

**TESTIMONY AND WRITTEN PUBLIC COMMENTS:
 CONSERVATION AND DEVELOPMENT INCENTIVES PROGRAM (CDIP)
 COMMENTS/TESTIMONY RECEIVED SEPTEMBER 24 – NOVEMBER 5, 2015**

| Name | Organization | Method |
|-----------------------------|------------------------------|-------------------------------------|
| Alexandra, Kathryn | | Email (10/23/15) |
| Ballash, Heather | WA Department of Commerce | Email (11/4/15) |
| Bergner, Richard | | Email (10/23/15) |
| Bynum, Ellen | Friends of Skagit County | Testimony + emails (10/6 & 11/5/15) |
| Dewhirst, Kathleen | | Email (10/23/15) |
| Doran, Molly | Skagit Land Trust | Email (11/5/15) |
| Ehlers, Carol | | Testimony + document (11/2/15) |
| Farrow, Christine | | Email (11/4/15) |
| Good, Randy | | Testimony |
| Good, Randy and Aileen | Friends of Skagit County | Letter (11/2/15) |
| Gribble, David | | Testimony |
| Gribble, David and Georgina | | Letter (11/5/15) |
| Hagland, Gary | | Testimony |
| Harrison, Bryan | City of Burlington | Testimony + email (10/23/15) |
| Kelly, Carolyn | Skagit Conservation District | Testimony |
| Kerr, Graham | | Email (10/23/15) |
| Lagerlund, Nels | Agricultural Advisory Board | Letter (11/5/15) |
| Lisser, Bruce | | Testimony |

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| | | |
|--------------------|---|-------------------------------------|
| Matterand, Sylvia | | Email (11/5/15) |
| Mitchell, Roger | | Testimony + email (11/5/15) |
| Osborn, Kenneth D. | | Email (11/3/15) |
| Owens, Jim | | Testimony |
| Petersen, Amelia | | Email (9/28/15) |
| Rawson, Kit | | Email (11/4/15) |
| Robinson, Roger | | Email (11/5/15) attaching petitions |
| Rozema, Allen | Skagitonians to Preserve Farmland | Letter (11/5/15) |
| Schissler, Paul | | Testimony |
| Scott, Lori | | Testimony + letter (11/2/15) |
| Sexton, Steve | City of Burlington | Testimony |
| Stauffer, Ed | | Testimony + letter (11/2/15) |
| Trask, Barbara J. | | Email (11/5/15) |
| Voli, Carlo | | Email (10/23/15) |
| Xaver, Andrea | | Testimony + email (11/4/15) |

From: [Kathryn Alexandra](#)
To: [PDS comments](#)
Subject: Conservation and Development Incentives Program
Date: Friday, October 23, 2015 4:50:01 PM

I support the Conservation and Development Incentives (CDI) Program, which is a great tool for protecting our farms, forests and rural areas.

I support the CDI Program program because it also is low cost to taxpayers and helps our farmers and forest land owners unlock some of the value of their land, which provides an additional source of working capital, while permanently conserving their land.

However, to make sure rural areas are adequately protected, please require that ALL rural density increases only occur with a CDI development credit.

Thank you for considering my recommendation.

Kathryn Alexandra
4311 GINNETT RD
Anacortes, WA 98221

From: [Debra L. Nicholson](#)
To: [Debra L. Nicholson](#)
Subject: FW: Commerce"s Comment Letter _21672 Skagit County
Date: Friday, November 06, 2015 10:45:02 AM

From: Weyl, Linda (COM) [<mailto:linda.weyl@commerce.wa.gov>]
Sent: Wednesday, November 04, 2015 9:31 AM
To: PDS comments
Cc: Dale Pernula; KirkJohnson
Subject: Commerce's Comment Letter _21672 Skagit County

Regarding: Proposed amendment to comprehensive plan policies and development regulations creating a Conservation and Development Incentives Program in Skagit County. The program would enable the voluntary and permanent conservation of farm, forest, and open space lands while encouraging development in urban areas and certain rural areas best suited for additional growth.



STATE OF WASHINGTON

DEPARTMENT OF COMMERCE

1011 Plum Street SE • PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-4000
www.commerce.wa.gov

November 4, 2015

The Honorable Josh Axthelm, Chair
Skagit County Planning Commission
1800 Continental Place
Mount Vernon, Washington 98273

RE: Proposed amendment to comprehensive plan policies and development regulations creating a Conservation and Development Incentives Program in Skagit County.

Dear Commissioner Axthelm:

Thank you for sending Growth Management Services the proposed amendments to Skagit's comprehensive plan and development regulations that we received on September 25, 2015, and processed with Material ID No. 21672.

We congratulate the County for the considerable work that has gone in to developing a Conservation and Development Incentives (CDI) Program that can provide another tool to conserve forest and agricultural lands in the County for future generations.

We especially like the following:

- The County's commitment to working with the cities to provide a market for conservation development rights in urban areas planned to accommodate population growth.
- The County's willingness to identify city or town conservation priorities within or surrounding its urban growth area. Citizens in cities need to see a connection between increased density in their neighborhood and the benefits of conserving farm and forest land to the city.
- The County's decision to establish both a public option for purchasing development credits by the County, as well as allowing for private transactions between buyers and sellers of development credits. This combination a number of advantages to the County. With respect to private market transactions, those transactions can:
 - Take any form agreed to by buyer and seller; and
 - Lower costs to the County, and therefore the public.

Purchases of development credits by the County can:

- Focus on property with a high priority for conservation that might not be addressed by the private market;
- Simplify transactions for buyers and sellers by eliminating the need to find trading partners and negotiate individual deals. The County can make sales occur in a timely fashion for buyers and sellers, who may not be ready to act at the same moment.

- Be integrated with the County's existing purchase of development rights (PDR) program, the Farmland Legacy Program, expanding the resources available for conservation; and
- Facilitate larger development incentive 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.

We have concerns about the following that you should address before you adopt your plan and development regulation amendments:

- We understand that the Example Schedule of Development Credit Fees and Exchange Rate is a sample, and that the Board of County Commissioners will adopt the final version prior to implementation of the CDI Program. However, we are concerned that the sample version discusses transfers to rural areas (Groups 2, 3 and 4) with exchange ratios of two, three and four dwelling units. While this ratio would make sense in an urban growth area where growth should be encouraged under the Growth Management Act (GMA), it seems high for a rural area where growth should not be encouraged. We recommend that the County limit the exchange ratio for transfers to rural development priority areas to a one to one ratio in those instances where a ratio of more than one to one would increase the number of dwelling units to above currently allowed densities in order to protect rural character.
- Regarding Draft Code Section 14.22.060, Conservation priority areas – sale of development rights to County, this section does not provide a clear process for who decides whether to purchase a conservation easement under the CDI program. We recommend that the County establish a clear process in the Code for these decisions to provide transparency to the public and landowners interested in selling their development rights.

We have some suggestions for strengthening your plan and development regulation amendments that we encourage you to consider either in these or future amendments:

- We like Goal 2H-4, County-city partnerships, but the language could be strengthened to reflect the County's commitment to work with the cities to create a market for conservation incentives. We suggest the following word changes: "Policy 2H-4.1: Skagit County should encourage cities and towns to implement similar incentive programs in ~~coordination~~ partnership with the County, enabling cities and towns to assist in conserving county designated farm, forest and open space lands that are important to their residents."
- Regarding Goal 2H-4, Policy 2H-4.1(d), we recommend that the policy clearly state that an interlocal agreement is necessary if the County and a city decide to cooperate in transferring development rights from the County into a city receiving area. An interlocal agreement will set out requirements for how transfers are tracked. For example, how certificates for development rights are issued by the County, used in a city, and retired once they have been used. For some examples of interlocal agreements governing transfers, go to the Commerce TDR web site web site at <http://www.commerce.wa.gov/Services/localgovernment/GrowthManagement/Regional-TDR-Rights-Program/Pages/Local-TDR-Programs.aspx>.
- Also regarding Goal 2H-4, we suggest that the County consider adding a policy that encourages the cities to designate their downtowns or urban centers within municipal boundaries as priority development areas to conserve county farm and forest land. Many other cities in the Puget Sound region have adopted similar programs in partnership with the county as part of their plans for redevelopment and revitalization of their downtowns and urban centers. For more information about what other counties and cities have done, see the county and city case studies in the report issued by the Department of Commerce in June 2013, *Regional Transfer of Development Rights in Puget Sound*.

The Honorable Josh Axthelm
November 4, 2015
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- Regarding Draft Code Section 14.22.050(d), Conservation priority areas – eligibility to sell development right: The draft code section has a placeholder of five to twenty acres for the minimum size of a tract eligible for the sale of development rights. In order for the County to realize the most conservation benefit from a development right transaction, we suggest that the County adopt a higher rather than lower minimum number of acres per tract. This minimum could be based on the allowed density for designated conservation priority lands. For example, in Pierce County forest land sending sites must be at least 80 acres.

Congratulations to you, your staff and the TDR Advisory Committee for the good work this Program represents. If you have any questions or concerns about our comments or any other growth management issues, please contact me at 360.725.3044. We extend our continued support to Skagit County in achieving the goals of growth management.

Sincerely,



Heather Ballash
Senior Planner
Growth Management Services

HB:lw

cc: Jeffrey Wilson, AICP, Senior Managing Director, Growth Management Services
David Andersen, AICP, Eastern Region Manager, Growth Management Services
Ike Nwankwo, Western Region Manager, Growth Management Services
Dale Pernula, AICP, Director, Skagit County Planning & Development Services
Kirk Johnson, Senior Planner/Team Supervisor, Skagit County Planning & Development Services

From: [Richard Bergner](#)
To: [PDS comments](#)
Subject: Conservation and Development Incentives Program
Date: Friday, October 23, 2015 10:29:37 AM

I support the Conservation and Development Incentives (CDI) Program, which is a great tool for protecting our farms, forests and rural areas.

I support the CDI Program program because it also is low cost to taxpayers and helps our farmers and forest land owners unlock some of the value of their land, which provides an additional source of working capital, while permanently conserving their land.

However, to make sure rural areas are adequately protected, please require that ALL rural density increases only occur with a CDI development credit.

Thank you for considering my recommendation.

Richard Bergner
15515 Yokeko Dr
Anacortes, WA 98221

The literature on transfer of development rights programs (TDR) emphasizes that in areas with good land use planning, TDR programs are unnecessary. TDRs and density bonus credits (DBC) are generally used where there is a need to retro-fit permitted activities in a zone where a city did not allocate adequate parks or open space in a UGA or in a newly annexed area. A city may use DBCs to encourage additional density for affordable housing. DBCs can be created and sold to prospective developers and the funds used for any purpose. Conservation of farmland is what Burlington chose to do with the funds from the DBC program.

Skagit has a good comprehensive plan that identified and protected resource lands, critical areas and shorelines. Cities and towns now have UGAs appropriately sized for the projected population growth.

You won't get accurate answers unless you ask specific questions. One other caveat: make sure that you have gotten the answer to the question that you asked and not an answer to a different question.

1. Skagit County rejected TDRs two previous times. What has changed to make TDRs necessary now? What is the urgency to add this program now? Is there ANY downside if we do NOT add the program now?
2. What does a TDR program do that cannot be done using current existing zoning and an added density bonus credit program? What benefits does the CDI program provide that current planning does not?
3. DBCs provide an easier, cheaper and more effective method of achieving increased densities. How does the creation and use of density credits affect property values in a neighborhood? Is a density credit a "giving" by the County or a city/town?
4. What definition of "free market" allows the county to decide who can and cannot participate and what the actual price of the transaction can be?
5. What comprehensive economic and cost/benefit analyses have been completed for the TDR program? What does this information and data tell us about the program?
6. Why are market-based appraisal values not used to establish the value of a development right?
7. What are the costs of adding this program to PD&S? What are the estimated revenues and expenses?
8. How does a TDR program affect the County, city or town tax revenue? How does removing a development right affect the appraised value of land and therefore taxes on that land?
9. Are properties in sending areas going to lose value? Are properties in receiving areas going to gain value? Who benefits from these changes in value? Are such changes in the public interest?
10. Won't the reduction in value of parcels in the TDR program cause an overall property tax shortfall? Won't the rest of the landowners in the county pay more tax to make up the difference? Does the public want to pay additional tax to support and subsidize development density? Has anyone asked the citizens?

11. What effects will a TDR program have on the economics, function and success of the highly successful Farmland Legacy PDR program?
12. Shouldn't parcels that were reduced in value by the Swinomish v DOE decision be eliminated from the TDR sender pool and therefore seriously reduce the sending areas?
13. Shouldn't property owners decide to become a sending or receiving area? Shouldn't this be a public process and not an administrative decision of the PD&S director?
14. Given that we do not know how the CDI program will work, wouldn't it be more responsible to recommend a limited pilot program of TDRs to determine if the program does what it is supposed to do?
15. If the TDR program fails, how can the County deny future liability to TDR program participants by claiming it was a 'private transaction' when, in fact, the County designed the program, determined who could and could not participate, and what the terms of the transaction were?
16. Why should private parties be allowed to manage any of the CDI programs when planning and land use decisions are the responsibility of municipal governments and citizens?

From: [Ellen Bynum](#)
To: [PDS comments](#)
Cc: [FOSC Office](#)
Subject: FOSC comments on CDIP 110515
Date: Thursday, November 05, 2015 10:44:56 AM

Friends of Skagit County

PO Box 2632

Mount Vernon WA 98273-2632

• Common Good • Common Goals • Common Ground •

November 4, 2015

Skagit County Planning Commission
1800 Continental Place
Mount Vernon, WA 98273

Dear Planning Commissioners:

This letter serves as additional information to the public testimony submitted on the proposed Conservation and Development Incentives Program (CDIP). Friends does not support implementing the program as it is currently written. We submit these comments to your discussion of how GMA rules speak to rural development and urge you to use the Growth Management Hearings Board (GMHB) Digest (http://www.gmhb.wa.gov/Documents/Digest_WW_2010-06-30_FinalEdition.pdf - searchable by topic) in your review of CDIP.

As you read the proposed CDIP you must determine if the CDIP can achieve the goals of the Growth Management Act (GMA), the Skagit Comprehensive Plan (CP) and policies and then if the proposed code implements the GMA, CP and policies. We did not re-submit a copy of the GMA, CP, CWPPs or Skagit County Codes (SCC), or the proposed CDIP language but urge you to compare the proposed CDIP to these documents in making your decision.

As a procedural matter, we request that you delay deliberation on the CDIP until you have time to review a completed transcript of the testimony given in the public hearing of November 2nd.

We recommend the program be changed to a density bonus program to fund the existing Farmland Legacy Program and that the County establish a comparable Forest Legacy Program organized and run by a Citizens' Committee like the Conservation Futures Advisory Committee. We propose renaming the program the Farm and Forest Conservation Program. A line by line change of the policies are included at the end of this letter.

Generally, the goals of the GMA were set to prevent sprawl and direct development into distinct urban areas. While Skagit set the policy goal of 80% of new residents going into cities, the County has not met this goal more than 5 of the past 20 years. There is currently no enforcement of this goal or way to correct the over-development in future planning. If the intent of the policies are to comply with the GMA, the County must admit that the goal has not been met and make some attempt to correct the over-development of the rural County.

Counties have been told by the GMHB on many occasions that they must identify and permit appropriate uses in both rural and resource zones, encourage development in urban areas and reduce inappropriate conversion of undeveloped land in rural areas. This is a fundamental requirement of the GMA that the County must reference, adopt and enforce through policies, CP and codes to be in compliance.

The proposed CDIP encourages rural development while saying that the transferred development rights (TDR) from resource lands will justify or somehow off-set the rural development. Land use planning is not "let's make a deal", nor does GMA allow swapping one kind of land use decision for another. The GMA is clear on the protection of resource lands and equally clear on "...reducing the inappropriate conversion of undeveloped land into sprawling, low-density development" Goals 1, 2, 8.

Whether counties can allow greater rural densities in designated resource land zones or surrounding rural zones has been the subject of many GMHB rulings. When county proposals interfere with GMA goals, the GMHB has ruled against the county actions. "Allowing densities more intense than 1 du (development unit) per 10 acres in agricultural RL and 1 du per 20 acres in designated forestry RL, under the record here, substantially interferes with Goal 8 (to maintain and enhance resource industries, conserve rural lands and discourage incompatible uses) of the GMA." *Friday Harbor v. San*

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Juan County 99-2-0010 (FDO, 7-21-99). (Explanations and underline added.) Comparable zoning in Skagit County allows only 1 du per 40 acres in Agricultural-NRL and Rural Resource – NRL zones, 1 du per 20 acres in Secondary Forest – NRL and 1 du per 80 in Industrial Forest – NRL.

“Substantial interference with the goals 1, 2, 8, 9, 10, 12, and 14 was found for allowance of lots less than 5-acre minimums in rural areas (including shoreline areas) which were outside designated villages, hamlets, or activity centers.” (v.s. - see above citation *FDO, 7-21-99*).

Please note that “maintaining and enhancing resource industries” becomes impossible if the land base for these industries is converted to other uses (for example, habitat for fish and wildlife without continued farming on the land or implementing flood controls that do not allow continued forestry or farming).

Proposing to conserve working farm and forest lands while proposing to increase densities on surrounding lands does not comply with the GMA Goal 8 requirements to “maintain and enhance natural resource-based industries” and “discourage incompatible uses”. It is likely that a majority of the approximately 56,000 acres of rural zoned lands contribute to the local agricultural economy. Using rural lands for additional development rather than agriculture or forestry is not “maintaining or enhancing” NRL industries. CDIP, as proposed, also risks encouraging incompatible uses.

Protection of commercial and non-commercial farming (farming in other zones) is important enough to rural character and the rural economy for the GMHB to rule that standard buffer requirements can be replaced with best management practices (BMPs) to protect critical areas and farming activities. *WEAN v. Island County, WWGMHB Case No. 98-2-0023c (2006 Order Finding Compliance of Critical Areas Protections in Rural Lands, 9-1-07)*. Explanation added.

“Development regulations (county code) must be consistent with and implement the CP and may not be used as a way to amend the CP or render it meaningless.” *Butler v. Lewis Co 99-2-0027c (FDO, 6-3-00)*. The draft CDIP contains conflicting policy objectives and codes and is not consistent with the CP.

“A rural element must protect the rural character of the area by containing and controlling rural development, assuring visual compatibility, reducing low-density sprawl, protecting critical areas and surface water and ground water resources and protecting against conflicts with the use of designated RLs.” *Butler v. Lewis County 99-2-0027c (FDO, 6-30-00)*.

The Conservation and Reserve Development (CaRD) overlay must comply with both the GMA and the CP. The GMHB rulings clearly specify limits on densities in rural zones. “If clustering provisions do not minimize and contain rural development or reduce low-density sprawl it is not in compliance with the GMA and CP and interfere with Goals 1, 2 and 10 of the Act.” *Panesko v. Lewis County 00-2-0031c (FDO, 3-5-01)*. “The allowance of TDRs from commercial forest to rural forest, with no density limit or cap for a cluster development, did not comply with the GMA.” *OEC v. Jefferson County 94-2-0017 (Compliance Order, 8-17-95)*

The Skagit CWPP under 2.3 **allows rural development in areas outside the UGAs “having limited resource production values (e.g. agriculture, timber, mineral) and having access to public services.”** This applies to all lands **outside the UGA**, not just NRL zones. Absent a way to determine resource production values, the County should not allow rural development in areas outside the UGAs. **(emphasis added)**.

These **(rural)** developments **must have “limited impact** on agriculture, timber, mineral lands, critical areas, shorelands, historic landscapes or cultural resources **and must address their drainage and ground water impacts.”** The determination of the impacts are not to be done on a permit by permit basis. Calculation and consideration of the cumulative effects, the number of acres, density (existing and proposed) in the entire zone, and the relationship of those effects to surrounding zones, is a minimum standard for evaluating what a proposed program will do to the landscape. The County has not done this analysis, nor do the TDR reports generated by consultants fulfill this requirement of the GMA to implement planning in a coordinated and orderly fashion. **(emphasis added)**.

The CWPP 4.3 states: “The CP should support innovative land use management techniques, including, but not limited to, density bonuses, cluster housing, planned unit developments and the transfer of development rights”. This policy must

work with all other policies. Where innovative land use management techniques conflict with other policies, the CP and GMA, they must be rejected.

The GMHB has specified rules for increasing density in a number of cases including the following: “In order to comply with the Act, a county must complete a compliant subarea plan before urban reserve development or other increases in density are allowed to occur under the record in this case.” *Evergreen v. Skagit County 00-2-0046c (FDO, 2-6-01)* The Skagit Comprehensive Plan Section 4.6 states: “Comprehensive Plan provisions for the location of residential development shall be made in a manner consistent with protecting natural resource lands, aquatic resources, and critical areas.” Additional residential development is not consistent with protection of natural resource lands because it removes the future option of adding more rural lands to the resource land economic base. Additional development of lands outside the NRL zones, could compromise current and future production and affords no protection to these industries as required under GMA.

So while CDIP proposes conservation of NRLs, the development rights added with the proposed density credit sales and conservation easements on the rural non-resource lands may prevent the future re-zone of those lands for resource uses. The County is required to “maintain and enhance natural resource-based industries”. The County should not adopt any program that intentionally or accidentally undermines the County’s planning goals. This is not a win-win but a lose-lose for the future of Skagit’s rural resource industries.

“The redesignation of properties formerly in rural reserve to a new designation of rural resource that involved a lack of application of a local government’s own criteria and which was also inconsistent with the CP, failed to comply with the Act.” *FOSC v. Skagit County 99-2-0016 (FDO, 8-10-00)*.

Under CDIP a developer can purchase development credits directly from the County and the County would use revenues accumulated from the sale of development credits to purchase development rights directly from landowners who execute a conservation easement on their land. We agree that the County can create development credits or density bonuses but the designated area for the use of those credits must be inside the UGAs or inside cities (with an MOU) to comply with the GMA.

We ask that you read the GMHB Digest for cases on LAMIRDs for a number of GMHB cases that strike designations of rural zones that do not comply with GMA requirements for rural development. Two rulings which address the process for rural development follow.

“Where a county fails to follow its own CP policies and to do a .070(5) rural analysis for an expansion of a rural village designation, compliance with the GMA is not achieved.” *Evergreen v. Skagit County 00-2-0046c (FDO, 2-6-01)*.

“The designation of an area as a rural village recognizes existing rural development patterns in the surrounding rural areas, reduces converting undeveloped land into sprawling, low-density development and is harmonious with Goal 2.” *Solberg v. Skagit County 99-2-0039 (FDO, 3-3-00)*.

You have little to no information as to the number of DRs available in resource lands; nor is there any estimate of the number of possible DRs that would occur if this program is implemented. We do not think it is possible to uphold the GMA and CP by adopting a program without knowing the effect of the program on rural development and that includes using accurate data and an economic impact analysis to create the outcomes.

GMA Goal 12 Public facilities and services states: Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards. The CDIP provides no analysis of the services that may be needed in the “development priority areas” (DPA). Nor is there any analysis of the effect of increased development on water resources. Given that approximately 6,000 parcels have been identified to be removed from development in rural zones, the County must know how many parcels are available to be identified as a DPA before it can determine if there will even be a demand for development credits. This knowledge will be needed for all lands inside the UGAs, but the County does not appear to have this information.

COMMENTS & SUGGESTED LANGUAGE REGARDING CDIP PROPOSED POLICIES**The Farm and Forest Conservation Program.**

We removed the program description as increasing development in rural areas does not comply with GMA goal requirements to: (1) encourage growth where adequate public facilities and services exist or can be provided in an efficient manner, (2) reduce the inappropriate conversion of undeveloped land into sprawling, low-density development, (8) maintain and enhance natural resource-based industries and encourage the conservation of productive forest and ag lands and discourage incompatible uses, (10) protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water, (11) encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

Goal 2H Implement a farm and forest conservation program.

Implement a program to conserve resource lands and to guide development to areas best suited for additional growth inside Urban Growth Areas using voluntary and permanent conservation of farms and forests.

Farm & Forest Conservation Program

The Farm & Forest Conservation Program is a voluntary, market-based program to support the permanent conservation of farms and forests while encouraging additional development in urban areas – cities, towns and urban growth areas. The program uses the creation of density bonuses which developers may purchase from the County to build additional housing on residential lots inside UGAs. The location(s) for the use of density bonuses will be determined by a Citizens Committee (modeled on the Farmland Legacy Program) working with County and city planning staff to recommend appropriate sites within the UGAs. Citizens Committees must educate, inform and consult with residents inside UGAs before making site recommendations. County staff will provide a complete inventory of parcels, acreages, existing conservation easements and any other information needed by the CAC to create a program for determining sites where additional density may be desired by the landowner and neighbors.

The Farm and Forest Conservation Program will generate a new source of support for land conservation, adding to existing conservation programs, like the Farmland Legacy Program. The program will help to conserve additional farmland as well as establish a new conservation program to conserve forests.

Cities and towns that establish density bonus programs, like the Agricultural Heritage Program in Burlington can identify resource lands they wish to conserve and can specify these in agreements they sign with the County.

COMMENT: Residents of rural zones have expressed concern over applying the purchase of development rights to their areas. The Planning Commission may want to examine at a future date and designate a zoning overlay in Rural Reserve and Rural Intermediate for parcels in these zones that are used for agriculture and forestry and where the owners wish to extinguish development rights by selling into the Farm or Forest Legacy Programs. We do not recommend that these zones be included at this time. The addition of these zones should only be done after County staff supply an accurate inventory of the total acres, number of development rights available for purchase and an analysis as to how removal of these rights would affect the owner's ability to borrow against the land for their resource businesses. Over-designation and conversion of resource lands to rural zones has been struck down by the GMHB, for example in Whatcom County where 12,000 acres designated from Ag-NRL to rural zones had to be restored to the original designation of Ag-NRL.

Policies:

2H – 1.1 Skagit County will establish a program for permanent conservation of resource lands which encourage development in urban areas – cities and UGAs that will eventually be included in cities.

2H – 1.2 The program should be voluntary and designed to provide additional options for farm and forest landowners who want to conserve their land.

2H – 1.3 Landowners in resource land zones may choose to participate in the program; under no circumstances will landowners be required to sell development rights.

2H – 1.4 Landowners in cities or urban growth areas may develop their property based on current zoning or use density bonus credits identified and recommended by a volunteer Citizens Committee made up of residents and neighbors in the UGA.

2H – 1.5 No change.

COMMENTS: Per GMHB rulings, land inside UGAs zoned agriculture must sell the development rights to the city's TDR program, which is the basis for Mount Vernon's TDR program. Land can be identified by the CAC as open space for agriculture, future parks or recreational uses inside the UGAs.

Goal 2H – 2 Participation

To provide additional density in UGAs, developers may purchase density bonuses from the County. Funds from the purchased density bonuses will be used to purchase development rights and conserve natural resource lands.

Policies

2H – 2.1 Purchase of development credits. Remove title.

New Title: **Purchase of density bonuses:** The program allows the purchase of density bonus credits from the County based on criteria and economic analysis of the parcels size, location, suitability for construction type, drainage and other physical features as well as the capacity. The price of each density bonus will be set to encourage additional density which maintaining design standards and protecting the natural environment.

2H – 2.2 Sale of development rights. Landowners interested in conserving their land by selling development rights to the County may do so. A conservation easement must be attached to the title of the property.

Goal 2H-3 Rural development priority areas. Remove entire section and policies. Additional residential development in rural zones is inconsistent with the GMA and CP.

Goal 2H-4 County-city partnerships – no changes.

Policies:

2H – 4.1 Skagit County should encourage cities and towns to implement density credit programs in coordination with the County, enabling cities and towns to assist in conserving farms and forests.

(a) Cities and towns may identify areas where they wish to encourage increased development based on their public planning processes. Every area proposed for increased density must have public support and be consistent with each jurisdiction's planning vision and goals.

(b) Cities and the County may want to execute an interlocal agreement concerning the density bonus program in municipal urban growth areas. The agreement may also address terms of cooperation and how the municipalities will work with the Citizen Committees to identify which areas of the UGA or city may be appropriate for designating for additional density.

(i) Development projects by an agency or non-profit housing developers that build, own or manage affordable housing for individuals not adequately served by the private market can purchase density bonuses at reduced rates.

(ii) The County with an agreement with the city may exempt for-profit housing developers that provide long-term affordable housing from the requirement to purchase density bonuses.

(c) The County and the respective city should identify any farms or forests that are inside UGAs to purchase the development rights and conserve the land.

(d) delete – covered in (b) above.

Goal 2H-5 Land Eligible for Conservation

Expand Skagit County conservation programs by generating funds to purchase development rights to conserve farms and forests. Lands eligible for the Farm & Forest Conservation Program include: Ag-NRL, Industrial Forest-NRL, Secondary Forest – NRL and in special instances Rural Resource-NRL.

Policies

2H – 5.1 Land eligible for conservation through the program are:

(a) Those located in the following Natural Resource Land designations:

(i) Industrial Forest – NRL within a fire district

(ii) Secondary Forest – NRL (within a fire district – See SCC 14.18.000 General (h))

(iii) Ag- NRL

(iv) Rural Resource – NRL (secondary priority)

Goal 2H-6 Conservation Easements – no change. Check for consistency with Farmland Legacy section.

Policies

2H-6.1 No changes except remove (c) to comply with the Farmland Legacy easement requirements which does not allow termination of easements. Change (d) to (c).

Goal 2A Urban Growth Areas**Goal 2A-1 Urban Growth Area Designations****Policies:**

2A-1.2 No changes.

(a) No changes.

2A-1.2 (b) – UGA expansion proposals that generate increased residential development potential may be designated as areas for additional development under the Farm & Forest Conservation Program. No UGA expansion can be completed without an agreement between the County and the adjacent city/town. Citizens residing in the UGA must be fully involved in the research, public education and planning options of possible UGA expansions and the best placement of increased densities. The County and city will work together to create a Citizen Committee to guide UGA expansion.

Goal 2A-4 Joint City-County Planning

No changes.

Policies:

2A-4.1 No changes (a) through (e).

2A-4.1 (f) applicability of the County’s Farm & Forest Conservation Program policies and provisions to land added to a municipal UGA and subsequently annexed into the city or town.

(g) identification of County resource lands that the city/town prioritizes and recommends for purchase of development rights and permanent conservation using funds from the Farm & Forest Conservation Program.

Goal 3C-1.1 Rural Reserve (RRv). Remove the proposed language: “...(and slightly more when allowed through the Conservation and Development Incentives Program with the purchase of a development credit).” This action is not supported in the GMA, CP, policies and codes.

3C-1.3 Rural Intermediate (RI). (b). Remove. This action is not in compliance with the GMA, CP, policies and codes.

3C – 1.9 (a) Remove. This action is not in compliance with the GMA, CP, policies and codes. Rural villages must provide public water and an approved on-site septic system. Rural villages cannot increase density where water quality and septic drainage has closed basins, for example in the Alger area.

4A – 3.2 Development Rights Program. Remove added language. The County density bonus program can support the existing Farmland Legacy Program by purchasing development rights off of farmland.

4B-3.1 Conserve Forest Lands.

Implement conservation and management measures that retain commercial forestry activities in designated forest resource lands. Establish a Forest Legacy Program that allows the voluntary sale of development rights from forest resource lands into the program, using funds generated by the County's density bonus program, while supporting the continued practice of forestry.

New section:

4B - 3.4 Forest Legacy Program – The Forest Legacy program shall be established and operated following the Farmland Legacy Program model and shall coordinate with the Forest Advisory Board.

Recommend re-writing the code here following the same format for the Ag section where appropriate.

Rural Resource Lands

4C-3.4 Resource Land Conservation. Allow the sale and retirement of residential development rights from Rural Resource Lands through the Farm & Forest Conservation Program to permanently conserve those lands for NR management and production. (NOTE: In future the Farmland Legacy Program may wish to consider PDRs in Rural Resource on lands used for agriculture, but with the caveat that these lands will be considered second to Ag-NRL lands. Also, we have not included mineral lands even though they are part of the County's resource land base.)

We recommend that the County re-draft the CDIP to operate as a density bonus program inside of UGAs and cities that wish to participate.

If the County determines the number of development rights located inside UGAs a density bonus program may help encourage more density than the GMA required 4 units per acres. The County must secure City participation as well as involve UGA landowners and establish a Citizen Committee to determine if there are appropriate areas in the UGAs for increased density. The funds generated could be given to the existing Farmland Legacy Program for farmland conservation and/or to a new Forest Legacy Program.

The County must determine if there is adequate interest in participating in a Forest Legacy Program by forest landowners. We understand that forest landowners use the value of trees, land and the associated development rights to secure long term loans for operating capital. Removing development rights reduces that asset, so the amounts paid for purchasing the DRs off of forestland would need to be high enough to compensate owners for the removal of the DRs. The County needs to get accurate data and analyze whether such a program would be used. If the analysis shows that the program could work, the Forest Legacy Program could be organized and operated with a citizen committee like the Farmland Legacy Program.

If you have questions or need additional information, please do not hesitate to contact us.

Yours sincerely,

Ellen Bynum
Executive Director

cc: FOSC Board; FOSC Office; PD&S; BOCC.

From: [Kathleen Dewhirst](#)
To: [PDS comments](#)
Subject: Conservation and Development Incentives Program
Date: Friday, October 23, 2015 8:19:40 PM

I support the Conservation and Development Incentives (CDI) Program, which is a great tool for protecting our farms, forests and rural areas.

I support the CDI Program program because it also is low cost to taxpayers and helps our farmers and forest land owners unlock some of the value of their land, which provides an additional source of working capital, while permanently conserving their land.

However, to make sure rural areas are adequately protected, please require that ALL rural density increases only occur with a CDI development credit.

Thank you for considering my recommendation.

Kathleen Dewhirst
22311 9th Ave W
Edmonds, WA 98020

From: [Molly Doran](#)
To: [PDS comments](#)
Subject: "Conservation and Reserve Development" (CDIP), Molly Doran, Skagit Land Trust 1020 S 3rd, Mount Vernon WA 98273
Date: Thursday, November 05, 2015 2:54:49 PM

November 5, 2015
Skagit County

Regarding: Conservation and Development Incentives Program (CDIP) in Skagit County.

Skagit Land Trust supports the proposed program and code for the Conservation and Development Incentives Program (CDIP) in Skagit County with one exception (described below). The CDIP will provide an additional tools for the voluntary and permanent conservation of private farm, forest and open space lands while encouraging development in urban areas and certain rural areas best suited for additional growth.

The one aspect of the CDIP program that we have concerns about has to do with CaRDs. The CDI program proposes to allow additional density in Conservation and Reserve Developments (CaRDs) and Rural Intermediate zones. While there are benefits to allowing maximum flexibility for participants, this provision may have unintended consequences leading to more rapid development in rural areas and thus should be further examined.

Skagit Land Trust served on the Transfer of Development Rights Advisory Committee which led to the proposed Conservation and Development Incentives Program (CDIP). Skagit Land Trust recognizes the challenges to implementing an effective CDIP, however we feel it is an important tool for voluntary land conservation that will be useful in the future as the County faces inevitable growth pressure. It is time to get the CDIP program up and running and allow for its gradual implementation. In an era where federal, state and private grants and funds for conservation of farms, forests and open space is shrinking, we must develop new tools to preserve our resource and natural lands. We also are aware of many cases of high quality farms, forests and open space in Skagit County that have no funding source available for their conservation at this time. These landowners must either have the resources to donate conservation easements - which can be difficult or impossible - or the land remains unprotected. We need tools to assist willing landowners to conserve more of these important resource and natural lands.

We appreciate Skagit County's long-term vision of sustaining the productive natural and resource lands of our beautiful county.

Molly Doran

Executive Director, on behalf of Skagit Land Trust
1020 S 3rd (PO Box 1017)
Mount Vernon WA, 98273

360.428.7878

mollyd@skagitlandtrust.org
skagitlandtrust.org

Receive Skagit Land Trust news & events by email



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CDI

NOV 02 2015

HFG

Carol Ehlers 11/2/15
good example of the
practical issues
needed in locating
increased
density in R.1

Planning and Development Services

Mining Special Use Permit Information

Skagit County Code section 14.16.440 Mineral Resource Overlay
Visit our web site at: www.skagitcounty.net for detailed information

Mineral Resource Overlay Special Uses.

Any special use permitted in the underlying zoning district is likewise permitted in the MRO. The following uses are permitted as a Hearing Examiner special use in the Mineral Resource Overlay subject to the requirements of this Section and the restrictions contained in the underlying zone. Uses under this Section must comply with RCW 78.44, Surface Mining Act, RCW 90.48, the Water Pollution Control Act, and all other applicable laws and regulations:

- Activities associated with mining or quarrying operations, including blasting and use of equipment in connection with an extraction operation, maintenance of mineral extraction equipment, maintenance of roads, traffic control, sorting, crushing, cleaning and loading;
- On-site processing including asphalt or concrete batching and asphalt or concrete recycling; and
- Surface or underground mining or quarrying of mineral deposits or building materials from rock, stone, gravel, sand, and earth together with associated structures and equipment;
- Temporary dwellings for a caretaker or superintendent and their family.

Application Requirements For mining operations special use permit.

- 1) **Maps:** An applicant for a mining operations special use permit shall submit the following information on maps in a 11" x 17" format size:
 - a) A vicinity map with a north arrow indicating the area on which the extraction operation is proposed including a legal description, showing right-of-way width of access roads to the proposed site from the nearest community and any roads proposed on the site, and showing zoning of adjacent properties and land uses within 5 miles of the area proposed for mineral extraction and related activities;
 - b) A pre-mining map drawn to scale with an appropriate scale bar showing the permit area and buffers, elevations and contours, natural slopes and other drainage patterns, boundaries of municipalities, boundaries of property ownership, names and addresses of adjacent property owners, locations of nearby mines, locations of all railroads, bridges, utility lines or other rights of way, locations and names of any streams and natural or artificial drain ways on or adjacent to the site, locations of parks and other significant features;
 - c) A reclamation sequence map drawn to scale with an appropriate scale bar covering the same area as the pre-mining map showing the permit area border and buffers, excavation areas, location of all proposed access roads to be built, location of types of setbacks and beams, numbered segments and the direction of the sequence of mining, soil storage areas and sequence of stripping, storing and replacement of mined segments, overburden storage areas and sequence of stripping, storing and replacement of overburden on mined segments, waste rock piles and how they will be reclaimed and stabilized, operation plant and processing areas, measures to be taken to adjacent surface area to prevent slumping or landslides on adjacent lands, location and description of storm-water and erosion control systems including drainage facilities and settling ponds and estimated runoff served by individual facilities; and
 - d) A final reclamation map drawn to scale with an appropriate scale bar covering the same area as the pre-mining map permit area and buffers, final elevations and contours, adjacent natural ground slopes, reclaimed drainage patterns, general topography, locations and names of any roads, utility lines, rights-of-way, streams, bridges, lakes, springs, wetlands, location and depth of topsoil to be replaced after seedbed preparation, permanent drainage and water control systems, area to be re-vegetated and proposed species, 2 cross-sections (at right angles) with horizontal and vertical scales the same that show the original and final topography and the water table.

recognize that the purpose of designating mineral resource lands is to conserve mineral resource lands, allow continued operation of existing legally established mining operations, and assure that use of adjacent lands does not interfere with the extraction of minerals. The Hearing Examiner shall take into consideration the January, 1996 publication Best Management Practices for Reclaiming Surface Mines in Washington and Oregon, published jointly by the Oregon Department of Geology and Mineral Industries and the Washington State Department of Natural Resources, Chapter 3, Operation and Reclamation Strategies, in determining appropriate mitigation requirements for operational impacts.

- 4) Appropriate site-specific conditions shall be required to mitigate storm water runoff and erosion impact. The Hearing Examiner shall take into consideration the January, 1996 publication Best Management Practices for Reclaiming Surface Mines in Washington and Oregon, published jointly by the Oregon Department of Geology and Mineral Industries and the Washington State Department of Natural Resources, Chapter 2, Storm Water and Erosion Control, and the National Pollutant Discharge Elimination System (NPDES) Surface Water Protection requirements in determining appropriate conditions for mitigating storm water and erosion impacts.
- 5) The Hearing Examiner shall consider public interests such as fishing, boating, hiking and camping when reviewing a mining operations special use permit, and may impose mitigating measures as necessary and appropriate.

Mining Operating Standards and Requirements.

Site area and width. When the activity includes both extraction and on-site mineral crushing or mineral processing including asphalt or concrete batching and asphalt or concrete recycling, the site area shall be a minimum, of 20 acres. There shall be a minimum lot width of 500 feet for crushing or processing activities. Operations that are limited to extraction and transportation shall comply with dimensional standards of the underlying zone.

Buffers.

A minimum 200-foot buffer shall be required between on-site crushing, processing, or recycling activities and adjacent properties for the site as a condition for the issuance of a mining operations special use permit. Adjacent properties are required to maintain a 200-foot buffer from the mineral resource designated land or sign a nuisance waiver to reduce the 200-foot buffer. In the case of a pre-existing structure located in the buffer of adjacent property, the required buffer shall be established on the mineral resource designated land. A minimum 100-foot buffer shall be required for the site where operations are limited to the extraction and transportation of minerals. Once the extraction and transportation operations have been completed, the material in the buffer may be utilized during reclamation.

Maximum permissible noise levels

Maximum permissible noise levels shall be according to the provisions of the WAC 173-60, Maximum Environmental Noise Levels.

Blasting.

Blasting shall be restricted to daylight hours when the mineral extraction operation is within ¼ mile of a residential area with a greater density than 1 dwelling unit per 10 acres. The Hearing Examiner may otherwise set blasting hours and conditions based on site-specific circumstances. Except in the case of emergencies declared by civil authorities, blasts should be scheduled for regular and predictable times.

Vertical Limitations/Aquifer Protection

Surface mining shall be vertically limited to only one aquifer unless approved by the Washington State Department of Ecology. Hydrological barriers separating aquifers shall not otherwise be disturbed.

Activities related to mineral extraction and processing operations in the vicinity of aquifers must provide safeguards including containment to prevent direct contamination to the open aquifers and indirect contamination through infiltration of mining operation pollutants.

Imported material shall not be used as a backfill for mine sites where an aquifer has been breached.

Disturbed aquifers should be reclaimed as ponds or lakes and/or wetlands.

Additional buffers and setbacks may be required beyond those listed in Subsection (10)(a-b) above if necessary to prevent over-excavation when mining in an aquifer.

Responsibility.

The landowner(s) and operator(s) shall be held jointly responsible for the operation of a mineral extraction site.

Metal Mining.

Metals mining shall be regulated by RCW 78.56, Metals Mining and Milling Act.

Additional Requirements.

Additional requirements related to this zone are found in SCC 14.16.600-900 and the rest of the Skagit County Code.

From: [christine kitch](#)
To: [PDS comments](#)
Subject: Skagit County Transfer of Development Rights and Density Credit Project
Date: Wednesday, November 04, 2015 7:40:44 PM

To the Members of the Board and the Planning Commission:

I have been reading the information that you have made available to the public regarding the drafting of a TDR proposal.

No where do I see that someone with rural property that has been swept into the Mount Vernon Urban Growth Area , might be allowed to place a conservation easement on their property.

We have steeply sloping acreage that contains a salmon spawning creek. It is a perfect wildlife habitat and refuge. In the future, as development continues to sweep eastward along Division, I would like to see this land preserved. This should be my right as a property owner.

Please confirm that the city of Mount Vernon's UGA does not restrict my right to protect this sensitive area.

Sincerely,

Christine Farrow

Skagit County Planning Commission
1800 Continental Place
Mount Vernon, Wa. 98273

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SKAGIT COUNTY
PDS

Nov. 2, 2015

RE; Conservation and Development Incentives Program (CDIP) Public Hearing,

We feel this CDI/TDR Program was created for the need to pay county salaries not for the needs of Skagit County citizens. A TDR committee that was manipulated and run by county staff and consultants. A committee with no bylaws, no chairperson, no vice chair, and no minutes taken during meetings, somehow minutes miraculously appeared later.

One of the first steps this TDR committee should have undertaken was to develop a inventory of existing certified development rights in rural Skagit County and put into place a system to keep track of that. This has not been done. Instead we have a guess of 12,300. How can you have a workable plan without this information? A failure by staff to even consider if a CDI/TDR program is feasible. Add to that the loss of water rights to so many.

How are these TDR's working in other areas?

Staff uses King County as a good example. King County TDR Program started in 1999 to protect open space and has since protected 141,500 acres of forest lands in the Snoqualmie Tree Farm through TDR's with less than 450 acres of agriculture land now protected by TDR's. TDR market activity since 2009 shows only one or two per year of private transactions and very few before that with several still listed from Feb. 2009 yet to be sold. City of Seattle had five people working eighteen months to develop and implement their program.

King County realizing the TDR Program was not meeting expectations in 2008 added polices to try to boost demand and improve supply-side incentives by adopting the following policies. 1. Use of TDR's to help meet greenhouse gas emissions for new development projects. 2. Use of TDR to satisfy traffic concurrence requirements for development in rural areas, 3. Higher transfer ratio's in RA-10 zones. (All this information available on King County TDR website)

Thurston County with the first TDR program in the state in 1996 and has only 200 acres of agriculture land preserved in their TDR program. (Information available on Thurston County TDR website).

No one can understand the present proposal and how it would work in Skagit County. This proposal will only encourage sprawl out into our rural county. Skagit County already has the successful Farmland Legacy Program that is working to preserve farmland. Plus County Comp Plan Policy and Code that restricts urban sprawl.

Consequences of a CDI/TDR program that have not been addressed :

1. Determine certified lot numbers in rural county to see if CDI/TDR are even feasible for the county. Get a true count.
2. Ag/NRL lands must be removed. Does not work in rural counties.
3. Inadequate receiving areas. Who will accept higher density? Most communities want to stay as they are. Most communities lack infrastructure and amenities to support increased density. Most residences want to keep their rural character, keep their single story residences and also keep their lot size. This is why the TDR's /CDI do not work in rural counties.
4. Failure to identify and map sending and receiving areas. A well thought out CDI/TDR program would have sending and receiving areas identified

and mapped in proposal. A successful program requires such. (check all other TDR proposals across the country.)

5. What are the limitations in receiving areas created by concurrency requirements?
6. Eliminate Bonus Credits. Will encourage rural development and sprawl.
7. Consider a forestry legacy program instead.
8. TDR's/ CDI are unproven across country. Check on internet google.
9. Will increase housing costs for those who cannot afford it.
10. How will county cover cost of enforcement and administration of this unproven program? County will need to add staff.
11. Termination of the program, failure to enforce the program (leading to loss of value in certificates), eliminating receiving areas and altering methods could lead to a takings.
12. County indirectly controls market by decisions made for sending and receiving areas creating regulated market.
13. There would be no support to use Conservation Future funds on this CDI/TDR proposal. Conservation Future funds are the backbone of the Farmland Legacy Program.
14. Forterra formerly known as Cascade Land Conservancy acknowledges that most county TDR programs in Washington state are either top heavy with acquired development rights or have failed to accomplish anything. Clallam County recommendations for their proposed TDR proposal was to shelve the endeavor until emergence of at least one truly successful TDR

program in a Washington State rural county. (as reported in the Clallam County TDR report available on the internet)

Will hand out a letter written by Randall K Gaylord, San Juan County Prosecuting Attorney, June 2000 titled TDR Analysis.

Mr. Gaylord's letter addresses many of the concerns and consequences this Planning Commission has been addressing on CDI/TDR.

Important information for you to consider;

Points from Mr Gaylord's letter:

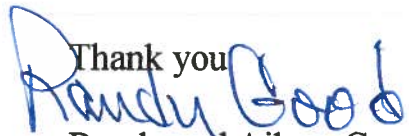
- * Island and Clallam counties TDR programs have turned out to be failures.
- * Ways to think of TDR's- is a non governmental compensation scheme a way of shifting money from one segment of the community to another. Those hurt most by TDR are new moderate and low income housing purchases.
- * A second way of thinking on TDR's is as a financial incentive for land use planning as King County has taken. In rural counties where most growth is single family homes, finding receiving areas for the TDR program is difficult. Will take a new department in the county.
- * Reasons against a TDR Program - proved difficult and cumbersome and TDR's in Washington State is unproven.
- * Potential to shift wealth from those least able to pay, first time home buyers increasing housing costs.
- * Potential to create inequities because there is no connection between development costs and property values and the price of certificates.
- * If receiving areas become only the few multi-family zones of the county

UGAs, it will increase the cost of housing to middle income, against GMA goals.

* Costs of administration and enforcement never addressed.

* County will control the market by decisions made with the sending and receiving areas.

Why in the world would put together a CDI/TDR program that does not work in rural areas and hang it around the neck of our next generation?

Thank you


Randy and Aileen Good
Friends of Skagit County
35482 SR20

Sedro Woolley Wa. 98284



360-856-1199

Attachment E. TDR analysis by San Juan County Prosecuting Attorney

News Release
News Release No. 2000-11
June 23, 2000

PROSECUTOR PROVIDES WRITTEN REPORT ON TDR PROGRAMS SAYS TDR PROGRAMS "UNPROVEN" IN RURAL WASHINGTON COUNTIES

Prosecutor Randy Gaylord has advised the County Commissioners that transfer of development rights programs are "unproven" in rural Washington counties. Gaylord has advised the commissioners to proceed cautiously and not to link the "transfer of development rights" (TDR) concept to the map changes that are in the final phases of consideration by the commissioners.

Two other rural Washington counties developed TDR programs: Island and Clallam. "Both of these have turned out to be failures," says Gaylord.

According to Gaylord, there are two ways to think of TDRs. "One way to think of TDRs is as a non-governmental compensation scheme, a way of shifting money from one segment of the community to another."

"This is the kind of thing that sounds good in an ivory tower or a think tank, but when you try to make it work, it falls apart. I have read the literature and challenge others to show me a system that works as a compensation scheme. I have yet to find it."

When used as a compensation scheme, Gaylord notes that the people that would be hurt most by TDR programs are those purchasing new moderate- and low-income housing. The people who would benefit most are property owners of large estates who have no desire to subdivide or have high costs of development.

"If the goal is compensation, it would be more fair and efficient to use the social security model of taxation and redistribution of wealth," says Gaylord.

The second way of thinking of TDRs is as a financial incentive for land use planning. This is the approach King County has taken. But it will take a new department in the County to make this work. "The difficulty is in the details," says Gaylord. In predominately rural counties where most of the growth is in single family homes, finding "receiving areas" for a TDR program is very problematic, and educating the individual home builders is difficult.

Proponents have justified TDRs as an equalizer for fairness and equity. But TDRs simply create another set of problems. Maintaining the market for TDRs is one of them. "People will be angry if we promise compensation in the free market that doesn't meet their expectations." The only way to correct that, says Gaylord, is for the County to become a "market maker" by buying and selling TDR certificates.

Another unfair aspect of TDRs is that the certificate is issued to each landowner based on a lost development right without regard to the cost of development. "That means the landowner that must incur \$100,000 to develop a lot is given the same number of certificates as a landowner that must incur just \$10,000 to develop a lot." The certificates issued have no bearing on the cost of development. This creates a huge windfall for the person who would never have developed due to the cost of development.

TDR certificates should not be required for moderate and low cost housing, according to Gaylord. "Adding more expenses where land costs are already the highest in the state runs against the goals of the Growth Management Act."

INTRODUCTION

There have been many meetings of the Board of County Commissioners in which the concept of transfer of "development rights" or "development credit" programs have been discussed. As of this date, there has not been a board majority who has asked for the planners to research or our office to provide guidance on this

topic. But last week, Commissioner Evans and Commissioner Nielsen separately identified "TDRs" as worthy of further discussion.

I have previously provided to you copies of the 1992 Publication from the State of Washington Department of Community Development entitled Evaluating Innovative Techniques for Resource Lands, Part II, Transfer of Development Rights. Since the 1980s, many communities have considered and adopted programs for the transfer of development rights (TDRs), some successful, some not.

The purpose of this memorandum is to answer questions regarding TDRs and to express caution and guidance for further consideration of TDRs. I hope this will aid your discussions and I welcome the opportunity to discuss this with you in more detail.

FREQUENTLY ASKED QUESTIONS AND RESPONSES

What Are TDRs? TDR is a government authorized program to use financial incentives to direct land use control and development. In a TDR program, the fee interest of land is divided into parts and a certificate is created for that portion of the fee that allows certain development (usually residential development or "density"). This certificate (like a deed) can then be sold to others. The local government controls who can sell and who can purchase certificates. Sellers are located in "sending areas" which are areas targeted for preservation and loss of development rights. Buyers are located in "receiving areas," and, as a condition to allowing certain development, must obtain a TDR certificate from a seller.

Most TDR programs are an "overlay" to traditional zoning; that is, they augment and provide additional incentives that lead to a development option that is a bonus which is allowed by law.

Sending areas are preservation zones that encompass the quality the local government desires to protect under the police power, which includes agriculture, open space, historic structures and critical areas. The experience has been it is relatively easy to identify sending areas.

Receiving areas are designated as the areas where development is desirable. There are two levels of development in the receiving zone. The first is the base use; that which can be achieved without a TDR certificate. The second is the bonus or higher level that is allowed with the certificate. Locating receiving areas is viewed as the most difficult step in setting up a TDR program.

What is an Example of How a TDR Might Work? Janet's farm is in an area that has been designated as a "sending area." The current zoning is one dwelling unit for every two acres. As part of the GMA, her property is down zoned to one dwelling unit for every twenty acres, a loss of nine dwelling units. The County issues Janet nine TDR certificates, one for each unit.

Bob owns a five acre undeveloped parcel inside an urban growth area that allows four units per acre (twenty units). The County has designated Bob's property as a "receiving area" that may be developed at up to eight units per acre with a TDR certificate. Bob wants to develop duplexes at eight units per acre.

If Bob acquires Janet's certificates, he can apply them to his land and receive a permit to build housing at twenty-nine units, a bonus of nine units. If Bob acquires an additional eleven certificates, he can develop at the maximum of forty units.

Who Identifies Sending and Receiving Areas? The Board of County Commissioners. The Board may develop a process for identifying such areas that includes public participation from the Planning Commission, Technical Advisory Committee and others.

The act of identifying sending and receiving areas may create an issue of spot zoning, if the benefits of the action are not spread broadly through the community or if the program is enacted to benefit just a few landowners.

The experience from Seattle is that their program needs about three to five times more potential receiving units than potential sending units to make the program work at a rate of \$10,000 per unit.

Must the Receiving Areas Have a Base Development Potential That Is Consistent with the GMA?

Yes. For example, a receiving area located inside an urban growth area must be capable of being divided at urban levels (four units per acre).

The TDR development would only be allowed as a bonus to this base amount. A TDR program that allowed bonus density in which rural lands could develop at urban densities would not be compliant with the GMA. *Kitsap County Citizens for Rural Preservation v. Kitsap County*, CPSCMHB No. 94-3-005, fn.6 (10/25/94) (dicta stating that cluster ordinance which allows urban densities in rural areas is in violation of GMA); *OEC v. Jefferson County*, WWGMHB, No. 9402-0017 (CO 8/17/95) (holding allowance of TDRs from resource land to rural land without a density cap for a cluster development did not comply with GMA).

Is the Adoption of a TDR Program Required by the Growth Board Order or the Growth Management Act? No. The Growth Board Order is silent on TDR programs. The Growth Management Act only mandates TDR programs where agriculture lands are located within the exterior boundary of an urban growth area. Planned unit developments, cluster housing, and TDRs are all mentioned by the GMA as optional planning measures. RCW 36.70A.090.

The Board Order requires the County to make its maps consistent with the Comprehensive Plan, which will require down zoning. The Comprehensive Plan states as part of any down zoning, TDRs would be considered, and voluntary means are preferred over legislative means. CP § 2.2.A.10.

Why Would Anyone Develop at a Level Greater than the Base Density Allowed under GMA? In general, developers would have a financial incentive to negotiate for and purchase TDRs when their profits from the more intense development exceed the cost of the TDR certificate.

How are TDR Certificates Exchanged? It is expected that TDR certificates would be exchanged, traded and conveyed much like real estate. It is expected that real estate brokers would assist in such conveyance, for a fee. The sale and receipt of TDRs would be recorded with the auditor so that development rights could be "tracked."

How Will the Price for TDR Certificates be Established? The price will be the amount that a willing buyer will pay and a willing seller will accept. That is the "market price." The price will be established in the market under the principles of supply and demand. Some communities have created a "TDR Bank" that acts as a "market maker" by purchasing and selling TDR certificates when there is no apparent market.

In other rural counties, one of the major problems in creating a viable TDR program is that the certificates have had little or no market value. For example, in Clallum County a recent appraisal of a property with TDR rights valued those rights at zero dollars.

Caution: Do not confuse a "TDR Bank" with the San Juan County "Land Bank." It would not be appropriate to use the San Juan County Land Bank for maintaining a market in TDR certificates without adequate evidence of (1) the value of each certificate, (2) that the property protected by the acquisition of the certificate meets the mission of the Land Bank, and (3) the property restricted through the sale of the certificate meets the definition of "conservation area" under the Land Bank charter.

Does the Sale of a TDR Certificate Compensate Landowners for the Full Market Value of the Loss of the Development Right? No. The price that will be paid for a TDR certificate has no relationship to the cost of land or market value of the loss of the development right.

A TDR certificate is issued regardless of the cost of land, cost of development, the market value of the development right, or the intent of the owner to actually develop the property.

The price paid for the certificate is based on the number of certificates on the market, and the price purchasers are willing to pay. This leads to great inequities as the same number of certificates is issued to the person who would incur \$10,000 to install roads and utilities as it would to a person who would have to incur \$1,000.

Is a TDR Program a Compensation Plan or a Land Use Planning Tool? It depends on your perspective. The first and foremost objective of the program should be good land use planning. The program should be viewed as a means to provide financial incentives for land use planning. Although protecting "equity" has

been mentioned by proponents of TDR programs, the experience of existing programs is that they do not come close to compensating for changes to value or "equity" when government imposes regulation on the use of property. A planner for the Seattle program strongly advises against using a TDR program with a goal of providing "equity" or compensation.

Do TDRS Result in Takings of Private Property? Probably not. The Pinelands, New Jersey, TDR program has survived court challenges to the implementation of a TDR program under the takings clause and the National Environmental Policy Act. See, e.g. *Hovson's, Inc. v. Secretary of Interior*, 519 F. Supp. 434 (D.N.J. 1981), *aff'd* 711 F.2d 1208 (3rd Cir. 1983). Cf., *Suitam v. Tahoe Regional Planning Agency*, ____ U.S. ____, 137 L. Ed. 2d 980 (1997).

Will the Cost of a TDR Certificate Increase the Price of "Affordable Housing?" Yes, if the TDR certificate is a precondition to a permit to construct affordable housing at higher densities or if affordable housing projects are located in "receiving areas." In response to comments from affordable housing advocates in the Seattle area, affordable housing builders were not required to purchase certificates before their development would be approved.

How is a TDR Program Administered? To be successful, a TDR program must be rigorously enforced and administered in a methodical fashion. The agency charged with implementing and operating the TDR program must have the technical ability to design and operate it. When implemented, the agency will also be relied upon to handle the program's operation and enforcement of the development restrictions. I would envision that it would take a two or three person staff similar to the Land Bank to operate the program. Based on our experience with the Buck Mountain Development Agreement, the program should not be administered through existing departments without the commensurate increase in staff.

Can a TDR Program be Terminated Once it is Initiated? Once a TDR certificate is created, it represents fixed interest in property. If through government action the use of that certificate was canceled or terminated by action of the County, the County would risk having to compensate the holder of the certificate. That action could be construed as taking all economic value of the certificate and require just compensation as a takings. The actions of the County that might arguably lead to a taking would be termination of the program administration, failure to enforce the program (leading to loss of value in certificates), elimination of the receiving areas, and authorizing other methods for property owners to obtain the bonus development otherwise allowed only by a TDR certificate. See, *Fred F. French Investing Co. v. City of New York*, 350 N.E.2d 381 (N.Y.1976).

What Are Some of the Advantages of a TDR Program? TDR programs offer an alternative means to protecting land beyond the zoning required under the GMA. TDR programs can protect resource lands without incurring public money to purchase such lands or the development rights. TDRs may spread the cost of resource conservation to others. TDRs add flexibility.

What Are Some of the Limitations of TDR Program? A TDR program has high startup and administrative costs. The program may not generate transactions (for example, Island County generated two transactions in the first seven years of operation). Designing an effective program requires an in-depth understanding of local housing markets that may exceed the capability of many small communities. As with any voluntary program, the results will likely be a patchwork of preserved and developed land. Residents and elected officials in receiving areas may object to higher development levels in their communities.

What Are Some Basic Guidelines for How a TDR Program Might Be Implemented? A TDR program must be simple to understand and simple to administer, especially at the outset. It is best to start simple and add more complex components later. Starting with a complex program invites failure.

A TDR program should complement other land use conservation techniques such as cluster housing, planned unit development, open space tax programs, and acquisition of conservation land through a land bank or with conservation futures.

An active housing market and demand must exist. Transfers should not occur only in rural and resource lands where bonus development is discouraged.

Landowners must have an incentive to sell TDR certificates.

Housing builders must have an incentive to buy TDR certificates.

A TDR program must recognize limitations in receiving areas created by concurrency requirement. Lack of concurrency will effectively dampen the market for TDR certificates as there is no value to a certificate if the public facilities to serve the development do not exist.

A public education program for all those affected is critical. It should be undertaken from the outset of the program formation and must continue if certificates are to have any value.

What Has Been the Experience of TDRs in Other Communities? TDRs were first proposed in 1961, but the concept was not seriously considered until the 1970s. By 1987, approximately fifty jurisdictions throughout the fifty states had TDR programs, but perhaps only a dozen actually had a transfer take place.

The programs viewed as most successful are located in Montgomery County, Maryland, the New Jersey Pinelands program, and the Boulder County, Colorado, program.

Because of the limitations created by the GMA, programs in Washington State are of greater interest. In Washington, TDR programs have been implemented in Island County, Clallam County (Ord. 643-1998), King County, Seattle and Redmond (Ord. 18-73). The Island County and Clallam County programs have had little success. In Island County, between 1984 and 1992, sixty-one certificates were issued of which only two were applied to receiving areas protecting sixty-one acres through a conservation easement.

The King County program was authorized in 1994, and it took five staff planners about eighteen months to work with technical advisory committees to develop the regulations, start a public information campaign and implement a pilot program. The program has been operating since 1998.

The City of Seattle and City of Redmond also have a program. The City of Seattle program has just one receiving area: the Denny Triangle.

For details of the Island County, Clallam County and King County programs, I strongly urge that you invite the persons responsible for these programs to describe the programs and the issues that they have faced in implementing the programs at a public workshop.

What Reasons Against a TDR Program Did the Prosecuting Attorney Discuss with the Planning Commission? While the TDR program is attractive, even elegant, in theory, the implementation of the program has proved difficult and cumbersome, and in Washington State is unproven. Good land use planning relies on established programs that work, such as large lot size, planned unit developments and cluster programs.

Depending on the design of the program, it has the potential to shift wealth from those least able to pay – first time home buyers – to large, wealthy property owners. This would have the undesirable effect of increasing housing costs for those least able to pay.

I foresee great potential for the program to create as many inequities as it is designed to counter because there is no connection between development costs and property values and the price of certificates. Why should a person with high cost of development receive a certificate of equal value to a person who has low development costs? Why should a landowner whose property is valuable as a large lot estate and would likely never be subdivided obtain a certificate when there is no loss to the value of their property as a consequence of down zoning? Why should a person be able to obtain and sell a certificate when they cannot show that they have lost value from the County's action?

To date, nearly all the discussion has been toward identifying sending areas – that's the easy part. Identifying receiving areas is more difficult because the overwhelming residential development in San Juan County is single family residences, not multi-family. It is not appropriate to identify receiving areas as existing single family zones, including rural lands, as it is not appropriate to establish a "bonus density" on rural lands (unless they are located in AMIRDs) because they do not have sewer and water systems. If receiving areas become only the few multi-family zones of the county UGAs, it will increase the cost of housing in the affordable and middle income categories, contrary to GMA goals.

There has been no discussion of the costs of administering and enforcing such a program, including startup costs or ongoing expenses of education and program administration. This should be evaluated, as a TDR program cannot be simply assumed by existing departments.

Although a TDR program sounds like a "free market" alternative to compensate landowners, it is a highly regulated market. The County indirectly controls the market by the decisions it makes with respect to sending and receiving areas, and as such it creates a regulated market in TDR certificates. This substantially increases the complexity of the program and understanding of the factors that make it work or not work.

If the County chose to discontinue or modify the program in the future, it may be liable to pay for takings and acquiring all certificates that are issued and outstanding.

Finally, if preserving open space is the goal, this goal can be accomplished through a clustering bonus program using base densities that are consistent with the minimum densities approved by our Comprehensive Plan and the Growth Board decisions.

What Is the Next Step If the Board of County Commissioners Wants to Consider a TDR Program in Connection with its Response to the Growth Board Order? I would recommend that the commissioners proceed in a deliberate step-wise fashion. The first step, to occur at the time of adoption of the response to the Growth Board Order, would be to direct that TDR implementation be placed on the work plan, and prioritize this for the Planning Department.

I strongly recommend against attempting to draft a program in the time that remains to comply with the Growth Board Order. The City of Seattle had five people working about eighteen months to develop the materials to implement their program. A successful program requires a great deal of public participation in drafting the program and educating the public, developers and others about how the program will work. Every community that has adopted such an ordinance in Washington has made it part of an ordinance enacted after the response to the Growth Board orders, which is consistent with our recommendation.

Randall K. Gaylord
San Juan County Prosecuting Attorney
96 Second Street, 2nd Floor
P.O. Box 760
Friday Harbor, WA 98250
360/378-4101

November 5, 2015

Subject: Conservation and Development Incentives Program(CDIP).

To whom it may concern,

We wish to eventually place the majority of our property (57 acres)that, presently and in the past, has been farmed and selectively logged in a conservation easement program that preserves these purposes , and excludes the growing of marijuana and the development for multiple homes or businesses.

We believe the CDIP proposal provides an additional avenue for maintaining the rural character of the county, the 80/20 population distribution and does not usurp existing programs while allowing consideration of property that is now excluded for consideration due to existing zoning(not zone as Agriculture for example).

The means for administration of the existing programs such as Farmland Legacy and Skagit Land Trust that are said to be working well suggests that the addition of this program would not represent an undue burden for augmentation. I doubt there will be a "land rush" for participation.

This program, or one of a similar nature, that includes forestry could be of interest as well.

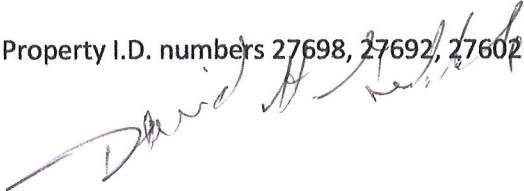
Thank you for your consideration.

David and Georgina Gribble

15593 State Route 9

Mount Vernon, Washington,98274

Property I.D. numbers 27698, 27692, 27602



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NOV 05 2015

SKAGIT COUNTY
PDS

From: [Bryan W. Harrison](#)
To: [PDS comments](#)
Subject: Conservation and Development Incentives Program (CDIP)
Date: Friday, October 23, 2015 1:44:46 PM



October 23, 2015

Skagit County Planning and Development Services
1800 Continental Place
Mount Vernon, WA 98273

RE: Comments on proposed "Conservation and Development Incentives Program (CDIP)"

I am writing to provide comments on the proposed comprehensive plan policies and development regulations creating a Skagit County Conservation and Development Incentives Program (CDIP) as they pertain to the City of Burlington.

I appreciate recent emails from county planning staff proposing to amend the language in draft policy 2H-4.1 from mandatory "will" language to permissive "may" language as pertains to future city urban growth area expansions and the requirement to implement a CDIP program. This change, if adopted, would alleviate many of my concerns with the proposal. However, I would ask that the county consider the following comments as well:

- **Regarding the reliance upon the City of Burlington TDR program**

The policies, codes and supporting studies provided by the county in support of the proposed amendments focus a good deal of attention and analysis on the potential to enhance the CDIP program within the City of Burlington. As you may know, the City of Burlington has had a transfer of development rights and

agricultural heritage credit program in place for five years. While the concept of preserving natural resource lands in conjunction with providing for increased levels of development within urban areas is certainly intriguing and attractive in concept, it has proven challenging to implement. As a result, there are few relatively modest examples of implementation within Burlington. The most recent case created a great deal of community discussion and reaction to the proposed increase in multifamily residential density.

The City of Burlington is charged with updating its comprehensive plan and development regulations in 2016. As part of the update process, the city intends to examine the performance, goals, benefits, limitations and appropriateness of its Agricultural Heritage Credit Program as currently designed. The outcome of this process is as yet unknown. As such, it may be premature to base the success of a Skagit County CDIP program on an expected level of city participation, particularly when that level is as yet undetermined.

Note: the county may wish to address the implications of transferring development rights from one jurisdiction to another (from NRL land in the unincorporated area into cities and urban growth areas) that may or may not conflict with adopted GMA population allocations, particularly if the county anticipates implementing a more robust program than currently exists.

- **Regarding the TDR Market and Economic Analysis report completed by Heartland dated March 2014: Under the “Candidate Receiving Areas” discussion**

There is a great deal of emphasis placed upon an evaluation of Burlington’s commercially zoned property, and specifically its development and redevelopment potential as a source of private sector revenue for the CDIP. The presumption appears to be that there are currently no density/development restrictions within the commercial zone in Burlington, and in order to establish a viable CDIP program, development restrictions would have to be put in place with options to “buy” back development rights. In laypersons terms this would result in a downzone and removal of development rights as they currently exist, with an option for property owners and developers to “purchase” the right to return to pre-existing development densities via contributions to the CDIP program. This approach is problematic at best, and I recommend that the county not rely upon this approach to determine the viability and/or appropriateness of a CDIP program. First, there are existing limitations on development within Burlington’s commercially zoned property. The limiting factors include percentage of lot coverage standards, building height limitations, parking requirements, setback requirements, storm water infiltration requirements, and market factors. Existing development patterns and commercial property values have taken these limitations into account. Effectively down zoning commercial property and requiring financial contribution to CDIP programs to restore development

potential, no matter how well meaning, could significantly alter the commercial real estate market in Burlington and would negatively impact current owners of commercial property. This is not an insignificant policy change, and for that reason I believe it deserves much more analysis and discussion prior to further consideration. That said, the city does appreciate the county sponsorship of the Heartland report, and the city will certainly include this analysis and data as part of the record during the city's comprehensive plan and development regulations update process.

- **Regarding the Comprehensive Plan Policies to Implement Skagit County's CDI Program:**

Under policies 2.A-1.2 (b) and 2.H-4.1(b) (as they pertain to expansion of city Urban Growth Areas) the city would appreciate the removal of the mandatory language "will" and replacement with discretionary "may" language.

Under 2H-4.1(b) (i) - exemption for agency or non-profit housing developers. I suggest that this language be made permissive and optional as well.

- **Regarding the Draft CDI Program Code:**

Under Chapter 14.08 Legislative Actions 14.08.090(7) (a) and (b) map amendments and rezones – the city would appreciate the removal of the mandatory "must" language and replacing it with permissive "may" language

Thank you for the opportunity to comment on the proposed comprehensive plan policies and GMA code amendments.

Sincerely,

Bryan Harrison,
Burlington City Administrator
833 South Spruce Street
Burlington, WA 98233
360-755-0531

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From: [Graham Kerr](#)
To: [PDS comments](#)
Subject: Conservation and Development Incentives Program
Date: Friday, October 23, 2015 11:31:58 AM

I support the Conservation and Development Incentives (CDI) Program, which is a great tool for protecting our farms, forests and rural areas.

I support the CDI Program program because it also is low cost to taxpayers and helps our farmers and forest land owners unlock some of the value of their land, which provides an additional source of working capital, while permanently conserving their land.

However, to make sure rural areas are adequately protected, please require that ALL rural density increases only occur with a CDI development credit.

Thank you for considering my recommendation.

Graham Kerr
18564 cascade view drive
Mount Vernon, WA 98274



SKAGIT COUNTY AGRICULTURAL ADVISORY BOARD
1800 Continental Place
Mount Vernon, WA 98273
Phone (360) 416-1338

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SKAGIT COUNTY
PDS

November 5, 2015

Planning and Development Services
Planning Commissioners
1800 Continental Place
Mount Vernon, WA 98273

RE: Comments on proposed Conservation and Development Incentives Program (CDIP)

Dear Planning Commissioners,

The Agricultural Advisory Board (AAB) has concerns about the proposed Conservation and Development Incentives (CDI) program.

The AAB is concerned CDI encourages movement of development rights within areas zoned rural (receiving areas). This could adversely affect agricultural production because of increased population density and increased traffic adjacent to agricultural lands. Rural Village Residential zoned lands should not be a receiving area.

The AAB is also concerned Skagit County's major cities are not supporting the CDI program. Support from the cities could increase their densities and lessen the impact in rural areas. Will the GMA's 80/20 goal for cities be reduced?

The AAB is requesting this proposed program exclude Ag-NRL lands entirely. The Farmland Legacy Program is a successful program, and we feel the CDI program will interfere with its success.

Last, the proposed Conservation and Development Incentives program does not meet the goals this advisory board is tasked to perform, which is to protect and defend agricultural lands in Skagit County. Thank you for reading our concerns.

Sincerely,

Nels Lagerlund, Chair
Skagit Agriculture Advisory Board
(360) 708-5383

Skagit County Agricultural Advisory Board Members:

Nels Lagerlund (Chair), Kraig Knutzen (Vice Chair), Murray Benjamin, Steve Bertelsen, Jim Carstens, Ty Clark, Barbara Cleave, Brian Duquaine, Scott Hanseth, Michael Hughes, Greg Lee, Terry Sapp

From: [John & Sylvia Matterand](#)
To: [PDS comments](#)
Subject: RE: CDI Program
Date: Thursday, November 05, 2015 3:57:36 PM

I want like to encourage the Planning Department to implement a CDI. I see that it would benefit both cities that would like to increase their density and help preserve resource lands by purchasing their development rights.

As a co-owner of open space forest lands, I could see the advantage of having the county purchase future building possibilities and help us keep these forest lands in forest. We have forest lands that were originally purchased by my husband's grandfather, in the early 20's and it would be nice to be compensated for keeping them together and as forest land. It's a wonderful, multi-specied forest that is habitat to a wide variety of flora and fauna. Also it would allow us to continue our limited harvesting of the forest, a renewable crop.

I'm afraid this consideration comes too late for the adjoining property owned by my sister-in-law. She has found it necessary to begin the process to sell her portion of the forest land, so it will probably be clear cut and developed. I am sad to see this portion leaving the family, and further shrinking the forest and resource land.

So I encourage the Planning Department and the Planning Commission to move forward on implementing the CDI Program. I would like to see our resource lands be able to remain a resource and that trading or compensating for that can create densities where they belong, in the cities.

Sylvia Matterand
PO Box 597
Clearlake WA 98235

physical address (not a mailing address)
13294 State Route 9
Mount Vernon WA 98273

From: [Roger Mitchell](#)
To: [PDS comments](#)
Subject: Written comments on Conservation and Development Incentives (CDI) proposal
Date: Thursday, November 05, 2015 3:35:38 PM

Please enter my attached written comments in their entirety into the official record.

Thanks

Roger Mitchell
Bow, WA

I have written my overarching comments and opinions in an Executive Summary section and inserted specific comments and opinions into the "DRAFT for PUBLIC REVIEW and COMMENT 9/24/2015, below. I apologize that there are formatting and footer issues that cannot be easily resolved since I'm using a pdf to Word converted document.

I apologize for the extraordinary length of these written comments but it's due to insufficient opportunity for public input and *dialogue* on an unnecessarily complex proposal that is significantly different from the precursor TDR proposal that has been churning for 2-3 years. In addition, in the past at least one County Commissioner has requested essentially line by line critique of the proposal's deficiencies, of which there are many.

EXECUTIVE SUMMARY:

TDR's Reincarnated as CDI's. For two to three years many citizens have followed the juggernaut that the Transfer of Development Rights (TDR) proposal became. All along, citizens expressed opposition that fell on deaf ears. That opposition was based on common sense and research. We knew that TDR's began in New York City and are essentially a city need whereas Skagit is a rural county. Research showed that TDR's failed in most places they've been tried primarily due to government failure and market failure. We knew that TDR proposals had been studied and evaluated *twice* before and *rejected both times* – for good reasons. The TDR proposal has been mentioned for addition to agendas and public hearing actions many times. Links to the TDR proposal were found on the County website and Planning Department homepage. Now, however, if a person previously interested in TDR's and knowing that the proposal was due for public hearings, Planning Commission action, and BoCC action was to look at the County website and Planning Department homepage they would find no mention of TDR's. Instead, for those of us who know, TDR's have been suddenly reincarnated as the Conservation and Development Incentives program (CDI) and only links to CDI currently exist on the website. As far as I can determine, the TDR reincarnation as CDI was not disclosed to the public until September of this year – just weeks ago. All along, we were told that TDR's were under consideration; however, at the eleventh hour, we find that a hastily cobbled together "dog's dinner" program rebranded "CDI" has been substituted. That type of obfuscation certainly stifles public participation by concerned and interested citizens and creates a lack of trust.

The Interagency Agreement with Skagit County for the National Estuary Program (NEP) Puget Sound Watershed Protection and Restoration Grant (the enabling agreement), in the "Scope of Work" (attachment A) specifically and repeatedly refers to "TDR". The proposal in front of us is "CDI" which, by design and intent, is not the same thing. Are there any potential problems with that in terms of contractual performance as stated in "3. Compensation" that ties compensation to "...performance...set forth in Attachments A and B, the Scope of Work and Budget." ? Some of the Attachment A, Scope of Work "deliverables" are things citizens have been requesting but have not received. Examples listed in the Scope of Work: GIS maps with data layers, criteria for prioritizing lands, "Maps, GIS data layers and other documentation identifying potential priority sending and receiving areas and capacities, [note: not CDI 'Development Priority Areas and Priority Conservation Areas' as in the proposal before us] including criteria, maps and supporting analyses. Where are these required deliverables? The required Market Feasibility Report bears little resemblance to the incomplete and fact-deficient study that was done on TDR's [again, not on CDI's]. There are many other specific "deliverables" listed in Attachment A that I have never seen and that have not been discussed with the public, as far as I know. I have some concern that the CDI program is significantly different from the TDR program the Agreement anticipates and requires.

Presumably the already extended contractual deadline is also why there has been a recent "rush to judgment" on a very recently changed proposal with little time for the public to fully investigate, ask questions, and understand the CDI proposal that differs radically and significantly from the previous TDR proposal.

Rural Areas are now "Development Priority Areas" and the County is a Bank – That Changes Everything. Until just a month or two ago, when this was still a TDR program, we were always told that one objective was to limit development in rural areas and shift it to the cities. Absent sufficient interest by cities to participate, apparently, the program was resuscitated in the form of CDI's. Now development in certain rural areas is desirable. Furthermore, when it was TDR's, it was always touted as a "private transaction". Now, however, the County is a buyer and a seller and a competitor of true private transactions. Even worse, we were always told that the County did not want to "be a bank", however now, the County is a bank. That changes everything. CDI is no longer consistent with what we've been told about the TDR proposal for 2-3 years yet there is a rush to judgment to pass something to meet a contractual requirement few citizens, if any, realized was driving this proposal.

“Not Ready for Prime Time.” The CDI program, and the draft Skagit County Code (SCC) we have before us, is unnecessary, unworkable, and unfair. It is so riddled with impracticalities and inconsistencies it is clear that it is, at best, very poorly thought out. It appears that when it was realized that it could not be “sold” as a TDR program, the attempt to resuscitate by rebranding it as the CDI program has failed. It appears to be a hastily cobbled together “dogs dinner” of concepts promulgated by bureaucrats in silos that don’t know what they don’t know. As the saying goes, CDI: *“It isn’t ready for prime time”*.

A Multipurpose Tool Rarely Work as Well as a Dedicated Tool. It’s true with woodworking tools and mechanics tools and software tools and countless other examples. Multipurpose tools typically do each function with far less ability whereas dedicated tools function extremely well for their designed and intended purpose. CDI artificially conflates two concepts that do not naturally work together and the result is a “dog’s dinner” program. If citizens want and need a forestland conservation program then design a Forestland Legacy Program that parallels and learns from the highly successful Farmland Legacy Program. Perhaps, in that way, core issues that have never been considered in CDI’s could have well thought-out solutions. For example, Commercial foresters incur long-term loans as a source of working capital. Those loans are typically based on the value of the associated forestland. A component of the lender’s valuation of the forestland is that it carries development rights. When those rights are removed, through a TDR or CDI program, the land valuation decreases and the basis for the loan decreases thereby reducing the amount borrowable by the forester. And that devaluation is *permanent*. It is doubtful that the price the forester receives for those development rights can cover the decreased future borrowing power, especially when the time value of money is factored in.

CAC Looked at TDR’s, not CDI’s. Just a quick note: it has been touted that 8 members of TDR Citizens Advisory Committee (CAC) recommended this program. Well, I have trouble with that. There were 16 members of the CAC so, at best, 8 is only half, not even a majority. Further, looking at the 8 written comments from the CAC, not all can be construed as supportive and some clearly oppose. We have never found any recorded vote by the CAC. If such a vote is in the meeting minutes, (never formally approved that we can determine), I have not seen it. Lastly, and *critically important*, is that the specific proposal the CAC may have commented on, or even voted on, was a TDR program, a far cry from, and definitely not the CDI proposal now under consideration.

Public Participation is Woefully Inadequate. Who from the public was involved with the last minute switch from TDR’s to a significantly different CDI proposal? Who from the public was even aware of that change being in the works? Numerous places in the proposed SCC 14.22, below, cite decisions to be made. Unfortunately, in almost every case, one person with no criteria and no public input or oversight makes the decision. People’s lives, livelihoods, property rights, property values, pursuit of happiness, and expectations about the area they live in are significantly affected by the implementation of a CDI program. That is especially true now that certain rural areas are Development Priority Areas (aka “receiving areas”).The previously stated purpose, back when this was a TDR proposal, was to create additional development opportunities in cities to keep development out of rural Skagit! Apparently, because our cities have not shown interest, TDR’s were resuscitated, reincarnated, and rebranded as CDI’s and now rural development is needed as some place to stick the development credits.

I strongly oppose the Conservation and Development Incentives program (CDI) and respectfully request that you reject it in its entirety.

Lest there be an argument to just “add it to the toolbox”, please reject that notion, too. CDI is so poorly thought out and so rushed in it’s reincarnation from TDR’s, that it is not a useful tool. Nobody wants a useless tool in their toolbox.

CDI is Unnecessary:

Unnecessary because adequate tools already exist and are being used.

Unnecessary because many rural citizens, and the Comp Plan, already protect and conserve rural land.

Unnecessary because it undermines the very successful Farmland Legacy Program

CDI is Unworkable and Riddled with Inconsistencies:

- CDI is inconsistent with the Growth Management Act (GMA)
- CDI is inconsistent with our Comprehensive Plan
- CDI is inconsistent with Skagit County Code (SCC)
- CDI is inconsistent with what we've been told for 3 years when it was the TDR program
- CDI is inconsistent with real world economics
- Adding Rural Intermediate and Rural Village as "Priority Development Areas" doesn't prevent rural development nor does it preserve "rural character".
- A CDI program creates "islands of zoning" and inconsistencies prohibited by GMA and the Comp Plan
- If cities don't participate, that leaves only rural areas as the "receiving" or Priority Development Areas", the exact opposite of what this was intended to do.
- Unintended infrastructure costs have never been discussed or included in a legitimate cost/benefit analysis
- Allowing a parcel with 7 to less than 10 acres to participate contravenes the whole purpose of past planning decisions.
- **CDI is very different and significantly inconsistent with what we've been told for 2-3 years when it was called TDR**

CDI is Unfair:

Unfair because neighboring property owners' rights and expectations for zoning consistency are violated.

Unfair because "Sending" parcels, lacking a development right, must be devalued thereby increasing everyone else's property tax.

Unfair because developers will pass their costs along to the end buyer through increased cost per housing unit. There is nothing wrong with that but it does result in less affordable housing.

Unfair because only a select handful will benefit. There is no tangible benefit for the other 117,000 of us, yet we pay the cost of the program.

Unfair because just one government person decides who can and cannot participate – there is no public input or process.

Unfair because government is involved in what was previously touted as a "private transaction".

Unfair because government shouldn't be involved with a money-driven process. It's like selling something we don't really have. It's a taking without compensation. The people who want these things should pay for them. Who voted for this ?

Unfair because we are told it is a "market-based" program - but it is NOT.

- No appraised value is used for the "sending" property
- Government determines who can and cannot participate
- Gov't sets the exchange rate "to equalize things in the market"

Unfair because too many CDI program criteria and decisions lack public input and public participation

Some specific comments are inserted in the draft SCC below.

Draft CDI Program Code

| |
|--|
| <p>Plain text = existing code with no changes Strikethrough = existing code to be deleted <u>Underlined</u> = new code to be added Double Strikethrough = existing code moved to another location <u>Double Underline</u> = existing code moved from another location <i>Italics</i> = instructions to code reviser</p> |
|--|

Chapter 14.04 Definitions – no comments

Existing Chapter 14.22 Records of Survey

Recodify chapter as section 14.02.090.

New Chapter 14.22 Conservation and Development Incentives Program

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14.22.10 Policy.

- (1) Purpose. The purpose of this Chapter is to enable the movement of development rights from areas where the County prefers land conservation (see SCC 14.22.040) to areas where the County and its partners prefer residential development (see SCC 14.22.030), through voluntary and market-based transactions.

This should read, "...where citizens prefer land conservation...to areas where citizens...prefer residential development..."

Who are the "partners" referenced in "...the county and its partners..."

In practice, under this proposal, "...through voluntary and market-based transactions." not all transactions are voluntary and none of the transactions are truly "market-based"

- (2) Policy objectives. The objectives of this chapter are to:
 - (a) Offer incentives to developers to concentrate development in areas best suited for additional growth, while engaging the private development market to support conservation of farm and forest land and open space;

“...areas best suited...” according to whom ? Based on what criteria ? What is the mechanism for public input and approval ?

- (b) Implement the goals, policies, and objectives of the Growth Management Act and the comprehensive plans of Skagit County and participating cities and towns.

It must require that the goals, policies, and objectives comply with GMA and Comp Plan. As proposed, CDI has inconsistencies with GMA and Comp Plan. Protection of “Rural Character” is one example.

14.22.20 Development credits—purchase and use.

- (1) Generally.

- (a) In development priority areas, qualifying landowners may ^{big change; where does County get money to buy these rights ?} buy development credits from the County, or from willing landowners in conservation priority areas, and use those development credits for the purposes described in SCC 14.22.030.

[sorry, I didn't have time to remove the highlight carried over from the pdf version]

Previously, as a TDR proposal and in all the discussions about a TDR program, the County was never a buyer or seller; now it is. That's a highly significant change that has been largely glossed over and not discussed.

- (b) In conservation priority areas, qualifying landowners may sell their development rights to the County, or convert their development rights into development credits for sale to and use by landowners in development priority areas, per SCC 14.22.040.

- (2) Jurisdiction and applicability.

- (a) Projects in development priority areas in unincorporated Skagit County, including unincorporated portions of urban growth areas, are reviewed by the Department per this Chapter.

Citizens in unincorporated Skagit have no elected representative that solely represents them. Who constitutes the equivalent of a city's land use authority for unincorporated ? This is a place where a Rural Advisory Board would benefit everyone however that proposed Comp Plan amendment was rejected by Planning.

- (b) Projects in development priority areas in a town or city are reviewed by the municipality's land use authority per that municipality's code instead of this Chapter.

- (3) Application requirements. In order to utilize development credits toward an application authorized by SCC 14.22.030, the applicant must provide the Department with some combination of the following:

- (a) development credits issued in the name of the applicant;
- (b) development credits issued in the name of another person with a signed agreement for the applicant to purchase those development credits;

This could be construed as a secondary market. Is that the intent ? Is that legal ?

- (c) a signed intent to purchase development credits from the County, on forms provided by the Department.
- (4) Purchase and use of development credits.
 - (a) Purchase from County. An applicant may purchase development credits from the County consistent with the fee schedule adopted per SCC 14.22.100. An applicant may purchase only as many credits from the County as are necessary to process the application.

This sets up the County as a bank, something that we have been repeatedly told the County did not want to do. This is a last minute change in the resuscitation of TDR's to CDI's and has not been thoroughly vetted or discussed.

- (b) Purchase from private party. An applicant may purchase development credits from a private party per SCC 14.22.070 for use at the exchange rates adopted per SCC 14.22.100.

This appears to set up two different fee & exchange rate schedules. Is that equitable ?

14.22.30 Development priority areas.

- (1) Defined. Development priority areas are those places where development credits may be used to increase the level of development over what would otherwise be allowed.

For me, this is the fundamental non-starter for TDR's and , now, CDI's. It essentially says, "We decided we didn't want to do something [increase level of development in a specified area] but here is a "smoke and mirrors" mechanism for ignoring what we said." If it wasn't okay before, why is it okay now? This is precisely why conflating two things that do not naturally go together – housing density and conservation – ends up as a failed program as TDR's have so frequently proven to be.

- (2) Designation. Development priority areas include all parcels subject to any of the following:
 - (a) an application for a CaRD development priority bonus per SCC 14.18.300 or .310;
 - (b) an application for a rural infill development priority bonus per SCC 14.16.300 or .310;

"rural infill" – this kind of obviates the "reduce rural development" meme we have been told for 2-3 years that the [then] TDR program was intended to prevent

14.22.40 Conservation priority areas.

- (1) Defined. Conservation priority areas are those places where development rights may be sold to the County or a private party in exchange for conservation via a conservation easement.

What
funds,
from what
source,
will the
funds
come to
do this?
Especially
initially.
Remind
us, again,
how the
County is
not a
bank.

- (2) Designation. Conservation priority areas include:
 - (a) all parcels designated Ag-NRL;
 - (b) all parcels designated Industrial Forest-NRL and located inside a fire district and within 200 feet of an existing County road or State highway;
 - (c) all parcels designated Secondary Forest-NRL;
 - (d) all parcels designated Rural Resource-NRL;
 - (e) all parcels designated Rural Reserve that are enrolled in or eligible for the Open Space Taxation program.
- (3) The Board may designate additional lands as conservation priority areas by resolution if it finds that the area to be added has significant natural resource, conservation, watershed, habitat, or open space values; or pursuant to an interlocal agreement or development agreement.
- (4)

Shouldn't the citizens decide what "additional lands" are designated ? Especially those citizens actually in the potential "additional lands"?

14.22.50 Conservation priority areas—eligibility to sell development right.

- (1) Application requirements. An application for an eligibility report must be submitted on forms provided by the Department, include the application fee, and include all of the following:
 - (a) Lot certification application, or if a lot certification has been completed, the Lot of Record Certification issued by the Department.
 - (b) If one or more single family dwellings or other residential, commercial, or industrial structures exist on the property, or unused development rights are proposed to be retained, a site map showing the location of each dwelling or structure and the proposed buildable area boundary.
 - (c) If the tract is in Rural Reserve but not enrolled in the Open Space Taxation program, a demonstration of eligibility for enrollment.
 - (d) A title report issued no more than 30 days prior to the date of application confirming that the ownership interests in the tract are in the name(s) of the applicant(s) and identifying any conservation easements, liens, or similar encumbrances recorded against the tract.

That is an expensive requirement

- (e) An affidavit of compliance with the reforestation requirements of RCW 76.09.070, WAC 222-34-010, and any additional reforestation conditions of the forest practice permit, if applicable.
- (2) Application review.
 - (a) If the application is inadequate, the Department may require additional documentation from the applicant or rely on information contained in the County geographic information system or other County records.

Where are the listed criteria for what constitutes "adequate" ? Who had input into those criteria ? What public involvement set those criteria ?

The County should neither be a buyer or seller and that was how the TDR program was always intended to be. That has now changed by making the County a buyer, a seller, a banker, and a competitor for private sellers.

14.22.60 Conservation priority areas—sale of development right to County

- (1) The owner of eligible property in a conservation priority area may sell its development right(s) to Skagit County pursuant to this section.
- (2) Application—evaluation and ranking.
 - (a) Skagit County’s selection of development rights to purchase is a competitive process intended to achieve the greatest conservation at the lowest cost.

This is not appraisal based or free market-based. How is this fair to other potential, private sellers ? The County becomes competition.

- (b) Periodically, the Department will review and evaluate all properties that have been determined eligible per SCC 14.22.050 where the owner has indicated interest in selling development rights to the County.
 - (c) The Department will rank properties for purchase priority based on the ranking criteria adopted per SCC 14.22.100.
- (3) Purchase and extinguishment of development rights.
 - (a) After the Department has completed a final rank of the properties, the Department will request a letter of opinion from an MAI-certified appraiser on the likely fair market values for the top-ranked property or properties.

So, this is not a true and full appraisal so it may not be very useful.

- (b) Based on the letter of opinion, the landowner may sign a letter of intent to execute a conservation easement in exchange for the fair market value.
 - (c) Upon receipt of a signed letter of intent, the County may order a full appraisal of the proposed conservation easement.

Will the letter of intent provide for the landowner (seller) to have a mirror image ability to back out if the full appraisal is less than the letter opinion of market value – like the County can ?

- (d) The County may not pay more than fair market value for a conservation easement. The County may pay less than fair market value for the conservation easement if the landowner is willing to accept a lower price.
- (e) Upon agreeing to the value of the conservation easement, the County and the landowner must execute a conservation easement per SCC 14.22.100 to close the transaction.
- (f) If, in the judgment of the Administrative Official, the County and landowner cannot reach agreement as to the value, the Department may terminate the negotiation.

The landowner should have an equal, parallel right to terminate that mirrors the County's right

14.22.080 Reserved - no comments

14.22.90 Conservation easements.

- (1) Form. Conservation easements accepted per this Chapter must be in a form approved by the Prosecuting Attorney and the Board of County Commissioners, subject to the requirements of this section.
- (2) Contents. The conservation easement must contain all of the following:
 - (a) a legal description;
 - presumably this should state the legal description of the subject property
 - (b) if the development rights are to be sold to a private party in the form of development credits, the serial numbers of any development credits to be issued;
 - (c) if only a portion of the development rights are to be extinguished, a designation of the remaining buildable area tightly constrained around the existing development, designation of critical areas, and how many development rights remain;
 - (d) a prohibition on subdivision or division of ownership;
 - (e) a prohibition on boundary line adjustments except where approved by the County:
 - (i) for minor corrections in parcel boundaries;
 - (ii) where land is added to the parcel subject to the easement; or
 - (iii) where land subject to the easement is swapped for contiguous land of equal or greater area and equal or greater conservation value;
 - (f) if an existing residence exists on the property, a reservation of that existing development right and designation of a limited building envelope boundary outside of which new construction is prohibited;
 - (g) a prohibition on the construction of any other buildings, dwellings, structures, or other improvements except customary farm, agricultural, or forestry use structures;
 - so, a non-farmer, non-forester cannot build an accessory building ?

- (h) a grant to the County of a right of entry, subject to reasonable advance notice, to conduct brief inspections for the purpose of determining compliance with the requirements of the easement;

This is very concerning from a privacy and property rights protection perspective.

- (i) a statement that nothing in the easement may be construed to convey to the public a right of access or use of the property and that the owner of the property, his or her heirs, successors, and assigns retains the right to exclude others, subject to the other terms of the conservation easement;
- (j) a statement that all provisions run with the land and may be enforced by the County;
- (k) additional provisions that are reasonably necessary for the enforcement and administration of the easement as determined by the Administrative Official.

What mechanism is set up for the public to input their wants and needs relative to the "criteria" ? This leaves far too much discretionary power in the hands of one person.

- (3) Perpetuity. The easement must permanently encumber the property, but may allow for termination of the easement in the following circumstances:
 - (a) The landowner must demonstrate a hardship beyond his or her control, namely that the land may no longer be managed in its conserved status due to changed conditions; and

- (b) The landowner must purchase an equivalent number of development credits as were originally sold from the property, or pay a fee in lieu to the County for an equivalent number of credits, as determined by the County; and
- (c) The Board of County Commissioners makes a finding that the transaction described in (b) above will achieve an equivalent or better public conservation benefit as the easement to be terminated.

14.22.100 Administration.

- (1) Development credits. The Department must:
 - (a) serially number all issued development credits;
 - (b) record all issued development credits in a database with:
 - (i) parcel number(s) and zoning of the conservation priority area from which the development credits originated;
 - (ii) number of issued credits;
 - (iii) date of issue;
 - (iv) parcel number(s) and date of expenditure.
 - (c) track conveyances, including sales prices, of any development credits in a database;
 - (d) promptly cancel any committed credits;
 - (e) make the database available for public inspection on the County website; and
 - (f) maintain an exchange on the County website where individuals may indicate their interest in buying or selling development rights or developer credits, the number of credits being offered or sought, and the asking or offering price.
- (2) Fees and exchange rates.
 - (a) The Board of County Commissioners must adopt a fee schedule containing appropriate fees for:
 - (i) application for eligibility report;
 - (ii) price of development credits,
 - [What criteria are these based on given full appraisals are not used ?](#)
 - (A) for each development incentive option in each zone in which they may be used; or
 - (B) for each transaction type described in SCC 14.22.030.
 - (b) The Board of County Commissioners must adopt an exchange rate schedule to implement this Chapter.
 - (i) Exchange rates represent the additional residential development units that may be obtained in a given development priority area for each development right purchased from a given conservation priority area.
 - (ii) Exchange rates may differ depending on the development incentive option applied for, the development priority area in which it is located, and the conservation priority area from which the development credits are purchased.

Apparently, exchange rates can vary – but based on what fact-based, objective criteria ? What measure is used to ensure fairness ?

- (iii) The fee and exchange rate schedule must be developed to:
 - (A) reflect the differing values of residential development rights in different zones and development priority areas;

What objective criteria are used to determine “differing values” ?

- (B) facilitate the transfer of development rights from areas best suited for conservation to areas better suited for rural development, and calculated to ensure that this Chapter does not add additional development rights to the rural area as a whole.

What is the mechanism for public participation in determining “best suited” etc ?

- (c) The Board should periodically evaluate the fee and exchange rate schedules to ensure they reflect current market conditions and must re-adopt the schedules at least every [one-five] years.

What objective criteria are used to “reflect current market conditions” ?

- (3) Revenue. The County must use **the** revenue from sale of development credits in unincorporated development priority areas, or from a municipal program established per this Chapter, to purchase conservation easements from properties in conservation priority areas.

That needs to say the County must use “All” revenue...

- (4) Maps. The GIS Department must maintain an interactive map on the County website of:
 - (a) conservation priority areas;
 - (b) parcels conserved by conservation easements issued per this Chapter;
 - (c) development priority areas, including a layer showing the allowed density prior to the upzone.

Many people (including some Planning Commissioners) have asked for such a map to aid evaluation of the CDI proposal, however it has not been produced. How can a map that does not exist be “maintained” ?

- (5) Ranking criteria.
 - (a) The Department will develop criteria to rank properties for purchase priority based on conservation value.

What is the mechanism for public participation in developing these “criteria” ?

- (b) In developing selection criteria, the County will consider factors including:
 - (i) the number of development rights offered for sale;
 - (ii) land use designation;
 - (iii) parcel size;
 - (iv) soil quality or site productivity (e.g., PFLG for forest land);
 - (v) economic productivity;
 - (vi) current use of the property for resource management;

- (vii) enrollment in or eligible for Open Space Taxation (as open space land, farm and agricultural land, or forest land;
- (viii) proximity to other properties conserved as open space or working natural resource land;
- (ix) conversion threat including:
 - (A) proximity to urban development or major highways and intersections;
 - (B) availability of sewer service;
 - (C) urgency of sale;

- (x) presence, size, and quality of environmental resources or critical areas, including wetlands and wildlife habitat;
 - (xi) presence of geologic hazards;
 - (xii) scenic and open space value;
 - (xiii) availability of other conservation programs (e.g., Farmland Legacy Program) to conserve the property.
- (c) The ranking criteria must be approved by the Board of County Commissioners, and may be periodically reviewed at the Board's direction.

What is the mechanism for public participation in developing these "criteria" ?

- (6) Easement monitoring and enforcement.
- (a) The County must annually monitor properties subject to easements acquired per this Chapter for compliance with the easement terms.
 - (b) The County must take appropriate measures to enforce the terms of such easements consistent with the enforcement provisions in the easements.

will "enforcement provisions in the easements" be the same or different as those in SCC 14.44?

- (7) Interlocals to establish development priority areas.
- (a) Subject to review by the Prosecuting Attorney's office and approval by the Board of County Commissioners, the County may negotiate an interlocal agreement with any city or town that chooses to establish a conservation and development incentives program in coordination with the County. Execution of such agreements by the County shall be subject to the applicable requirements of this chapter and the comprehensive plan.

by definition, this precludes unincorporated Skagit yet unincorporated areas are potential participants

- (b) Substantive requirements. Interlocal agreements executed by the County pursuant to this subsection must:
 - (i) Provide for the movement of certified development rights from conservation priority areas for use in development projects in specified incorporated areas.
 - (ii) Establish procedures for a city or town to return applied development credit certificates to the County, following final approval of a development project in a city or town development priority area, to ensure timely and accurate record-keeping.
 - (iii) Identify unincorporated areas that the municipality has an interest in helping to conserve in cooperation with the County.
 - (iv) Establish a process for the transfer by a city or town of revenues generated from the sale of development credits in specified incorporated areas, to the

County for the purchase of development rights in conservation priority areas.

Chapter 14.06 Permit Procedures

The following sections of SCC Chapter 14.06 are modified as follows:

14.6.50 Application level.

- (1) Applications for development permits and other administrative determinations shall be categorized as 1 of 4 levels as follows; provided, that shoreline applications shall be processed as described in the Skagit County Shoreline Management Master Program:

“other administrative determinations” – what are they ? Where are they defined ? Why is SMP referenced ?

- (a) Level I. Level I applications are those applications for which a final decision is made by the applicable Administrative Staff, either the Director of Public Works or his/her designee, or the Director of Planning and Development Services or his/her designee, without a public hearing. That decision may then be appealed in an open record appeal hearing to the Hearing Examiner. The Hearing Examiner decision may then be appealed in a closed record appeal to the Board. Actions reviewable as Level I applications include:

- (i) – (xvii) *No change.*

- (xviii) [eligibility report for sale of development rights per SCC 14.22.050.](#)

- (b) *No change.*

- (c) *No change.*

- (d) *No change.*

14.6.150 Public notice requirements.

[Every action contemplated under this Chapter that alters zones, parcels, criteria, etc should require public notice.](#)

- (1) *No change.*

- (2) Notice of Development Application Requirements.

- (a) Exemption. A Notice of Development Application pursuant to this Section shall not be required for:

- (i) – (iii) *No change.*

- (v) [eligibility report for sale of development rights per SCC 14.22.050.](#)

- (b) – (d) *No change.*

- (3) –(4) *No change.*

14.6.200 Notice of decisions.

- (1) Exemptions. A Notice of Decision shall not be required for:

- (a) – (c) *No change.*

- (d) [eligibility report for sale of development rights per SCC 14.22.050.](#)

- (2) – (6) *No change.*

Chapter 14.08 Legislative Actions

The following sections of SCC Chapter 14.08 are modified as follows:

14.8.90 Review and decisions by Board.

- (1) *No change.*

- (2) *No change.*

(3) *No change.*

(4) *No change.*

(5) *No change.*

(6) *No change.*

(7) Map amendments and rezones.

(a) Prior to approving a municipal UGA expansion, the County must execute an interlocal agreement with the associated city or town to ensure that development that occurs within the area of UGA expansion after future annexation are subject to the Conservation and Development Incentives program per SCC Chapter 14.22

Doesn't this requirement take the oft-cited "voluntary" out of the equation ?

(b) After a map amendment or rezone is approved, the County must:

(i) designate the subject property as a development priority area per SCC Chapter 14.22;

(ii) update the map to reflect the designation as a development priority area and the prior maximum allowed density; and

(iii) record a title notice on each parcel describing the requirements for development per SCC Chapter 14.22.

Chapter 14.16 Zoning

The following sections of SCC Chapter 14.16 are modified as follows:

14.16.030 Districts, maps and boundaries.

Skagit County is hereby divided into land use districts to carry out the policies and objectives of the Comprehensive Plan. This Chapter describes the limitations and regulations for the use of and construction on properties within each zone. The following table illustrates the relationship between Comprehensive Plan land use designations, allowed residential densities and zoning districts. Density bonuses are also available in some zones per SCC Chapter 14.22 Conservation and Development Incentives Program.

[No changes to Table of Land Use Districts or remainder of section]

14.16.300 Rural Intermediate (RI)

(1) *No change.*

(2) *No change.*

(3) *No change.*

(4) *No change.*

(5) Dimensional Standards.

(a) *No change.*

(b) *No change.*

(c) Minimum lot size: 2.5 acres or 1/256th of an, unless created through a CaRD or through use of a development credit per SCC Chapter 14.22 to create one lot at the standard minimum lot size and a second substandard size lot of at least one acre.

(d) *No change.*

(e) *No change.*

(6) *No change.*

14.16.310 Rural Village Residential (RVR).

(1) *No change.*

(2) *No change.*

(3) *No change.*

(4) *No change.*

(5) Dimensional Standards.

(a) *No change.*

(b) *No change.*

(c) Minimum lot size: 1 acre or 1/640th of a section with public water and septic, 2.5 acres or 1/256th of a section with private water and septic. Smaller lot sizes are permissible through CaRDs [or through use of a development credit per SCC Chapter 14.22 to create one lot at the standard minimum lot size and a second substandard size lot of at least one acre.](#)

(d) *No change.*

(e) *No change.*

(6) *No change.*

(7) *No change.*

Chapter 14.18 Land Divisions

The following sections of SCC Chapter 14.18 are modified as follows:

14.18.300 Conservation and Reserve Developments (CaRDs)—An alternative division of land.

No change.

(1) *No change.*

(2) Applicability.

(a) *No change.*

(b) *No change.*

(c) CaRDs are permitted in the following zones:

(i) – (iv) *No change.*

(v) Rural Reserve (on parcels 10 acres or 1/64 section, or greater, with 1 lot allowed for each additional 5 acres or 1/128 section, [or on parcels between 7 and 10 acres with use of development credit per SCC Chapter 14.22 up to a maximum of 2 du](#));

(vi) – (x) *No change.*

- (d) *No change.*
- (3) - (4) *No change.*

14.18.310 General approval provisions—CaRD.

- (1) *No change.*
- (2) Allowable Density. The maximum residential gross densities shall not exceed those set forth in the following lot size table. The maximum density as allowed for by the Comprehensive Plan may not necessarily be granted if a density limitation is necessary to meet septic and/or water system requirements. There shall be no density bonus for CaRD developments in areas designated as a “sole source aquifer,” except where the source of water is from a public water system whose source is outside the designated area or from an approved alternative water system pursuant to Chapter 12.48 SCC. Applications for such systems are processed pursuant to the regulations outlined in Chapter 12.48 SCC. Applications for CaRDs requesting an alternative system to obtain a density bonus shall be processed as a Level II application. Hearing Examiner criteria for review of an alternative system shall ensure that the system has no adverse impacts to the sole source aquifer. For CaRD density bonus developments in flow-sensitive basins refer to SCC 14.24.350.

The following lines in the CaRD zoning table are modified as follows:

| Zone | Maximum Residential Densities with a CaRD* (du/acres) | Open Space Options |
|---------------|--|---------------------------|
| Rural Reserve | 2/10 acres or 2 per 1/64 of a section, or 2/7 acres with use of development credits per SCC Chapter 14.22 limited to a maximum of 2 du | All, where appropriate |

[This allowance of parcels of 7 - less than 10 acres ignores and modifies previous land use regulations. Where is "du" defined ?](#)

From: [Kenneth Osborn](#)
To: [PDS comments](#)
Subject: TDR's
Date: Tuesday, November 03, 2015 3:06:38 PM

To Whom It May Concern,

During deliberations of the first post GMA comp plan, in the mid 1990's, TDR's were discussed and approved as options to direct growth into UGA's and away from resource lands. As a Planning Commission member at this time, I do not recall any objection to these proposal.

Since then nothing has changed except for the gaining of some momentum against TDR's from folks from the Property Rights side and Friends of Skagit County. There may be others but I don't know them. BUT I CONTINUE TO SUPPORT the concept of TDR's as I have yet to hear substantive arguments against TDR's. The population size of an area doesn't matter and the program would be voluntary.

This is not to say the program will wildly successful but I don't see any reason to shoot it down based on failures elsewhere. GIVE IT A CHANCE. If done properly, such as balancing sending and receiving areas, and eventually working with other incorporated jurisdictions, it could work, and Skagitonians will be the better for it.

Kind Regards,

Kenneth D. Osborn

From: [Amelia Petersen](#)
To: [PDS comments](#)
Subject: Conservation and Development Incentives Program (CDIP)
Date: Monday, September 28, 2015 10:24:27 AM

This sounds like a worthy incentive program. I encourage conservation, and I am happy to see that the County is planning for well-suited growth and development.

Thank you,

Amelia Petersen
17116 139th Pl. SE
Renton, WA 98058

From: [Kit Rawson](#)
To: [PDS comments](#)
Subject: Conservation and Development Incentives Program
Date: Wednesday, November 04, 2015 8:32:08 AM

To the Planning Commission:

I have lived in Skagit County since 1988 and recently retired from full time work as a fisheries biologist with the Tulalip Tribes. I have worked on salmon management and salmon recovery planning and implementation throughout the Puget Sound region and continue to do work in this area as a part time consultant. I am concerned with land use planning in Skagit County both as a citizen who appreciates the natural values provided by our environment and as a fisheries professional who understands the importance of good land use planning for maintaining fish and wildlife resources.

I was unable to attend your hearing on the Conservation and Development Incentives (CDI) program on Monday evening, November 2, 2015. Therefore, I am submitting this written comment instead.

In general, I support the CDI Program, which is a great tool for protecting our farms, forests and rural areas. We must maintain the open space we have in Skagit County and direct future development to areas already designated for development under the Growth Management Act process.

The CDI Program program is low cost to taxpayers and helps our farmers and forest land owners unlock some of the value of their land, which provides an additional source of working capital, while permanently keeping that land in forest and farming uses. This in turn supports ecosystem services, natural beauty, a sense of rural community, and other values that make our county the great place that it is. Among many other things, the recovery and persistence of the Skagit River's salmon stocks depends on the ecosystem service provided by these rural open spaces.

However, unless a CDI development credit is required for ANY rural density increase, the benefit of a CDI program would be greatly diminished. Therefore, please require that ALL rural density increases can only occur with a CDI development credit.

Thank you for considering this comment in your deliberations.

Sincerely,

Kit Rawson
3601 Carol Place
Mount Vernon, WA 98273
425-388-1000
krawson50@gmail.com

From: [Roger Robinson](#)
To: [PDS comments](#); [Ron Wesen](#)
Subject: Attn: Commissioners & Planning Department - CDIP Comment
Date: Thursday, November 05, 2015 3:11:07 PM

Dear Commissioners & Planning Department,

Below is a copy of a "comment" letter to you, signed by 34 South Fidalgo residents, regarding your proposed CDIP. South Fidalgo is not in favor of this increase in density. We only had one day to gather these signatures. If needed, to influence your decision, we can supply you with many more.

Attached to this email are scanned copies (PDF files) of the two original signed letters, complete with the 34 signatures. The letter portion is the same on the 2 copies, although we needed the 2nd page for the additional signatures.

Please let me know immediately if you can not open the PDF file containing the signatures.

Thank you in advance,
Roger Robinson
Rosario Beach

November 4, 2015

Skagit County Commissioners
Skagit County Planning Commission
Skagit County Planning Department

pdscomments@co.skagit.wa.us

Dear Planning Commissioners:

We appreciate the opportunity and invitation to comment on the Conservation and Development Incentives Program (CDIP). We are South Fidalgo residents who care about preserving rural character on South Fidalgo Island.

We like the inclusion of Rural Reserve in the list of Conservation Priority Areas. There are many large parcels of Rural Reserve on South Fidalgo that we would like to see preserved without development.

To help preserve the rural character of South Fidalgo, we believe that the program should be modified by deleting the Rural Reserve and Rural Intermediate zones, on South Fidalgo, from the list of Development Priority Areas so that the CDIP cannot be used to increase development on South Fidalgo. Rural Intermediate on South Fidalgo has all too many lots already smaller than the minimum 2½ acre lot size. With many of our wells, that draw from our island aquifer, already failing - we cannot be allowing any additional development, especially the addition of 1 acre lots with a development credit purchase, in these zones.

Please contact Roger Robinson, rogerarobinson@comcast.net, if you have questions about this proposal. Thank you for your consideration.

Signed by 34 residents of South Fidalgo Island

November 4, 2015

Skagit County Commissioners
Skagit County Planning Commission
Skagit County Planning Departmen
pdscomments@co.skagit.wa.us

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(Saul Spino) Saul M. Spino, M.D. (Roger Robinson) Roger Robinson

(Allen Jett) Allen Jett (Kathleen Jett) Kathleen M. Jett BRAD WALTERS - KENDRA WALTERS
Tom Carson - Carol Taylor

(Dore Caldwell) Dore Caldwell (Ann Caldwell) Ann Caldwell

(Paul Thorne) Paul A. Thorne (Rob Woods) Rob Woods

(George Webb) George Webb (Dana Webb) Dana C. Webb

(Michael Webb) Michael Webb (Cynthia Walters) Cynthia Walters

(Randy Walters) Randy Walters DENIS DURAN (Steve Demopoulos) Steve Demopoulos
Kevin Montgomery

(Jim Davis) James B. Davis (Jan Robinson) Jan Robinson

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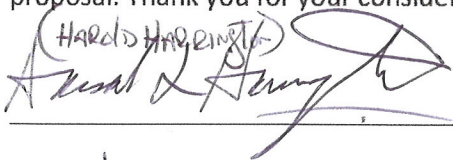
Dear Planning Commissioners:

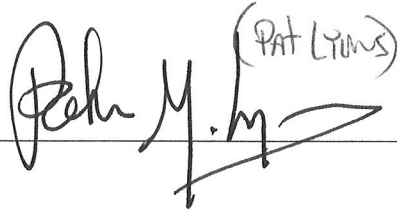
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(Harold Haggren)


(PAT LYONS)




↔

THOMAS CONWAY

Richard C. Machin

(MARY LYONS)
Mary Lyons

Tom Huffstodt

↔

RON HUFFSTODT

Paul Sherman

↔

Paul Sherman

Laurie Sheerer

↔

Laurie Sheerer

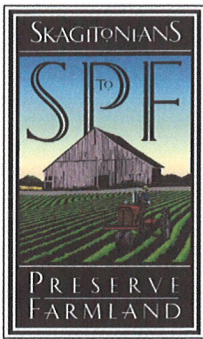
Lizbeth Vecchione

Lizbeth Vecchione

Beth Backlund

Suzanna Dentel *(SUZAN DENTEL)*

Kathryn Alexander



Thursday, November 05, 2015

Mr. Kirk Johnson, Senior Planner/Team Supervisor
Skagit County Planning and Development Services
1800 Continental Place
Mount Vernon, WA 98273

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RE: Skagit County Conservation and Development Incentives Program

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Linda Tyler
Development Director

Elisa Minerich
Development Assistant

Barbara Martin
Bookkeeper

Dear Mr. Johnson:

Skagitonians to Preserve Farmland (SPF) has been a longtime advocate for developing a Transferable Development Rights (TDR) program within Skagit County. In 1992, with support from the Bullitt Foundation and Skagit County, SPF completed and issued a report titled Farmland Preservation in Skagit County: Program Options and Recommendations. One of the many program recommendations at that time was to pursue the development of a TDR program. Twenty-three years later SPF is pleased to be able provide comments on the proposed Conservation and Development Incentives program.

In general, SPF is supportive of most of what has been proposed for the draft Comprehensive Plan Policy amendments and Unified Development Code amendments with the following exceptions:

Proposed Comprehensive Plan Amendments

- **Goal 2H 1.5** should be modified to clarify the program must designed to be in compliance with GMA in addition to advancing the overall goals of GMA.
- **Policy 2H-3.2(2)** on its face value, appears to be inconsistent with GMA by granting non-conforming building lot(s) the ability to become buildable through the proposed CDI program and therefor increase density in rural areas. Only lots that have been gone through the lot certification process and received an approved lot certification from Skagit County should be eligible to transfer and/or receive development units under the proposed CDI program.
- **Goal 3C-1.1** regarding CaRDs in the Rural Reserve designated areas. The current CaRD already provides a density bonus of an additional development right in exchange for clustering. We believe increasing the density bonus through the CDI program will serve to exacerbate rural sprawl and is inconsistent with the spirit and intent of the GMA.

Proposed Unified Development Code Amendments

- **14.22.030(2)(a) an application for CaRD development priority bonus per SCC 14.18.300 or .310.**

This proposed code addition should be stricken as the current CaRD provisions already grant a “free” development right to property owners in exchange for clustering. Granting a third development right through the CDI program will exacerbate sprawl and is contrary to the spirit and intent of GMA.

- **14.22.030(2)(c) a Comprehensive Plan Map amendment approved after January 1 2016, including an urban growth expansion, that increased the maximum allowable number of residential lots or dwellings.**

We would like this proposed new section to also include urban growth area expansion for commercial and industrial expansion.

- **14.22.030(2)(d) a rezone inside an urban growth area (“stand alone rezones” per SCC Chapter 14.08) approved after January 1, 2016, that increased the maximum allowable number of residential lots or dwellings. In the case of municipal UGAs this provision must be authorized through an interlocal agreement between the County and the municipality.**

We would like this proposed new section to also include urban growth area expansion for commercial and industrial expansion.

- **14.18.300 (2)(c)(v) Rural Reserve (on parcels 10 acres of 1/64 section, or greater, with 1 lot allowed for each additional 5 acres or 1/128 section, or on parcels between 7 and 10 acres with the use of development credit per SCC Chapter 14.22 up to a maximum of 2 du);**

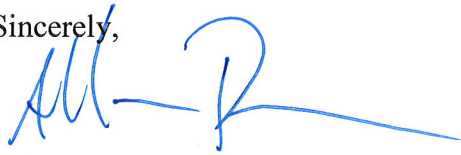
The proposed new code language should be stricken as the current CaRD provisions already grant a “free” development right to property owners in exchange for clustering. Granting a third development right through the CDI program will exacerbate sprawl and is contrary to the spirit and intent of GMA.

14.18.310 General approval provisions- CaRD.

The proposed new code language in this section's table should be stricken as the current CaRD provisions already grant a "free" development right to property owners in exchange for clustering. Granting a third development right through the CDI program will exacerbate sprawl and is contrary to the spirit and intent of GMA.

Thank you again for allowing us this opportunity to provide public comment. If you have any questions about our comments please do not hesitate to contact me by phone at 360-336-3974 or by e-mail at allenr@skagitonians.org.

Sincerely,

A handwritten signature in blue ink, appearing to read "Allen Rozema", with a long horizontal flourish extending to the right.

Allen Rozema
Executive Director

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Lori Scott, Alger WA

First I want to thank you for your work on the marijuana regulations. As a result, I do not believe any other property owners will be disadvantaged as our neighborhood is.

We purchased our property in Rural Intermediate in 1987 when it was zoned for 5 acre parcels. Now 2.5 acre parcels are allowed, it is a LAMIRD area and is now being considered as a "receiving" area as part of the proposed CDI Program. Even the reduction from 5 acres to 2.5 has allowed some development with unusual lot splits and damaged the rural character of the area. Allowing 1 acre parcels would be even more detrimental.

We are opposed to this program as proposed for the following reasons:

- 1) The intent of the GMA is to restrain low density sprawl and encourage the majority of growth in cities and urban areas. Trying to preserve natural resource land by increasing density in Rural Intermediate areas does not seem to meet the intent of the GMA or the LAMIRD which currently applies to our area. Cities and urban areas should "receivers" rather than increasing development in areas where current code states "long term open space retention and critical area protection are encouraged".
- 2) There are already regulations in Skagit County Code which limit lot sizes and development in resource lands. Adding an additional program requiring additional staff time and government oversight seems to add to the bureaucracy.
- 3) The Alger Sub area Plan, approved in 2008, was to guide the development in the area for 20 years. Extensive public involvement and a thorough review of build out was completed. The results were designed to protect rural character which includes a pattern of land use that does not require extension of government or urban services. Even with zoning remaining as it is, it allows for the current population to double over time which will increase demand for government services such as Sheriff, fire etc. Designating our Rural Intermediate area to "receive" additional development is not in keeping with the approved Alger Sub area plan.
- 4) Some potential "receivers" in Alger are within ½ mile of Friday Creek which is designated a low flow creek and because of that a CaRD would not be allowed in this area so why would this area be chosen to "receive" additional development. There are already identified concerns about water quality and quantity and the preservation of critical areas in this zone.

I respectfully request that prior to approving this proposal that cities and urban areas be identified and contracted as "receivers" and that all Rural Intermediate areas be more thoroughly reviewed as to potential impact.

I am not sufficiently informed about the other Rural Intermediate areas to speak for them but I do know that our neighborhood in Alger has already "received" an industrial marijuana grow with obscuring black fences, security cameras and disgusting odor which continues to exist because not enough research was done prior to allowing the facility. I urge extreme caution in moving forward with a program that seems redundant and perhaps damaging to one area in a stated attempt to protect another.

Lori Scott
3351 Old Hwy 99N
Burlington WA 98233

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SKAGIT COUNTY
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Honorable Ron Wesen, Chairman

Board of Skagit County Commissioners

June 18, 2014

Dear Commissioners:

Pursuant to directives in your resolution #R20120276, dated August, 2013, I wish to inform you that the Advisory Committee held its final meeting on June 8, 2014. Our task was to "... evaluate possible development of a transfer of development rights (TDR) program" for Skagit County.

From the resolution, I am the only remaining "... at-large member who can help to represent the interests of Skagit County urban and rural residents"; I am prepared to meet with you at your request anytime to discuss in detail any issues which concern you, including public awareness. I attended all committee meetings, (with one exception for which I arranged attendance by proxy), all public presentations, offered my services to the public, the Board, and the Planning Commission during my tenure. I read all of the voluminous materials provided, did independent research, and initiated countless discussions with your constituents. I asked questions, and provided information of and to the staff and consultants.

Skagit County currently has a conservation plan developed under the Growth Management Act and adopted in 1996.

Under State guidelines, Skagit County identified and then inventoried and mapped resource lands, (Agriculture, Forest, Mineral, Fish), critical areas (eg steep slopes, wetlands), rural villages, and low population density residential use zoning. One of the salient features of this GMA inspired plan, is that the property owners or rural lands in Skagit County are front-line conservationists defined as Stewards of the land in RCW 36.70. The results of the studies undertaken as part of this proposal point out that our plan has been absolutely successful in achieving our Conservation Goals. Close to eighty percent of Skagit's Rural Lands remain protected permanently for conservation of legitimate natural resource values. A small portion of our rural land is zoned for low-density rural residential use.

The proposed permanent removal of the right to build a home and live on one's rural property is discrimination against the rural community. A city has no need to alter its development code to allow more dense intra-city uses through the device of demanding someone to give up the "American Dream" on a piece of rural property; urban jurisdictions can change development code at will without engaging in such a charade; indeed, the Board of County Commissioners

has created a number of options allowing owners to donate or sell property for conservation. Prudence dictates noting that all such conversion of residential use reduces the County's revenue base.

Notwithstanding the directives of your resolution, the Department of Commerce Grant which funds this exercise includes funds and guidelines for preparing and forwarding an ordinance for adoption. At least two opportunities to terminate this project have already passed. I recommend that you do so now. If this proposal is allowed to advance, I predict you will find an uninformed public once again engaged in last-minute panic as it passes to the hapless Planning Commission, and then to you. Would you really sign an ordinance empowering urban officials to eliminate living rights on County residential property, especially since they already have the power to permit whatever they wish without meddling with rural property rights?

Please forward this document to your colleagues and to staff for inclusion in the Appendix of the Committee Report. Thank you for the opportunity to serve.

Respectfully, Ed Stauffer, Citizen-at-large Committee Member

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**RECORD OF THE PROCEEDINGS
SKAGIT COUNTY BOARD OF COMMISSIONERS
TUESDAY, JUNE 19, 2012**

The Skagit County Board of Commissioners met in regular session on Tuesday, June 19, 2012, with Chairman Kenneth A. Dahlstedt, Commissioner Sharon D. Dillon, and Commissioner Ron Wesen present.

I. CALL TO ORDER:

Chairman Dahlstedt called the proceedings to order at 8:31 a.m.

II. PLEDGE OF ALLEGIANCE:

Chairman Dahlstedt led the gallery in the salute to the flag.

III. AGENDA:

County Engineer Paul Randall-Grutter was present to introduce the agenda items and to answer questions.

a) 8:30 a.m. - 9:30 a.m. Public Works - Henry Hash, Director:

1. Public Hearing/Possible Action: Consideration of the Vacation of a Portion of County Right-of-Way Known as Similk Bay Road, No. 16010

Engineering Technician Shane Whitney provided a map depicting the Similk Bay Road. He indicated that the Skagit River System Cooperative (Cooperative) and Skagit County staff had been working together on a fish habitat enhancement project. As part of the fish habitat enhancement project a portion of roadway had been removed and would not be reinstalled. The Cooperative and the adjacent property owner have requested that a portion of the right-of-way be vacated.

Mr. Whitney indicated that the proposed right-of-way to be vacated was currently closed and Similk Bay Road could not be used as a through road. He said that Public Works recommended that the Board of County Commissioners sign an order to vacate a portion of Similk Bay Road.

There was a discussion about whether there was the possibility to vacate the whole road. Mr. Whitney indicated that the County should maintain full right of way access in order to accommodate the multiple utilities located in the area.

Chairman Dahlstedt opened the public hearing at 8:43 a.m.

Andy Culbertson of 5909 Campbell Lake Road in Anacortes said that easements existed that would allow utility companies to maintain the utilities, he did not think the County would have any problems maintaining the section of road since the road was closed. He indicated that the project for salmon enhancement was a beneficial project.

Seeing no further public testimony forthcoming, Commissioner Dillon made a motion to close the public hearing at 8:45 a.m. Commissioner Wesen

seconded the motion, which passed unanimously.

Commissioner Wesen indicated that the vacation was the final piece needed to complete the estuary project and he understood why it was needed.

Commissioner Dillon said she believed in the project but did not believe in vacating right-of-way because she had experienced circumstances in the past that there could be need for the right-of-way in the future.

Commissioner Dahlstedt expressed concerns about public and the County accessing the water. He indicated that there are some unanswered questions about public access to the water.

A motion was made by Commissioner Dillon to approve making a decision regarding the vacation of a portion of County right-of-way Known as Similk Bay Road, No. 16010 on Tuesday, July 24, 2012, at 8:30 a.m. Commissioner Wesen seconded the motion.

The vote passed unanimously.

2. **Public Hearing: Consideration of Road Name Change Petition Request Regarding a Road Name Change of a Portion of County Road Known as Roney Road, No. 30610, South of Halloran Road**

Commissioner Dahlstedt announced that he had done business with the petitioner of the road name change, and felt that for the appearance of fairness he would abstain from participating in the proceedings. Chairman Dahlstedt left the proceedings at 8:51 a.m.

Traffic Engineer Given Kutz said that Public Works had received a petition requesting a road name change of a portion of County road currently known as Roney Road (#30610) to Hopley Road (#30620). Mr. Kutz indicated that 14 comments opposing the name change had been received.

Mr. Kutz showed a map depicting the section of road located on Samish Island along the section line between Sections 35 and 36 Township 36 North, Range 2 east, W.M., running north from Samish Island Road to Halloran Road for a length of approximately 0.44 miles.

Mr. Randall-Grutter stated that pursuant to Skagit County Code, the applicant had received the require signatures from 60% of addresses. He indicated that Public Works had recently received an e-mail from a resident who had previously supported the name requesting that his signature be removed from the petition.

Commissioner Wesen opened the public hearing at 8:58 a.m.

Julie Beldin Hopley of 619 West Hazel Street in Mount Vernon, stated that she went door-to-door to get signatures from residents. She provided a brief history of Hopley family from 1610 to 2012.

Craig Little of Roney Road said he had lived on that road for about five years. He said that was a volunteer firefighter for Fire District 5. He submitted a letter from the Samish Island Fire Department Fire Chief Michael Collins opposing the name change. Mr. Little said the name change of a main through fare would cause problems for fire and emergency response services. He suggested the park on Halloran Road could be named after the Hopley family.

Marnie Pennington of 5072 Roney Road stated that it would be costly to change all legal documents. She suggested that the Hopley name be recognized on Samish Island in another way.

Tim Van Leeuwen stated that he owned a lot on Roney Road. He said he did not think the name change was necessary.

Howard Brown a resident of Samish Island said that he knew and respected the Hopley family and suggested that the Hopley name be recognized in another way. He suggested the park become the Blau-Hopley Park.

Ken Schacht stated that he owned cabin at 10735 North Beach Road and shared memories of Mr. Roney and said Roney Road should not be changed.

Raymond Hopley said he lives on Roney Road and spoke in favor of the name change.

Doug Hopley of 9461 Samish Island Road spoke about the history of the Hopley family and provided suggestions that would recognize the Hopley family.

Chuck Pennington of 5072 Roney Road said that he was not opposed to the Hopley family but was opposed to the road name change. He asked that if the name change was approved that the petitioner should cover expense associated with changing documents.

Gary Storm 5182 Roney Road spoke in favor of keeping the name of the road the same.

Seeing no further public testimony forthcoming, Commissioner Dillon made a motion to close the public hearing at 9:26 a.m. Commissioner Wesen seconded the motion, which passed unanimously.

A motion was made by Commissioner Dillon to approve making a decision on this matter on Tuesday, July 3, 2012, at 8:30 a.m. or as soon thereafter as possible. Commissioner Wesen seconded the motion.

The vote passed unanimously.

Commissioner Wesen recessed the proceedings at 9:29 a.m.

3. Miscellaneous

There were no miscellaneous items for Public Works to discuss.

b) 9:30 a.m. - 10:30 a.m. Washington State University (WSU), Skagit County Extension - Don McMoran, Director:

Chairman Dahlstedt reconvened the proceedings at 9:35 a.m.

Director Don McMoran was present to introduce the new Ideas for Living Program Coordinator Natalie Gustafson. He invited the Commissioners to attend WSU's 90th Birthday Celebration and Open House taking place on Thursday, August 30, 2012, from 11 a.m. to 3 p.m. at 11769 Westar Lane in Burlington.

Mr. McMoran provided information on the recent Jefferson Elementary field trip, Skagit County Pest Control Board, Annual Berry Grower's Breakfast, and various programs at WSU.

Horticultural Pest Control Coordinator Talea Price provided information about monitoring and controlling the Apple Maggot or Snowberry pests.

1. 4-H Program Update

4-H and Leadership Development Extension Educator William Freitas said that in 1902, A.B. Graham organized 85 Ohio youths into a club of boys and girls, which started the 4-H program. He reported that there are currently 6.5 million youths involved in the 4-H program. Mr. Freitas said that in Skagit County there are 500 members, 30 clubs, and 130 adult volunteer leaders. He provided information about the benefits of being a 4-H member. He said that about 92% of youth who graduate from the 4-H program in Skagit County were attending post-secondary education programs.

Mr. Freitas spoke about the Latino Outreach and Partnership, the 4-H Science Leadership Team; and the 4-H Team Conference taking place on June 24 through June 26, 2012, at Washington State University in Pullman; the 4-H Camp at Deception Pass taking place in July; the Japan - Summer Inbound 4-Week Program; 2012 Skagit County Fair, taking place August 8 through 11, 2012.

Mr. Freitas introduced the mentor of the Mount Vernon High School Latino/an Education Achievement Program (LEAP) Jesse Benavidez. Mr. Benavidez spoke about the (LEAP) club and his work with the migrant community.

2. Community Development and Public Issues Program Update

Community Development & Public Issues Regional Extension Educator Kay Haaland spoke about her extensive career at WSU Extension. She said she began her career in 1984 working for Livestock and will retire on July 31, 2012.

3. Miscellaneous

There were no miscellaneous items for WSU to discuss.

Chairman Dahlstedt recessed the proceedings at 10:30 a.m.

c) 10:30 a.m. - 11:30 a.m. Planning and Development Services - Dale Pernula, Director:

Chairman Dahlstedt reconvened the proceedings at 10:34 a.m.

1. Presentation: Skagit Transfer of Development Rights Project

Senior Planner Kirk Johnson introduced proposed TDR Stakeholder Committee members: Skagitonians to Preserve Farmland Executive Director Allen Rozema, Skagit Land Trust Conservation Director Martha Bray, Skagit County/Island Builders Association (SICBA) Executive Director Wayne Kriegel, Forest Advisory Board Member Paul Kriegel, Agricultural Advisory Board member Kim Mower, Conservation Futures Advisory Committee (CFAC) Member Mike Hulbert, City of Burlington Planner Margaret Fleek, and Farmland Legacy Program Coordinator Kendra Smith. He indicated that the Committee was seeking applications for two more members.

He explained that TDR program was a market-based mechanism that enables

the voluntary transfer of growth from places where a community would like to see less development ("sending areas") to places where a community would like to see more development ("receiving areas.")

He said that sending areas could include farmland, forestland, or wildlife habitat. Receiving areas typically included cities or other lands that already have the infrastructure and services to meet the needs of increased growth.

Landowners in sending areas may voluntarily sell the development rights on their land while retaining ownership of the land. The landowner could continue to use the land for other purposes, such as forestry or agriculture. Development rights are purchased by buyers looking to obtain additional development potential in receiving areas (where the community has decided it wants development to go). A receiving area might be a downtown district where a city is looking to encourage second-floor residential development over first-floor commercial uses. The TDR program would facilitate the sale and transfer of these development rights.

Mr. Johnson stated that the purpose of the TDR advisory committee would be to review policy, provide input on key policy technical issues, provide public outreach efforts, and provide information to County staff and the Board of County Commissioners. The TDR Advisory Committee would not be a decision-making body and would not be expected to "vote" on recommendations or achieve consensus on all issues brought before them.

The TDR Advisory Committee would consist of up to 15 members. Most committee members that have already been selected represent groups or organizations that might directly participate in a TDR program, including agriculture, forestry, conservation, builders, developers, real estate professionals, bankers, and city planners. This request for applications is specifically for two at-large members of the committee who may or may not be direct participants in a TDR program but could help to represent the interests of Skagit County urban and rural residents. The two at-large TDR advisory committee members may live in urban or rural parts of the county and will be selected by the Board of County Commissioners.

Mr. Johnson said the project staff and consultant team included staff from the Department of Commerce Heather Ballash, Forterra staff member Taylor Carroll, Consulting Planner Mark Personius, County Geographic and Information Services staff member Josh Greenberg, County Grant Management staff member Linda Christensen, and County Project Manager Kirk Johnson. He went on to explain the scope of work of the project.

Program Manager of Forterra's Policy Department Taylor Carroll explained that Forterra's role in the TDR project would be to help guide the TDR Advisory Committee. He explained that a TDR program was a program aimed at protecting natural resources. A TDR is a market based technique that encourages the voluntary transfer of growth from places where a community would like to see less development (called sending areas) to places where a community would like to see more development (called receiving areas).

Mr. Carroll provided information about Kittitas County's TDR Program, which was adopted in December 2009.

Heather Ballash with Department of Commerce stated that Skagit County had received the 2012 Governor's Smart Communities Award recognizing outstanding local planning and community development efforts from throughout the state.

Ms. Ballash provided information on The Regional Transfer of Development Rights Alliance partnership, which is an alliance between King County, Pierce County, Snohomish County, Forterra, the Washington State Department of Commerce, and the Puget Sound Regional Council.

She explained the factors needed to develop a successful TDR Program.

Commissioner Wesen said he thought it was critical that the TDR Program work with the Farmland Legacy Program.

Commissioner Dillon said she thought the program was exciting and that the diversity of the committee members was critical.

Chairman Dahlstedt said that he had heard loud and clear from property owners about the importance of property rights. He said it was important that property owners be compensated for their development rights if they were not allowed to build on their land. He said that the public's input would be carefully considered before any decisions about implementing a TDR Program was made.

2. Miscellaneous

Chairman Dahlstedt asked for information about the Shoreline Master Plan Program Update public comment period.

Senior Planner and Project Manager for the Shoreline Master Program Update Betsy Stevenson stated that the public had an informal opportunity to provide comment on the working draft document. She said that written comments would be accepted until the close of business on June 29, 2012, and that no written response to comments received on this draft will be prepared. She said that the public comment period would be part of the formal adoption process.

She reported that it was also important to remember that the Department of Ecology (DOE) had asked Skagit County to furnish a copy of the working draft to them by July 31, 2012. They do not expect it to be complete, but they do want to see that the County was making progress and are on track to complete the update process within the allotted grant period. She indicated that this was just the first round in the process. Ms. Stevenson reported that there would be formal public open house meetings that would be conducted prior to finalizing the draft SMP and the formal adoption process.

A finalized draft document will be completed and the formal notice and adoption process was anticipated to begin in late fall or early winter. Public hearings before the Planning Commission will be held late in 2012 or early 2013. Skagit County anticipates having the SMP adopted by June 2013.

Additional information about the upcoming SMP Update study sessions before the Planning Commission are available on Skagit County's website at <http://skagitcounty.net>, navigate to Planning & Development Services page and check under the heading Planning Projects of Current Interest: "Transfer of Development Rights Project," which will be updated as materials are available.

Chairman Dahlstedt expressed concerns about submitting a draft document to the DOE. He said the public should be allowed more time to provide comment before any documents are submitted DOE, he suggested another 30

days.

Ms. Stevenson reported that the County was required to submit a draft document to DOE as part of the grant requirements.

d) 11:30 a.m. - 11:45 a.m. Public Comment Period:

Executive Director of The Arc of Island and Skagit County and Skagit Parent Coalition Joy Caldwell said that she and her family would be leaving the Skagit Valley and moving Bothell due to her husband's promotion. She thanked community for their support and friendship over the last several years.

Executive Director Friends of Skagit County Ellen Bynum said they were interested in monitoring the TDR Committee. She said that it was uncertain whether the Skagit Valley had the market to implement transfers of development rights. She said the key to making an informed decision about the program was to understand the economics. She said she did not think that Skagit County was ready for this type of program.

Seeing no further public testimony forthcoming, Chairman Dahlstedt closed the public comment period at 11:49 a.m.

V. ADJOURNMENT:

Chairman Dahlstedt adjourned the proceedings at 11:49 a.m.

**BOARD OF COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**

Kenneth A. Dahlstedt, Chairman

Sharon D. Dillon, Commissioner

Ron Wesen, Commissioner

ATTEST:

Linda Hammons, Clerk of the Board

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SKAGIT COUNTY
PDS**RCW 36.70A.011****Findings — Rural lands.**

The legislature finds that this chapter is intended to recognize the importance of rural lands and rural character to Washington's economy, its people, and its environment, while respecting regional differences. Rural lands and rural-based economies enhance the economic desirability of the state, help to preserve traditional economic activities, and contribute to the state's overall quality of life.

The legislature finds that to retain and enhance the job base in rural areas, rural counties must have flexibility to create opportunities for business development. Further, the legislature finds that rural counties must have the flexibility to retain existing businesses and allow them to expand. The legislature recognizes that not all business developments in rural counties require an urban level of services; and that many businesses in rural areas fit within the definition of rural character identified by the local planning unit.

Finally, the legislature finds that in defining its rural element under RCW 36.70A.070(5), a county should foster land use patterns and develop a local vision of rural character that will: Help preserve rural-based economies and traditional rural lifestyles; encourage the economic prosperity of rural residents; foster opportunities for small-scale, rural-based employment and self-employment; permit the operation of rural-based agricultural, commercial, recreational, and tourist businesses that are consistent with existing and planned land use patterns; be compatible with the use of the land by wildlife and for fish and wildlife habitat; foster the private stewardship of the land and preservation of open space; and enhance the rural sense of community and quality of life.

[2002 c 212 § 1.]

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SKAGIT COUNTY
PDS**RCW 36.70A.030****Definitions.**

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Adopt a comprehensive land use plan" means to enact a new comprehensive land use plan or to update an existing comprehensive land use plan.

(2) "Agricultural land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by *RCW **84.33.100** through **84.33.140**, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production.

(3) "City" means any city or town, including a code city.

(4) "Comprehensive land use plan," "comprehensive plan," or "plan" means a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter.

(5) "Critical areas" include the following areas and ecosystems: (a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas. "Fish and wildlife habitat conservation areas" does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company.

(6) "Department" means the department of commerce.

(7) "Development regulations" or "regulation" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW **36.70B.020**, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.

(8) "Forest land" means land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under *RCW **84.33.100** through **84.33.140**, and that has long-term commercial significance. In determining whether forest land is primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, the following factors shall be considered: (a) The proximity of the land to urban, suburban, and

rural settlements; (b) surrounding parcel size and the compatibility and intensity of adjacent and nearby land uses; (c) long-term local economic conditions that affect the ability to manage for timber production; and (d) the availability of public facilities and services conducive to conversion of forest land to other uses.

(9) "Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

(10) "Long-term commercial significance" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.

(11) "Minerals" include gravel, sand, and valuable metallic substances.

(12) "Public facilities" include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

(13) "Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

(14) "Recreational land" means land so designated under **RCW 36.70A.1701** and that, immediately prior to this designation, was designated as agricultural land of long-term commercial significance under **RCW 36.70A.170**. Recreational land must have playing fields and supporting facilities existing before July 1, 2004, for sports played on grass playing fields.

(15) "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

(a) In which open space, the natural landscape, and vegetation predominate over the built environment;

(b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(c) That provide visual landscapes that are traditionally found in rural areas and communities;

(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(f) That generally do not require the extension of urban governmental services; and

(g) That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas.

(16) "Rural development" refers to development outside the urban growth area and outside agricultural, forest, and mineral resource lands designated pursuant to RCW **36.70A.170**. Rural development can consist of a variety of uses and residential densities, including clustered residential development, at levels that are consistent with the preservation of rural character and the requirements of the rural element. Rural development does not refer to agriculture or forestry activities that may be conducted in rural areas.

(17) "Rural governmental services" or "rural services" include those public services and public facilities historically and typically delivered at an intensity usually found in rural areas, and may include domestic water systems, fire and police protection services, transportation and public transit services, and other public utilities associated with rural development and normally not associated with urban areas. Rural services do not include storm or sanitary sewers, except as otherwise authorized by RCW **36.70A.110(4)**.

(18) "Urban governmental services" or "urban services" include those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas.

(19) "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands designated pursuant to RCW **36.70A.170**. A pattern of more intensive rural development, as provided in RCW **36.70A.070(5)(d)**, is not urban growth. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

(20) "Urban growth areas" means those areas designated by a county pursuant to RCW **36.70A.110**.

(21) "Wetland" or "wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands.

RCW 36.70A.060

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SKAGIT COUNTY

Natural resource lands and critical areas — Development regulations.

(1)(a) Each county that is required or chooses to plan under RCW **36.70A.040**, and each city within such county, shall adopt development regulations on or before September 1, 1991, to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW **36.70A.170**. Regulations adopted under this subsection may not prohibit uses legally existing on any parcel prior to their adoption and shall remain in effect until the county or city adopts development regulations pursuant to RCW **36.70A.040**. Such regulations shall assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals.

(b) Counties and cities shall require that all plats, short plats, development permits, and building permits issued for development activities on, or within five hundred feet of, lands designated as agricultural lands, forest lands, or mineral resource lands, contain a notice that the subject property is within or near designated agricultural lands, forest lands, or mineral resource lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration. The notice for mineral resource lands shall also inform that an application might be made for mining-related activities, including mining, extraction, washing, crushing, stockpiling, blasting, transporting, and recycling of minerals.

(c) Each county that adopts a resolution of partial planning under RCW **36.70A.040(2)(b)**, and each city within such county, shall adopt development regulations within one year after the adoption of the resolution of partial planning to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW **36.70A.170**. Regulations adopted under this subsection (1)(c) must comply with the requirements governing regulations adopted under (a) of this subsection.

(d)(i) A county that adopts a resolution of partial planning under RCW **36.70A.040(2)(b)** and that is not in compliance with the planning requirements of this section, RCW **36.70A.040(4)**, **36.70A.070(5)**, **36.70A.170**, and **36.70A.172** at the time the resolution is adopted must, by January 30, 2017, apply for a determination of compliance from the department finding that the county's development regulations, including development regulations adopted to protect critical areas, and comprehensive plans are in compliance with the requirements of this section, RCW **36.70A.040(4)**, **36.70A.070(5)**, **36.70A.170**, and **36.70A.172**. The department must approve or deny the application for a determination of compliance within one hundred twenty days of its receipt or by June 30, 2017, whichever date is earlier.

(ii) If the department denies an application under (d)(i) of this subsection, the county and each city within is obligated to comply with all requirements of this chapter and the resolution for partial planning adopted under RCW **36.70A.040(2)(b)** is no longer in effect.

(iii) A petition for review of a determination of compliance under (d)(i) of this subsection

RCW 36.70A.070**Comprehensive plans—Mandatory elements.**

*** CHANGE IN 2015 *** (SEE [5923.SL](#)) ***

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The comprehensive plan of a county or city that is required or chooses to plan under RCW [36.70A.040](#) shall consist of a map or maps, and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan. The plan shall be an internally consistent document and all elements shall be consistent with the future land use map. A comprehensive plan shall be adopted and amended with public participation as provided in RCW [36.70A.140](#).

Each comprehensive plan shall include a plan, scheme, or design for each of the following:

(1) A land use element designating the proposed general distribution and general location and extent of the uses of land, where appropriate, for agriculture, timber production, housing, commerce, industry, recreation, open spaces, general aviation airports, public utilities, public facilities, and other land uses. The land use element shall include population densities, building intensities, and estimates of future population growth. The land use element shall provide for protection of the quality and quantity of groundwater used for public water supplies. Wherever possible, the land use element should consider utilizing urban planning approaches that promote physical activity. Where applicable, the land use element shall review drainage, flooding, and storm water run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

(2) A housing element ensuring the vitality and character of established residential neighborhoods that: (a) includes an inventory and analysis of existing and projected housing needs that identifies the number of housing units necessary to manage projected growth; (b) includes a statement of goals, policies, objectives, and mandatory provisions for the preservation, improvement, and development of housing, including single-family residences; (c) identifies sufficient land for housing, including, but not limited to, government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, and group homes and foster care facilities; and (d) makes adequate provisions for existing and projected needs of all economic segments of the community.

(3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

(4) A utilities element consisting of the general location, proposed location, and capacity of all existing and proposed utilities, including, but not limited to, electrical lines, telecommunication lines, and natural gas lines.

(5) Rural element. Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The following provisions shall apply to the rural element:

(a) Growth management act goals and local circumstances. Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, but shall develop a written record explaining how the rural element harmonizes the planning goals in RCW **36.70A.020** and meets the requirements of this chapter.

(b) Rural development. The rural element shall permit rural development, forestry, and agriculture in rural areas. The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. To achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character.

(c) Measures governing rural development. The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by:

- (i) Containing or otherwise controlling rural development;
- (ii) Assuring visual compatibility of rural development with the surrounding rural area;
- (iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;
- (iv) Protecting critical areas, as provided in RCW **36.70A.060**, and surface water and groundwater resources; and
- (v) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW **36.70A.170**.

(d) Limited areas of more intensive rural development. Subject to the requirements of this subsection and except as otherwise specifically provided in this subsection (5)(d), the rural element may allow for limited areas of more intensive rural development, including necessary public facilities and public services to serve the limited area as follows:

(i) Rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments.

(A) A commercial, industrial, residential, shoreline, or mixed-use area shall be subject to the requirements of (d)(iv) of this subsection, but shall not be subject to the requirements of (c)(ii) and (iii) of this subsection.

(B) Any development or redevelopment other than an industrial area or an industrial use within a mixed-use area or an industrial area under this subsection (5)(d)(i) must be principally designed to serve the existing and projected rural population.

(C) Any development or redevelopment in terms of building size, scale, use, or intensity shall be consistent with the character of the existing areas. Development and redevelopment may include changes in use from vacant land or a previously existing use so long as the new use conforms to the requirements of this subsection (5);

(ii) The intensification of development on lots containing, or new development of, small-scale recreational or tourist uses, including commercial facilities to serve those recreational or tourist uses, that rely on a rural location and setting, but that do not include new residential development. A small-scale recreation or tourist use is not required to be principally designed

From: [Barb Trask](#)
To: [PDS comments](#)
Cc: [KirkJohnson](#)
Subject: Conservation and Development Incentives Program (CDIP)
Date: Thursday, November 05, 2015 4:18:52 PM

Dear Planning Commissioners,

I am writing in support of the proposed Conservation and Development Incentives (CDI) program. My husband I are landowners in Skagit County. We chose to move to Skagit County because of its rural character and extensive open spaces. The valley is a beautiful blend of natural habitats, working farms and forestland. Remarkably, it has not yet been irreversibly fragmented with residential developments like so many other once-beautiful valleys in the country.

Protecting the county's natural resources is very important to us. I am therefore pleased to see that the county's planning department is working to develop innovative policies and programs, like the CDI, to help preserve the county's natural areas, large farms and forestland, against the pressures of residential development. Programs like this help preserve the county's rural and natural character, which residents and tourists value greatly.

We understand how conservation easements work. We granted a conservation easement to the Skagit Land Trust. Our experience is a good illustration of how the purchase of a conservation easement can benefit the landowner and achieve the county's overarching goal of protecting open space and farmland.

We purchased a portion of a defunct dairy farm in Birdview after it had been broken up into 5-acre building lots and slated for development. We worked with the Skagit Land Trust to put a conservation easement in place that permanently extinguishes five residential building sites, protects riparian woods as natural habitat, and yet permits us to live and farm within a designated agricultural zone. Extinguishing the building rights reduced the appraised value of our property significantly. We were fortunate in that the conservation easement protects approximately one mile of Skagit River shoreline, so the Trust was able to use funds from a state Salmon Recovery Fund Board grant to compensate us for half of this reduced property value. The other half formed a tax-deductible charitable donation from us to the Trust. With the funds we received for granting the conservation easement, we were able to purchase the remainder of the lots that had constituted the original farm before they were sold off to others and built upon. Thus, by purchasing the conservation easement from us, the Skagit Land Trust enabled us to reassemble the fragmented pieces of a large farm and permanently protect it against development.

The County's CDI program promises to do the same, and it's an especially important tool to protect forest, open space, and agricultural land that lack historical or future sources of conservation support like the Salmon Recovery Fund program we benefited from. The CDI program would complement the efforts of nonprofit organizations like the Skagit Land Trust and the Farmland Legacy Program. It would help keep large farms and forestlands intact and help the county keep its unique rural character. It would enhance efforts to preserve habitat connectivity for wildlife, too. Since purchasing and protecting our main farm, we have acquired more acreage, a combination of working farmland and natural areas, in the area and would like to protect much of it through conservation easements. The CDI program could help us do that.

I applaud the Planning Department for the thought and care that has gone into developing the policies needed to apply this innovative tool wisely and effectively. In my view, four points are key to the program's success:

1. It is essential that the easements be permanent and not subject to revision or reversion except in extremely rare cases.
2. The county must rely on a robust, science-based ranking system that takes into account natural value, habitat connectivity, as well as farming interests, to prioritize any county purchases of conservation easements.
3. The program should be voluntary for the easement-granting landowner (as is currently proposed).
4. The county must take seriously its obligation to monitor compliance with the terms of each easement and impose stiff penalties on any non-compliant activities.

I support implementation of the CDI program under these conditions.

This innovative tool should be put in place before it is too late.

Thank you for the opportunity to comment.

Barbara J. Trask, Ph.D.

41219 Elysian Ln.
Concrete WA 98237

From: [Carlo Voli](#)
To: [PDS comments](#)
Subject: Conservation and Development Incentives Program
Date: Friday, October 23, 2015 10:30:21 AM

I support the Conservation and Development Incentives (CDI) Program, which is a great tool for protecting our farms, forests and rural areas.

I support the CDI Program program because it also is low cost to taxpayers and helps our farmers and forest land owners unlock some of the value of their land, which provides an additional source of working capital, while permanently conserving their land.

However, to make sure rural areas are adequately protected, please require that ALL rural density increases only occur with a CDI development credit.

Thank you for considering my recommendation.

Carlo Voli
9605 239th st sw
Edmonds, WA 98020

From: [Andrea](#)
To: [PDS comments](#)
Subject: Comments on CDIP
Date: Wednesday, November 04, 2015 9:24:32 AM

Here are my comments re CDIP. Please let me know if something is confusing.
Thank you.
Andrea Xaver (422-8922)

From: Andrea Xaver

1. Why does development need “incentives?” Development continues in Skagit County.
2. The “CDIP” language is not clearly defined.
3. Sending and receiving areas are not clearly defined. Can Seattle be brought into the equation? Can rights be continually transferred around? Will they be put in a “bank?”
4. Who administers the program – it was mentioned that a private enterprise might do it – why is that? Who would it be? Why wouldn’t this program be managed by, and money given to, local government as it affects the county – and cities?
5. Have other counties/states been reviewed for success/failure re this type of program? If so, what are the answers?
6. What are the long-term consequences of Transfer of Development Rights (TDRs), or CDIP, or whatever name, intended or not?
7. The county abolished the Agricultural Reserve zoning in the mid 1990s. This “paved” the way for more development on thousands of acres in rural type areas, and on lands that were and can still be used for agriculture (ag). With over 300,000 people being born daily on this planet, it would seem prudent to have more agriculture designations “just in case we need more local food.” Also, ag lands provide scenic, open spaces, and habitat for thousands of snow geese and swans. And, ag can be a buffer from forest fires here.
8. This county has some of the richest and most productive farmland in the world. We need to further protect it and farmable rural lands for food production. Increasing housing in these areas does nothing for the quality of life that is valuable to this county.
9. Seems like when the county (and cities) experiments with lands and zoning and when subsequent mistakes are revealed, nothing comes along to correct those mistakes.
10. Seems like the cities have more power than the county regarding expansion of UGAs and other ploys to take over/change county lands and zoning.
11. Perhaps the GMA “requirements” for Skagit County should be changed to a split of 90/10 instead of 80/20.
12. Diane Freethy’s recent Letter to the Editor in the SVH mentioned a couple of concerns re TDRs for a county with a population less than 600,000 and not near the Puget Sound. Skagit Co. doesn’t have a population of 600,000. I’m not sure what area for TDRs is considered near Puget Sound. Has this been looked into by this county?
13. Skagit County’s Conservations Futures Program (a.k.a. Farmland Legacy Program [FLP]) is doing an outstanding job with its Purchase of Development Rights (PDRs). These development rights are extinguished on farmlands so that they cannot be taken advantage of. It has been said that “just go to court to undo the extinguishing of the rights” - implying that it would be easy to do. This has never been done or tried, as far as I know. Our FLP is the best in the state, so I’m told; and possibly one of the best in the nation. Thus, leave these farmlands out of any CDIP (or whatever TDR name) process. FLP should not be tampered with so that others, who favor development over food and other natural needs, can take advantage of it.

Thank you for the opportunity to comment.