors such as underlying zoning, planners can calculate the projected inventory of development rights.

Values of Development Rights

Calculating development right values on sending properties is a complex process. Two approaches yield valuations at different scales. To calculate the value of development rights on a specific property, a “before and after” appraisal compares the value of the property under its resource use to its value at its highest and best use (typically maximum buildout). Factors considered in this approach include access to roads, infrastructure, and services, and conversion pressure. A second approach would determine the value of development rights in general across a range of sending areas is best done by examining comparable sales.

Examples of Market Analysis

For an example of a high-level market analysis, see this 2008 study done by DC&E for CTED:

[*“Market Analysis for Regional Transfer of Development Rights in Puget Sound”*](#)

Snohomish County analysis:

Transfer of Development Rights for Farmland Preservation: Model Policy and Regulatory Strategy for Snohomish County

Determining the Market Price¹⁸

In determining the market price of a TDR credit, a developer will weigh the revenue and cost impacts on a project based on a set of assumptions. The developer will choose to purchase TDR credits if the risk adjusted profit is projected to be the same as, or better than, it would have been in the absence of TDR credits. The value of increased density is equal to the increased revenue minus the increased costs.

Revenue is a function of the additional units or area of building that is feasible to build in increments, but is also subject to market factors such as demand for the product, size of the unit or lot, and views. In some locations, the higher density is beyond what consumers are willing to buy, in which case there would be no revenue increase.

Costs vary widely depending on type of construction, and some do not increase proportionately to revenue. This can reduce the value of a TDR credit to a developer. The following list identifies some costs that developers might incur when building to increased density:

- **Parking.** These costs can take a wide range depending on development regulations. In some markets, the cost of providing structured parking can exceed the cost of the land for additional units.
- **Construction type.** The combination of local building and international building code regulations can highly alter construction costs. There are many construction types, each with different costs and the ability of developers to maximize building envelopes within each construction type will result in the greatest financial return.
- **Mitigation.** Additional traffic created by a project can trigger concurrency requirements. Other issues which may increase costs include water, sewer, and storm water infrastructure.
- **Process.** Zoning thresholds or State Environmental Policy Act requirements can impose additional costs and delays.
- **Predictability and risk.** Increased density or change of use may result in additional time for processing or permitting and/or can provoke opposition to the project, causing delays and increasing costs.

Revisiting Market Analysis

Market analysis does not end with a study for program design purposes. Just as real estate markets fluctuate, so does the market for development rights. In order for a TDR program to continue to function effectively, it may require fine tuning to reflect the state of the market. Without subsequent assessments of the market, a program can stagnate because the demand for development no longer aligns with the incentives offered by the program, the value of the incentives may no longer be commensurate with the cost of participating, and actual population

¹⁸ This section adapted from “TDR’s That Work in the Marketplace” by Judd Kirk, Port Blakely Communities, presented to the CTED Regional Transfer of Development Rights Policy Advisory Committee on August 14, 2008.

or economic growth may vary from projections. Therefore, in order to promote the long term viability of a TDR program, local governments should plan to examine market conditions periodically. Market characteristics to examine over time include:

- Changes in the volume of transactions,
- Trends in sale prices of TDR credits,
- Numbers of landowners willing to participate,
- Population growth,
- Changes in building permit application volumes,
- Rate of conversion of lands targeted for conservation,
- Real estate prices.

The frequency at which a jurisdiction should review the market analysis can vary depending on the scale and activity of the program. Jurisdictions should plan a schedule for assessing the market- it is easier to make subtle adjustments along the way than to resuscitate a defunct program. See also [Program evaluation and updates](#).

Evaluating TDR Interaction with Other Programs and Regulations

A TDR program does not operate within a vacuum and, through its implementation, can interact in a variety of ways with existing programs and regulations. In order to anticipate how TDR programs might affect other programs or regulations, and vice versa, jurisdictions should consider evaluating the potential for these interactions. Examples highlighted here include affordable housing programs and regulations addressing design and safety.

Affordable Housing

The challenge of providing affordable housing is a wide-reaching and complex subject. While it is too large of an issue to address comprehensively in this guide, there are a few basic points that deserve special attention for the way they interact with TDR. An effective program will identify ways for TDR to avoid competition with, and possibly complement, existing or pending affordable housing programs. A detailed analysis of the relationship between TDR and housing affordability is made in the Cascade Land Conservancy's paper *Analysis of the Impacts of Transfer of Development Rights Programs on Affordable Housing*¹⁹.

Incentives

Affordable housing programs and conservation TDR programs can both be designed to advance specific policy goals through the use of incentives. Certain incentives, such as density bonuses, can be common to both programs. In situations where two different programs award similar bonuses, developers will be able to choose between multiple sources to gain that bonus. This arrangement can result in outcomes that do not reflect policy goals. If it is less expensive for a developer to achieve a desired bonus through TDR than through the affordable housing program, the effectiveness of the affordable housing incentive will be diminished. This is a simplification of the relationship between the two programs, but the point is that jurisdictions should be aware of the potential for overlap between TDR and affordable housing programs.

One way a jurisdiction can strengthen a TDR program's approach to improving affordable housing options is to recognize potential overlap and design the program using alternative incentives. One approach a jurisdiction might take to promote compatibility is:

- Inventory current or pending affordable housing programs and any proposed changes to them.
- Assess the structure and incentive components of affordable housing resources as part of the TDR market analysis.
- Explore the use of *conversion commodities* as a way for the TDR program to offer different incentives from an affordable housing program.
- Separate how or where incentives are provided between the programs.

¹⁹ *Analysis of the Impacts of Transfer of Development Rights Programs on Affordable Housing*, Cascade Land Conservancy, May 2009.

- Consider a policy decision that defines the roles and community goals of conservation TDR and affordable housing as part of a comprehensive livability strategy.

Examples of jurisdictions with both TDR and affordable housing programs:
City of Seattle (WA), Palm Beach County (FL), Montgomery County (MD)

Other references for Affordable Housing and TDR Programs

[The Impact of Zoning on Housing Affordability](#)

[Why do Homes in Washington Cost So Much?](#)

Existing Regulations

In addition to examining existing programs for potential interactions with TDR, jurisdictions should conduct the same process with regulations. This is discussed in the [Establishing Receiving Areas](#) section in the context of GMA. In summary, local governments should examine how increased development intensity will meet existing regulations. Examples of regulatory areas to consider include fire code and design guidelines.



Establishing Sending Areas

The establishment of sending areas creates new land use options for landowners. This process can be informed by lessons learned from earlier design stages. Having already identified the conservation goals on a broader scale, a jurisdiction can focus on more specific questions:

- What kind of land do we want to protect?
- How much land should we aim to conserve?
- Over what period of time?
- What are the conversion pressures?
- Do sending areas contain an adequate supply of TDR credits?

It is important to initiate stakeholder outreach in this stage. Thorough program design will result in the designation of sending sites in which many eligible landowners are interested in selling their development rights. Through this process the goal should be to balance landowner interest with conservation priorities. A program with low landowner interest will not generate the desired volume of transactions, but a program designed entirely around willing landowners may not yield conservation patterns that reflect the community's priorities. Local jurisdictions are best positioned to determine this balance.

What kind of land do we want to protect?

Cities and counties have numerous policy options for targeting land for conservation. They include local comprehensive plan priorities, local watershed plan priorities, and priorities in regionally and state-adopted plans. Furthermore, the marketplace will be structured to reward jurisdictions whose programs accomplish conservation of these lands.

Examples of other policy options for conservation include:

- Agricultural and forest land;
- Floodplains;
- Land in the watershed from which a city draws its drinking water; and
- Open space;
- Wildlife habitat;
- Land of other special importance to a community.

How much land should we aim to conserve?

The amount of land a community can protect through TDR is closely tied to the capacity of the receiving areas to accommodate additional development. While there is flexibility in this relationship, it is important for a community to quantify a conservation objective. This will help inform the design process and reflects conservation priorities. In many cases, the amount of land targeted for conservation is connected to the type of land a community wants to protect.

Over what period of time?

Many factors can affect the pace at which TDR transactions occur, some of which are beyond the jurisdiction's control. For example, during periods of economic expansion the demand for development will be high and may result in more conservation than during recessionary periods. Counties planning under GMA are required to plan for growth using population

projections from the Office of Financial Management. These data can help inform an estimate of the rate at which a county or city will be able to achieve conservation of prioritized land. If some amount of growth will be accommodated through a TDR program, then this portion will result in conservation. Population projections should be considered alongside the observed growth that a community has experienced and the expected demand for different types of development.

What and where are the conversion pressures?

Cities and counties may find it helpful to identify what conversion pressures are being exerted in rural and natural resource lands and where those pressures are greatest. Using state and county data to measure the conversion patterns of unincorporated areas outside designated urban growth areas, they can compare how growth projections compare to actual distributions of growth. Evaluating data from several years will help paint a picture of development trends over time. Examining parcel data from development applications using geographical information system (GIS) software will show where new growth is emerging and how development patterns are changing. Understanding these trends can help counties and cities select and prioritize lands for inclusion in sending areas.

Methods frequently used to define sending areas:

Three methods are frequently used to designate sending areas:

- Map designations
- Criteria
- Land Use Designation/Zoning Designation

Map Designations

This method is the most straightforward and is simple to administer. The agency administering the TDR program (managing agency) draws a line around the areas it wants to protect via the TDR program and designates all properties within those areas as sending sites. This geographic determination is made as a result of the jurisdiction identifying its conservation priorities. The City of Arlington, for example, wanted to conserve a specific area of farmland in the Stilliguamish River valley. Accordingly, Snohomish County designated that area of farmland on a map as a sending area for its inter-jurisdictional program with the City.

Advantages

- Maps provide clarity about which properties are eligible sending sites.
- The government or a community can target specific areas it wants to protect.
- Over time the map can be amended to reflect changes in sending site supply, program participation, conversion pressures or conservation priorities.

Disadvantages

- Map designations have the potential to create winners and losers: the line has to be drawn somewhere and some landowners may disagree with this decision.
- This approach may not capture the full extent of properties that the jurisdiction wants to conserve.

- The potential exists for blocs of landowners in a sending area to exert influence on development right prices.
- Map amendments may happen on a cycle that doesn't allow for frequent updates.
- Map designations may artificially limit the number of potential sellers in the market, resulting in inflated prices for TDR credits.

Examples

Cities of Arlington, Issaquah, and Redmond; Snohomish County (WA).

Criteria for Sending Areas

This approach, while more complex than map designations, allows a jurisdiction to more precisely translate its conservation goals to the program level. The managing agency decides upon a set of criteria to determine sending site eligibility. These could be parcels of a certain size range, property characteristics like wetlands or wildlife habitat, land use designations like agriculture or forest land, zoning, or threat of conversion. In this way the government and community can tailor the criteria to be specific about what types of land it wants to protect, rather than identifying specific parcels.

Advantages

- The jurisdiction can be selective in choosing what types of land it wants to conserve.
- The program can be flexible in modifying the criteria to address shifts in goals or to respond to the marketplace.
- Because criteria-based sending sites are potentially distributed over a greater area, sale prices of development rights are less vulnerable to influence by single transaction.

Disadvantages

- The resulting patterns of conservation may not be consistent with program goals as landowner participation may vary geographically.
- Participation in the program becomes more complex as landowner eligibility must be evaluated instead of being predetermined.
- Identifying eligible landowners and marketing the program to potential sending-site landowners may require more effort.

Land Use Designation

One specific subset of a criteria-based method of choosing a sending area is by land use designation. Using this approach, a jurisdiction can identify parcels with specific land use designations as eligible sending sites based on its general use designation. All lands zoned for and used as forest land or farmland within a certain area can be sending sites. For example, King County has designated a forest production zone and Pierce County has designated Agricultural Resource Land within a specific community plan (Alderton-McMillin)²⁰ as sending areas.

²⁰ Pierce County Code 18G.10.040(D)(1)

Advantages

- Land use designation enables landowners in a large area to participate in the program.
- This approach supports conservation objectives of protecting large, contiguous areas.
- Basing the designation on land use or zoning designations is easy to administer.

Disadvantages

- This approach is broad, and would have to be combined with other designations if a jurisdiction has more specific conservation priorities.
- This approach may create more sending area development potential than receiving areas can absorb.
- Land use designation may be politically infeasible.

These approaches may be combined to address certain limitations of each. For example, a jurisdiction could designate a broad area on the map within which individual parcels must meet criteria to gain sending site eligibility, or combine general land use designations with specific map designations.

Examples

Palm Beach County (FL), King County (WA)

Defining Development Right Allocations – Sending Area Ratios

Having identified sending sites, how should the program allocate the number of development rights to eligible landowners? Two possible approaches are:

- Zoning designation
- Formula

Regardless of what allocation system is adopted, it is essential that the jurisdiction clearly define how many TDR credits are assigned per development right and how that quantity is determined by the enabling ordinance.

Zoning

Under this approach, the number of TDR credits a sending site may be certified to sell is determined by the number of dwelling units allowed under the zoning of the property. For example, if a landowner has a 100-acre parcel zoned for 1 dwelling unit per 10 acres, the number of development rights allocated will be 10. Rights are not issued for existing dwelling units or encumbered properties.

Advantages

- Basing the allocation on applicable zoning is simple and objective.
- Basing the allocation on applicable zoning is consistent with the current development potential.
- Zoning is often a proxy for conversion pressure. Parcels zoned at higher densities may face a greater development threat, but also have more development rights to sell and therefore hold higher profit potential for the landowners.

Disadvantages

- Zoning is not a permanent designation, and as it changes the number of development rights a landowner may sell will also change. If an expectation of zoning changes is created, it may deter landowners from entering the marketplace in anticipation of higher future allocations.
- Zoning alone does not capture other conservation values that are related to ecological function of the land, such as wetlands, habitat, or recreation opportunities.
- Zoning does not take undevelopable land into account, such as steep slopes.

Examples

King County and Pierce County (WA)

Formula

A jurisdiction may allocate development rights based on a formula. In its simplest form, this could be “for every X acres a landowner receives Y development rights.” This approach gives jurisdictions a wide range of flexibility in deciding how to allocate rights.

Advantages

- A program can use a formula to increase landowner incentive for participation by increasing the allocation of rights beyond zoning.
- Formulae can be calculated to match the supply of development rights with the desired additional density in a receiving area.

Disadvantages

- This approach involves a greater level of complexity.
- An improperly calculated formula can create unfavorable market conditions for one or both sides of a transaction, deterring program participation.
- This approach could create inequities between landowners.

Examples

Pierce County, King County, Snohomish County (WA)

Establishing Receiving Areas

Receiving areas are the locations to which development potential is transferred in the form of TDR credits. They can be within city limits or within an unincorporated urban growth area depending on the scale of the program (see [Program Scale](#) section). Within these areas developers may gain bonus uses by purchasing TDR credits. Perhaps more than any other element of design, the establishment of receiving areas is a step that influences a TDR program's effectiveness.

The receiving area plays multiple roles. At the program level, demand for incentives in the receiving area funds the conservation of sending sites. At the community level, the receiving area reflects the growth goals that a jurisdiction wants to achieve. Therefore the designation of receiving areas should be approached in the context of GMA goals for accommodating growth. For jurisdictions that fully plan under GMA, some of the work used to inform the selection of receiving areas will already be completed as part of the comprehensive planning process. Communities will want to draw on this prior work to identify potential receiving areas.

- What areas are planned for growth?
- What areas are not experiencing planned growth that might benefit from a TDR program?
- What areas might become appropriate for growth because of planned infrastructure improvements?

Because the local community has an interest in the shape growth takes in a receiving area neighborhood, a transparent decision-making process involving public outreach is important. As with any local planning process, it may be impossible to allay every concern. But there are many steps that governments should take to improve livability in receiving areas, such as ensuring adequate transit, public services, infrastructure, and amenities to meet the needs of a growing population.

GMA Considerations

In establishing receiving areas, cities and counties should ensure that these areas are consistent with their comprehensive plans as adopted under the Growth Management Act.

- RCW 36.70A.020 establishes planning goals to encourage development in urban areas, reduce sprawl, ensure adequate public services to serve development, maintain and enhance natural resource industries, retain open space, and protect the environment.
- RCW 36.70A.070 requires local comprehensive plans to address land use, affordable housing, funding for capital facilities, and protection of rural character.
- RCW 36.70A.110 and 115 discuss requirements for communities to plan sufficient land capacity for 20 years of population growth.

Cities and counties should take certain policy considerations into account when locating receiving areas.

- Existing plans or community vision documents: What strategic goals has the community identified?
- Population trends: Which neighborhoods or areas are experiencing growth, or are planned or projected to grow?
- Infrastructure upgrades or investments: What plans exist for improving services or infrastructure, and do capital facilities plans support designation of a receiving area?
- Transit: How can receiving areas best be served by existing and future transit?
- Community composition: What are the economic uses, the character, and attributes that the community desires for the receiving areas?
- What other programs are in place or are being contemplated that need to be considered in designating a receiving area? For example, incentive programs for affordable housing or amenities such as streetscapes and parks.

Methods for Establishing Receiving Areas

Receiving areas may be established in a number of ways:

TDR Overlay

This approach involves the government designating one or more geographical areas to be the only eligible locations into which development rights may be transferred. Different overlays are appropriate for different development bonuses. In a program where the purchase of development rights provides higher density bonuses, the jurisdiction may identify receiving areas around transit corridors. In a program where the development incentives are conversion commodities like increased height or FAR (floor-area ratio), the most appropriate receiving areas may be commercial parks or a downtown office core.

As part of this approach, the jurisdiction should examine the work already done in planning for growth. Evaluating indicators of growth and understanding what areas are experiencing development will help inform decisions to locate overlays. Coordinating overlays with existing plans for growth will increase efficient use of planning resources and infrastructure.

Advantages:

- An overlay can target growth in an area consistent with the goals of a comprehensive plan.
- Overlays can help shape the composition of a designated area, for example by encouraging commercial, residential, or mixed-use development.
- There is certainty in where development rights may be used.

Disadvantages:

- Overlays only capture demand for development bonuses in a limited area.
- Opinions on the appropriateness of the overlay may vary within the community.

TDR Upzone

This approach requires that any area of the jurisdiction requesting a zoning change to a higher use purchase development rights as a condition of granting the change. Developers may still build to previous zoning without having to purchase development rights.

Advantages

- This approach captures the demand for higher density or other development bonuses.
- Upzones can target specific areas for growth.

Disadvantages

- It limits a jurisdiction's ability to direct growth to designated areas that are planned for growth.
- It may result in proposals for increased growth in areas where adequate facilities and services are not planned to support increased density or intensity with TDR. This adds uncertainty to the process for developers. If there is not adequate infrastructure planned, the jurisdiction will either have to deny the request to upzone, or amend its capital facilities plan and either require the developer to pay for the infrastructure or find another source of funding.

Examples:

Pierce County (WA)

Redevelopment

When a developer replaces an existing building with a new structure in an urban area, this indicates that market conditions make the cost of doing this favorable. A TDR program could capture these market conditions by linking the purchase of development rights to the replacement of existing buildings with larger ones. As land prices rise and demand for housing in urban areas grows, the opportunity to share redevelopment costs among more units becomes increasingly attractive. Redevelopment can also be planned by jurisdictions. For example, in the City of Sammamish, the revised Town Center Plan calls for the use of TDR in redevelopment. Additionally, the City of Snohomish is pursuing a TDR program as a way to help revitalize the Maple District redevelopment process.

Example: City of Snohomish

In its plan, [Imagine Snohomish](#), the city identifies five strategic planning goals for the long term growth and redevelopment of the community. Subsequent to the publication of this plan, the city chose to explore TDR as one way of achieving its planning goals, particularly the redevelopment of the Maple District near its historic downtown. A TDR program would help support revitalization and create development patterns consistent with the strategic goals of the plan, including:

- Increase walkability within the city,
- Improve access to bicycle trails,
- Grow and diversify the city's economy and employment base,
- Maintain and enhance the city's special character and identity.

Advantages

- This approach captures the demand for higher density or intensity in areas that are already urbanized.
- This approach complements existing redevelopment plans.

Disadvantages

- Patterns of growth through redevelopment can be unpredictable and widely distributed if not planned.

Receiving Area Ratio

As a demand-driven tool, an effective TDR program must offer development rights at a price that developers are willing and able to purchase. The receiving area ratio is the number of additional dwelling units (or other development bonus) that a TDR credit may be used for in a receiving area development project beyond what base zoning allows. The allocation rate must be structured in such a way that the return on the investment justifies the additional cost to the developer and the risk of increasing the scale of the project.

During the design stage jurisdictions should seek input from developers to improve the level of participation in a TDR program. Developer demand is instrumental in successful TDR programs. If developers do not find the price of the development right to be cost effective, the program will fail to achieve the greater policy objectives. Jurisdictions should be prepared to encounter a range of ideas from the development community, and this varied input should be considered along with the results of the market analysis in structuring incentives.

Meeting with developers is a crucial step, and the government should target from which developers to seek input based on the proposed scale and planning goals it has already established. For example, if the desired scale of the program is within the city and the community planning goals are to concentrate office space in a downtown core, then the government should approach commercial developers for input.



Conversion Commodities

The most common use of a TDR for developers in TDR programs is a residential density increase. In return for purchasing development rights, the developer is allowed to build to higher density than is allowed by base zoning. Some existing programs cap the additional density that can be gained through TDR at a number of units or a percentage of the base density (King County, for example). However, this tool is flexible and can offer a wide range of incentives to developers depending on where demand exists in the market.

Other incentives that can supplement or substitute for increased density in TDR programs are commonly referred to as *conversion commodities*. These are useful in situations where demand exists for incentives that extend beyond the housing market. A sample of conversion commodities includes:²¹

1. Commercial Floor Area (CFA)
2. Building Height
3. Parking Ratio
4. Impervious Surface
5. Parkland and Open Space
6. Setbacks
7. Floor Area Ratio (FAR)
8. Impact Fees and Concurrency Conformance

Commercial Floor Area

As a marketable commodity, commercial floor area (CFA) consists of the ability to create or retain additional built square footage for commercial purposes. Frequently employed as part of an economic development strategy, policies regulating commercial floor area can be used as an alternative or in addition to a residential density bonus under a traditional TDR program. Many communities that are experiencing a jobs/housing imbalance choose to place a “cap” on whichever of the two is in greater supply to ensure a proper mix. Rather than limit residential development, the option to purchase more commercial square footage can result in the same outcome. In the Puget Sound area, TDR programs in both Issaquah and Redmond allow receiving-area developers to convert a TDR into increased commercial square footage. One TDR credit in Issaquah equates to the following:

- One residential dwelling unit/or comparable additional commercial
- square footage in commercial zones; and
- the associated number of p.m. peak hour trips; and
- impervious surface; or
- building height

²¹ Adapted from [DC&E Market Analysis for Regional Transfer of Development Rights in Puget Sound](#)

Case Study: Commercial Floor Area

In Redmond, Washington, receiving-area landowners can purchase TDR credits from a sending area in the form of a residential right, and are able to convert it to multiple commodities, including commercial floor area (CFA). They can be used in any number of combinations in commercial and mixed-use zones. Each TDR credit in the city of Redmond may be used to increase the amount of building floor area by 8,712 square feet, or one-fifth of an acre. Microsoft has been a significant program participant both for floor area and parking in the Overlake district, which is overlaid with a cap on CFA agreed to by the Cities of Redmond and Bellevue. TDR program participants can exceed development intensity allowed by base zoning regulations, but only within the overall maximum floor area restrictions.

Building Height

Additional building height is one of the most commonly used development commodities available for purchase through a TDR program. Combined with a regulated floor area ratio, or FAR, additional building height enables developers to fit more square footage within the building envelope than would otherwise be the case. In Seattle, the Olive 8 tower downtown was built higher than the 300-foot limit with the purchase of TDR credits. Additionally, the City of Redmond allows TDR credits to be used to increase the height limitation on a project by up to one story over each increment of floor area of 8,712 square feet.

Parking Ratio

Parking requirements can either be increased or decreased through the land use regulation process. Developers who seek to provide less parking than required by the local government can buy that right by purchasing a TDR credit. Typically measured as a percentage of floor area square footage or number of spaces, the parking ratio can also be decreased to allow developers to fit more parking into a project. Redmond permits developers to purchase and combine TDR credits to add up to 25 percent or 30 percent more parking per 1,000 square feet of gross floor area than would be allowed by regulations. However, the total parking ratio must not exceed five spaces per 1,000 square feet of gross floor area.

Impervious Surface

In jurisdictions where there are specific regulations on storm water run-off, either for watershed protection or public health and safety, there may be an opportunity to incorporate impervious surface area in a TDR program. Generally expressed as a percentage of the proposed project site, the amount of impervious surface, either as a man-made structure or paved surface that restricts water from reaching the underlying land, can trigger development review or be restricted at the entitlement phase. Impervious surface is a tradable commodity in some cities in King County as well as in other areas, such as the Tahoe Basin. For each underlying zoning district in Issaquah, there is a set of conditions that enable the augmentation of impervious surface area. In Issaquah, one TDR credit equals the following amount of

impervious surface area in addition to one residential unit or the comparable commercial square footage:

- 2,000 square feet of impervious surface outside the Critical Aquifer Recharge Area (CARA), or
- 1,000 square feet of impervious surface inside the CARA.

Case Study: Impervious Surface

The process and conditions for increasing impervious surface ratio limits in receiving sites are based on the type of zone and the associated impervious surface ratio allowed in that underlying zoning district, including multifamily, mixed-use and commercial zones. Issaquah is also currently investigating ways to increase the permitted amount of lot coverage for a project that incorporates Low Impact Design (LID) techniques. Redmond permits developers to increase the maximum impervious surface or maximum lot coverage by 8,712 square feet, provided that the total increase does not exceed 10% of the project site. Because storm water run-off can counteract conservation efforts, impervious surface area ratios in receiving areas are tailored to improve storm water management of specific land uses.

Parkland and Open Space

Developers are often required to provide parkland and open space as a community benefit accompanying development, which also fall within the realm of marketable commodities. Each TDR credit in Redmond may also be used to substitute for the requirement to provide 8,712 square feet, or one-fifth of an acre, of public or private parkland.

Setbacks

Similar in theory to the parking ratio or impervious surface area, waived or decreased setback requirements on a project site enable developers to increase residential and/or commercial floor area. Taken together, setbacks and building heights create the building envelope but can also contribute to the “wedding cake,” or tiered, appearance of tightly grouped buildings. Issaquah permits developers to exchange one TDR credit for 1,000 square feet to modify building setbacks, minimizing the “wedding cake” effect.

Floor Area Ratio

Many zoning ordinances restrict non-residential building size by restricting the floor-to-area ratio (FAR). FAR is the ratio of building square footage to square footage of the underlying land. For example, if a lot is 10,000 square feet and the FAR is 1:1, this means that the building can be no greater than 10,000 square feet. Even for zoning ordinances that do not have an explicit FAR limit, the amount of square footage is implicitly restricted by the combination of setback and height requirements. Thus, FAR is an important consideration in defining the size and shape of buildings in any urban area. If a jurisdiction's planning goals include the growth or distribution of commercial development, offering FAR as an incentive can help achieve these goals.

Case Study: Floor Area Ratio

In the City of Everett, developers can transfer unused floor area per the maximum FAR standards for historic properties to a proposed development site within the B-3 (Central Business District) zone, provided the proposed development does not exceed the maximum FAR. In addition, an explicit or implicit FAR limit may come into play if a TDR credit can be converted into either commercial floor area or additional building height. For example, a receiving-area landowner may obtain more height by purchasing a TDR credit but may not be able to use that additional height because of FAR restrictions.

Exchange Rates (Sending and Receiving Area Ratios)

Also referred to as transfer ratios or multipliers, sending and receiving ratios correct the imbalance in value between development rights in sending and receiving areas. The market value of one dwelling unit on a 10-acre parcel in a rural area is often worth more than the value of one additional unit in an urban apartment building to a developer. Developers would be unwilling to pay the rural value for one right, and landowners would be unwilling to sell their rights at urban values.

Examples

A linear exchange rate/ratio is the simplest to implement. In King County's program, for example, for every one development right purchased a developer can build an additional two dwelling units in a receiving area, up to 200% of the base density. Pierce County uses a formula to determine how many rights a developer must purchase for any given project. Exchange rates can similarly be established for conversion commodities. One example of this is building height. The jurisdiction can establish the additional height a developer may obtain in an amount that adds sufficient value to the project to justify the cost.

The higher the receiving area ratio, the more it will favor developers. Setting it too high, however, will reduce the amount of conservation the program achieves. Finding an exchange rate that approximates an equilibrium for both buyers and sellers should be one of the objectives of a market analysis.

Incentives for Developers

What will motivate developers to participate in a TDR program? A developer will pay for increased revenue or reduced costs and risk. Depending on the market, a variety of incentives could be appropriate to encourage program participation. The key to answering this question is to discuss the issue with the intended users. Outreach to developers will help a jurisdiction inform program design. For example, one incentive in which developers have expressed interest is expedited permitting and review under the State Environmental Policy Act (SEPA). The cost of environmental review can represent significant additional expense for a project. Any delay to a construction project during the permitting process can have compounding effects on the cost of financing. For developers, time is money and certainty is critical to estimating costs. Local governments should consider the following optional incentives for developers.

“By Right” Permitting

“By right” permitting means that project applications for permits that use transferable development rights would be subject to administrative review. Administrative review allows a local planning official to approve a project without noticed public hearings.

By linking TDR to a “by right” process, developers will benefit from predictability and time savings. The value of these benefits can often be sufficient motivation for purchasing development rights.

Advantages

- More certainty is provided to developers.
- Time and money savings will be appealing to developers.

Disadvantages

- The city or county will need to ensure the public is engaged in the designation of the receiving area and understands future development potential as they will not have a significant opportunity to engage in the permit decision through a public hearing.

“Up Front” Environmental Review of Receiving Areas

One incentive that a city can offer developers is up front environmental review in conjunction with the designation of a receiving area. The review would include and address any impacts to the natural or built environment that will be generated by a development project using a TDR. This can take a variety of forms under SEPA.

Subarea plans

Doing more substantial and detailed environmental review of the impacts of the use of TDRs in a designated receiving area through a subarea plan will benefit proposed projects using TDRs. The impacts identified in the subarea plan will not have to be re-reviewed in conjunction with

the project permit application. The developer will know up front what the impacts are and can address them. This adds certainty to the permit process for the developer.

Categorical exemption for infill development

SEPA provides a categorical exemption for infill projects that meet the requirements of RCW 43.21C.229. A city or county may categorically exempt development that is new residential or mixed-use development proposed to fill in a designated urban growth area where current density and intensity of use in the area is lower than called for in the goals and policies of the applicable comprehensive plan. An environmental impact statement must have been prepared in conjunction with the comprehensive plan. A city or county with a designated receiving area that meets this requirement could categorically exempt projects that use TDR to meet comprehensive plan density and intensity goals.

Planned Actions

SEPA allows jurisdictions to provide a more streamlined environmental review process of permits by performing a more detailed environmental review to assess the impacts of a receiving area being built to maximum capacity using development bonuses. Designating planned actions and adopting a planned action ordinance requires more work up front on the part of the government, but yields the unique result of making subsequent participation in the TDR program very easy. Under RCW 43.21C.031 (Significant impacts), a local government can perform a SEPA analysis evaluating the impacts of maximum desired build-out assuming use of TDR in a designated receiving area. By planning for this level of development and doing the detailed environmental review, a city or county can thereby approve development permits consistent with designated planned actions without requiring further SEPA analysis at the individual project level and without an appeal under SEPA. The savings in time and money to developers are substantial.

Advantages

- This approach establishes certainty for developers.
- Time and money savings in projects for developers will be appealing.

Disadvantages

- The government bears the burden of initial time and cost of this approach.
- The city or county will need to ensure the public is engaged in the designation of the receiving area and environmental analysis, and understands future development potential, as they will not have a significant opportunity to engage in the permit decision through a public hearing.

Planned Action Ordinances

For more comprehensive information on planned action ordinances, refer to the [RCW 43.21C.031](#); [WAC 197-11-164, 168 and 172](#); and the [SEPA Handbook](#).

Example:

[City of Mountlake Terrace application of a Planned Action Ordinance](#).

Planning for Infrastructure and Amenities

An effective TDR program requires that a community devote adequate resources to the program's design and implementation, including planning for infrastructure in receiving areas. In designating a receiving area, a community will need to ensure that the existing capital facilities plan includes adequate infrastructure to support any increases in density or intensity as a result of using TDR in a project. If not, the capital facilities plan may need to be amended in conjunction with the designation of receiving areas.

For further discussion of infrastructure and amenity funding, please refer to Cascade Land Conservancy's paper,

[Capital Funding for Infrastructure and Other Amenities in Cities – Incentives for Participation in a Transfer of Development Rights Program.](#)



Transaction Mechanisms²²

A technical and policy decision in designing a TDR program is the selection of a transaction mechanism, or the means of conducting the purchase and sale of development rights. The range of alternative transaction mechanisms that a TDR program may employ is broad. These mechanisms form a central component of a program and should be considered in light of these factors:

- Conservation goals: Is the objective to maximize acres conserved, maximize the number of transactions, target large or small parcels?
- Effectiveness in policy implementation: Which transaction mechanism is best suited to achieving the conservation goals of the program?
- Ease of participation: Is the transaction mechanism simple to use and understand?
- Cost effectiveness and ease of administration: What will the burdens be on the public agency that will be responsible for operating the TDR program? Is the mechanism appropriate for the program's resources?

This section gives a brief overview of several proven alternatives and weighs their relative advantages and disadvantages. The five most common transaction mechanisms are:

1. Simple buyer-seller
2. Buyer-seller with public support
3. Buyer-seller with private support
4. TDR bank
5. Density fee

Other alternatives exist or have been proposed, so this list is not comprehensive. Some TDR programs, such as King County's, have successfully combined multiple mechanisms.

Simple buyer-seller

Simple buyer-seller transactions occur when 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. Conceptually this is the most distilled form of TDR. However, it still requires the local government managing the program to issue, track and redeem TDR certificates.

²² This section is adapted from [Alternative Transfer of Development Rights \(TDR\) Transaction Mechanisms](#), Cascade Land Conservancy, July 2008

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.
- The private market on its own may not be effective in protecting contiguous areas, since individual developers may need to purchase only a portion of the development rights from a large sending site.
- Large projects may require the negotiation of several development rights transactions, which create added burdens for developer participation.

Examples

King County (WA), San Luis Obispo County (CA), Pitkin County (CO)

Buyer-seller with public support

The 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).
- Marketing the program to eligible participants.
- Influencing the marketplace by setting price floors for development rights.

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 to address the market timing issues in simple buyer-seller transactions by better connecting buyers who need to act quickly with sellers.
- Elements of this mechanism facilitate interactions between buyers and sellers.

Disadvantages

- Land protected via this mechanism may not reflect the community's conservation priorities.
- The higher level of service provided by the managing agency requires an increase in resources.

Examples

Redmond (WA), Collier County (FL), Pinelands (NJ)

Buyer-seller with private support

This alternative relies on private transactions as the core of the program, but incorporates brokers to facilitate TDR transactions. The concept of a TDR brokerage is the same as that for traditional real estate. A TDR broker acts as agent of the seller or buyer of development rights. For a fee, the broker markets available development rights to potential buyers, helps negotiate sales agreements, and arranges an escrow process to facilitate transactions.

Advantages

- Brokers link compatible buyers and sellers to enable transactions.
- Brokers can provide professional support and expertise to buyers and sellers to help them navigate the transaction process.
- The mechanism is funded by transactions.

Disadvantages

- Increased cost of participation may deter potential buyers or sellers.
- Land protected through private brokers may not reflect the conservation priorities of the managing agency.

Example: Montgomery County, MD

Montgomery County has helped overcome the problem of incomplete information by actively engaging the real-estate agent community in the TDR market. Inquiries from developers and private parties seeking development credits are forwarded to several independent agents who specialize in the sale of development rights and act as brokers between potential sellers and buyers. This brings the program more solidly into the free market and facilitates transactions in the same way real estate agents operate in the housing market. Incorporating the pool of agents also ensures that a body of knowledge and experience will likely be involved in every transaction, reducing actual and perceived risk.

TDR Bank

A TDR bank is an entity designed to buy, sell, and hold development rights. It can be managed by a government agency or by a private firm. The government may provide an initial amount of funding (seed money) to finance development right purchases. The bank purchases development rights from individual landowners and in turn sells them to developers. Proceeds from development rights sales are reinvested in the bank to finance future purchases, creating a revolving fund.

The process of creating a TDR bank is the same regardless of whether it operates in the public or private domain:

1. Identify the administrator of the bank, including which department, agency, or firm will be responsible for and staff the bank. Or, whether the bank will be run by a nonprofit.
2. Adopt an implementing ordinance to establish the bank, articulate the purpose of the bank and specify how it will serve the goals of the TDR program.
3. Determine how the bank will be funded (if public funds are used, the city or county must comply with legal regulations on the public use of funds).
4. Create guidelines for the purchase and sale of rights, including escrow, conservation easements, payments, and other elements of transactions.
5. Establish a methodology for valuing development rights that will be purchased or sold through the bank. If the bank uses public funds from a state or local government the price must be based on the fair market value using an appraisal.

Advantages

- Banks can focus on property with a high priority for conservation that might not be addressed by the private market.
- A bank simplifies transactions for buyers and sellers by eliminating the need to find trading partners and negotiate individual deals.
- Banks can intervene in the marketplace to steer activity. They can stabilize the marketplace by standardizing price structures, absorbing excess development right supply, and accommodating fluctuations in demand.
- Banks can make sales occur in a timely fashion for buyers and sellers, who may not be ready to act at the same moment.
- Banks can be integrated with an existing purchase of development rights (PDR) program, expanding the resources available for conservation.
- Banks can facilitate larger TDR projects by selling large numbers of rights to a developer who would otherwise have to undertake multiple negotiations and transactions to support an individual project.

Disadvantages

- Administrative costs can be high. Costs may be prohibitive for smaller communities with limited staff and budget constraints.
- Banks might face skepticism or suspicion in communities that are leery of government involvement in private property issues.
- Banks require up-front capitalization and assume an element of risk that would otherwise be shouldered by the private market.
- Banks setting the price of development rights through acquisitions could have a negative impact on the private market by inflating the price.

Examples

Public bank: King County (WA), private bank: Cambria (CA)

Case Study: King County TDR Bank

As the use of TDR expands in Washington, jurisdictions adopting or revising TDR programs may determine that creating a bank is appropriate for their market. Having successfully completed a number of transactions, the King County TDR bank might serve as an example for how other jurisdictions structure their own. King County's TDR bank was established in 1999 as a mechanism to facilitate a specific transaction that was impractical to conduct entirely in the private market. This exchange of development rights was the first interjurisdictional TDR project for the region, the timing constraints of which created the need for a county TDR bank. In this particular case, the developer was not able to purchase TDR credits from the sending site at the time the landowners wanted to sell them.

As a solution to this timing problem, the King County Council appropriated \$1.5 million in capital to establish the King County TDR bank. Using Conservation Futures tax dollars, the appropriation enabled the county to purchase 56 development rights from the sending site to hold for future sale to developers who had identified projects in downtown Seattle. A majority of these rights were re-sold in 2001. The capital from the sale was subsequently used to purchase additional development rights in 2009.

The King County bank was structured to purchase development rights strategically, targeting properties with the highest public benefit and eliminating the timing constraints which can hinder the market. In addition to handling TDR transactions, the King County bank acts as a central database for potential buyers and sellers of development rights in the private market. This database provides a forum for buyers and sellers of development rights to connect. King County's bank includes \$500,000 in "amenity funds" set aside to provide urban infrastructure improvements in neighborhoods which accept additional density through TDR, such as parks and open space, streetscape and transit-related improvements, and cultural facilities.

Administration of the King County TDR Bank has been part of the program's success without being burdensome. The TDR bank is managed by the county's TDR program administrator, who spends about 25% of his time on these duties. While the bank's transactions are an executive decision, they are overseen by a Board of Directors from various county departments. Administrative and programmatic expenses represent approximately 10% of the bank's costs, the remaining 90% is directed towards conservation.

Through county code, the bank's buying and selling decisions are constrained to prices that do not exceed Fair Market Value (FMV) for purchase and are not below FMV for sale of development rights. While flexibility in pricing outside of FMV would allow the bank to more effectively take advantage of willing landowner prices, the restrictions are necessary for handling public funds.

Density Fee

A density fee, also known as an in-lieu fee, may be used to achieve land conservation 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 PDR in high priority conservation areas. Density fees can be set to a specific dollar amount per additional unit of incentive.

While a density fee is not actually a transaction mechanism, it has many similarities to a conventional TDR transaction. The chief difference between a density fee and a traditional TDR transaction is whom the developer pays - in this instance payment is made directly to the government instead of a landowner. Framing this approach requires tact: to reduce the potential negative reception to this mechanism by developers, the government should emphasize the gains achieved.

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 PDR program, leveraging public resources for additional purchases of development rights.

Disadvantages

- A density fee may be perceived as “selling zoning.”
- If a program allows both private market transactions and a conservation fee option, coordination between the two could be difficult.
- There is a time lag between when the fee is charged and when the funds are expended for conservation.

Density Fee Programs

For a more detailed analysis and discussion of this subject, please refer to the Cascade Land Conservancy’s paper:

[Alternative Transfer of Development Rights \(TDR\) Transaction Mechanisms](#)

Examples of Density Fees

As of March 2008, the **Livermore, California** TDC program is in its early stages of implementation. It has adopted an in-lieu fee (\$21,591.61 per development credit) and has collected about \$1.5 million in fees. Livermore has not, however, started purchasing easements in the North Livermore area, so empirical evidence of the program's performance is incomplete. Since the collection of in-lieu fees is tied to housing development, the revenue generated from fees has been affected by the housing market downturn. Livermore will be implementing the program when additional fees have been collected, or have developers conveying easements they have purchased to the city. Livermore also anticipates using the in-lieu fees in coordination with other mitigation and conservation programs as those opportunities arise.

(Frost, Susan, Livermore Principal Planner, email to author March 21, 2008)

Berthoud, Colorado, uses a density transfer fee instead of a traditional TDR program because it is easily administered. This fee is \$3,000 per dwelling unit in single-family and \$1,500 per unit in multi-family projects. These funds are used to purchase development rights on parcels that protect water resources, agricultural lands and community buffers. Berthoud does not consider this an impact fee because the charge is assessed only upon the developer requesting higher density within the town. The current total of Berthoud's density transfer fee fund is \$229,014. The town allocates 6% of the fee to cover administrative costs of the program.

(Fulton, Bill; Mazurek, Jan; Pruetz, Rick; Williamson, Chris; *TDRS and Other Market-Based Land Mechanisms: How They Work and their Role in Shaping Metropolitan Growth*; Brookings Institution, 2004)

http://www.brookings.edu/~media/Files/rc/reports/2004/06metropolitanpolicy_fulton/20040629_fulton.pdf

Administration

A broader policy decision that jurisdictions designing TDR programs will want to consider in light of funding, transaction mechanism choice, and conservation goals is the scope of the program's administration. In essence, are the resources available to the jurisdiction adequate to effectively administer the program? To help jurisdictions answer this question, this section profiles three examples of government involvement and describes what preparations must be in place for the successful administration of TDR programs. The levels of government involvement discussed are low, medium, and high.

City of Everett: low government involvement in TDR program administration.

Both the scope of and level of government involvement in Everett's Reasonable Use Exception program are small. Under this program, a landowner can sell development rights from a property that has environmentally sensitive areas that limit full economic use. Approval for participation in the program is administrative, so the time, cost, and risk to developers are minimized. Transactions typically involve small numbers of rights, demand for rights has remained modest, and the extent of the program is entirely within the city. Administration of the program requires a fraction of one staff member's time.

City of Redmond: medium government involvement in TDR program administration.

Redmond's TDR program is an example of a moderate level of government involvement working effectively to achieve modest but clearly defined conservation policy objectives. The program's administration is managed by one member of the city's planning staff. Redmond has conserved over 400 acres and satisfied the program's original conservation goals to such an extent that sending site eligibility is being expanded. Redmond's TDR program offers public support in the form of a user-friendly website, ample information, registries of interested participants, and maps.

King County: high government involvement in TDR program administration.

King County, Washington, has the highest level of government involvement of any TDR program in the state. The program employs two staff, manages a TDR bank, and since inception has conserved over 137,500 acres of land. The program administrators take an active approach to conservation, marketing the program to cities and seeking out transactions with landowners and developers in addition to reviewing applications to the program. The success of the program in terms of acres conserved is a reflection of the combination of King County's policy objectives, appropriate transaction mechanisms, and energetic administration.

Comprehensive plan and development regulations

Jurisdictions wishing to implement a TDR program will need to add policies to their comprehensive land use plan to articulate the role of the program in meeting plan policies and goals. Development regulations that govern the program will have to be adopted. Typical topics addressed in the plan policies include conservation goals, rural land use and development, economic development, transportation, concurrency requirements, and infrastructure, to name a few. Development regulations would address specific elements such as how development rights are calculated in sending areas, what bonuses may be awarded in receiving areas, and how the transfer process works.

Certifying development rights and issuing certificates

There are a variety of ways in which managing agencies can structure the process for certification and issuance of TDR credits. The exact sequence of events can vary between jurisdictions, but one general outline of the process involves the following steps:

1. **Application.** The managing agency makes available information and forms for program application. Eligible landowners may apply for certification and issuance of TDR credits, or certificates.
2. The managing agency evaluates the application and recognizes the landowner's intent to conserve the proposed land.
3. The managing agency calculates how many credits the property is eligible to be issued. Existing encumbrances shall be taken into account in the calculation.
4. The landowner places a conservation easement upon the property.
5. The managing agency records the easement and issues credits or certificates.
6. The landowner markets the credits and may sell them.

The main variations on this sequence involve the timing of the sale of TDR credits. For example, in the programs in Snohomish, King, and Pierce Counties, landowners must first record conservation easements on their properties before receiving TDR certificates to sell. Landowners can choose to place easements on their properties and then market their credits. Alternatively, landowners can try to line up a buyer for their credits in advance and complete the process of recording the easement, receiving TDR certificates, and selling those certificates in close succession.

Process overview: landowner perspective

The process for obtaining TDR certificates is as follows:

1. A landowner must obtain, complete, and submit a sending site application and, if required, any associated fee to the managing agency.
2. Following an application for TDR certificates by the sending site owner, the managing agency will issue a TDR certificate letter of intent. This letter recognizes the landowner's willingness to sever development potential from his or her property and sell it as TDR credits. The letter should contain a determination of the number of TDR credits calculated for the sending site and an agreement by the agency to issue a corresponding number of TDR certificates in exchange for proof of a sending site conservation easement granted to the county or city administering the program. The easement will be enforced through the land use regulatory process.

The sending site owner may use the TDR certificate letter of intent to market sending site development rights to potential purchasers, but the letter of intent should have no value and should not be transferred or used to obtain increased development rights within receiving areas.

3. As provided by the TDR certificate letter of intent, the agency should issue serially numbered TDR certificates to the sending site owner upon acceptance of a TDR conservation easement. The agency should retain the TDR certificates until such time as a conservation easement restricts the sending site. The agency should establish some period of time from the date the conservation easement is offered by the sending site owner to conduct, at its discretion, a review of the sending site permit file and/or a site inspection.

Tracking development right use

The program administrator will need to establish a method to track the movement of development rights. This is not only important for measuring program activity and the marketplace, but also for preventing the same rights from being sold multiple times. Maintaining a database with seller and buyer information is a common practice, and an effective way to track the application for, issuance of, and use of development rights is to assign them serial numbers.

Deed restriction

After development rights have been transferred, a TDR conservation easement restricting the deed and documenting the transaction should be recorded by the jurisdiction. Notice will also be placed on the title of the sending parcel. The jurisdiction should establish and maintain an internal tracking system that identifies certified transfers. Options for such a system include:

- (1) Placing a checkbox on building permit applications asking property owners if their land is encumbered by a conservation easement, and
- (2) Placing a checkbox on property tax assessment records that assessors can mark if an easement has been placed on a parcel.

Conservation easements²³

A conservation easement is a legal agreement between a landowner and a government agency that permanently limits uses of the land in order to protect its non-development values. It allows the landowner to continue to own and use the land, to sell it, and pass it on to heirs. A conservation easement is placed on a sending site at the time development rights are sold from the property. The conservation easement typically prohibits any further development of the property, but should allow resource-based uses, such as farming and forestry, to continue.

Characteristics and elements of this document may include:

- Written in easily understood language
- Defines “development”
- Details monitoring requirements and processes
- Outlines transferability

Written in easily understood language

The conservation easement should be written in plain language to the extent allowed by legal requirements. It is important to clearly communicate what is and is not affected by the conservation easement, and to reduce the likely wariness of some potential TDR participants.

Defines “development”

The intent of transferring development rights from rural or resource lands is to conserve open space, habitat, agricultural, or forestry values. This generally translates to a restriction on the construction of houses and commercial buildings, and incompatible uses would be addressed in zoning laws per GMA requirements.

Details monitoring requirements and processes

Monitoring for TDR conservation easements, given their limitations, should be largely restricted to making certain the landowner is abiding by the terms of the easement—namely, that the landowner is not developing the property. The holder of the easement may occasionally need to access the property to conduct its monitoring. In such cases, the easement should clearly

²³ Ibid.

state the easement holder must give sufficient notice and should not interfere with the landowner's use of the property.

Web based tools

With the increasingly widespread use of the Internet as a tool for the government to communicate with citizens, it is recommended that agencies publish program information online. Given the broad geographical distribution of participants in a TDR program, maximizing the accessibility of information and communication via the Internet will serve to improve knowledge of and participation in the program. Any jurisdiction implementing a TDR program should aim to include as many of these resources as possible on the agency's website.

Applications & forms

At minimum, the paperwork for program participation should be available to download. At best, participants would be able to complete and submit applications and forms electronically. (See sidebar for examples.)

Sending and receiving site databases

A key resource for prospective program participants is information about who is in the market, what rights are for sale, and what the current demand is for rights. Knowing that willing buyers and sellers exist will affect participation, and helping them to connect is a valuable service that will facilitate marketplace activity.

Records of past sales

Transparency is integral to a healthy marketplace, and by making records of past sales public the managing agency will help inform negotiations between buyers and sellers. The information can be collected as part of the recording process, and should include at minimum the date of the sale, the number of rights purchased, and the price paid per right. This information can also help the administrators make changes to the program.

Examples of Web-based Tools for TDR Programs

Applications & forms

Examples of applications for TDR program participation may be found at the following locations:

- [City of Redmond application](#)
- [King County application](#)

Records of past sales

Redmond's TDR program website offers a database of transaction history:

- [City of Redmond TDR transaction database](#)

Electronic TDR Credit Exchanges

Tool to connect buyers and sellers

- [King County TDR Exchange](#)

Maps/GIS

Examples of online mapping tools:

- [Clark County Basic Property Map](#)
- [Lewis County Property Assessment and Tax System Map](#)

Frequently Asked Questions

A TDR program can appear complicated to the newcomer, so having a section of the website dedicated to answering basic questions about eligibility, participation, transactions, procedures, and so forth can help people unfamiliar with TDR understand and navigate the process.

Maps/Geographic Information System

An increasingly common feature on the websites of planning departments is a Geographic Information System (GIS) mapping tool. (See sidebar for examples.) Users can perform basic spatial analyses and create their own maps through a simple interface. Adapting this type of tool to incorporate geospatial information about a TDR program would create a powerful utility for prospective participants. In cases where the sending and receiving areas are map designated, the extents of these areas could be viewed in conjunction with other landscape features. This could provide useful decision-making information for marketplace players and could quickly help determine landowner eligibility.

Marketing the program

Activity in a TDR program will be limited if potential participants are not aware of its existence, its benefits, or their eligibility. The program administration should include funding for marketing and a marketing plan. The extent of this component should reflect the goals of program and the level of involvement in which the jurisdiction is prepared to engage (see section on Administration).

One goal of TDR programs should be to encourage a high volume of transactions. Many factors influence participation, and marketing is one which can change public interest in a relatively short period of time. The most basic component of promoting a program should be spreading awareness of its existence. Ways to reach a broad audience include articles in daily

newspapers, community and industry newsletters, and Internet-based media such as blogs, discussion forums, and online news sources. Following this, potential participants need to be

Case Studies: Effectively Marketing TDR Programs in Washington

The **City of Redmond**, which has a modestly sized TDR program, succeeded in boosting participation through the simple approach of mailing informational packets to eligible landowners.

King County's TDR administrator has taken a proactive and personal approach to program outreach. In addition to welcoming unsolicited applications, the administrator seeks out owners of land that the county has prioritized for conservation and initiates discussions about land use options. He also has met with city governments to encourage them to adopt interlocal agreements allowing density transfers from unincorporated county land into cities. Not all programs will be able to devote this much time or energy to promoting TDR, but these examples illustrate how marketing can yield desirable results.

informed of their eligibility. Finally, if a local government deems it appropriate, a representative might conduct outreach with individual groups, landowners, or developers to encourage participation.

There are few limits to the creativity an agency may use to promote its TDR program, and if outreach efforts have been thorough, some approaches may suggest themselves over others. It is important, however, that the agency be attuned to landowner attitudes toward government involvement in property related matters or neighborhood attitudes towards growth. A poorly planned marketing effort could have a counterproductive effect.

Program evaluation and updates

A feedback mechanism is an essential component of any public program. A TDR program should include a way to measure its progress against the stated policy objectives and a means to modify the design to better meet its goals. Regularly scheduled program evaluations should be established along with a set of criteria measuring effectiveness. The CTED Policy Advisory Committee report recommends a biannual reporting cycle. Information to consider in evaluation might include

- Number of transactions completed by different mechanisms,
- Area of different land types conserved,
- Changes in transactions and area conserved compared to previous periods,
- Spatial distribution of land conserved,
- Relative conservation values of land conserved,
- Annual amount of land conversion before and after TDR program implementation,
- Development right price fluctuations,
- Costs of program administration,
- Characterization of community composition and population growth in receiving areas,
- Reduction of carbon footprint,
- Qualitative feedback on user experience and agency role in transaction,
- Number of additional units (or other development commodities) added to the receiving area.

The TDR ordinance may include language defining the frequency of program reviews and provisions for updates based on review findings.

Definitions

Appraisal

An appraisal is an unbiased and systematic process of estimating the value of a property, whether it is market value, insurable value or other defined value of a specific parcel or property.

By-right permitting

Project applications for permits that use transferable development rights would be subject to administrative review. Administrative review allows a local planning official to approve a project without noticed public hearings.

Conservation easement

A conservation easement is a legal agreement between a landowner and a land trust or government agency that permanently limits uses of the land in order to protect its non-development values. It allows the landowner to continue to own and use the land, to sell it, or to pass it on to heirs. A conservation easement is placed on a sending site at the time development rights are sold from the property. The conservation easement typically prohibits any further development of the property but allows resource uses, such as farming and forestry, to continue. Other uses for conservation easements include land management or stewardship by land trusts.

Conversion commodities

Commodities, other than increased residential density, that a jurisdiction can offer to developers with the purchase of TDR credits. Examples of conversion commodities include additional building height, changes to parking requirements, flexibility in setbacks, impervious surface requirements, and commercial floor area.

Development rights

Land is thought of as real property, and ownership extends to all aspects of the land, including minerals below the ground surface, air above and all other resources located on the land. Owners of real property also own development rights, which allow development of that land in accordance with local land-use regulations. Development rights can be bought, sold, donated or otherwise transferred as TDR credits. Restrictions on a property's development rights are usually recorded in a conservation easement.

Interlocal agreement

An interlocal agreement is a legal contract between two or more local jurisdictions (cities and counties) that specifies the conditions under which development credits may be transferred (typically from a county into a city). Interlocal agreements must be endorsed by the legislative bodies of both jurisdictions.

Purchase of development rights

Purchase of development rights (PDR) refers to the removal of development potential from a parcel. The development rights are purchased and retired, and a conservation easement is placed on the parcel. PDR programs are generally used to protect resource and farmlands.

Receiving areas

Lands within and designated by a city or town in which transferable development rights may be used.

Receiving area ratio

The number or character of development rights that are assigned to a development right for use in a receiving area. Development rights in a receiving area may be used at the discretion of the receiving area jurisdiction, including but not limited to additional residential density, additional building height, additional commercial floor area, or to meet regulatory requirements.

Sending areas

Sending areas are designated areas where landowners may sell their development rights in exchange for placing conservation easements on their property. Sending areas are typically agricultural lands, forest areas or open space.

Sending area ratio

The number of development rights that a sending area landowner can sell per acre. This ratio may be greater than, less than or equal to the amount of development allowed by zoning, depending on the goals of the TDR program and the need for incentives.

This describes the numerical relationship between the amount of development potential forgone on sending sites, and the amount of additional development allowed on receiving sites. A 1:1 ratio means that the sending sites forgo the same number of houses per acre as are allowed on receiving sites, while a 2:1 ration means that for every TDR credit purchased a developer can build an additional 2 units on a receiving site.

Transferable development right

A right to develop one or more residential units in a sending area that can be sold and transferred for use consistent with a receiving ratio adopted for development in a designated receiving area.

Transfer of development rights

Methods for protecting land from development by voluntarily removing the development rights from a sending area and transferring them to a receiving area for the purpose of increasing development density or intensity in the receiving area.

TDR bank

An entity operated by a local jurisdiction, regional government or private nonprofit organization for the purpose of buying, selling and holding development rights and/or facilitating private TDR transactions. By providing a single point of contact, a TDR bank can streamline the process for buyers and sellers of development rights.

TDR credit

This is the tradable good representing development rights. Credits are purchased and sold, either in the open market or through a bank. For landowners, credits are assigned based on the number of development rights on their property. For developers, credits may be redeemed to gain development bonuses, such as additional units or building height.

Transaction types

A TDR program can offer one or more transaction types, which are the various mechanisms available for buying and selling development rights. The simplest transaction type is a private transaction between the owner of a sending site and the developer of a receiving site, executed at the time a TDR development project is proposed. Other options include buying and selling development rights to/from a TDR bank or a private investment corporation, or participating in a conservation credit or purchase of development rights program run by the local city or county.

Sample Documents

1. Sample ordinances
 - a. [Pierce County](#)
 - b. [City of Redmond](#)
 - c. [City of Issaquah](#)
 - d. [King County](#)
2. Sample interlocal agreements
 - a. [Issaquah](#)

Additional Resources

1. [CTED Growth Management Services web site](#)
2. Cascade Land Conservancy contact information
Skip Swenson, Director, TDR Policy Director
skips@cascadeland.org
(206) 905-6935
615 2nd Avenue, Suite 600, Seattle WA 98104
[Cascade Land Conservancy web site](#)
3. References – Cascade Land Conservancy white papers
 - a. [*Transfer of Development Rights \(TDR\) in Washington State: Overview, Benefits, and Challenges*](#)
 - b. [*Alternative Transfer of Development Rights \(TDR\) Transaction Mechanisms*](#)
 - c. [*Capital Funding for Infrastructure and Other Amenities in Cities: Incentives for Participating in a Transfer of Development Rights Program*](#)
 - d. [*Analysis of the Impact of Transfer of Development Rights Programs on Affordable Housing*](#)
4. [DC&E Market Analysis for Regional Transfer of Development Rights in Puget Sound](#)
5. [Creating a Regional Transfer of Development Rights Program for Central Puget Sound](#)

Appendix A: Inventory of TDR programs in Washington State

Jurisdiction	Year	Objective	Contact
Bainbridge Island	1996	Agricultural lands	<p>Planning and Community Development pcd@ci.bainbridge-isl.wa.us</p> <p>General Website: http://www.ci.bainbridge-isl.wa.us/</p> <p>Website for Department for TDR: http://www.ci.bainbridge-isl.wa.us/planning_community_development.aspx</p> <p>Department Administering TDR: Planning and Community Development (PCD)</p> <p>Physical Address: 280 Madison Ave. N. Bainbridge Island, WA 98110</p> <p>Phone Number: (206) 842-2552</p>
Black Diamond	2003	Open space protection (wetlands, freshwater bodies, wildlife corridors, greenways, viewpoints, etc.)	<p>Natural Resources Department General questions overall can go to: info@ci.blackdiamond.wa.us</p> <p>Community Planning and Development: permitcenter@ci.blackdiamond.wa.us</p> <p>General Website: http://www.ci.blackdiamond.wa.us/</p> <p>Website for Department for TDR: http://www.ci.blackdiamond.wa.us/Depts/NaturalResources/naturalresources.html</p> <p>Department Administering TDR: Natural Resources Department</p> <p>Physical Address: 24301 Roberts Drive Black Diamond WA 98010</p> <p>Phone Number: 360.886.2560 ext. 220</p>

Clallam County	1998	Agricultural lands, critical areas, low-density open space	<p>Clallam County Community Development, Planning Dept. dcdplan@co.clallam.wa.us</p> <p>General Website: http://www.clallam.net/</p> <p>Website for Department for TDR: http://www.clallam.net/Departments/html/dept_dcd.htm</p> <p>Department Administering TDR: Department of Community Development, Planning Department</p> <p>Physical Address: 223 East Fourth Street Port Angeles, WA 98362</p> <p>Phone Numbers: Administration 360-417-2321 Building Division 360-417-2318 Code Enforcement 360-417-2337 Planning 360-417-2420</p>
Everett	1991	Historic preservation	<p>Planning and Community Development planning@ci.everett.wa.us</p> <p>General Website: http://www.everettwa.org/</p> <p>TDR Department Website: http://www.everettwa.org/default.aspx?ID=52</p> <p>Department Administering TDR Program: Planning and Community Development</p> <p>Physical Address: Public Services Counter 3200 Cedar Street, 2nd Floor Everett, WA 98201</p> <p>Phone Numbers: 425-257-8731</p>
Island County (Revoked)	1984	Agricultural lands	<p>Island County Department of Planning and Community Development http://www.islandcounty.net/planning/staffdir.htm</p> <p>General Website: http://www.islandcounty.net/</p> <p>TDR Department Website: http://www.islandcounty.net/planning/</p> <p>Department Administering TDR Program: Planning and Community Development</p>

			<p>Physical Address: Island County Courthouse Annex 1 NE 6th Street Coupeville, WA 98239</p> <p>Phone Numbers: 360.679.7339</p>
Issaquah	2005	Critical areas	<p>webmail-planning@ci.issaquah.wa.us</p> <p>General Website: http://www.ci.issaquah.wa.us/</p> <p>TDR Department Website: http://www.ci.issaquah.wa.us/SectionIndex.asp?SectionID=13</p> <p>Department Administering TDR Program: Planning Department</p> <p>Physical Address: 1775 12th Ave NW Issaquah, WA 98027</p> <p>Phone Number: 425-837-3080</p>
King County	1993	Rural resources and public benefit lands	<p>General Website: http://www.kingcounty.gov/</p> <p>TDR Department Website: http://www.kingcounty.gov/environment/stewardship/sustainable-building/transfer-development-rights.aspx</p> <p>Department Administering TDR Program: Transfer of Development Rights Department</p> <p>Physical Address: King County TDR Program 201 S Jackson St, Suite 600 Seattle, WA 98104</p> <p>Phone Number: 206-263-0435</p>

Mt. Vernon	1999	Agricultural, wetlands, riparian, parks	<p>General Website: http://www.ci.mount-vernon.wa.us/</p> <p>TDR Department Website: http://www.ci.mount-vernon.wa.us/page.asp_O_navigationid_E_145</p> <p>Department Administering TDR Program: Community and Economic Development Department</p> <p>Physical Address: 910 Cleveland Avenue Floor I Mount Vernon WA, 98273</p> <p>Phone Number: 360-336-6214</p>
Pierce County	2008	Agricultural lands and open space	<p>pcpals@co.pierce.wa.us</p> <p>General Website: http://www.co.pierce.wa.us/PC/</p> <p>TDR Department Website: http://www.co.pierce.wa.us/pc/services/home/property/pals/palsmain.htm</p> <p>Department Administering TDR Program: Planning and Land Services</p> <p>Physical Address: Annex (Public Services Building) 2401 S. 35th St Tacoma, WA 98409</p> <p>Phone Number: 253-798-7210</p>
Redmond	1995	Agricultural lands and critical areas (Northern Sammamish Valley)	<p>compplan@redmond.gov</p> <p>General Website: www.redmond.gov</p> <p>TDR Department Website: http://www.redmond.gov/insidecityhall/planning/planning.asp http://www.redmond.gov/insidecityhall/planning/compplanning/transfer.asp</p> <p>Department Administering TDR Program: Planning and Community Development</p> <p>Phone Number: 425-556-2440</p>

<p>Seattle</p>	<p>1985</p>	<p>Affordable housing, historic preservation, and open space protection</p>	<p>General Website: http://www.seattle.gov/</p> <p>TDR Department Website: http://www.seattle.gov/housing/incentives/TDRbonus.htm http://www.seattle.gov/html/CITIZEN/departments.htm#dpd</p> <p>Department Administering TDR Program: Office of Housing Department of Planning and Development</p> <p>Physical Address: 700 5th Ave, Suite 2000 Seattle, WA</p> <p>Phone Number: (206) 684-8880</p>
<p>Snohomish County</p>	<p>2004</p>	<p>Farmland, resource lands, and open space</p>	<p>planning.div@co.snohomish.wa.us</p> <p>General Website: http://www.l.co.snohomish.wa.us/</p> <p>TDR Department Website: http://www.l.co.snohomish.wa.us/Departments/PDS/default.htm</p> <p>Department Administering TDR Program: Long Range Planning Division, Planning & Development Services</p> <p>Physical Address: 3000 Rockefeller Avenue Everett, WA 98201</p> <p>Phone Number: (425) 388-3311</p>
<p>Thurston County</p>	<p>1996</p>	<p>Agricultural lands</p>	<p>permit@co.thurston.wa.us</p> <p>General Website: http://www.co.thurston.wa.us/index.asp</p> <p>TDR Department Website: http://www.co.thurston.wa.us/permitting/</p> <p>Department Administering TDR Program: Development and Planning Services</p> <p>Physical Address: Thurston County Courthouse Building 1, Second Floor 2000 Lakeridge Dr. SW</p>

			<p>Olympia, Washington 98502</p> <p>Phone Number: (360) 786-5490</p>
Vancouver	N/A	Historic preservation	<p>General Website: http://www.cityofvancouver.us/Default.asp</p> <p>TDR Department Website: http://www.cityofvancouver.us/departments.asp?deptID=10423</p> <p>Department Administering TDR Program: Community Planning</p> <p>Physical Address: Community Planning Office 1610 C Street, Suite 203 Vancouver, Washington</p> <p>Phone Number: (360) 487-7950</p>
Whatcom County	1999	Lake Whatcom and Birch Bay watersheds	<p>pds@co.whatcom.wa.us</p> <p>General Website: http://www.co.whatcom.wa.us/</p> <p>TDR Department Website: http://www.co.whatcom.wa.us/pds/index.jsp</p> <p>Department Administering TDR Program: Planning and Development</p> <p>Physical Address: 5280 Northwest Drive Bellingham, Washington 98226</p> <p>Phone Number: (360) 676-6907</p>

Appendix B: Checklist of TDR Ordinance Elements

This appendix presents a sample of elements local jurisdictions should consider including in a TDR ordinance. Because goals of different communities vary so widely, it is impractical to propose a single model ordinance that is appropriate to every situation. The structure presented here identifies some of the most basic components of an ordinance and can be adapted or augmented to address the goals of a particular jurisdiction. Here each element is identified as being a policy decision or a technical decision with references back to the relevant section in the guide.

Component	Decision Type
Purpose	Policy
Definitions	Technical
Sending Areas	Policy
Calculation of Available TDR Credits from Sending Areas	Policy
Sending Area Procedures	Technical
Receiving Areas	Policy
Use of TDR Credits in Receiving Areas	Policy
Receiving Area Procedures	Technical

Purpose

This section identifies the need for the program and its overarching goals (see [Why Washington Communities Would Consider a TDR Program](#) and [Goals and Requirements of the Growth Management Act](#)).

Definitions

All terms used in the ordinance should be defined. The definitions used in SSHB 1172 (Implementation of a regional transfer of development rights program) are a good reference (see [Definitions](#)).

Sending Areas

This section designates sending areas, determines how they are established and modified, and should include a map if relevant (see [Establishing Sending Areas](#)).

Calculation of Available TDR Credits from Sending Areas

This section identifies how eligible sending area properties are allocated TDR credits and should clearly explain the methodology involved (see [Defining Development Right Allocations – Sending Area Ratios](#)).

Sending Area Procedures

The process by which landowners apply to the TDR program to receive TDR certificates should be described in detail (see [Administration](#)).

Receiving Areas

This section designates receiving areas, determines how they are established and modified, and should refer to a map if relevant (see [Establishing Receiving Areas](#)).

Use of TDR Credits in Receiving Areas

This section identifies what uses TDR credits can be converted into within receiving areas, establishing a receiving area ratio and restrictions to the use of credits (see [Receiving Area Ratio](#) and [Conversion Commodities](#)).

Receiving Area Procedures

The process by which developers apply to the TDR program to use TDR certificates in receiving area projects should be described in detail (see [Administration](#)).

Other Elements

Further components a jurisdiction may choose to include in a TDR ordinance include:

- Performance measures- a schedule and methodology for evaluating the effectiveness of the program and updating it (see [Program evaluation and updates](#)).
- Interlocal agreement- reference to either an agreement between a county and city regarding the transfer of development rights or an administrative rule created by CTED pursuant to SHB 1172.
- State enabling legislation- to give the local ordinance context it is helpful to refer to the state legislation that allows for the implementation of TDR, for example RCW 43.362 and RCW 36.70A.090, Comprehensive plans—Innovative techniques, which 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” (see [Goals and Requirements of the Growth Management Act](#)).