Summary from Agriculture/TDR Focus Group Meeting

January 7, 2014

Participants

Andrea Xaver, Farmer, Conservation Futures Advisory Committee (CFAC) Member

Carolyn Kelly, Skagit Conservation District; CFAC Chair

Darrin Morrison, Farmer, Board President, Skagitonians to Preserve Farmland (SPF)

Tim Rosenhan, Envision Skagit Citizen Committee Member, SPF Land Protection Committee

Annie Lohman, Farmer, Skagit County Planning Commission

Bob Suttles, Northwest Real Estate Valuation

Allen Rozema, Skagitonians to Preserve Farmland

Staff

Kirk Johnson, Skagit County
Matt Hoffman, Heartland

Doug Larson, Heartland
Ian Loveless, Heartland

Agriculture 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, and to ensure compatibility with the Farmland Legacy and Burlington Ag Heritage programs.[1]

Why is Skagit County Considering TDR?

The question was asked: Why is this necessary? Why is Skagit County considering TDR? Andrea Xaver was concerned that if TDR is successful, the County could end up dropping the Farmland Legacy Program and then manipulate the prices for Ag-NRL land.

- The project is exploring whether TDR can help with land conservation in Skagit County, including conservation of agricultural lands. The County is not required to adopt a

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

program but can do so if it would benefit and enhance existing conservation and development efforts.
- The market analysis is a key component in determining whether a TDR program can work in Skagit County, since the purchase of development rights is what generates the revenues for land conservation.
- The project is committed to ensuring a TDR program would not hurt the Farmland Legacy and the Burlington Ag Heritage Credit programs; and options are being explored to complement and support those programs.

Andrea asked if development rights purchased in Skagit County could be transferred outside of the county, for instance to Seattle.

- They could not be, as such transfers are not permitted by state law except in four central Puget Sound counties. Even if allowed, it is unclear what Skagit County goals those transfers would promote. Out-of-County transfers are not being considered.

Will TDR work, when, and what will it take to be effective?

Doug from Heartland identified some key components of successful TDR programs:

- Adequate market demand
- Effective pricing of TDRs for both receiving and sending area landowners
- Compatibility of TDR with other types of conservation and development programs and incentives,
- Ease of use ("option flexibility") for participants, and
- Voluntary nature of the program.

Carolyn said that the market analysis appeared to show adequate demand for TDR would not materialize for 10 or 15 years or even longer. She said "this is very long-term planning. That needs to be made clear."

Kirk explained there are two components to market demand:

1) Availability of developable land or "capacity," and
2) The price of additional units of density or other forms of development potential available through TDR.

Even where there appears to be adequate capacity for additional development, a particular developer might find it worthwhile to increase the development potential on land that they own through TDR, rather than buying additional land.

- For instance, two potential projects in Burlington are looking at purchasing additional residential development potential through that city's Ag Heritage Credit Program.

Doug said if you wait for a period of strong market demand to implement a TDR program, it can be too late.

- Several more urbanized cities to the south now wish they hadn't granted density increases many years ago without a TDR requirement.

- To make TDR work now, they must consider imposing a regulatory threshold on top of existing zoning that can't be exceeded without TDR purchase – which some view as a downzone – or grant even more development potential through TDR than the market or local politics will support.

Several participants advised focusing on the conditions that will make a TDR program work, rather than citing all of the reasons a program won't work.

- Darrin said condition would be for the cities to focus on expanding upwards rather than outwards. This would limit the new land supply while making existing land more valuable, encouraging better, more intensive utilization.
- Kirk said cities are increasingly seeing that infill development is less expensive to serve than low-density expansion. This might encourage infill rather than outward expansion, to the benefit of TDR.

Development Right Valuation

Heartland was asked why its analysis suggests that Ag-NRL development rights sold through a TDR program would have less value than development rights sold through the Farmland Legacy Program (FLP). Several reasons were discussed:

- TDR easements usually just restrict a property's residential development potential. They are less restrictive than the Farmland Legacy Program easement and therefore less costly to purchase.
- Development right purchasers using TDR will look for the cheapest development rights available on the market, not the more expensive ones.
- TDR is not likely to be able to compete pricewise with Farmland Legacy. Sales of development rights through TDR are likely to occur outside of the core area of interest for the Farmland Legacy Program, which has been the Skagit Delta. Development rights outside of the Delta are father away from development pressure. Market data shows they tend to sell at a lower price.

For the reasons described above, Allen said a TDR program would provide additional options to Skagit farmland owners and farmland conservation, without taking anything away. A TDR program could create new opportunities for ag land property owners who:

1) Are outside of the area where most FLP purchases have been concentrated to date, or
2) Do not want as restrictive an easement as comes with FLP purchase (including the new restrictions associated with federal funds).

A TDR program could also help conserve land being actively farmed in the Rural Reserve and Rural Resource-NRL zones, which the FLP program does not apply to.

TDR and the Farmland Legacy Program

Kirk said a County TDR program would likely be most effective if it had two components (see attached PPT slide):

1) A traditional TDR component involving market transaction between a private buyer and private seller, and
2) A density fee component – like Burlington's – where developers purchase credits for additional density, and revenues are provided to the County for land conservation purchases.

A program could be structured a couple of different ways relative to Farmland Legacy and ag land conservation:

1) Some or all of the fees generated from the density fee program could be provided to the Farmland Legacy Program as match for Ag-NRL purchases. This would appear to strengthen the FLP program, not weaken it.
2) With the private-market TDR component, the County could include or exclude Ag-NRL from eligible sending areas.
    a. Excluding Ag-NRL would provide a firewall between the TDR program and the FLP program, preventing negative interactions between those two "markets."
    b. However, positive interactions would also be eliminated. The TDR option would not be available to Ag-NRL landowners – even those who do not want to or are unable to sell their development rights to Farmland Legacy.

Advantages and Disadvantages of PDR and TDR

The group discussed some of the advantage and disadvantages to the two approaches (PDR and TDR) to ag land conservation.

- PDR (Farmland Legacy) has a very successful track record of Ag-NRL conservation since its creation in 1996, conserving more than 10,000 acres.
- However, recent restrictions placed on federal dollars requiring buffer strips along drainage ditches are "very undesirable" to many farmers. It's thought that Snohomish County is reducing its emphasis on PDR because of these restrictions.
- A strength of PDR is its dedicated funding source (the Conservation Futures tax, plus state and federal grant dollars).
- Conservation priorities can be more carefully targeted with a PDR program.
- Because appraisals are required with the use of public dollars, landowners are assured of fair market value.

A TDR program would have some differing characteristics:

- It would be locally created and supported through local development right purchases so Skagit County can set the terms of the easements.
- The location of development right purchases is dictated more by the market than by policy or prioritization – other than the policy that establishes eligible sending areas.

The County would have less administrative cost, but also less control over the location of conservation purchases.

- The TDR easement will likely be simpler and less restrictive than the FLP easement, focusing solely on retiring residential development rights. This may be more attractive to some landowners, although it would also generate a lower sales price than a more restrictive easement.
- Some willing landowners who haven't ranked highly enough to sell development rights to Farmland Legacy may find willing buyers through a TDR program.
- TDR could focus on conserving active agricultural lands in the Rural Reserve and Rural Resource-NRL zones, whereas FLP only applies to Ag-NRL lands.
- TDR transactions are market-funded and do not require tax dollars (though a TDR program would require some level of administrative support).
- Because TDR is market driven, it requires an active development market to work. It may take some time for the TDR market in Skagit County to mature and start generating significant support for land conservation.

Receiving Areas

Annie said additional County receiving areas should be explored beyond Bayview Ridge. She mentioned the Conway and Bow Hill areas as places where a lot of rural development is occurring. Andrea mentioned Nookachamps Hills.

- Kirk said the Rural Upzone TDR provisions would apply when a landowner seeks an increase in rural development capacity, but the increase would need to be consistent with County Comp Plan policies and GMA.
- Some of the larger rural developments (such as Nookachamps Hills and certain projects around Conway) are happening based on development applications submitted and vested before the current Comprehensive Plan and development regulations took effect in the late 1990s.

TDR can't be applied to already-permitted projects. But those situations illustrate that prior planning decisions can have very long-term impacts. If the County wants to have a viable TDR market 10 or 20 years from now, it would be wise to put provisions in place now.

Concluding Remarks

Annie said there's no way to be fair to everyone. There are always winners and losers.

Allen said he was still waiting to hear a compelling reason why Farmland Legacy, ag land conservation, and farmland owners would lose through the creation of a TDR program. It's voluntary. It compensates landowners who sell development rights. It can be complementary to the Farmland Legacy Program.