

Summary from TDR Focus Group Meeting with Foresters

January 7, 2014

Participants

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

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

Staff

Kirk Johnson, Skagit County
Matt Hoffman, Heartland

Doug Larson, Heartland
Ian Loveless, Heartland

Forestry Focus Group Meeting

The meeting began with a presentation by Heartland covering:

- Scope of the market analysis,
- Preliminary findings regarding demand for development,
- Estimated value of additional units of development potential to landowners/developers in different receiving areas,
- Estimated value of residential development rights from sending area properties, particularly forested lands including Secondary Forest-NRL, Industrial Forest-NRL, Rural Resource-NRL, and Rural Reserve; and
- Exchange ratios necessary to encourage successful market transactions between the two.¹

Conservation Priorities

There was much discussion about the importance of prioritizing forest land to be conserved through a TDR program.

One participant said it was an opportunity for the County to look at “the big picture” of forest conservation goals. Achieving that prioritization will likely require more work with forest landowners.

Some of the conservation priorities identified at the meeting were:

- Linking conserved forest lands to compliance with the Endangered Species Act and other environmental or ecosystem conservation goals
- Maintaining active forest management and timber production on forest land, vs. moving forest lands into “preservation” status.

¹ For additional details, see: “Transfer of Developments Rights (TDR) Market and Economic Analysis,” Heartland Power Point Presentation slides, January 7, 2014.

- Maintaining active forest management is essential to maintaining the forestry infrastructure (including mills) that makes the industry viable
- It also provides important and ongoing economic benefits to Skagit County in terms of jobs, taxes and revenues.
- Maintaining a fixed edge between rural residential lands and larger blocks of managed forest lands; preventing fragmentation and leapfrog development. Lake Cavanaugh and Snoqualmie in King County were cited as **undesirable** examples)
- Would like to see goals and measurable objectives for forest land conservation through TDR. Is the overall goal to conserve land for preservation or for management?
 - Concern was expressed that some CaRDs (Conservation and Reserve Developments) are taking forested land out of production and putting it into a “preservation” category where forest management is discouraged or disallowed.
 - Several participants said that the Rural Forestry Initiative would help address this concern. (This is a proposed code amendment pending with the County that would apply state forest management practice/critical areas requirements to CaRD open spaces rather than County CAO requirements)
 - Small landowners, to whom a TDR program might be most attractive, may have a different view of active forest management than larger, industrial forest landowners).
 - For the small landowners active forest management may be less intensive than for the larger companies.

TDR Program Use

Participants suggested that small, individual forest landowners would be most inclined to use a TDR program; perhaps more than large forest landowning companies.

A TDR program would provide additional options to these landowners, provided it is voluntary.

The most likely ownership size range would be 5 to 40 acres.

TDR could be a means for small landowners to expand their ownership by making purchase of forest lands less expensive. And TDR could help retain ownership within a forest landowning family for succeeding generations by helping to cover estate taxes.

- Many/most small landowners are older. After death land is often broken up to pay taxes. Many want to maintain generational ownership. TDR sale could help pay taxes and pass on land to younger generations.

Jim Owens, president of the local chapter of Washington Farm Forestry Association, said he contacted 7-8 landowners. No one was opposed. Some thought TDR was an excellent idea. Their members tend to be older, land rich, cash poor, money would be a welcome addition. (Jim was not representing the WFFA at the meeting but did want to find out what some of the members thought about TDR).

Paul said he liked the fact that TDR was giving something to landowners in exchange for their development rights; it isn't simply taking those development rights away through downzones, as has happened in the past with forest lands.

Permanence of Easements, Buy-Back Option

Some of the larger company representatives were less certain about use of TDR.

They indicated they (like policymakers) can't foresee future; things change over time. Permanent sales and retirement of development rights may not make sense in the long-run.

These foresters have a strong belief in forest resource management; retaining the option to build is not their first choice.

But, regulatory restrictions are ever-increasing. Many landowners have lost 20-30% of their forest land base in past 15 years. Some fear a future where forest management and timber production is no longer an economically viable option, due to continued loss of the land base and loss of infrastructure such as mills to market timber to.²

If that future comes to pass, they would want the option to develop their land. Some suggested a TDR program could use a non-permanent conservation easement (like DNR's 50-year riparian easements). However, a Kitsap County TDR program with a non-permanent easement was found not to comply with the Growth Management Act.³

Another alternative would be a buy-back option: the ability to buy back development rights, previously sold, at a later date. If that option were not available, some of those forest managers said they would not be interested in participating in TDR.

One small landowner participant objected to the idea of a non-permanent easement or a buy-back option, saying neither would assure the important goal of permanent forest land conservation.

² A different perspective was offered by Rob Janicki, Janicki Logging and Construction, who could not attend the Forestry Focus Group meeting but met with Kirk Johnson on January 15. He said due to the state's habitat conservation plan there's much greater certainty in forest management than there has been in a long time. That, coupled with the fact that forest lands are a commodity that will hold their value over the long-term, even against inflation, means forest land is a very good long-term investment. With a voluntary program, landowners can hedge uncertainty by choosing not to participate in TDR or only selling some of their development rights.

³ In follow-up comments, one forester wrote: "My concern about a 'permanent' ban on any development is based simply on the mega long term view that land forms and landscapes change over time. Wetlands could become uplands, & vice versa. And development patterns change. So I'm not so focused on the loss of a bundle of rights (a valid concern) rather the lack of adaptability in these agreements to unforeseen changes which might occur 100+ years from now." The following response was also received: "Conservation easements typically contain clauses that provide for the ability to extinguish the easement if it is no longer possible to accomplish the conservation purposes stated in the easement-- its intentionally a high bar -- usually requiring going before a judge, but possible if there is some kind catastrophic change to a landscape."

Doug (Heartland) suggested that a potential seller of development rights would need to factor future uncertainty into their decision to sell or not to sell. If that uncertainty was too great, they could simply exercise their right not to sell, and hold the development rights for the future.

Sending Site Values

Ken asked if the sending site values in those zones that allow CaRD density bonuses (specifically, Rural Resource-NRL and Rural Reserve) were based on the base density (without CaRD) or the CaRD density bonus?

- In other words, does the \$32,800 sending site value for Rural Resource-NRL represent the value of one residential development right per 40 acres (base density) or four development rights per 40 acres (CaRD density)?
- Would the landowner be able to sell the number of development rights allowed by base density or CaRD density?

Ken felt that if the owner was able to sell the number of development rights allowed at the CaRD density this would amount to “doubling up” and would not be consistent with the general conservation goals of a TDR program.

Heartland indicated the \$32,800 sending site value for RRc-NRL represented the value of the base density, not the CaRD bonus density.

What to allow through a TDR program would be a policy decision that the County would need to make.

Conservation Easements

TDR conservation easements typically only retire the residential development rights sold through the program, they do not typically prescribe certain forest management practices or affect other rights associated with the property through zoning. Whether that would be true in a Skagit County TDR program is a policy decision that the County would need to make in further considering a program; but that has been the working assumption of the TDR advisory committee.

Martha indicated that a TDR conservation easement would likely be much simpler than a donated easement which must comply with complex IRS requirements due to the charitable nature of the donation.

TDR vs. Density Fee Option

If the County creates a TDR program, some participants saw the benefit of offering both a traditional TDR option (buyer-seller transaction with price negotiated directly between the two) and a density fee option (developers pay set fee for additional increments of development potential, program then purchases development rights from willing sellers similar to a Purchase of Development Rights (PDR) program).

Paul said he personally preferred the TDR option. It’s a free-market transaction where the buyer and seller set the price. It’s not a government program setting the price.