TDR Advisory Committee
January 2014 Meeting Summary[1]

Committee Members

Paul Kriegel
Wayne Crider
Allen Rozema
Kim Mower
Bruce Lisser
Charlie Boone
Ed Stauffer
Martha Bray

Public

Ellen Bynum

Staff

Kirk Johnson, Skagit County
Nick Bratton, Forterra

Meeting focus

The major focus of the discussion was:

- Options for structuring a TDR or density fee program
- Appropriate level of County administrative involvement
- What structure would best serve the County's and Burlington's conservation and development goals?

Kirk and Nick described several program and transactions mechanism options and some tradeoffs between them:[2]

- Traditional TDR (private buyer-seller)
- Density Fee
- Combination (TDR and density fee)
- TDR with Bank

Combined TDR and density fee programs:

- Provide more options for development-right purchasers; increases likelihood of use
    - Burlington has both on books; only density fee option has been used to date
- Density fee option requires a mechanism for pooling density fee revenues and purchasing conservation easements.

Discussion and Questions

- What sets the upper limit on development potential in TDR receiving areas?
    - It can be a regulatory cap – for example the 6 du/acre cap proposed for Bayview Ridge-Residential, with development right purchase, or

[1] These meeting notes are intended to be as accurate as possible. Meeting participants were provided an opportunity to review and comment on the notes and any resulting comments have been incorporated.
[2] For additional details see attached slides.

    - It can be left to the maximum the market will support, or other regulatory constraints (parking, impervious surface, etc.)
    - In Snohomish County's TDR program each city sets its own receiving area rules

- ➢ Is there a finite number of credits for sale?
    - Depends on the geographic size/scope of receiving areas
    - City of Redmond an example where initial sending area was small, credits were all purchased, then city expanded sending area, creating more
    - Burlington Ag Heritage Program focuses on 1,800 acres Ag-NRL around city; that could expand if/when all of those lands are conserved

- ➢ What are the options for achieving conservation with a density fee program?
    - The Burlington Ag Heritage Program provides fees to Farmland Legacy for Ag-NRL purchases. A Skagit County density fee program could do the same; or
    - The County could broaden the focus of the Farmland Legacy Program, or create a counterpart to Farmland Legacy, focused on the conservation of forest and other priority resource lands; or
    - Density fee revenues could potentially be provided to a private-non-profit organization – for example a land trust – for the purchase of conservation easements consistent with the County program's goals and under an inter-agency agreement with the County. (This would require some research to explore legal and other issues.)

Allen suggested research to determine whether the County can use Conservation Futures dollars to purchase development rights, sell those development rights to developers in designated receiving areas, and generate additional funds for additional conservation purchases.

Nick noted that some counties (such as King County) have used Conservation Futures dollars in this manner.

Level of County Admin Involvement in TDR

Nick described examples of low, medium, and high-levels of public administrative involvement (county or city) in TDR programs:

- Low: the program establishes governing policies and code and tracks transactions, certifying development credits and recording conservation easements. Private buyers and sellers find each other, negotiate sales prices, and conduct transactions.
- Medium: to facilitate private market transactions, the program may provide a website, post historic sales data, market the program to potential buyer and seller groups (Relators, Farm Bureau, etc.), and may offer a market exchange (like a Craig's list for potential TDR buyers and sellers).
- High: this may involve also offering a density fee option or creating a TDR bank, which can serve as a market participant, buying and selling development rights to assist with large transactions, smooth out market fluctuations, or facilitate transactions that achieve priority public goals.

Few jurisdictions with TDR programs operate TDR banks. The required investment of public resources makes the most sense where there is a large amount of TDR market activity already.

- King County is an example of a TDR program with an active TDR bank. It was initially capitalized with $1.5 million in Conservation Futures tax dollars.
- Other potential sources for capitalizing a TDR bank include levies or bonds, timber revenues, or other sources of public funds. Density fee sales could also provide capital.
- Use of public funds requires an appraisal to assure fair market value for development right purchases.

Committee Thoughts on TDR Bank, Level of County Administrative Support

While several committee members saw how a TDR bank could help make a program function more smoothly, the consensus appeared that 1) the bank concept was risky given the use of public funds; 2) the TDR market is insufficiently developed here; and 3) sources of funds to capitalize a bank are too limited to justify creation of a TDR bank at this time.

Those members who appeared to support moving forward with some type of TDR and/or density fee program appeared also to support a low to moderate level of County involvement, progressing over time as the program increased in usage.

- Kim: moderate level of involvement sounds like the best way to go; website, marketing, matchmaking buyers and sellers could help the private TDR market function.
- Bruce: You need an adequate commitment of effort to put a program in place, but then let it evolve into the appropriate level of administrative support depending on use. Don't throw a whole bunch of FTEs at it now. The amount of market activity won't justify that.
- Allen: there's an opportunity to ramp up to a moderate level as program matures.
- Martha: if you're going to do it, it needs some level of commitment from the beginning, especially on the conservation easement side, including monitoring for compliance.

Program Design

When asked their thoughts on the program design options, several committee members (Allen, Martha, Kim, Bruce and Margaret) supported the following:

➢ Establish a program; provide both TDR and density fee options to encourage use by developers. Low to moderate administrative support as warranted by program use.

Individual committee member comments:

- Bruce - Put TDR on books; be ready, but don't expect great things anytime soon
- Martha, Margaret –if there's a density fee component, they would want to see a way to conserve forest and other priority conservation lands in addition to agricultural lands.
    - Martha is concerned about use of TDR with CaRDs; this meeting was the first she'd hear about that
- Allen – sees a complementary relationship between TDR and Farmland Legacy:

    - TDR easement not as restrictive as Farmland Legacy easement, creating a price differential.
    - TDR could appeal to a different group of ag landowners who may be interested in conserving their land but with fewer limitations than with the FLP easement.
    - TDR would contribute to the cause of farmland conservation

- Paul – His company in the business of making money, but they can't cut trees every day.
    - If TDR is a way to put money in a landowners' pocket, he's for it.
    - Small landowners have probably the most to gain, the most interested.
    - Wouldn't want to see a program restrict the price that development right can be sold for.
    - Would prefer a non-permanent easement; like DNR riparian easement

Committee members having more reservation:

- Charlie – Not sold on whole thing
    - But if you're going to do something, the simpler the better.
    - Density credit approach seems much simpler than creating a whole new (TDR) program.
    - If a development right can't be built under current rules, shouldn't be sellable through TDR.

- Wayne- Still absorbing information.
    - Some SICBA members love TDR, some hate it.
    - Personally would support the hybrid approach, providing both options.
    - But devil's in the details and there's a whole lot of details.
    - Doesn't think program would be much used; Skagit is too rural a county.
    - Would have been more popular before GMA; not so much now that rural development potential already significantly limited by zoning.

- Ed – The Heartland analysis indicates the market support may not be there.
    - All of the other examples that Heartland has worked on are urban.
    - TDR may not work here in a rural county.
    - Concerned about possibility of the County intentionally creating disincentives to rural development as a way to encourage TDR sales.
    - Message from developer focus group: developers won't play unless it makes financial sense.

Public comment:

- Ellen Bynum
    - Doesn't think Conservation Futures tax is at the maximum level allowed by law
    - Could be expanded to provide funds for forest land conservation
    - Only successful TDR programs are in urban counties
    - If a program is created, it should focus on Rural Reserve and Rural Resource.
    - Doesn't want to jeopardize economics of ag land conservation.

Identification and Prioritization of Sending Areas

There was some discussion of prioritization of sending areas. The Committee agreed to return to this issue at the March meeting.

The discussion reflected tension between wanting to target TDR sending areas based on specific conservation priorities, version concerns about sending a message that “some properties are more valuable than others.”

TDR could be made available to all landowners in a particular zone for fairness purposes. However, the tradeoff might be a highly dispersed, checkerboard pattern of land conservation, or “conservation” of some lands not likely to develop anyway due to their distance from development pressure.

Some options for further discussion in March include:

- Identifying some or all natural resource land designations as potential sending areas
- Starting with some or all natural resource land designations, but narrowing down designating sending areas based on specific conservation priorities, including:
    - Those areas determined by criteria to have the greatest natural resource value.
    - Those areas considered to face the greatest development pressure
    - Those areas having high environmental or public safety value, such as the floodplain, water supply, habitat values, etc.
    - Those areas outside of natural resource land (NRL) designations being used for natural resource production but not currently having NRL protections.

Comparison: TDR & Density Fee

- **Traditional TDR program**
  - Private market transaction between buyer & seller
  - Sales price negotiated directly between two
  - Sometimes offers better pricing for large number of development right purchases
  - Can reduce govt cost and involvement
  - Program issues development certificates, records conservation easement

TDR & Density Fee Programs

- **Density fee (like Burlington Ag Heritage)**
  - Developer purchases density credits at set price
  - Revenues aggregated and used for conservation purposes (Burlington → Farmland Legacy)
  - Easier to use for most developers
  - May be more understandable to general public

- **TDR experts recommend offering both options**

Program design:
One possible option

- **Density fee component**
  - Functions like Burlington Ag Heritage Program
  - Revenues provided to Farmland Legacy or new conservation program focused on forest and other resource lands
- **TDR component**
  - Private buyer-seller option (can work better for large transactions)
  - Potential sending areas: SF-NRL, RRc-NRL, IF-NRL; possibly Ag-NRL