

Summary of TDR Discussions to Date

1. TDR goal statement

*This draft narrative statement is based on discussion by the TDR advisory committee at several meetings in 2012 and early 2013. **It is a draft and is intended for continued discussion purposes.** The goal statement is intended to help establish a framework for the Skagit County TDR study and will evolve as the advisory committee and project staff gather additional information on TDR. Because it is a goal statement, it describes what a TDR program should seek to accomplish if one is implemented in Skagit County.*

A Skagit County TDR program should be a voluntary, incentive-based, and market-driven tool to help implement conservation and development goals established in the Skagit County comprehensive plan and the plans of other participating jurisdictions.

The program should complement existing land conservation and development incentive programs including Farmland Legacy and the Burlington Agricultural Heritage Density Credit Program. It should advance land conservation goals for which there is broad public support, including conservation of working farms and forest lands, and rural lands with important habitat or watershed functions or other significant open space or recreational values.

A Skagit TDR program should enjoy broad support from members of the public and elected officials from jurisdictions throughout the county. It should create receiving areas in selected urban and rural parts of Skagit County. It should work in close cooperation and coordination with participating cities and towns to implement development and conservation goals of greatest importance to them. A Skagit TDR program should make use of a variety of developer incentives, including increased development potential or reduced costs for residential, commercial, industrial, and mixed use development.

A Skagit TDR program should respect the property rights of participants and be based on free-market principles and prices that motivate voluntary landowner and developer participation. Sending area landowners who voluntarily choose to sell residential development rights should retain ownership of their land and the ability to use their land for other uses permitted by code. The program should use rigorous and objective market analysis to determine whether there is adequate demand for development in proposed receiving areas to generate TDR purchases.

The market transactions facilitated by the TDR program should create a private mechanism for land conservation that helps to complement publicly-funded conservation efforts.

2. Identification of TDR Conservation Goals

Discussion of TDR conservation goals has generally centered on the conservation of the following resources and related values¹:

- Natural resources and working farm and forest lands
- Environmental resources
- Open space resources

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

The primary mechanism for conservation through a TDR program would be purchase and transfer of a property's residential development right.

- Property conserved through TDR would remain in private ownership.
- The residential development right would be retired on the sending site through a conservation easement, and then would be transferred to a receiving area.
- Other uses of the sending site property allowed by its zoning (and reflected in the conservation easement) would not be affected.

TDR programs reportedly work best where receiving area residents have a strong interest in the lands and resources being conserved through the program.

- Conservation goals pursued through TDR should be important to residents in receiving area communities.
- Those residents should be consulted when establishing TDR conservation goals.

Proximity to designated receiving areas is an important criterion when establishing TDR sending areas.

- Close-in lands will likely face more significant development pressure than more remote lands. They will also likely be more important to receiving area residents
- The committee has not specifically defined "close proximity" but has reviewed maps showing, for demonstration purposes, 2- and 4-mile areas around cities and UGAs.

¹ One item that has not been discussed but may deserve attention is conservation of lands for future industrial zoning. One potential location is the area currently designated Rural Reserve located to the northwest of the Skagit Regional Airport.

Committee discussion has focused the most on conservation of the following:

- Farm land with high-quality agricultural soils, and rural and natural resource lands in active agricultural use even if they are not identified as having prime agricultural soils.*
- Forest land rated as highly-productive for forestry purposes, and predominantly forested rural lands – even if they are not rated as highly-productive for forestry and not engaged in active forest management.*
- Lands identified as having significant open space value to the public, particularly within or immediately surrounding cities, towns and urban growth areas.

*Including the natural resource, open space and environmental values associated with these lands.

The committee has discussed other conservation goals as well, including:

- Areas prone to flooding and resulting property damage; and floodplain areas that provide significant ecological function.
- The watersheds or stream corridors most directly associated with public water supplies (e.g. Judy Reservoir);
- Priority watershed areas, including wetlands, riparian areas, and aquifer recharge areas.
- Wildlife habitat and corridors important to threatened, endangered, or priority species.

How these areas might be further defined is discussed in greater detail under item #4, **Potential TDR Sending Areas.**

3. Potential TDR Receiving Areas

The TDR market analysis now underway is looking at three potential receiving areas:

- The City of Burlington's downtown business, commercial, and industrial zones.
- The Bayview Ridge UGA's residential, industrial, and community center zones.
- Rural Upzones: exploring requirement that rural upzone recipients purchase TDRs in exchange for increased development potential granted through the upzone.²

The market analysis will progress over the next several months, with preliminary results expected to be available by mid-summer.

- At a very simplified level, the analysis will evaluate how much development capacity exists in the various zones under consideration, and will compare that against projected demand for development.
- If the demand exceeds the available capacity, then there is a potential market for TDRs.³
- More detailed analysis may be conducted where the initial analysis shows promising TDR market potential.

Project staff and many TDR advisory committee members would like to see other cities consider participating in a Skagit TDR program.

- One or two urban areas will likely not generate adequate demand for development right purchases, especially considering the wide range of potential sending areas in Skagit County.
- At least one committee member has questioned the choice of Burlington as a receiving area due to its location in the floodplain.
- A TDR program will likely be more successful if coordinated among the various cities in Skagit County, creating a more even playing field for development costs.
- At the same time, extending the market analysis to include additional jurisdictions as receiving areas would require significantly more money than is currently available for the analysis.

² The upzone request would need to be reviewed on its own merits for consistency with Comprehensive Plan designation criteria and GMA.

³ This simplified description is more appropriate for the Bayview Ridge and City of Burlington analysis. The Rural Upzone analysis will focus more on rural property owners' willingness to pay for additional development potential.

Project staff has talked with Mount Vernon and Anacortes planners and some Anacortes council members but neither city has expressed formal interest at this time.

- City staff suggests TDR supporters should encourage city elected officials to identify TDR as an item to be considered through the cities' 2016 Comprehensive Plan updates.

The Advisory Committee has urged consideration of more than just residential development rights as developer incentives under TDR.

- Increased density in existing residential neighborhoods is frequently not very popular among existing city residents in Skagit County.
- City Council concerns about higher residential densities achievable through Mount Vernon's TDR program contributed to changes that have rendered that program inactive in recent years.

Other incentives that may be more feasible in Skagit County's cities, and that will be evaluated through the market analysis, include:

- Additional commercial square footage, floor-to-area ratio (FAR), or height;
- Additional lot coverage in industrial areas;
- Reduced parking requirements in residential or commercial zones; or
- Additional residential potential in commercial zones, resulting in "mixed use" residential and commercial areas; and
- Other incentives that may be identified in focus-group discussions with developers.

It is extremely important that incentives offered through a TDR program be compatible with other development regulations for the receiving area.

- For instance, the potential for increased commercial square footage would not be of value if it could not be exercised due to limitations on lot coverage or impervious surface.

4. Identification of Potential Sending Areas Based on Conservation Goals

Two of the conservation priorities identified above, in Section 2, appear most easily translatable into TDR sending areas. These are:

1. Farm land with high-quality agricultural soils, and rural and natural resource lands in active agricultural use even if they are not identified as having prime agricultural soils.
2. Forest land rated as highly-productive for forestry purposes, and predominantly forested rural lands – even if they are not rated as highly-productive for forestry and not engaged in active forest management.

This is because there is a relatively high level of agreement in Skagit County about the importance of conserving productive natural resource lands, and because the County has already defined and mapped Natural Resource Lands under GMA.

Agricultural Land

The vast majority of land with high-quality agricultural soils or active agriculture uses falls into three County zones: Ag-NRL, RRc-NRL, and Rural Reserve.

- Ag-NRL and RRc-NRL lands are designated largely on soil quality, with Ag-NRL soils being the very best.
- GIS analysis has identified Rural Reserve lands in blocks of 20 acres and larger⁴ that have land cover indicating active agricultural use.

Some committee members have advocated including these Rural Reserve lands as TDR sending areas, allowing willing landowners to “opt in” to Ag-NRL type zoning after selling residential development rights.

These members say these lands:

- Have significant agricultural value, even if they are not the best agricultural soils in Skagit County;
- Can help to stabilize the agricultural land base against limited but unavoidable losses to Ag-NRL over time; and
- Are more accessible and affordable than Ag-NRL to new farmers just starting out in the industry.

Opinions differ as to whether Ag-NRL should be included as a TDR sending area.

Reasons in support include:

- TDR can help supplement the Farmland Legacy Program and, if properly designed, will not compete with or undermine Farmland Legacy;
- Federal funds currently available for FLP are on the decline; and

⁴ A larger or smaller block size could be analyzed.

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- Ag-NRL lands are located in the floodplain which provides another public justification for discouraging residential development.

Concerns about including Ag-NRL in a TDR program include:

- Farmland Legacy is one of the most successful purchase of development rights (PDR) programs nationwide and is doing a good job of permanently protecting Ag-NRL land.
- By contrast, TDR is an untested program. Extending TDR to Ag-NRL lands might lessen political support for Farmland Legacy on the belief (whether accurate or not) that TDR is protecting agricultural land.
- TDR will not be able to compete with the amount of money that Farmland Legacy is able to offer for Ag-NRL development rights; and
- Ag-NRL lands have very limited residential development potential due to the three-year farm income rule; therefore there is no need for additional protection of Ag-NRL lands.

Forest Land

Forest land designations of long-term commercial significance are: Industrial Forest-NRL, Secondary Forest-NRL, and some Rural Resource-NRL lands.

- These designations are based largely on the site productivity of the land (based on soils, elevation, and other factors).
- GIS analysis has identified Rural Reserve lands in blocks of 20 acres or larger that are in predominant forest cover.

From the perspective of project staff, the SF-NRL and RRc-NRL lands are logical candidates as TDR sending areas – with some criterion for proximity to cities and urban growth areas.

- These are designated Natural Resource Lands of long-term commercial significance with *relatively* high residential development potential (1 residence/20 acres for SF-NRL, or up to 1 residence/10 acres in RRc-NRL through CaRD development).

Project staff also believes there is merit to identifying predominantly forested Rural Resource parcels in 20-acre blocks⁵ as TDR sending areas, also with a criterion for proximity to cities and UGAs.⁶

- Although these lands may be less significant to forestry production than SF-NRL and RRc-NRL lands,⁷ they do provide habitat, watershed and open space benefits

⁵ A larger or smaller block size could be evaluated.

⁶ Identification as a TDR sending area would provide landowners with the *option* to sell development rights but it would not create an obligation or a requirement. It is also not intended as a statement that rural landowners are not already good conservationists and stewards of their land.

that might be diminished through rural residential development, particularly at the density of 2 residences per 10 acres as allowed under CaRD.

Project staff believes there is less rationale for identifying all Industrial Forest-NRL as a TDR sending area, for the following reasons:

- At 1 residence/80 acres, residential development allowed in IF-NRL is significantly less likely to conflict with forest management activities.
- Residential development in IF-NRL is *only* allowed where the land is located within the existing boundaries of a fire district and within 200 feet of a public road.
 - It may make sense – and would be consistent with the proposed framework for determining eligibility to sell development rights through TDR – to identify those limited IF-NRL lands where residential development is allowed as TDR sending sites.
- These issues require more discussion with forest land owners.

Other conservation goals discussed by the committee have merit but may be harder to identify, define and map without additional work through this or other projects. These include:

Open Space Lands (particularly within or adjacent to cities, towns, and UGAs)

Potential lands to consider include open space areas identified in in adopted City, Town, Tribal, or County open space plans, reflecting prioritization and approval through previous public planning processes.

- The adopted Skagit County’s UGA open space plan and city plans identify general areas of open space interest but do not identify areas or corridors at a parcel-specific level. Until this is done it would be difficult to identify open space areas as TDR sending areas.
- Also, because TDR leaves sending area properties in private ownership, TDR (at least by itself) may not be a sufficient tool for conserving lands intended for public access such as parks or trail corridors.

Floodplain (areas of high risk, and those providing important floodplain functions)

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

- First, Skagit County continues to move forward with flood protection and management planning through the General Investigation study with the Army Corps of Engineers, and with a Comprehensive Flood Hazard Management Plan.

⁷ There are some areas of significant overlap between forested Rural Reserve lands and lands identified as “High Conversion Risk, High Value Private Forestland” by the Rural Technology Initiative.

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- These efforts are likely to identify an area or areas in the Skagit River delta where flood waters would be directed in an emergency, in order to avoid economic damages in the cities.
- Once identified, these areas may merit consideration as TDR sending areas.
- Second, the Shoreline Master Program Update will consider designation of a Channel Migration Zone upriver of Sedro-Woolley where development may be particularly subject to flood risk over time.
 - If and when designated, the channel migration zone may be a logical TDR sending area, providing landowners the opportunity to voluntarily sell their development rights rather than develop in a high-risk flood area.

Water supply

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

Priority watershed areas

The Washington State Department of Ecology has developed a series of “watershed characterization” models for watersheds throughout the Puget Sound. The watershed characterization models draw on a variety of scientific assessments and data sources in an effort to characterize lands as most suitable for protection, restoration, conservation, or development. These characterizations are based on the land’s importance, and sensitivity to degradation, across a variety of ecological functions: including water quality and flow; freshwater habitats; and terrestrial wildlife habitats.

While the watershed characterization models and data may help to identify certain areas in Skagit County that are important to conserve (and therefore to include as TDR sending areas), the models are quite complex. Project staff will continue to work with Department of Ecology personnel to determine the relevance of the models to conservation efforts in Skagit County.

If the watershed characterization appears to provide useful insights for identifying TDR sending areas, project staff will bring a more developed proposal to the TDR advisory committee for discussion and consideration.

Wildlife Habitat

It has been difficult to locate data that clearly and credibly delineate wildlife habitat areas and corridors warranting additional conservation at a landscape level. This makes it difficult to identify TDR sending areas for purposes of conserving wildlife habitat.

5. Proposed framework for determining whether a sending-site property has a development right for sale through TDR

The following proposed framework is under development and subject to further refinement; it is not a finished product.

The process would follow several of the review steps currently used to determine whether a parcel can be built upon for residential purposes, including the following:

- a. **Lot certification (for development purposes).** Used to determine if a lot is eligible to be considered for development permits. Evaluates whether a lot meets a minimum required size for its zone or, if not, meets one of several exemptions related to how it was created or whether certain property improvements were made by a certain date indicating an intent to develop.
- b. **Review for easements, plat restrictions or other encumbrances.** Part of the development review process, done to determine if the lot is already subject to a conservation easement or other private restriction that would prohibit residential development of the property.
- c. **Review for zoning or other County code restrictions prohibiting development.** Also part of the standard development review process, done to determine if there are code restrictions that apply to a class of properties that prohibit residential development or limit the number of residential development rights that may be exercised.

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

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

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

- This review is conducted to determine how a residential development project would meet County code requirements for critical areas, shorelines, sanitation (sewer or septic), water, road access, and others.

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- Typically this review requires on-site assessments and can cost several thousand dollars to complete.⁸
- Rarely if ever do the above-mentioned code requirements outright preclude residential development, although in some cases they may significantly increase development costs.
- A residential development right on a difficult-to-develop parcel would not be precluded from sale through a TDR program; however, the price negotiated between buyer and seller might be lower than for a residential development right that did not face similar constraints.

⁸ Where a property has not already been professionally surveyed, a survey would likely be necessary for a TDR sending site parcel to enable accurate tracking of the parcel and related conservation easement over time.

6. TDR Pros and Cons

Below are some of the reasons cited by project staff, the TDR literature, and TDR advisory committee members in support of implementing a TDR program in Skagit County.

- TDR is a voluntary, incentive-based, and non-regulatory approach to encouraging land conservation.
- TDR programs are recognized and encouraged in the Washington State Growth Management Act (GMA; RCW 36.70A.090) and the Skagit County Comprehensive Plan as an innovative land use management technique.
- A TDR program doesn't limit growth. Rather, it allows communities to plan more effectively by directing that growth into areas identified as most appropriate for additional development.
- TDR goes beyond traditional zoning by a) compensating landowners who give up (sell) their right to develop; b) protecting property from development in perpetuity; and c) engaging the market to generate private funding for land conservation.
- TDR is another tool in the conservation toolbox. Appropriately designed and implemented, TDR can complement other tools including zoning, purchase of development rights, open space taxation, and rural clustering (e.g. through Conservation and Reserve Development or CaRD).
- TDR can assist in the conservation of land that provides natural resource, environmental, and open space benefits; while also reducing infrastructure costs associated with more dispersed (rural) vs. more compact (urban) forms of development.
- TDR is a way for the public to obtain a benefit – in the form of financial support for land conservation – in exchange for the economic benefit or “windfall” granted to property owners or developers in a TDR receiving area where additional development potential may be accessed through the purchase of TDRs.

Concerns and Objections

Following are some of the concerns cited by committee members or members of the public to implementing TDR in Skagit County or to specific potential elements of a Skagit TDR program.

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- There is not enough market demand in Skagit County to make a TDR program work.
- More cities need to be involved in order for TDR to have meaningful impact in Skagit County.
- Sending area property owners may sell development rights for less than they are truly worth.
- Care needs to be taken to ensure that development right purchasers are able to exercise those development rights in receiving areas. An example has been cited of a Mount Vernon developer who is unable to exercise development rights that he has purchased through the Mount Vernon TDR program due to changes in that program.
- Areas such as Burlington that are in the floodplain should not be receiving areas – those are the wrong areas in which to encourage more development. Some have raised a similar concern about linking purchase and transfer of development rights to upzones of Rural lands.
- Encouraging more residential density through TDR will not be successful and is not desirable in Skagit County cities. Most city residents do not want more residential density in their neighborhoods. Higher density residential areas often look and feel cramped and have inadequate parking.
- TDR is unnecessary because the Growth Management Act and the Skagit County Comprehensive Plan and development regulations are adequate to protect natural resource lands and rural character and prevent sprawl.
- The fiscal impacts of shifting residential development from urban areas to rural areas should be evaluated.
- A TDR program focusing on Ag-NRL could undercut the success of the Farmland Legacy Program by reducing political support for Farmland Legacy.
- Some forest landowners may not be interested in selling development rights in perpetuity.
- Some people fear that TDR is an effort to de-populate the rural area and force rural residents to move into cities.

- End -