



Skagit County Planning & Development Services

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Staff Report

From: Kirk Johnson, AICP, Senior Planner

Re: Policy Framework for Proposed Conservation and Development Incentives Program
(Density Credit and TDR)

Date: May 28, 2015

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Background

In 2011, Skagit County initiated a process to consider development of a transfer of development rights (TDR) program.

TDR is a voluntary, market-based mechanism to encourage the conservation of working farm, forest and open space lands, while transferring residential development potential from those lands to areas where growth is appropriate and desired.

In 2012, the Board of County Commissioners (Board) approved [Resolution R20120276](#), appointing a TDR Advisory Committee whose purpose was to “review and provide input on key policy and technical issues, and TDR public outreach efforts, to the County planning staff and consultants, the Planning Commission, and the Board of Skagit County Commissioners.”

The Planning & Development Service department (Department) worked with the Advisory Committee from September 2012 through August 2014, holding a dozen advisory committee meetings to consider a wide range of issues and policy options related to TDR and related density credit programs.¹

The TDR review process also included independent staff and consultant research; a detailed TDR market analysis; focus group meetings with potential TDR program users; and periodic project updates to the County's Agricultural and Forest Advisory Boards and the Planning Commission, city and town planners through the Skagit Council of Governments, and the Board.

In July 2014, the Department issued a report, *Skagit County Transfer of Development Rights: Project Findings and Program Recommendations*, which reviewed and analyzed the major issues surrounding such programs and summarized the Committee's discussions on key issues.

The report included [Final Recommendations](#) from a majority of committee members (8) that Skagit County should move forward with a combined TDR and density credit program, and a minority of committee members (3) that the County should not move forward with TDR at this time.

On August 6, 2014, project staff and TDR Advisory Committee members made a presentation to the Board on the TDR recommendations report and the majority and minority recommendations, and several members of the general public also spoke. (See [TV21 Video](#))

On September 29, 2014, the Board adopted [Resolution R20140298](#) directing the Department to draft TDR and density credit program policies and code based generally on the TDR Advisory Committee's majority recommendation with the additional guidance from the Board included in that resolution.

The Board added consideration of TDR and density credit policies and code to the 2014 Comprehensive Plan Amendment docket through [Resolution 20140390](#). Department staff has been drafting the proposal in preparation for its release for public review and comment this summer. A Planning Commission hearing and deliberations are anticipated in the early part of the fall.

The Department has developed a working title for the program – the Conservation and Development Incentives Program – in an effort capture the program's overall purpose and goals and to encompass both the TDR and density credit components. Also see the diagram of the proposed program included as [Exhibit A](#) to this memo.

¹ Density credit programs allow landowners or developers in designated areas to obtain additional development potential by purchasing density credits from the program based on an established fee schedule. The program uses revenues from the sale of density credits to purchase development rights from willing landowners in areas prioritized for conservation.

Process Going Forward

As noted above, the Department anticipates the full proposal (policy and code) will be ready for public release by mid-summer of this year. The Department will seek another opportunity to meet with the Planning Commission to discuss the draft policies and code before the proposal is released.

Department staff met with the Forest Advisory Board on May 11 to discuss the program and intends to meet with the Agricultural Advisory Board on June 10.

Release of the proposal will follow the standard legislative process as described in Skagit County Code 14.08, Legislative Actions, including the following steps:

- Issuance of a threshold determination under the State Environmental Policy Act (SEPA)
- Release of the proposal for public review and comment
- Written comment period and public hearing before the Planning Commission
- Planning Commission deliberation and development of a recorded motion for transmittal to the Board
- Review and final decision by the Board of County Commissioners

For More Information

Please visit the project website at www.skagitcounty.net/TDR.

Conservation and Development Incentives Program Policy Framework

Goals and policies to establish the program are proposed to be inserted as Goal H and related policies in Chapter 2 of the Skagit County Comprehensive Plan, the [Urban, Open Space & Land Use Element](#).

What follows is the general substance, in narrative form, of the goals and policies the Department is drafting. In some instances additional background discussion is included beyond what would likely appear in the policies themselves. ***This should be considered a discussion draft subject to change.*** The Department will develop a draft in goal/policy format after receiving feedback from this work session.

Draft Goals and Policies

Goal 1: Implement a conservation and development incentives program

Implement a program that provides an economic incentive to guide development to areas best suited for additional growth while engaging the private market to support the voluntary and permanent conservation of farm, forest and open space lands.

The conservation and development incentives program would facilitate the permanent conservation of farm, forest and open space lands, while encouraging development in urban areas and in a limited number of rural areas best suited for additional growth.

Key program features include:

- The program would be voluntary and incentive-based, providing additional options for farm and forest landowners who want to permanently conserve their land.
- No landowners would be required to sell development rights through the program.
- Landowners in areas eligible for additional development (known as “receiving areas”) could develop their properties under existing rules. Alternatively, they could obtain additional development potential by purchasing TDR credits or density credits.

The program would be implemented in a manner consistent with the overall goals of the Growth Management Act, the Skagit County Comprehensive Plan, and the comprehensive plans of participating cities and towns, which direct most new growth to designated urban growth areas while prioritizing the long-term conservation of natural resource lands and open space areas.

Goal 2: Provide both a transfer of development rights (TDR) option and a density credit option for program participants

In order to encourage and facilitate use, the program would offer two ways for buyers and sellers to participate:

- A TDR option would enable private-market transactions between receiving-area developers and sending-area landowners who negotiate a mutually agreeable price for the sale and transfer of development rights from a sending area to a receiving area.²
- A density credit option would allow developers to obtain additional development potential in receiving areas by purchasing density credits from the County or from a participating city or town based on an established fee schedule. The County would use density credit revenues to purchase development rights from willing landowners in sending areas.

Goal 3: Encourage partnerships between the County and the cities and towns to conserve lands of mutual interest, while directing growth to urban areas best suited for additional development.

Skagit County would encourage cities and towns to consider implementing TDR or density credit programs in coordination with the County. This would enable cities and towns to assist the County in conserving farm, forest and open space lands that are important to city or town residents.

² Receiving areas are areas eligible for additional development potential through the purchase of density credits or the transfer of TDR credits from sending areas. Sending areas are areas prioritized for conservation where landowners are eligible, on a strictly voluntary basis, to sell development rights and place their land in a conservation easement.

- Cities and towns would designate their own receiving areas and establish development incentives through their own public planning processes, ensuring that resulting development has public support and is consistent with each jurisdiction’s planning vision and goals.
- Municipal urban growth area expansions that generate increased residential development potential could be designated as receiving areas based on mutual agreement between the County and the respective city or town through an interlocal agreement.

Background narrative: Cross-jurisdictional (e.g. county-city) programs enable cities and towns to partner with the County to conserve farm, forest and open space lands outside of municipal boundaries that are important to city and town residents, while offering incentives for development in urban receiving areas.

Cities and towns represent the most active development markets, experiencing approximately 80% of Skagit County’s population growth in recent years. As a result, urban areas have the greatest potential to generate TDR and density credit purchases resulting in permanent land conservation in the County.

Cities and towns also have obligations and unique abilities under the Growth Management Act to provide the infrastructure, utilities and services needed to accommodate growth in a cost-effective manner. This makes them logical places to encourage development through a conservation and development incentives program.

Burlington’s Agricultural Heritage Density Credit program sells density credits that grant additional residential development in certain mixed-use (mixed commercial and residential) zones. The city provides revenues from those sales to the County’s Farmland Legacy Program to conserve Ag-NRL land surrounding the city. Burlington is considering expanding that program through its comprehensive plan update process. The City of Anacortes is in the early stages of considering a TDR or density credit program in partnership with the County.

Goal 4 : Establish a limited number of rural receiving areas where additional residential development that is consistent with the Comprehensive Plan’s and the Growth Management Act’s requirements to protect rural character can help to conserve surrounding farm, forest and open space lands.

The following rural areas would be eligible for modest increases in residential development potential with the purchase of TDR or density credits that help to conserve surrounding farm, forest and open space lands:

- Rural Village Residential and Rural Intermediate lands, where certain infill opportunities would be allowed through the purchase of TDR credits or density credits;
- Properties approved for Comprehensive Land Use/Zoning Map amendments (also known as “rural upzones”) that create additional residential development potential; and

- Certain Conservation and Reserve Developments (CaRDs) where the purchase of TDR credits or density credits would enable development not otherwise permitted under the CaRD ordinance.

The County would establish development regulations to ensure that the use of TDR or density credits in rural receiving areas protects rural character consistent with the requirements of the Comprehensive Plan and the Growth Management Act.

Goal 5: Complement existing Skagit County conservation programs by generating private market support for land conservation and focusing conservation efforts on lands and resources not protected by existing programs such as Farmland Legacy.

Lands designated as sending areas and eligible for conservation through the program would be:

- Lands in the following Natural Resource Land designations:
 - Industrial Forest-NRL³
 - Secondary Forest-NRL
 - Rural Resource-NRL, and
 - Ag-NRL⁴; and
- Lands in the Rural Reserve designation that have active farm or forestry uses or significant open space value.

The program would focus its farm land conservation efforts on Rural Resource-NRL and Rural Reserve lands, which are not eligible for Farmland Legacy Program participation but may contain active farms and high-quality agricultural soils.

The program would also support conservation of working forest lands and open space lands for which there currently is no County conservation program comparable to Farmland Legacy.

Background narrative: The conservation and development incentives program is designed to complement the County’s successful Farmland Legacy Program, which uses public funds to purchase residential development rights from land zoned Agricultural-Natural Resource Land (Ag-NRL).

The State and federal funds that support Farmland Legacy are becoming increasingly scarce and competitive. The conservation and development incentives program will generate financial support for farm, forest land and open space conservation by engaging the private local development

³ Proposed to be limited to IF-NRL lands within fire districts.

⁴ **Policy option:** Ag-NRL lands could either be included or excluded as sending areas under the TDR portion of the program. The rationale for including Ag-NRL is that TDR would provide another option for Ag-NRL landowners interested in selling development rights. The rationale for excluding Ag-NRL is a concern that some have expressed that a TDR program that includes Ag-NRL lands would disrupt the successful operation of the Farmland Legacy Program.

market. The program would not receive locally-generated Conservation Futures dollars that support the Farmland Legacy Program.

Farmland Legacy focuses its efforts on Ag-NRL lands, yet many active farms and high-quality farm soils are located on lands designated Rural Resource-NRL (RRc-NRL) and Rural Reserve (RRv). The new program would create a way to conserve these valuable agricultural lands as well.

Equally important, the County does not have a program similar to Farmland Legacy that supports the conservation of working forest lands or open space lands. The new program would also address this gap.

To conserve land with density credit revenues, the County would establish a new purchase of development rights (PDR) mechanism that uses revenues from the sale of density credits to purchase development rights from farm, forest and open space lands in the designated sending areas identified above.

Goal 6: Maintain private ownership of land while ensuring permanent conservation

Land conserved under the program, whether through a TDR or PDR transaction, would be protected by a permanent conservation easement held by Skagit County, in the same manner as is done through the Farmland Legacy Program.⁵

- The program would enable voluntary conservation of land that remains in private ownership.
- The conservation easement would retire the residential development rights without limiting natural resource uses including farming and forestry.
- The easement would not require public access to the land or modifications to resource management practices beyond those required by County code.
- The easements would be monitored annually by the County.

Website

To facilitate use by interested buyers and sellers, the County would maintain a website that provides information to potential program users; helps potential TDR buyers and sellers find each other; and reports data on TDR, density credit, and PDR transactions in order to maintain a transparent market and public accountability.

⁵ At the request of Forest Advisory Board and TDR Advisory Committee member Paul Kriegel, the Department is looking at how other conservation programs handle the permanency of conservation easements when circumstances around the conserved property change dramatically, beyond the control of the landowner, and the property is no longer viable for the practice of commercial forestry. Most conservation easements, including the one used by the Farmland Legacy Program and the one-acre seg provision in SCC 14.16.860, allow an easement to be terminated by a court if the court finds its purpose to no longer be possible to accomplish or if the underlying land is acquired by eminent domain.

Exhibit A: Diagram of Proposed Program

Skagit County Conservation and Development Incentives Program

