## Summary from TDR Focus Group Meeting with Developers[1]

**January 7, 2014**

### Participants

Jack Wallace, Burlington Landowner
Kendall Gentry, Landed Gentry Homes and Communities
John Bouslog, Burlington and Bayview Ridge Landowner
Bruce Lisser, Lisser & Associates
Marianne Manville-Ailles, Skagit Surveyors and Engineers
Joe Woodmansee, Woodmansee Construction
Wayne Crider, Skagit-Island Counties Builders Association
Matt Mahaffie, Land Use Consultant
Ed Stauffer, Rural Landowner
Joe Woodmansee, Woodmansee Construction

### Staff

Kirk Johnson, Skagit County
Matt Hoffman, Heartland
Doug Larson, Heartland
Ian Loveless, Heartland

### Developer 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;
- Exchange ratios necessary to encourage successful market transactions between the two; and
- Options for structuring a TDR program to encourage participation on both sides.[2]

### Questions/general comments:

Participants asked Heartland a number of questions about the analysis and TDR generally, including:

- Question: Does the capacity projection for commercial (industrial) development at Bayview Ridge include the recently-added 110 acres of industrial? If so, does that push the commercial/industrial capacity even father out than the 42 to 47+ years shown in the analysis?

[1] These meeting notes are intended to be as accurate as possible. Meeting participants were provided an opportunity to review and comment on the notes and any resulting comments have been incorporated.
[2] For additional details, see: "Transfer of Developments Rights (TDR) Market and Economic Analysis," Heartland Power Point Presentation slides, January 7, 2014.

Response: If the 110 acres is all new industrial acreage, over and above what was considered in the market analysis, that would be the case.[3]

- What was Heartland's assumption about the percentage of population growth going to Bayview Ridge.

  Response: Heartland's modeling assigns approximately 8% of the **county's** total expected growth to Bayview Ridge. This is consistent with the county's comprehensive plan allocations. We apply this target allocation to updated growth figures from the OFM.

- Does the Bayview Ridge analysis factor in the type of development? Did it assume that development would occur as a straight short plat vs. a much more costly Planned Unit Development? The analysis needs to separate out costs and profit.

  Response: The analysis uses different cost assumptions for the different development scenarios, with a significantly higher gross cost associated with larger residential subdivisions, as anticipated at Bayview Ridge. The base scenario in Bayview Ridge looks at the hypothetical development of a 30-acre property. Therefore, the value gained per unit conclusion will be more in-line with the economics of a large subdivision than with a small short plat. Heartland did not evaluate specific costs associated with the proposed Bayview Ridge PUD code. The full analysis does separate costs and profits.

- The assumption that the rate of return on capital (profit) to equity of 13% (calculated from p. 13 of the slides) is way too low. It needs to be more like 30% to support a decision to go forward with a project.

  Response: Heartland's developer profit assumption is 15% (on cost) on an unlevered, static basis. This should not be confused the overall developer internal rate of return or a leveraged return metric which could be significantly higher.

- Are single-jurisdiction TDR programs more successful; for instance, where development rights are transferred from one area within a city to another area within the same city.

  Response: There are working examples of both types of programs (single jurisdiction and multi-jurisdiction). In the City of Issaquah, where Heartland has worked on TDR, the program accepts development right transfers from areas within the city and a forested watershed in rural King County. What's important is that residents of the city value the area

[3] The Heartland analysis looked at industrial land capacity at Bayview Ridge based on the past 12 years' rate of land consumption there. This resulted in the conclusions found in the analysis regarding the remaining number of years of industrial land capacity at Bayview. The industrial land allocated to Bayview Ridge (including the 110 acres of recently-added BR-LI zoning) are part of the overall allocation of industrial land to Skagit County and its cities established in Countywide Planning Policy 1.1. That overall allocation was determined by prior analysis to be needed to meet industrial land demand in Skagit County as whole through 2025. While the Heartland analysis projects a 42 to 47+ year supply of Industrial land at Bayview Ridge based on recent development trends there, the previous analysis done for the Countywide Planning Policies found that the BVR industrial land supply would be needed to meet *overall* industrial land demand in Skagit County (including cities) by 2025. One possible explanation for the different conclusions is that the rate of industrial land consumption will increase at Bayview Ridge in future years as city supplies become increasingly tight. Additional work is occurring through a Port of Skagit-led industrial lands inventory and SCOG-led review of population and employment projections including industrial land demands for the next 20-year planning period: 2016 – 2036.

that is to be conserved through the program and that the sending area has a sufficient supply of credits to help create an efficient market.

- Has Heartland seen successful TDR programs in locations like Skagit County where the primary receiving area opportunities are on rural lands, and in the few cities that are currently participating there are political limits to achievable densities?

  Response: One of the primary intents of a TDR program is to facilitate growth in receiving areas where services are in already place. That said, it is not common to have rural lands act as receiving areas; however, if a jurisdiction's goal is to preserve resource land and some rural areas have existing services that can support modest growth then the inclusion of these areas should not be precluded. As for political limits being placed in cities where a TDR program could be successful – we have seen two general themes. First, more urbanized areas now looking to implement TDR are realizing the downfall of having waited. Zoning decisions creating large amounts of development capacity were granted in years past without a TDR requirement. Not only is inaction a threat, but permitting "free" density also compromises functioning TDR programs. To now make TDR work, those jurisdictions must consider downzoning their receiving areas to create a TDR threshold, or increasing development potential allowed with TDR above what is currently supported by the market or what may be politically acceptable to their residents.

Several participants said there needs to be better balance in the development market, for the excess capacity of houses to be bought in the aftermath of the recession, for TDR to have a chance to work here.

**Fairness of TDR**

Heartland described how TDR – like other incentive zoning approaches – is a way to capture some percentage of the increased land value created by an increase in development potential for public benefit, rather than all of it accruing to the property owner. Importantly, enough of the increased land value must be retained by the landowner to create an incentive for the desired development. In the case of TDR the public benefit to be achieved is land conservation.

Several participants objected to this concept, saying the increase in land value should accrue entirely to the landowner.

- Jack said the hypothetical .30 Floor Area Ratio (FAR) cap proposed to apply TDR to commercial development in Burlington would take away value from commercial property owners.
  - Doug responded that few if any commercial projects in Burlington currently exceed the .30 FAR cap. It's currently a market threshold rather than a regulatory one. A .30 FAR cap would not begin to have any significant effect until property values increase.
- John objected to the proposed requirement to purchase development rights at Bayview Ridge to go from 4 dwelling units/acre to 6 du/acre. The 6 du/acre overall cap was put in place to serve a public purpose – to protect the airport. An additional TDR requirement on top of that is unfair. He said the allowed residential density on his property at

Bayview Ridge before the UGA was 4 du/acre, so the 4 du/acre baseline within the UGA was not itself an upzone.

- Marianne said many rural landowners experienced significant downzones when the Growth Management Act was implemented. Those landowners were made to pay for the public benefit of land conservation. There needs to be some mechanism for the public to pay for public benefits – not individual landowners.[4]
- A smaller number of the development group appeared to support the goals and premises of TDR[5]:
  - That denser urban development is necessary to conserve rural and resource lands;
  - The development market is moving in that direction;
  - Urban infill and intensification represents a more fiscally sound development approach for cities; and
  - TDR balances sending and receiving area landowner financial needs/goals and will be used by some developers provided there is a market and TDRs can be purchased at a price that provides a true financial incentive.

**Exchange Ratio/Pricing**

Bruce raised concerns about the suggested exchange ratios, particularly in the higher ranges -- such as 4, 5 or 6 dwelling units granted in a receiving area for every one purchased from a sending areas particularly in the case of Ag-NRL.

- He said that's not a true transfer of development rights program, which to him implies a one-to-one transfer between sending and receiving area. It should be called something different. Mount Vernon's program, which operates entirely within the city limits, worked closer to a one-to-one or one-to-two ratio.

Doug said the exchange ratio is simply the relationship between the value of a development right from a sending area compared to the value of a development right in a receiving area.

- Where development right values are significantly different, an exchange ratio is necessary to make transactions viable in the market.
- Exchange ratios are very typical in city/county TDR programs where the value of smaller urban lots is typically less than the value of larger rural lots. This is especially true when a discount factor is applied to the receiving site value to incent developer participation.

Joe said what sets the value in a TDR transaction is the buying side of the equation, never the sending side.

- If development rights on the receiving side cost more than a developer is willing or able to pay, no transactions will take place and the program won't work. He bought

[4] TDR can be seen as a marked-based means for doing just that, at least for the sending area landowner. The public, through the marketplace, compensates landowners who voluntarily choose to sell their development rights, rather than having those rights legislated away. On the receiving side, if a TDR purchase is not also a financial benefit to the development right purchaser, the program simply won't be used.

[5] Also reflects input from 1/15 meeting with Rob Janicki, Janicki Logging and Construction.

development rights through the Mount Vernon TDR program at about $15,000 per unit, compared to the $20,000 to $25,000 per unit he was paying for raw land. This means he purchased development rights at about 60% to 75% of the cost of raw land or at a 25% to 40% discount.

- This represents a higher percentage cost for TDR development rights than Heartland's proposed 50% value discount compared to the next best alternative, reflecting Heartland's effort to ensure that development rights (or density credit fees) are priced competitively to encourage their purchase.

**TDR Mechanism and Developer Interest**

Doug said that offering several ways for developers to purchase development rights can lead to greater program participation. This can be achieved by offering both a traditional TDR option and a density fee option. He asked participants which approach was more likely to be used by developers or receiving area landowners.

Several said the fee schedule approach would simplify the process for developers and provide more certainty by letting them know up front what it's going to cost. It could be much more difficult to locate a willing sending-area landowner and negotiate a sales price.

- Jack didn't see either type of program really working for commercial development. TDR seems more focused on residential development. Marianne wondered if there was the political will to put in place a .3 FAR limit in Burlington for commercial development.
- Ed asked: why not just raise permit fees and use those revenues for conservation? Bruce said with that approach there's no guarantee that land will actually be conserved with those funds. It could just be used to fund planning department operations.
- Whatever approach is used needs to be simple and easy for sending and receiving area participants. Marianne said the County needs to be receptive to the legitimate concerns of landowners regarding conservation easements. Jack advises landowners as an attorney and said easements are complex. It would work best with a standardized easement.
- Marianne felt competing programs (TDR and Density Fee? Or Farmland Legacy and TDR?) could be a problem but did not specify why they would necessarily compete rather than complement one another.

**Receiving Areas**

Participants were asked about the receiving areas under consideration, specifically Bayview Ridge, Burlington, and Rural Upzones.

<u>Urban areas</u>: Joe said cities that aren't encouraging density now are losing that opportunity in the future. Lower density development consumes more land and is more expensive to serve. Bruce said a TDR ordinance needs to be written like Snohomish County's, to allow other cities to join in over time.

Rural areas: Several participants suggested there should be more focus on rural areas where there may be more TDR market potential.

- Some saw a real potential use for TDRs with CaRD density bonuses. Matt said several times when he has worked on CaRDs he's been short a little acreage needed to achieve an additional development right. When the market was strong he would have been willing to pay for that additional development right.
  - If that transfer could add a unit where infrastructure was already provided through the CaRD, while removing a development right from forest resource land, it would be in the public benefit.
  - Joe cited a project on Tyee Road near Conway where he needed 10 additional units to be able to extend public water. He would have used TDR in that situation, clustered the development, and conserved the land from which the development rights were transferred.

- Kendall did not accept the apparent premise of TDR that a residential unit in the rural areas is bad while a unit in the urban area is good. In Spokane County, there's a huge area in the county where they can develop. In Skagit County, you can't develop outside of cities. He doesn't do any rural development here anymore.

**Need for TDR, Willingness of Sending Area Landowners to Participate**

Some said Skagit County has a host of conservation tools or requirements already, ranging from the Comprehensive Plan itself to open space taxation, the Shoreline Master Program, state-imposed rural water restrictions, and others.

Ed asked at what point have you done enough for conservation? He doesn't know of anyone who would use TDR.

Matt said he knows many landowners who would be interested. On Silver Lane, due to drainage problems, actual development is very expensive. There are many property owners who would willingly sell their development rights rather than not use them or develop them at very high cost.

Marianne said there should be further discussion of which areas should be priorities for conservation. In her opinion some of the Rural Resource Lands do not actually have natural resource value.