



Skagit County Planning & Development Services

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Supplemental Staff Report

Response to Planning Commissioner Questions

From: Kirk Johnson, AICP, Senior Planner
Re: Response to Planning Commissioner Questions on CDI Proposal
Date: October 22, 2015 (Updated to include responses to questions from Planning Commissioner Annie Lohman)

Following are Department responses to written questions from or comments by Planning Commissioners Kathy Mitchell, Tammy Candler, and Annie Lohman. This memo will be updated as additional written questions are received from other Planning Commission members.

Responses to questions from Kathy Mitchell:

- 1. Where does the County come up with the cash to buy these development credits to start with and to get rolling? (The County does not have an endowment like other entities would.) Is this cash resource voter approved to buy the rights let alone for the numerous steps to secure, transfer, & monitor them annually?**

The County would not need to buy development rights to initiate the program; instead, it would purchase development rights only after cash is generated by the sale of development credits.

- 2. For County developed CDI transactions – Who bears the costs and liability for each and all of these (including any [I] may have missed for this list that you know about/anticipate)? [A very detailed list of program components was included in the question and has been moved to the end of this document.]**
- 3. Which [from the detailed list of program components] will be fee based, which will be paid for by something ‘other’ than fees and where would the funds come from for that piece of the process? (Chart would be helpful.)**
- 4. Is/Will this cash resource be voter approved to buy the rights let alone for the numerous steps to secure, transfer, & monitor them annually?**

As a general matter, dollars from the sale of development credits would be used to buy development rights. All other costs would be paid for by general revenue. General revenue includes any application fees that the Department may require to participate in the CDI program.

The Department will develop the specifics of program administration. Generally, the costs of various aspects of the program would be covered as follows:

- **Revenues used directly to conserve land** would come from those people who purchase development credits from the County, or who purchase development rights from private landowners and receive development credits in exchange.
- **The County’s administrative costs related to specific, individual transactions** will be covered by permit fees associated with those specific transactions. These would include the review of comprehensive plan amendments/rezones, land divisions, or other development

approvals that require the purchase of development credits; the determination of which properties are eligible to sell development rights and how many development rights are eligible for sale; appraisals of land from which the County is considering purchasing development rights; and long-term monitoring of conservation easements.

- **Program administration not specifically related to individual transactions**, such as developing forms and procedures, updating maps and fee schedules, and describing the program to potential users, will be handled by existing planners and administrative staff and supported within the Department's annual budget.

For additional discussion of program administration issues and options, see Chapter 10, Program Administration (pp. 88-90), of the project's [Findings and Recommendations Report](#).

5. Why does the County want to be a 'middle man' at all when there are other entities that do this function already like the Skagit Land Trust?

Skagit County's role in administering CDI would be unlike the role that any other entity currently performs, or could perform. As the local government with land use authority, Skagit County is in a unique position to implement a program to engage the private development market to support conservation at a time when many sources of public conservation funding are in decline and little appetite exists for tax increases.

With respect to conservation easement purchases, Skagit County already plays this role through the Farmland Legacy Program. But as noted in the [Findings and Recommendations Report](#), both the County's Farmland Legacy Program and the private Skagit Land Trust and receive more inquiries from interested landowners than they have funds to work with in a given year.¹ As Skagit Land Trust executive director Molly Doran wrote to the County Commissioners in June 2014:

A TDR program will provide new incentives and better options for landowners, and could be especially useful to conserve important forest resource lands where little funding has historically been available – notably productive forest lands. We strongly encourage the inclusion in designated "sending areas" of not only AG-NRL lands, but also lands zoned Rural Resource, Secondary Forestry, as well as those lands eligible for development within the Industrial Forest Zone. Notably, we are aware of a number of landowners in these zones who are interested in TDR options.²

6. Where is the financial justification and need justification for the County to take on this project? This appears to be more of a select few's wish than a County-wide need.

See the section titled *Purpose and Need for the CDI Program* starting on p. 2 of the Department's [Staff Report](#) (September 24, 2015) releasing the CDI proposal for public review and comment. The justification is also discussed at length in the TDR project report that has been provided to each Planning Commission member and that was, in part, the basis for the Board of County Commissioners directing the Department to draft policies and code for the CDI proposal and move it forward through the 2014 docket. The following sections of the report are specifically recommended:

- *What is the rationale for TDR?* (p. 12);
- *Why is Skagit County considering TDR?* (p. 13);
- *Is additional conservation needed?* (p. 29);
- *Public support for conservation* (p. 31); and

¹ *Transfer of Development Rights: Project Findings and Program Recommendations*, Skagit County Planning & Development Services, July 2014, p. 22.

² *Ibid*, Appendix C.

- *Majority Recommendation: Skagit County should implement a combined TDR and density credit program (p. 92).*

7. What about the ‘roughly equalize’ component to attempt to facilitate private market transactions to occur...wouldn’t this give false sense of values to the public for the County to make up Exchange Rate Tables knowing full well they are inaccurate?

The exchange rates are based on an analysis of the *average value* of development rights, and the *average value* of development credits, in particular land use zones across the County. They are not intended to represent the exact value of any particular development right or development credit.

In private market transactions, the buyer and seller would seek to negotiate a mutually agreeable price for the sale of a development right and the receipt of a specified number of development credits based on the appropriate exchange rate for that transaction. The exchange rate seeks to place some potential buyers and some potential sellers in the same economic ballpark so that market transactions can occur.

A developer for whom 1 extra unit of density is worth \$10,000 is not going to buy a development right valued at \$40,000. However, if the developer can receive 4 bonus units of density for purchasing a \$40,000 development right, he or she would be more willing to purchase the development right at a price that is acceptable to the seller.

If a buyer or seller seeks more certainty, they have the option of buying development credits from the County at the price established by the fee schedule, or offering to sell development rights to the County based on a market appraisal, assuming their property is selected through a competitive ranking process.

8. Appearance of possible usury, coercion, favoritism, or bartering with this problem statement pg. 6 8Sep2015 Staff Report excerpt: “The County may pay less than fair market value for the conservation easement if the landowner is willing to accept a lower price.”

State law prohibits the County from paying *more* than fair market value; it does not prohibit paying *less*. In any kind of transaction—whether purchasing development rights from landowners or buying vehicles for the County motor pool—the County should attempt to obtain the best value for its (the public’s) money.

When the County purchases a development right, it will obtain an appraisal to determine the fair market value. It will share the appraisal with the potential seller who could then opt to accept no less than the appraised value.

However, some sellers might be interested in selling a development right for less than the appraised value, perhaps to make their offer more competitive, to take advantage of a charitable tax deduction, or for altruistic purposes. The code should not preclude that from occurring where that is the landowner’s choice.

The Farmland Legacy Program’s ranking criteria provide extra points to properties offered at less than full value. The CDI code proposal is consistent with existing County practice and represents sound management of public resources.

9. How is ‘the appropriate number of development credits’ assessed and assigned for any given parcel? Does this value or can this value change with time?

As stated on p. 7 of the Department’s September 24 [Staff Report](#): “The number of development rights eligible for sale is the same as the number eligible for building purposes as determined through the County’s Lot Certification process, except that development rights from parcels located

entirely in the regulatory floodway or in the Industrial Forest-NRL designation *outside* of a fire district shall not be eligible for sale.”

The determination is based on the overall size of the parcel and the number of residential dwelling units per acre allowed in the applicable zone, excluding existing residences, CaRD density bonuses, and accessory dwelling units. These numbers can be found in the Comprehensive Plan designation policies and zoning regulations for each land use designation and zone. For instance, one primary residence can be built on 20 acres of Secondary Forest-NRL. Therefore, a 20 acre parcel of Secondary Forest would be eligible to sell one development right.

The number of development rights could only change over time if the parcel were the subject of a Comprehensive Plan Amendment/Rezone to a higher or lower intensity zone.

10. Methodology: Where is the flow chart and or supporting tables and information that leads to the number of development credits determination? Where does that information come from?

There is no specific flow chart. There is a table of land use districts and densities in SCC [14.16.030](#), and those densities are also discussed in applicable Comprehensive Plan policies and zoning code provisions for each zoning district.

11. Other than a sense of altruism, why would the voters/taxpayers agree to this complicated and County man-power intensive undertaking for valuable County resources that are already cash-strapped and manpower deficient for a few landowners that may take advantage of the program?

The primary reason for the program is to conserve natural resource land. The program is not overly complicated and is not manpower intensive. For more, see the response to question #6 above and #12 below.

12. How does the County benefit – what specific, quantifiable, and measurable ways other than altruism?

The County would benefit from additional land in its Natural Resource Land zones being permanently conserved for natural resource production. This would help to maintain the viability of the agriculture and forest products industries which generate jobs, earnings, and tax revenues, and produce agricultural products for consumers, and timber for mills, and finished wood products for consumers. It would also reduce the amount of Natural Resource and Rural Reserve land developed for residential purposes, reducing the fragmentation of the land and thereby benefiting not only the resource industries but also natural watershed functions and habitat connectivity. The County’s rural character, including its agricultural landscape, forested hillsides, and open space lands contributes significantly to the local quality of life enjoyed by all residents.

A large number of land use fiscal studies indicate that retaining Natural Resource lands in resource production and open space lands in an undeveloped state will also provide a greater fiscal benefit to the County than would residential development of those lands. According to an [American Farmland Trust study](#) conducted with Skagitonians to Preserve Farmland in 1999: *“Study findings indicate that farm, forest and open land had a positive fiscal impact on Skagit County in 1997. Because of its modest requirement for services, open land creates a surplus of revenue for the county. For every dollar of revenue they generated, farm, forest and open land only cost 51 cents. Residential development overall did not pay for itself, requiring \$1.25 in services for every dollar of revenue generated.”*³

³ American Farmland Trust, *Cost of Community Services, Skagit County, Washington*, March 1999.

More recent “cost of community services” studies by American Farmland Trust and numerous other organizations across the country have reached similar conclusions.⁴ Additional facts and figures regarding the economic contributions of farming and forestry to Skagit County’s economy are included in the section titled “*Is additional conservation needed?*” starting on p. 29 of the [Findings and Recommendations Report](#).

As cited in the Department’s September 24 [Staff Report](#), the 2013 Skagit County Natural Hazards Mitigation Plan indicates that “*As the population of Skagit County increases and people desire to live in more rural or isolated areas outside of the floodplain, development in the wildland-urban interface will continue to expand thereby increasing the potential risk to lives and property from wildland and wildland urban-interface fires.*” To the extent the CDI program provides alternatives to the residential development of forest lands, these risks to lives and property will be reduced.

13. If the County starts this program and it does turnout to be a failure, what happens to those few left holding paid for un-used/useless development rights?

It would be difficult for the program to be a “failure” in this sense; the only real way in which the program would fail is if no one used it.

The structure of the program defers the need to purchase development credits until the time they must be used. Development credits can only be purchased directly from the County for a specific project under review. The applicant is not required to furnish the credits until time of project approval, minimizing the above risk.

Development credits purchased through private transactions do not need to be purchased for a specific development project, and an applicant does not need to purchase them in advance. A letter of intent to purchase credits, signed by the potential buyer and seller, is adequate to initiate the development review process.

14. How will potential sellers be educated and it is ensured that they understand the long-term ramifications of their decision to permanently sell their rights?

In the same manner as Farmland Legacy easements. The conservation easement document a landowner would sign to retire development rights will very clearly state that the easement is permanent and can only be reversed in very limited circumstances subject to approval of both the landowner and the County. County staff and CDI program literature would also be very clear on this point.



Department response to a comment from Planning Commissioner Tammy Candler at the October 6 Planning Commission work session:

15. “I looked at the report you’re referencing, and I didn’t see positive reports or positive comments from members of the public. I saw a lot of negative comments and what I saw as far as positive comments were a couple of letters from some guys who were being paid to be consultants on the project.”

Eight members of the TDR Advisory Committee recommended that the County implement a conservation incentives program, while three members recommended against such action. Those eight members represent a wide range of interests, including urban residential development, conservation, farming, farmland preservation, forest policy, and urban planning. The written statements of all committee members who submitted them for inclusion in the project report are available [here](#).

⁴ American Farmland Trust - Farmland Information Center, *Fact Sheet: Cost of Community Services Studies*, August 2010.

Three of those members spoke in support of moving forward at the August 6, 2014, presentation to the Board of County Commissioners, while two committee members spoke in opposition ([TV21 Video](#)). Also at that session, the following members of the public spoke in favor of implementing a program: Mike Janicki, Ken Osborn, and Jim Owens, all foresters and forest land owners.

The following individuals spoke or submitted letters in support of advancing a TDR and density credit proposal as part of the December 2014 Comprehensive Plan Amendment docketing hearing and public comment opportunity: Molly Doran, Skagit Land Trust (which has 1,500 members); Christina and Ryan Jepperson, forest land owners; Kevin Maas, Farm Power Northwest; Allen Rozema, Skagitians to Preserve Farmland (1,200 members); Phillip Wright and Tim Manns, Skagit Audubon Society (400 members); and Ken Osborn, forester.



Department responses to written questions submitted by Planning Commissioner Annie Lohman on Friday, October 16, 2015.

16. The County will not be a participant in the "market", correct? By this I mean as a purchaser of development rights. I was under the impression the County's role would be more of a facilitator of the exchange, a regulatory arm of the transaction between the developer and land-owner, and a holder (escrow) of the monies. This would technically then NOT be County monies.

In a direct transaction between a buyer and seller – which is one option under the CDI proposal – the County would facilitate the exchange but it would not purchase development rights. The County would issue development credit(s) to the seller once the conservation easement had been executed on the seller's land. The seller would provide the development credit(s) to the buyer in exchange for monetary payment for the seller's development right. If either party to the transaction wanted an escrow agent involved, they could turn to a bank or other private entity to provide that service.

The second option under the CDI proposal is for a developer to purchase development credits directly from the County, not from a private landowner. In this case, the County would use revenues accumulated from the sale of development credits to purchase development rights directly from landowners interested in conserving their land. The purchase would occur when the County and landowner executed the conservation easement extinguishing the development right(s) from the seller's land.

17. Pricing. You had a table of theoretical valuations. Then You said it was a negotiation between landowner/developer. So why would it matter what the agreed upon value would be if it exceeded the suggestion in the table. This is PRIVATE money and not taxpayer money. The fair market value would be a variable value depending on willingness of purchaser/seller.

The statements in the question are correct for direct transactions between a buyer and a seller. They would negotiate a sales price and if they reached agreement the transaction would occur. An important consideration for the buyer ("developer") in that negotiation is how many development credits they would receive for purchasing and extinguishing one development right from a particular zone. That number is established by the exchange rates indicated in the table (see the column titled "Exchange Rates").

The statements in the question are not correct where a buyer purchases development credits from the County. In this instance, the price of a credit would be established by the adopted development credit fee schedule (see the column titled "Development Credit Fee Per Additional Lot" in the example table). This price would not be negotiable. When the County used revenues from the sale of development credits to purchase and extinguish development rights, it would do so on the basis

on an appraisal to determine fair market value. These would be public monies and the County is prohibited by state law from paying more than fair market value.

18. Has the County considered running a pilot program to test out the idea on a limited scale? I am concerned about unintended difficulties. A pilot program has a sunset and an opportunity for tweaking.

Running a pilot program has not been actively considered, but this is a recommendation that the Planning Commission could make.

19. You used Matt's example of being just short on acreage for one more dwelling unit when doing a CaRD. I don't see where this program helps when basically a "fractional share" is needed to do the proposed development.

The intent of the question is unclear; Commissioner Lohman has been asked for clarification. Where the landowner in Rural Reserve lacked a relatively small amount of acreage needed to obtain a CaRD density bonus, they could gain the ability to create an additional residential lot by purchasing a development credit. The development credit fee for that transaction, \$14,500 in the example table, is based on the estimated value of a one-acre clustered lot in Rural Reserve; it is not a "fractional share."

20. I don't understand the rationale for the 7-10 acres being allowed up to one in RRV but someone who has more than 10 but less than 5 acre increments more doesn't receive the same density allotment.

This is a reasonable suggestion that the Department is evaluating.

21. I looked at the many rural villages and noted that there are already many sub-standard lots within these areas. Why would you basically penalize someone from doing what is already common in the area. Not talking about expanding the boundry but within the boundries of the RVR. Why would you discourage in-fill? Same can be said for RI- there really isn't a lot of consistency in either the RVR nor RI zoning area. They appear to never have been ground truthed at inception. Again my poster child of Blanchard. . . .

Currently in Rural Villages where public water is not available, no new lots may be created that are smaller than 2.5 acres except through a CaRD (Conservation and Reserve Development). The CaRD ordinance allows smaller lot sizes than 2.5 acres in Rural Villages but it does not grant a density bonus. In these Rural Villages, existing lots smaller than 2.5 acres were either created before the implementation of the current Comprehensive Plan and development regulations or in limited instances they may have been created since then through a CaRD.

The County could amend the code and allow lots down to one acre in size in all Rural Villages outright, without the purchase of a development credit. Making such lots available *with* the purchase of a development credit provides the added benefit of achieving conservation of natural resource land and helps to implement the following proposed policy:

2H-3.1 Residential densities in unincorporated Skagit County should be maintained at current levels; increases in those densities through upzones should only be granted with the purchase of development credits through this program.

22. Concerning the UGAs- I'm thinking of the recent contraction of the BayView UGA and the recent request by Sedro-Woolley to close up one UGA and designate a new one- Shouldn't these be areas where concentrated growth is desirable? Why go through all the technical activities related to developping the code/ Comprehensive plan when deviations can be sold on the open market? More of a UGA question but, when a city has a UGA is there a time horizon for them to incorporate the area into their boundries?

The proposal would not allow UGA expansions outside of the existing framework and requirements for documenting the need for the expansion. Those requirements would still need to be met. The proposal would make utilization of the additional density allowed by being added to the UGA contingent on the purchase of development credits.

Based on recent conversations with city representatives, the Department will recommend revising the proposed policy and code language related to municipal urban growth areas and their expansions. The revisions will clarify that the CDI program would only apply to municipal urban growth areas or their expansions where the County and the city have cooperatively entered into an interlocal agreement in support of doing so.

The proposed policies and code would remain unchanged for the creation or expansion of non-municipal (County) urban growth areas.

The Growth Management Act requires cities and towns to establish urban growth areas to accommodate 20 years of anticipated growth. The implicit assumption, if not explicit requirement, is that municipalities would annex land in their UGAs within that 20 year time period.

23. The plan is restricted solely to residential development- correct?

Correct.

24. I'm concerned about no interested city partners.

The City of Burlington has a density credit program and a transfer of development rights (TDR) program in its code currently. Last spring (2015), the city approved an apartment complex using 22 Agricultural Heritage Density Credits generating \$22,000 for preservation of Ag-NRL land in Skagit County surrounding the city of Burlington. The city will be further evaluating these programs as part of its 2016 Comprehensive Plan Update.

The City of Anacortes is considering implementation of a TDR and/or density credit program as part of its 2016 Update and is working in coordination with the County as it develops its proposal.

Other cities and towns in the County are encouraged through the proposed policies to partner with the County over time. In the four Central Puget Sound counties (King, Snohomish, Pierce, and Kitsap), the creation of a county TDR program has often preceded and stimulated city interest in TDR. Once a county has established a multi-jurisdictional TDR framework, cities have developed their own programs that link to it, allowing the transfer of development rights from the county to the cities. In many fast-growing cities in the central Puget Sound region, offering a TDR program linked to higher development potential, especially in downtowns, is viewed as a key element of economic competitiveness.



Additional detail from Kathy Mitchell's question # 2:

Which will be fee based, which will be paid for by something 'other' than fees and where would the funds come from for that piece of the process?: (Chart would be helpful.)

- Forms for costs & development?
- Application Reviews, Eligibility Assessments & Report Costs?
- Baseline Inspections and Reports Costs? (Pictures, documents, reports, & recording their costs)
- 'Exchange Rate Table'?
 - Initial development and maintenance costs?

- Where does this information come from? (What resources will be used and are proven accurate and reliable).
- Frequency of update every 5 years? Updates for at least every 5 years seems to be inadequate to reflect changing markets.
- Accuracy of update given statement 'roughly equalize'?
- Maps of development & conservation priority areas and on-going maintenance costs?
- Ranking Criteria development and updates? (Critical piece.)
- Who actively 'sells' the CDI concept to get people and other jurisdictions to do this, or does the County just expect for interested parties to show up? (Appears to be potentially manpower intensive.)
- Staff costs to oversee program?
- Written documents for public knowledge for all aspects of the program for clear understanding of program, its limitations, and punitive consequences for violations?
- Recording & filing costs to the County Auditor and with the County Planning Department?
- Conveyance Database development, updates, & maintenance costs?
- Annual Easement Monitoring and associated Enforcement monitoring costs?
- Penalization/Legal actions & follow-through for violations? (Separate costs from actual monitoring costs.)
- Assessment & assignment costs for 'the appropriate number of development credits'?
- Establishment of the 'building envelope' assessment & decision criteria and execution?
- Periodic Re-evaluation and Ranking of Purchase Priority?
- Purchase & Extinguishment of Development rights by the County (including full appraisal of proposed conservation easement)?
- Selling, negotiating, developing, executing, monitoring, and trouble-shooting Interlocal agreements?