Transfer of Development Rights (TDRs)

Grant deliverable: The County wants to update and improve its incentive programs so that they will be actively utilized and highly effective in the preservation of farmland. This grant would contribute to this goal by reimbursing the County for staff time to be spent consulting with jurisdictions around the state about their successful and innovative TDR programs, including those that bank development rights, or that link their TDR program to infrastructure funding, for the purpose of developing strategies for updating the County’s TDR program.

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1. Why Transfer of Development Rights (TDRs)? Cascade Land Conservancy explains TDRs as follows:
Transfer of development rights (TDR) is a market-based tool for helping implement a jurisdiction’s growth policies. TDR uses the “economic engine” of new growth to conserve lands with public benefits, such as working lands (farms and forests), environmentally sensitive areas, or open space. It is also sometimes used to further a community’s goals for historic preservation and/or housing affordability.

Through individual transactions, development rights are transferred from privately owned farmland, forestland, and natural areas (known as sending sites) to areas that can accommodate additional growth (known as receiving sites). Landowners in sending areas receive compensation for giving up their right to develop, while developers in receiving areas pay for the right to develop at greater densities or heights than would otherwise be allowed. When development rights are removed from a sending site, a conservation easement is placed on it, allowing for permanent protection of the parcel (unlike zoning regulations, which can be changed). TDR does not limit growth; rather, it allows communities to plan more effectively by directing that growth into areas most appropriate for it. In their comprehensive plans and development regulations, communities can identify which areas are suitable to receive development rights and how much additional development is appropriate.

2. Clallam County’s TDR program. There are two sets of sending/receiving areas in Clallam County, one located in the Sequim Dungeness Planning Region and another in the Port Angeles Planning Region. There are currently no TDR opportunities available in the Straits Planning Region or the Western Planning Region.

Sequim Dungeness Planning Region. Attachment C hereto includes a map of the sending and receiving areas located in the Sequim Dungeness Planning Region (SDPR), together with relevant zoning code provisions and comprehensive plan policies.

According to CCC 33.26.010, Transfer of development rights – Purpose, the purpose of the SDPR’s TDR program is “to encourage the conservation of long-term commercially significant agricultural lands in the Sequim-Dungeness Regional Planning Area by allowing owners of such lands to realize the equity in the land’s development potential without conversion to nonagricultural uses… Lastly, the chapter seeks to encourage appropriate growth in urban growth areas.”
The SDPR sending areas encompass all of the Agricultural Retention (AR) land which are located in the Sequim Dungeness Planning Region, with residential development rights available for transfer to receiving areas outside of the AR lands calculated by taking the difference between the currently available maximum density of one dwelling per sixteen acres and the pre-GMA maximum density of one dwelling per five acres, plus a density bonus.

The SDPR receiving areas encompass all of the unincorporated Sequim UGA’s residentially zoned areas (S(R-II), S(R-III), and S(R-IV)), which allow development ranging from, respectively, single family detached homes to high density, multifamily duplexes, triplices, and apartment development at a density of “up to 16 dwelling units per acre with transfer of development rights and the provision of urban level facilities and services.”

Port Angeles Planning Region. Attachment D hereto includes a map of the sending and receiving areas located in the Port Angeles Planning Region (PAPR), together with relevant zoning code provisions and comprehensive plan policies.

According to CCC 33.26.010, Transfer of development rights – Purpose, the PAPR’s TDR program “seeks to protect critical areas within the Port Angeles Regional Planning Area by allowing owners of such lands to realize the equity in the land’s development potential without conversion to nonagricultural or nonforestry related uses. Lastly, the chapter seeks to encourage appropriate growth in urban growth areas.”

The PAPR sending areas consist of “any urban property located within an Urban Very Low Density/Open Space Overlay zone or any rural property located within an Open Space Overlay Corridor.”

The PAPR receiving areas encompass the unincorporated Port Angeles UGA’s Low Density/Urban Low Density (VLD/LD), which allows development of “a mix of single-family residences, duplexes and multiple-family residential development which is free from encroachment of commercial and industrial activities at 2 units per acre” with an “opportunity to increase per acre urban densities up to an additional seven (7) units per acre through the purchase of development rights.”

No TDR transactions have taken place in either the Sequim Dungeness Planning Region or the Port Angeles Planning Region since the program’s inception in 1998.

3. Other county TDR programs around the state. Pursuant to the 2008 Cascade Land Conservancy publication “Transfer of Development Rights (TDR) in Washington State: Overview, Benefits, and Challenges” there are 6 county TDR programs in Washington State, as follows:

<table>
<thead>
<tr>
<th>County</th>
<th>Year</th>
<th>Type of Property</th>
<th>Available Rights</th>
<th>Development Rights</th>
<th>Purchase of Development Rights</th>
<th>Additional Opportunities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clallam County</td>
<td>1993</td>
<td>Agricultural lands, critical areas, low-density open space</td>
<td>0</td>
<td>N/A</td>
<td>Yes (Sequim and Port Angeles)</td>
<td>No</td>
</tr>
<tr>
<td>Island County (Revoked)</td>
<td>1984</td>
<td>Agricultural lands</td>
<td>88</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>King County</td>
<td>1993</td>
<td>Rural resources and public benefit lands</td>
<td>81,500 (89,500 protected through the purchase of development rights that are banked for possible future use)</td>
<td>201 transactions</td>
<td>Yes (Issaquah)</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
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<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Pierce County</td>
<td>2006</td>
<td>Agricultural lands and open space</td>
<td>N/A (program starts 04/08)</td>
<td>N/A (program starts 04/08)</td>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>

All upzones in unincorporated Pierce County will require TDRs.
Additional research revealed the following:

**King County** established a TDR bank with $1.5 million of Conservation Futures tax revenues. The bank has purchased development rights on more than 90,000 acres of working forest. Private transactions have conserved approximately 2,000 additional acres. The King County TDR bank focuses on spurring private market transactions. Two bank sales have occurred since November 2006. The first was a sale of 31 rural development rights, valued at $930,000, supporting development of a residential complex in downtown Seattle. A second transaction, also in Seattle, resulted in the sale of 18 credits from the TDR bank, generating $396,000 that will be used to acquire additional development rights from resource lands in King County. To facilitate these transactions, the County paid the City $500,000 for street improvements to accommodate the increased density associated.

**Snohomish County** adopted a TDR program in late 2004. Under that program, the county purchased 49 development rights at a price of $42,857 per development right for a total of $2.1 million for 74 acres of farmland (one purchase consisted of 71 acres). The County offered 15 credits for auction on April 9, 2007 with a minimum bid price of $50,000 and there were no bids, and the county was unable to otherwise sell the development rights. In 2007, Snohomish County subsequently received a $100k CTED grant and appointed a local Committee to produce a strategy for potentially revamping their TDR program. In 2008, Snohomish County adopted comprehensive plan policies that allow the expansion of the TDR program and the establishment of new sending and receiving areas as additional opportunities become available. Snohomish County is implementing its TDR program in phases. A pilot program was initially established with the City of Arlington for a sending area identified on nearby farmland in the Stillaguamish River floodplain. Under this pilot program, the following steps were taken:

- Sending areas were delineated on the zoning map.
- A new TDR code was adopted (Chapter 30.35A SCC) that includes a methodology for determining the number of rights that can be transferred from a sending site, a process to certify development rights and issue TDR certificates; a requirement for a permanent conservation easement; authorization for conveyance of certified development rights; the ability of the county to purchase, hold, and sell certified development rights; and a TDR application form and process.
- The City of Arlington and Snohomish County signed an interlocal agreement to work together to implement the TDR program.

**Whatcom County** only has a Purchase of Development Rights (PDR) program in place, which matches Conservation Futures Funds with USDA funds to purchase development rights from willing sellers. There has been discussion of adding a TDR (Transfer of Development Right) element to the program.

**The Cities of Redmond and Seattle** are the only Washington State jurisdictions with surprisingly active TDR programs, most likely because, unlike most rural county UGAs, increased density and height are in strong demand in both of these cities, and because both of these TDR programs are entirely intra-city, meaning that all aspects of the process are controlled entirely by one jurisdiction. This enabled Seattle, for example, to include within its TDR program an element whereby landowners of existing affordable housing
can sell their development rights in exchange for preserving, and maintaining, the existing affordable housing for a period of 50 years.

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. Snohomish County and Island County purchased development rights with public monies, but they have had very few takers for those development rights. Even King County’s touted TDR program has secured buyers for only about 1% of the development rights they have acquired so far, making King County’s Transfer of Development Right (TDR) program more like a Purchase of Development Right (PDR) program. Cascade’s own compilation in fact shows that there is no Washington State county with an existing robust TDR program. There are a number of counties with new, or updated programs (Kitsap County, Pierce County, and Snohomish County), all with high hopes of being successful, but as of yet with no proven record of success.

4. Key elements of a successful program. The Cascade Land Conservancy publication “Transfer of Development Rights (TDR) in Washington State: Overview, Benefits, and Challenges” cites the following “limiting factors” to successful TDR programs:

While many TDR programs have been enacted, not all have not been successful. In fact, only a handful of programs have protected 5,000 or more acres of land, and some have not generated a single transaction. In looking for ways to promote regional-scale TDR programs in Washington State, it is important to understand what factors have limited TDR program effectiveness elsewhere and to identify those factors that have contributed to making certain programs highly successful. Following are some of the most significant obstacles that appear to have limited TDR implementation.

**Inadequate receiving areas.** Without adequate receiving areas, there is no market for TDRs and a TDR program cannot succeed. A robust TDR program needs to have sufficient market participants, on both the sending and receiving sides, to generate transactions and to stabilize the market for and price of TDRs. While lands to be protected – sending areas – can be easy to identify, many jurisdictions have found it difficult to designate viable areas to receive the development rights. Communities are often reluctant to accept additional density without assurances of adequate infrastructure and protections for neighborhood character. The presence or lack of a regional consensus on appropriate locations for growth can significantly affect a jurisdiction’s ability to designate adequate receiving areas – especially where the resources to be protected lie in one jurisdiction, while the appropriate areas for development are inside a neighboring municipality.

A few second-generation TDR programs require the purchase of TDR credits as a condition of any upzones. This may apply within a particular designated area or across the jurisdiction. Examples of this include the new Pierce County, Washington, program, which requires the purchase of TDR credits for comprehensive-plan amendments that increase density in the unincorporated county. The Malibu coastal zone also requires the purchase of TDR credits if a landowner creates a new lot. This type of mechanism can help address the need for receiving site designations and take advantage of demand for upzones. Collier County, Florida, has designated rural fringe areas as receiving sites, in order to increase density for growth and to minimize conflicts in existing neighborhoods over additional density. Boulder County, Colorado, is proposing to require TDR credits to build very large houses.

**Lack of infrastructure and amenities to support increased density.** If the areas designated to receive TDRs lack the infrastructure needed to support added growth – e.g., roads, utilities, and stormwater facilities – they will not realistically be able to support TDR development. If significant infrastructure upgrades are needed, the cost may be prohibitive to a developer, even with the added development density enabled through TDR. The lack of adequate infrastructure in urbanizing areas is a critical issue for growth management in general, and is a specific roadblock to successful TDR implementation.

**Insufficient demand for development/density.** TDR is a market-based mechanism and, as such, can succeed only if there is demand for development. If developers are not interested in building to the higher densities established for receiving areas, there will be no marketplace for TDRs.

While local jurisdictions do not control the market, their zoning decisions have a substantial impact on developer interest in TDRs. In areas where zoning already allows development beyond what the market can support, there is no value to a developer in participating in TDR. Similarly, if rezones to higher
densities can be achieved without participation in TDR, interest in TDR will be undercut. The second-generation programs mentioned above (under “Inadequate receiving areas”) attempt to take advantage of where development is occurring. Newer programs are also tapping into developer demand for flexibility in development standards other than density, such as floor area ratios, impervious surface, and setbacks.

**Weak financial equation for buyers and/or sellers.** Neither buyers nor sellers will participate in TDR transactions unless they have a financial incentive to do so. The demand for selling and purchasing rights – and therefore TDR price – is determined in large part by the allocation or exchange rate for development credits. If the price is too low, few landowners in sending areas will be motivated to sell development rights. If the price is too high, developers in receiving areas will have little interest in purchasing credits, since they would not create additional profit for their projects.

Many people assume that TDR means a 1-to-1 exchange of development credits from a sending area to a receiving area. However, this ratio rarely results in equivalent values for both areas, because the right to build one house in a low-density area is generally worth more than the right to build one additional unit in a higher-density area. A recent economic study in Pierce County sought to quantify this relationship, by analyzing comparative sales data for properties zoned for different levels of density. The result revealed that in unincorporated Pierce County, development rights declined in value as density increased. Based on this analysis, the study proposed that the exchange rate for TDRs be based upon a multiplier, so that purchasing one TDR would gain a developer the right to build more than one additional unit in a receiving area.

Increasingly, jurisdictions are investing in market studies to help refine their programs so that they reflect a solid understanding of the market. However, such studies can be expensive and standard methodologies have not yet been established. For smaller jurisdictions in particular, such studies may be out of reach. Recognizing this dilemma, the state of New Jersey now provides up to $40,000 of seed money to communities that wish to pursue market studies.

**Lack of program leadership and transaction support.** A review of TDR history shows clearly that adopting legislation to enact a TDR program is not enough, by itself, to ensure program success. Active support and leadership are needed to foster a robust marketplace for TDR transactions. Especially at the outset of a program, support is needed to overcome the natural uncertainty that property owners may feel in considering a new and unfamiliar form of real-estate transaction, and the unease that developers may feel about a new step or option in the development permitting process. Public education, program advocacy, and transaction support appear to be key ingredients in successful programs, especially when the program is young.

In another Report entitled “Alternative Transfer of Development Rights (TDR) Transaction Mechanisms,” Cascade Land Conservancy discusses the various levels of program leadership and transaction support in detail, and included the table listed on the next page, summarizing the detailed discussion:
5. TDRs and Affordable Housing. While TDR programs are continually marketed as potential solutions for some of Washington State’s planning challenges, there are, in fact, alternative viewpoints to this opinion. San Juan prosecuting attorney, Mr. Randall K. Gaylord, provided this alternative opinion:

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

<table>
<thead>
<tr>
<th>Private market transactions</th>
<th>Ease of participation for buyers and sellers</th>
<th>Cost effectiveness for public and ease of administration</th>
<th>Effectiveness in implementation of conservation priorities</th>
<th>Political feasibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low</td>
<td>High Minimal government involvement and expense</td>
<td>Low Conservation priorities may not match market demand</td>
<td>High Minimal government involvement and expense</td>
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</tbody>
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<tr>
<th>Private transactions with public support</th>
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</thead>
<tbody>
<tr>
<td>Medium Improved availability of information</td>
<td>Medium Increased government involvement and expense</td>
<td>Low Conservation priorities may not match market demand</td>
<td>High Moderate government involvement and expense</td>
</tr>
</tbody>
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<tr>
<th>TDR brokerage</th>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Medium Marketplace infrastructure improves information</td>
<td>Medium Public sector increases bureaucratic complexity</td>
<td>Low (if private) High (if public) Conservation priorities may differ</td>
<td>Medium Variable level of government involvement</td>
</tr>
</tbody>
</table>

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<thead>
<tr>
<th>TDR bank</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>High Market timing issues resolved, strong public support</td>
<td>Medium Higher administrative and capital costs</td>
<td>Medium-high Bank can target priority areas for conservation</td>
<td>Medium Increased government involvement and expense</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Private investment corporation</th>
<th></th>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>High Corp. will seek out participants</td>
<td>High Minimal government involvement and expense</td>
<td>Low Profit goals may not match conservation goals</td>
<td>Medium Min. govt. involvement, but prices could be higher</td>
</tr>
</tbody>
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<thead>
<tr>
<th>Density fee</th>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>High Participation requirements predictable and defined.</td>
<td>Medium Increased administrative costs</td>
<td>High Complete public control over choice of land conservation</td>
<td>Low High level of bureaucracy and govt. involvement</td>
</tr>
</tbody>
</table>
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.

Because it is so rare to hear an opposite viewpoint to TDR programs, the article describing Mr. Gaylord's opinion is attached in its entirety as Attachment E.

In November, 2008 Cascade Land Conservancy issued a Draft Analysis of the Impacts of Transferable Development Rights Programs on Affordable Housing and acknowledged that the “implementation of a conservation-oriented TDR program can have an adverse, neutral, or positive effect on the outcomes of a community’s adopted affordable housing strategies, depending on the design of the TDR program and the affordable housing strategies chosen by a particular jurisdiction.” The Report described the “Effects of TDR on Supply and Affordability,” concluding that:

“...The impact on housing prices resulting from TDR programs is highly dependent on the ability of the TDR program to change the net quantity of the housing stock and, additionally, its effect on the type and location of any new housing. The essential TDR program factors that drive this impact include:

1. Transfer ratios,
2. The supply of housing and delineation of sending and receiving sites, and
3. The type and location of housing developments utilizing TDR."

The Report goes into detail about all three factors, and then lists a number of considerations for devising an approach that would allow a TDR and an affordable housing program “to successfully coexist,” as follows:

- Identify where incentive programs directly interact and determine the effect on program goals.
- Understand the local housing market in terms of what strategies are effective for each program.
- Design new programs to be compatible and non-competitive. Both programs can be incentive-based, but for different incentives.
- Increase the overall pool of resources to be used for both affordable housing and TDR. In a density bonus system, one way to do this is through raising total height or density limits.
- Establish a set ratio for the distribution of incentive program benefits so that programs are not competing for developer demand for least cost actions in a menu of options.
- Establish collaboration among affordable housing and TDR advocates and policy set threshold targets for each program and ensure that over time, across the region both targets are met. To the extent that both are included in a jurisdiction’s menu, emphasize the release of additional market rate units through broad stakeholder support.
The Cascade Report concludes that

“Future TDR programs can avoid competition with affordable housing programs through careful design. One way to achieve this would be to incorporate strategies into the TDR program that either have a neutral or positive effect on affordable housing programs. Another would be to incorporate affordable housing strategies that are not adversely affected by TDR when making program updates. With an understanding of which incentive programs compete and the characteristics of the local housing market, jurisdictions can craft new programs or modify existing ones in a way that overcomes competition.”

6. Analysis of Clallam County’s TDR program.

Why are developers not jumping at the bit to purchase TDRs to develop at higher densities in UGAs? CCC 31.02.210 Urban growth and sprawl issues concludes with the following statement. “While there is a need for growth in Clallam County to be directed into urban areas, people moving here often prefer a more rural setting. How to direct growth into urban areas and discourage suburban or rural sprawl is a challenging task.” There may be demand for increased density and/or height in big cities like Seattle, but in rural Clallam County, demand, driven by many retirees and newcomers, is for lower density. In Pierce County, a study showed that development rights are worth much more at lower densities than at higher densities. This is most certainly true in Clallam County as well. In fact, higher density developments are consistently associated with affordable housing. And when it comes to building affordable housing, developers are so dis-interested, they will even turn away the FREE development rights offered by the City of Sequim rather than build just one affordable home.

The requirement to purchase TDRs to achieve higher density in urban growth areas significantly increases the cost of higher density development in urban growth area, thus discouraging growth in urban growth area and negatively impacting the creation of additional affordable housing there. As a result, the requirement to purchase TDRs to build at higher density within the UGA should be reconsidered, not only in light of market forces, but also based on the policies and goals of the County’s Comprehensive Plan at both the Urban Growth Element and the Affordable Housing Element.

From Clallam County’s Comprehensive Plan, at:

CCC 31.02.210 Urban growth and sprawl issues concludes with the following statement. “While there is a need for growth in Clallam County to be directed into urban areas, people moving here often prefer a more rural setting. How to direct growth into urban areas and discourage suburban or rural sprawl is a challenging task.”

CCC 31.02.220 Urban growth areas observes the following: “it is the intent of these policies to encourage a shift to urban growth where adequate public facilities and services can be provided in a financially feasible manner while conserving resource lands, rural landscapes, and environmental quality.”

CCC 31.02.510, Affordable Housing Issues, subsection (3), citing the Report “Measuring Housing Need: A Data Toolkit for Clallam County” for strategies to provide affordable housing and meet the demand for diversity of housing choices, included the following strategies:

(e) Provide incentives for housing developers to increase affordable housing, such as strategies to reduce development costs, fast-track plan approval, maintaining a file of pre-approved housing plans, reduced impact fees, and providing density bonuses.

…

(i) Establish inclusionary zoning ordinances and other incentives for developers to reduce housing costs such as density/parking adjustments and fee reductions.

(j) Remove regulatory barriers to affordable housing by periodically reviewing and modifying ordinances, codes, and zoning regulations.

…

CCC 31.02.520, Affordable Housing Goals, lists strategies for Clallam County to consider in encouraging the retention and creation of affordable housing, which include:

…
(b) Zoning and subdivision provisions that broaden the range of affordable housing choices through expanded opportunities such as townhouses, condominiums, multiplex rental housing, multi-story housing, and high-density cottage units clustered around common green spaces; and low-density attached units mixed with large open-space remainder lots.

....

(e) Incentives, such as density bonuses, that would allow residential developments to be financially viable even with a partial set-aside of below-market-rate units.

(f) Pre-approved affordable housing plans and other development permitting strategies that reduce costs, permit fees, and waiting times.

Why would developers purchase TDRs when they can get what they want for free? People will not pay for what they can get for free. Both Snohomish and Thurston Counties have identified the availability of “freebies” as one of the reasons why developers are not interested in purchasing developing rights. In Clallam County’s case, it should be noted that all of the remaining Sequim’s UGA’s unincorporated residential receiving areas (it should be noted that many of the original receiving areas have been annexed to the City of Sequim and developed without acquiring TDRs) are located adjacent to large tracts of residential zoned areas within the city limits (“incorporated residential areas”). These incorporated residential areas allow/require high densities without the necessity of purchasing expensive TDRs. In addition, the incorporated residential areas are more likely to be located closer to sewer and other infrastructure, which further reduces the cost of development. Why purchase TDRs when the same density is available for free just down the road?

What could possibly be worth $250,000? There is no shortage of landowners willing to sell development rights at high cost – in Clallam County, development rights in Agricultural Retention lands were recently sold for $250,000 each. Snohomish County tried to sell development rights for $50,000 at the height of real estate boom in 2007 and received no bidders. Clearly, a one-to-one TDR relationship based on $250,000 rights is unrealistic. A real estate market analysis would examine the relationship between the development rights generated in the sending area and the capacity of the receiving zone to accommodate the necessary development, and consider such issues as what multiplier should be used, and who would pay for the transaction costs.

7. Recommendations.

Instead of requiring the purchase of TDRs to achieve desirable high density urban growth area development, consideration should be given to requiring the purchase of TDRs to achieve undesirable natural resource land conversions and rural land upzones. Appropriately enough, these latter types of activities are already associated with high cost luxury developments. Clearly, there will be opposition to artificially add to the cost of these developments, but doing so would be more consistent with the County’s Comprehensive Plan goals and policies than adding artificially to the cost of high density UGA developments.

For instance, purchase of TDRs could be required for upzones, for recognition of pre-existing non-conforming lots in natural resource areas, and/or for BLA and other actions that would shift development potential into resource areas. Yes, these measures will be very unpopular, for the very reason that they would actually be effective at slowing down conversions. Yes, these measures will further increase the cost of development in natural resource and rural areas, but this will have the desirable effect of steering people to the lower cost UGAs, all of which will be consistent with the goals of the County’s Comprehensive Plan and the GMA.

Clallam County’s sending areas could also be reconsidered. In addition to preserving “long-term commercially significant agricultural lands in the Sequim-Dungeness Regional Planning Area” and “critical areas within the Port Angeles Regional Planning Area,” other lands worthy of preservation are existing and newly created pockets of affordable housing.

8. Conclusion. Washington State policy makers and consultants are encouraging TDR programs as an important tool to saving rural and natural resource lands. The fact of the matter is that, today, there is no TDR program successfully operating in a Washington State rural county. Furthermore, there are, in fact, only a handful of successful TDR programs currently operating around the country and only a few of those successfully avoid negative impacts on affordable housing.

Pursuing the overhaul of Clallam County’s TDR program so that it might work would require complete reconsideration of its key elements (such as the identification of sending areas and receiving areas, the
calculation of a market-based transfer rate, the elimination of “freebies”, and the removal of any negative impacts on affordable housing, among others). Implementation of such a program will involve unpopular modifications to the County Comprehensive Plan and Zoning Code, the commission of an expensive real estate market analysis, and the continued commitment of extensive funding and human resources. While some of the start-up funds might be obtained through grants and fundraising, it will likely take many years of investing public time and money before a TDR program would become independently viable, if ever. The King County program was authorized in 1994, seeded with $1.5 Million, and it apparently took five staff planners about eighteen months to work with technical advisory committees to develop the regulations, to start a public information campaign and implement a pilot program, and to secure three buyers in eight years.

The recommendation is to shelve this endeavor until the emergence of at least one truly successful TDR program in a Washington State rural county.
Attachment A. Terms

- **TDR Bank.** A “TDR Bank would allow buyers to purchase development rights at a set rate without having to find the seller themselves. Fees would be collected then spent expressly for purchase of development rights on receiving sites. Using a TDR bank has several advantages over relying on individual transfers in the private marketplace. First, a bank would allow buyers and sellers of development rights to take advantage of market downturns and upturns because it allows them to enter the market at any time: a buyer does not have to wait until a seller chooses to sever development right in order to purchase one. Second, it can establish and stabilize values for development rights, guiding trading on the private market. This allows buyers to account for development right prices when planning new development projects and makes it easier to adjust values for maximum participation. Third, it can increase administration efficiency in large regional programs by tracking paperwork and potential clients. Finally, a TDR bank can motivate planners and participants because it shows a strong commitment to making the program work. Many of the country’s most successful programs have TDR banks.

- **Public Funding.** In various programs in Washington State, public funding is being used to facilitate TDR Programs. Public funds may be used to purchase development rights, which monies are then recouped when the development rights are sold. Public funds may also be used as “amenities funding” to assist cities with infrastructure improvements needed to accommodate the extra density being transferred into an area. TDR amenities may include acquisition, design or construction of public art, cultural or community facilities, parks, open space, trails, roads, parking, landscaping, sidewalks, other streetscape improvements or transit-related improvements.

- **Interlocal Agreements.** Development rights purchased from the TDR bank can only be used on receiving sites in urban unincorporated County or in urban incorporated cities. An interlocal agreement must be in place between the County and a city before TDR Bank development rights may be transferred to a development project within the city.

- **Sending areas and incentives.** Effective incentives must motivate the landowner to sell development credits through the TDR process. If a nonconforming preexisting 20 acre CF parcel fetches $350,000 if developable and $5,000 if non-developable, then the landowner is not likely to sell the developable rights for anything less than $345,000.

- **Receiving areas and incentives.** Again, effective incentives must motivate developers to buy development credits. It is difficult to envision a reason why a developer would purchase a development right for hundreds of thousands of dollars.

- **Multiplier & capacity.** Multipliers inflate sending area credits. They are used to facilitate a viable market for otherwise overpriced development rights. However, receiving areas must be able to accept additional density both politically and in terms of infrastructure and service level capacity (“capacity”).
Attachment B. Chapter 33.26 CCC, Transfer of Development Rights

Sections:
- 33.26.010 Transfer of development rights – Purpose.
- 33.26.020 Transfer of development rights (TDR) sending areas.
- 33.26.030 Allocation of transferable development rights.
- 33.26.040 Certification and transfer of transferable development rights.
- 33.26.050 Effect of the transfer of development rights.
- 33.26.070 Transfer of development right receiving areas.


33.26.010 Transfer of development rights – Purpose.
The purpose of this chapter is to encourage the conservation of long-term commercially significant agricultural lands in the Sequim-Dungeness Regional Planning Area by allowing owners of such lands to realize the equity in the land’s development potential without conversion to nonagricultural uses. This chapter also seeks to protect critical areas within the Port Angeles Regional Planning Area by allowing owners of such lands to realize the equity in the land’s development potential without conversion to nonagricultural or nonforestry related uses. Lastly, the chapter seeks to encourage appropriate growth in urban growth areas.

33.26.020 Transfer of development rights (TDR) sending areas.
All lands designated as Agricultural on the Sequim-Dungeness Regional Comprehensive Plan Map are established as agricultural transfer of development rights sending areas. The underlying regulations for this district continue to apply. Agricultural transfer of development rights credited by Clallam County to lands in this area can be sold by landowners for use in designated residential TDR receiving areas within the Sequim urban growth area.

All lands designated as Very Low Density/Open Space on the Port Angeles Regional Comprehensive Plan Map and all Open Space Overlay Corridors identified by the Port Angeles Regional Comprehensive Plan Open Space Overlay Corridors Map are established as critical area transfer of development rights sending areas. The underlying regulations for these districts continue to apply. Critical area transfer of development rights credited by Clallam County to lands in this area can be sold by landowners for use in designated residential TDR receiving areas within the Port Angeles urban growth area.

33.26.030 Allocation of transferable development rights.
Every parcel of land located in the TDR sending area shall have credited to it, upon certification by the Clallam County Department of Community Development, transferable development rights in the amount set forth below. These transferable development rights allocated in accordance with this section may be used to obtain approval for established residential densities on lands located within TDR receiving areas, in accordance with the zoning in the TDR receiving areas.

1. Transferable development rights within Agricultural Retention zones are calculated as follows:
   a. When a property located within an Agricultural designation and within the Agricultural Retention zoning district is proposed for a separation of its development rights which will create an agricultural reserve area protected from nonagricultural development by a conservation easement and which agricultural reserve is at least as large in area as the agricultural reserve which would be established through an Agricultural Retention development on that same property, then that property may be credited with transferable development rights calculated by multiplying the gross acreage of the parcel within the Agricultural Retention zoning district by 0.30 (acres in AR * 0.30).
   b. As an alternative to the method in subsection 1(a) of this section, when a property is to be developed with a partial separation of its development rights with an accompanying Agricultural Retention development proposal, then that property may be credited with transferable development rights calculated by multiplying the gross acreage of the parcel within the Agricultural Retention zoning district by 0.30 (acres in AR * 0.30).
   c. Lastly, should an owner of land zoned Agricultural Retention decide to sell development rights without protecting through conservation easement a portion of the farm equivalent to that which would be created through an Agricultural Retention development on that same farm then the transferable development rights on that parcel would be calculated by dividing the gross acreage of the parcel within the Agricultural Retention zoning district by five (5) (does not qualify for fifty (50) percent density bonus).

2. Transferable development rights within a Very Low Density/Open Space designation on the Port Angeles Regional Comprehensive Plan Map or in an Open Space Overlay Corridor are calculated as follows:
The number of transferable development rights credited to parcels located within a Very Low Density/Open Space designation on the Port Angeles Regional Comprehensive Plan Map or in an Open Space Overlay Corridor identified by the Port Angeles Regional Comprehensive Plan Open Space Overlay Map is calculated by determining the acreage of the entire parcel which has at least a portion of the Very Low Density/Open Space designation or a portion of the Open Space Overlay Corridor found within the parcel boundary and dividing the entire qualifying parcel acreage by the density allowed in the underlying zoning district rounded down to the nearest whole number.

(3) One development right shall be subtracted for each residence located on a parcel in the TDR sending area which exists as of the effective date of this chapter or is built after the effective date of this chapter.

(4) No fractional development rights shall be created.

(5) The use of a parcel from which development rights have been transferred remains subject to the density and other restrictions of the underlying zone. If the number of development rights remaining on a parcel is less than that permitted by the underlying zone, the property may be developed only to the extent of the remaining development rights.

33.26.040 Certification and transfer of transferable development rights.

(1) Application for Certification of Number of Transferable Development Rights.

(a) Clallam County Department of Community Development shall issue a certification of the number of transferable development rights on the sending area parcel and serially numbered individual certificates for each transferable development right credited to that parcel upon satisfactory application for certification of transferable development rights (TDRs) by the sending area parcel owner. The issuance of TDR certificates shall be recorded in the chain of title for the subject property.

(b) An application shall contain such information as deemed necessary to verify parcel size and existing uses as a basis for certifying the number of development rights. This information shall include:

(i) A map of the proposed sending area parcel based on a survey if available or a map prepared in a professional manner on an assessor’s map of the parcel if no recent survey is available.

(ii) Legal description and parcel numbers of the sending area parcel.

(iii) A copy of the deed showing that the applicant is the owner of the subject sending area parcel.

(iv) Number of housing units existing on the subject sending area parcel.

(v) A review fee as may be prescribed by the Board of Clallam County Commissioners.

(2) Transfer of Development Rights (TDR) Easement. In order to validly convey the transferable development rights certified on a sending area parcel, a TDR easement shall be signed between the owner of the sending area parcel and Clallam County and recorded with the Clallam County Auditor. To validly retain the transferable development rights which have been certified on a sending area parcel when an original owner sells such parcel, a TDR easement shall be signed by the purchaser of the subject parcel and Clallam County and recorded with the Clallam County Auditor. The TDR easement shall be on a form approved by the Board of Clallam County Commissioners and shall contain the following provisions:

(a) All of the serial numbers of the transferable development rights which have been certified by Clallam County Department of Community Development on the sending area parcel which is the subject of the TDR easement.

(b) A covenant on the sending area parcel that it may be developed or subdivided for residential purposes as authorized by the underlying zone only if transferable development rights have been reserved for each dwelling to be constructed on the subject property prior to subdivision on the sending area parcel. If subdivision is not required, a transferable development right shall be reserved prior to construction of any single-family dwelling. The covenant shall also state that any use of the parcel remains subject to the provisions of CCC Title 33 at the time the TDR easement is signed. A reserved transferable development right must be attached to a legal lot by a document of attachment in order for a single-family dwelling as defined in CCC Title 33 to be built. These reserved transferable development rights can be used only on the original sending area parcel or its legal subdivisions.

(c) A covenant that all provisions of the TDR easement shall run with and bind the sending area parcel in perpetuity and shall be enforced by the Board of Clallam County Commissioners.

(d) A statement that nothing in the restrictions shall be construed to convey to the public a right of access or use of the property and that the owner of the property, his/her heirs, successors and assigns shall retain exclusive right to such access or use subject to the terms of the TDR easement.

(e) If only a portion of the transferable development rights of a parcel in a Very Low Density/Open Space zoning district or an Open Space Overlay Corridor are being transferred, then a survey map of the entire parcel must be recorded with the Clallam County Auditor. The map must show the actual area on the parcel within a Very Low Density/Open Space zoning district or an Open Space Overlay Corridor which is being
protected by the transfer of development rights. That portion of the parcel protected by a TDR easement shall contain a statement that all residential development rights have been removed from this portion of the parcel and that only those limited agricultural or limited forestry uses listed in the underlying zoning district or as further limited by the Critical Areas Code shall be allowed.

(3) Deed of Transfer.

(a) The certified transferable development rights shall be sold or otherwise conveyed only by means of a deed of transfer, the form and content of which is prescribed by the Board of Clallam County Commissioners and approved by the Clallam County Prosecuting Attorney. This deed must be recorded with the Clallam County Auditor and appear in the chain of title of the parcel from which the development right(s) have been transferred.

(b) The deed of transfer shall specify the number of transferable development rights sold or otherwise conveyed and shall only be valid when recorded along with the appropriate TDR easement on the subject property, signed by the owner of the sending area parcel and Clallam County, containing the provisions established by the Board of Clallam County Commissioners for such a document.

(c) Contents. A deed of transfer shall contain:

(i) A legal description and map of the sending area parcel(s).

(ii) A covenant that all provisions of the deed of transfer shall run with and bind the sending area parcel and shall be enforced by the Board of Clallam County Commissioners;

(iii) The names of the transferor and the transferee;

(iv) A covenant that the transferor grants and assigns to the transferee a specified number of development rights from the sending area parcel;

(v) Proof of ownership of the sending area parcel;

(vi) If the transferor is not the owner of the sending area parcel, a statement that the transfer is (1) an original transfer, including a description of the reason for such (e.g., where an original owner sold the sending area parcel but retained the development rights), or (2) an intermediate transfer of development rights derived from another receiving area parcel with unused development rights or from a sending area parcel described in an original instrument of transfer, identified by its date, the names of the original transferor and transferee and the volume and page where it was recorded by the Clallam County Auditor;

(vii) A covenant by which the transferor acknowledges that he/she has no further use or right of use with respect to the development rights being transferred;

(viii) The certification of the number of transferable development rights on the sending area parcel and copies of the appropriate certificates of those rights issued by the Clallam County Department of Community Development as required by Chapter 23.26 CCC;

(ix) Payment of required excise tax and recording fees on the transaction;

(x) Proof of the execution and recordation of a TDR easement on the subject sending area parcel; and

(xi) The signature of the Clallam County Department of Community Development staff member who has reviewed the document for completeness.

(4) Responsibility. The transferor and the transferee named in an instrument of transfer shall have the responsibility to supply the information required by this section, to provide a proper instrument of transfer and to pay all costs of its recordation, in addition to any other fees required by this section.

(5) Intermediate Transfer. Transferable development rights may be transferred to an intermediate transferor or broker before they are used and held for a period of time before they are used on a receiving area parcel. In the case of an intermediate transfer, the transferable development rights shall still be considered to be appurtenant to the sending area parcel until the time they are actually attached to a receiving area parcel. The value of an intermediate transferable development right shall be tracked separately from the rest of the parcel value and taxes due for this value shall be paid by the owner of the transferable development right.

33.26.050 Effect of the transfer of development rights.

After development rights have been transferred from a property in the sending area, the following shall apply:

(1) The agricultural sending area parcel may be used only for agricultural uses, as defined and permitted in Chapter 33.07 CCC (Agricultural Retention district), except that subdivision for residential purposes, including a farm residence, as authorized by the underlying zone shall be permitted only if transferable development rights have been reserved for each dwelling to be constructed on the subject property prior to subdivision. That portion of the critical area sending area parcel protected by a TDR easement may be used only for agricultural or forestry related uses, as defined and permitted in the underlying zoning district, except that subdivision for residential purposes or other uses authorized by the underlying zone shall be permitted.
outside the Very Low Density/Open Space zoning district or an Open Space Overlay Corridor portion of the parcel only if transferable development rights have been reserved for each dwelling to be constructed on the subject property prior to subdivision. If subdivision is not required, a transferable development right shall be reserved prior to construction of any single-family dwelling. A reserved transferable development right may be used to construct a single-family dwelling only if it has been attached by a document of attachment to a legal lot. These reserved transferable development rights may be used only on the original sending area parcel or its legal subdivisions.

(2) All certified transferable development rights and the value of such rights shall be deemed for all other purposes to be appurtenant to the sending area parcel until such rights are transferred by a recorded deed of transfer. The value of an intermediate transferable development right shall be tracked separately from the rest of the parcel value and taxes due for this value shall be paid by the owner of the intermediate transferable development right.

(3) Nothing in such restrictions shall be construed to convey to the public a right of access or use of the property; the owner of the property, his/her heirs, successors and assigns shall retain exclusive right to such access or use subject to the terms of the TDR easement.

(4) An unused transferable development right may be shifted from one receiving area parcel to another receiving area parcel upon execution of a deed of transfer and recorded exchange of transferable development rights certificates.

33.26.060 Reservation of power – Damages.

Nothing in this chapter shall be construed to limit or affect the power of the County to amend, supplement or repeal all or any part of the provisions of this chapter at any time; however, should Clallam County eliminate the ability of an owner of unused, certified transferable development rights to transfer those rights into designated receiving areas, then Clallam County shall agree to compensate the owner of such certified transferable development rights for the exact amount which the owner originally paid for these rights, upon provision of proof of the price originally paid for such certified, transferable development rights.

33.26.070 Transfer of development right receiving areas.

Receiving area zones for agricultural sending areas are located within the Sequim urban growth area and are listed below. Receiving areas for Port Angeles critical area sending areas are located within the Port Angeles urban growth area and are listed below.

CCC 33.19.050(3) Sequim Urban Residential II, III, IV Zones
CCC 33.13.050 Urban Very Low Density/Urban Low Density District (Port Angeles)

And any additional future receiving area zones within City limits designated by Sequim or Port Angeles.
Attachment C. Sequim Dungeness Planning Region TDR program

Map of Sending Area (purple) and Receiving Area (blue) (LAMIRDs are in red outline)
Grey area is within city; dark red outline is UGA boundary.
Sequim Dungeness Planning Region TDR program

Sending area:

CCC 33.07.010 Agricultural Retention (AR).

The purpose of the Agricultural Retention zone is to maintain and enhance the agricultural resource industry of Clallam County through conservation of productive agricultural lands and discouragement of incompatible land uses within the agricultural retention zone.

...(10) Maximum Residential Density for Agricultural Retention Developments within an Agricultural Retention Zone. The maximum density of residential development within this zone which can be used on-site for an Agricultural Retention development shall depend upon the pre-existing status of divided lots within the proposed agricultural retention development. In the case where the development is proposed on lands that are not divided in an existing pattern of contiguous parcels of approximately five (5) acres or less in size, then the maximum density which can be utilized on-site shall be one dwelling per sixteen (16) acres, with the remaining residential density calculated at one dwelling per five (5) acres plus a density bonus, available for transfer of development rights to areas outside the Agricultural Retention zone or for purchase of development rights.

In the case where the development is proposed on lands that are divided in an existing pattern of contiguous parcels of approximately five (5) acres or less in size, then the maximum density which can be utilized on-site shall be one dwelling per five (5) acres plus a density bonus. In either case the maximum total residential density shall be determined according to the formula \[\text{Gross acres developed} \times 0.30 = \text{total development rights (rounded down to the nearest whole number)}\]. The number of units allowed in the development section and the number of development rights for sale off-site (areas not previously divided in small lots) are shown in the following table:

<table>
<thead>
<tr>
<th>Total Acres Developed</th>
<th>Homes Allowed in Development Area (area with an existing pattern of five (5) acre lots)</th>
<th>Homes Allowed in Development Area (area with no pattern of existing five (5) acre lots)</th>
<th>Development Rights Which Can Be Sold (area with no pattern of existing five (5) acre lots)</th>
</tr>
</thead>
<tbody>
<tr>
<td>16 acres</td>
<td>4 homes</td>
<td>1 home</td>
<td>3 development rights</td>
</tr>
<tr>
<td>20 acres</td>
<td>6 homes</td>
<td>1 home</td>
<td>5 development rights</td>
</tr>
<tr>
<td>25 acres</td>
<td>7 homes</td>
<td>1 home</td>
<td>6 development rights</td>
</tr>
<tr>
<td>30 acres</td>
<td>9 homes</td>
<td>1 home</td>
<td>8 development rights</td>
</tr>
<tr>
<td>35 acres</td>
<td>10 homes</td>
<td>2 homes</td>
<td>8 development rights</td>
</tr>
<tr>
<td>40 acres</td>
<td>12 homes</td>
<td>2 homes</td>
<td>10 development rights</td>
</tr>
<tr>
<td>45 acres</td>
<td>13 homes</td>
<td>2 homes</td>
<td>11 development rights</td>
</tr>
<tr>
<td>50 acres</td>
<td>15 homes</td>
<td>3 homes</td>
<td>12 development rights</td>
</tr>
<tr>
<td>50+ acres</td>
<td>(\text{Acres x 0.30} = \text{homes allowed in on-site development})</td>
<td>(\text{Acres/16} = \text{homes allowed in on-site development})</td>
<td>(\text{(Acres x 0.30) – (Acres/16) = transfer development rights})</td>
</tr>
</tbody>
</table>
Sequim Dungeness Planning Region TDR program

Receiving area:

CCC 33.19.030 Purpose of districts.

The purpose of land use zones established under CCC 33.19.020 is as follows:

1. Sequim Urban Residential – II [S(R-II)]. The S(R-II) zone establishes areas of low density, urban residential development consisting primarily of single-family detached residences up to one dwelling unit to one acre without required urban level facilities and services and up to five dwellings units per acre with transfer of development rights and the provision of urban level facilities and services. The S(R-II) zone provides for consistency and predictability in established single-family neighborhoods.

2. Sequim Urban Residential – III [S(R-III)]. The S(R-III) zone establishes areas of medium density, urban residential development consisting of single-family, duplex, or multifamily residences up 10 dwelling units per acre with transfer of development rights and provision of urban level facilities and services. The S(R-III) zone is located in areas where urban services are or will be provided concurrent with development, and is typically found in close proximity to transit, with easy access to neighborhood parks, schools and shopping.

3. Sequim Urban Residential – IV [S(R-IV)]. The S(R-IV) zone establishes areas of medium to high density, urban residential development consisting of single-family attached and detached; single-family small lot; multifamily duplexes, triplexes, and apartment development allowed at a density of up to 16 dwelling units per acre with transfer of development rights and the provision of urban level facilities and services. The S(R-IV) zone is located in areas where urban services are currently available or will be provided concurrent with development, and is typically found in close proximity to transit, with easy access to neighborhood parks, schools and shopping.

Adapted from Table 33.19.050(2)(A) – Bulk, Dimensional and General Requirements: Residential Zones

<table>
<thead>
<tr>
<th></th>
<th>Minimum Lot Size</th>
<th>Maximum Lot Coverage</th>
<th>Maximum Building Height</th>
<th>Maximum Residential Density</th>
</tr>
</thead>
<tbody>
<tr>
<td>S(R-II)</td>
<td>9,000 square feet</td>
<td>50%</td>
<td>35'</td>
<td>4 du/acre without TDR2 OR up to 5 du/acre with TDR</td>
</tr>
<tr>
<td>S(R-III)</td>
<td>9,000 square feet for single-family 9,000 square feet plus 2,000 square feet per additional unit for duplex and multifamily residences regardless of the number of buildings</td>
<td>50%</td>
<td>35'</td>
<td>4 du/acre without TDR2 OR up to 10 du/acre with TDR</td>
</tr>
<tr>
<td>S(R-IV)</td>
<td>6,000 square feet for single-family 6,000 square feet plus 2,000 square feet per additional unit for duplex and multifamily residences regardless of the number of buildings</td>
<td>50%</td>
<td>50’</td>
<td>4 du/acre without TDR2 OR up to 16 du/acre with TDR</td>
</tr>
</tbody>
</table>

CCC 33.19.050 Bulk and dimensional standards.

(3) Transfer of Development Rights. This chapter designates the S(R-II), S(R-III), and S(R-IV) residential zones as receiving areas of transferable development rights from lands designated Agricultural on the Official Sequim-Dungeness Regional Comprehensive Plan Map, as amended, consistent with CCC 31.03.230(6)(a), Comprehensive Plan Policy 10. Table 33.19.050(2)(A) establishes the residential density for which transfer and/or purchase of transferable development rights shall be required within the S(R-II), S(R-III), and S(R-IV) zones. The actual transfer and/or purchase of transferable development rights shall follow the requirements as set forth under Chapter 33.26 CCC.
Sequim Dungeness Planning Region TDR program

Comprehensive Plan policies:

From Countywide Comprehensive Plan

CCC 31.02.115 Agricultural resource land inventory and issues.

... (2) Agricultural land protection programs.

... (d) Transfer of Development Rights (TDR). The County has had a TDR program in the Sequim-Dungeness region since 1998, but to date no one has chosen to participate. The TDR program allows for transfer of development rights from land designated and zoned Agricultural Retention (AR), or TDR sending area, to designated TDR receiving areas within the unincorporated Sequim Urban Growth Area. Receiving area landowners can obtain higher residential densities through acquiring development rights from AR lands. Similar to PDR program, the value of a development right is generally the difference between the market value for development versus farmland.

From Sequim Dungeness Regional Plan

CCC 31.03.220 Agricultural land – Inventory and analysis.

... (7) Conservation Alternatives. Conservation of agricultural lands could be accomplished through several alternatives:

• Public acquisition or transfer of development rights; and/or
• Regulation of property, restricting land to agricultural uses or cluster developments; and/or
• Incentives, such as taxes, flexible zoning techniques, technical assistance.

(8) Development Rights. There are several ways to acquire the development rights, purchase those rights or transfer the rights to other properties. This plan pursues the concept of purchasing those rights.

The purchase of development rights occurs when the public acquires the rights held by the property owner to develop the land while the owner maintains the right to utilize the land for agricultural purposes. Once the public has purchased the development rights of the property, title to those rights no longer remains with the property owner and the agricultural nature of the land is preserved. The public purchase of development rights should provide more assurance that agricultural lands will be conserved forever than the use of traditional regulatory measures.

CCC 31.03.230 Agricultural land conservation – Policies.

... (3) Final Regulation

(b) [Policy No. 4] Development regulations shall provide for an agricultural retention zoning district with the following provisions and considerations:

(i) Conserve agricultural lands through land use regulations utilizing agricultural retention developments (twenty-five (25) percent maximum development area/seventy-five (75) minimum farm area). The regulations shall contain the following provisions:

(A) Residential base density in agricultural zones shall be one dwelling unit per sixteen (16) acres if a conventional development pattern of sixteen (16) acre lots is utilized or one dwelling unit per five (5) acres plus a density bonus if a cluster development pattern is utilized. Properties in an agricultural retention zone which have previously divided consistent with the land division ordinance to parcel sizes of approximately five (5) acres or less and are being recombined into a contiguous parcel of a size capable of qualifying for an agricultural retention development shall be able to utilize all of the available residential base density plus density bonuses on-site in an agricultural retention development site or they may transfer development rights to a nonagricultural property. Properties in an agricultural retention zone which have not previously divided to parcel sizes of approximately five (5) acres or less shall be able to utilize a base density of one home per sixteen (16) acres in an on-site agricultural retention development with the remaining one home per five (5) acre base density plus density bonus available for transfer of development rights or for purchase of development rights.

(B) A fifty (50) percent density bonus should be provided for landowners pursuing a cluster development pattern in order to provide an incentive to those owners of contiguous five (5) acre lots.
(2,300 acres of the agricultural designation) to recombine those lots to a minimum lot size of sixteen (16) acres for the purpose of establishing an agricultural retention development. The fifty (50) percent density bonus may be utilized on-site for a cluster development where previously divided parcels of approximately five (5) acres or less are being recombined into a contiguous parcel size capable of qualifying for an agricultural retention development (sixteen (16) acre minimum size). The fifty (50) percent density bonus for all other lands within the agricultural retention zone may only be utilized outside of the agricultural retention zone through a transfer of development rights to a designated receiving zone or may be extinguished through the purchase of development rights.

(4) Land Use Maps. [Policy No. 8] The Comprehensive Plan land use map shall have one designation for agricultural resource lands with density provisions that allow no more than one home per 16 acres unless an agricultural retention development is proposed which would allow a base density of one home per five acres for properties in an agricultural retention zone. Properties in an agricultural retention zone which have previously divided to parcel sizes of approximately five acres or less and are being recombined into a contiguous parcel of a size capable of qualifying for an agricultural retention development shall be able to utilize all of the available residential base density on-site in the agricultural retention developments site or may transfer/sell development rights off-site. Properties in an agricultural retention zone which have not previously divided to parcel sizes of approximately five acres or less shall be able to utilize a base density of one home per 16 acres in an on-site agricultural retention development with the remaining one home per five-acre base density available for transfer of development rights or for purchase of development rights.

(5) Purchase of Development Rights. [Policy No. 9] Develop a program for lasting, long-term conservation of agricultural lands based on public and/or private financial support.

(a) Focus the program on purchase of development rights in order to keep lands in private ownership. Once development rights are purchased, future development shall be restricted through such legal instruments as necessary to ensure permanent conservation of lands for the benefit of future generations.

(b) Work with the public and landowners to set priorities for the purchase of development rights which will provide long-term protection of farmland. Priorities may be set based on development pressures, open space value, or environmental values.

(c) Development rights to agricultural lands should be acquired through innovative financing mechanisms.

(d) County revenues shall not be used to fund a purchase of development rights (PDR) program without the approval of the citizens of Clallam County as evidenced by an affirmative vote of County-wide registered voters. The County will be supportive of private initiatives to establish a fund to implement a PDR program.

(6) Transfer of Development Rights.

(a) [Policy No. 10] Before the end of 1998, develop a program for transfer of development rights from areas with an agriculture designation into areas outside of the agriculture designation where additional development may be appropriately located in the Sequim-Dungeness Valley. Until additional development rights receiving zones in the Sequim urban growth area and in the proposed Carlsborg urban growth area are designated, development rights from agricultural retention zones may be transferred into the existing Port Angeles urban growth area designated receiving zones.

(b) [Policy No. 11] Clallam County shall conduct a study of the value of transfer of agricultural land development rights at least every five years in order to determine the average selling price of development rights and to compare these values with the average sales price of comparable bare land lot sales recorded throughout the Sequim-Dungeness Valley. These studies shall be utilized by the County to determine if adjustments to the agricultural retention zone are needed.
Attachment D. Port Angeles Planning Region TDR program

Map of Sending Area (green) and Receiving Area (blue),
Grey area is within city; dark red outline is UGA boundary.
Port Angeles Planning Region TDR program

Sending and Receiving Areas:

33.13.050 Urban Very Low Density/Urban Low Density (VLD/LD).

The purpose of the Urban Very Low Density/Urban Low Density zoning district is to provide areas of very low density urban development which provide the opportunity to increase per acre urban densities up to an additional seven (7) units per acre through the purchase of development rights. This zoning district provide areas for a mix of single-family residences, duplexes and multiple-family residential development which is free from encroachment of commercial and industrial activities.

(4) Maximum Residential Density.
   (a) Two (2) dwelling units per acre without purchase of development rights.
   (b) Nine (9) dwelling units per acre with purchase of development rights.

(5) Minimum Lot Size. 4,840 square feet.

(6) Setbacks.
   (a) Front yard – forty-five (45) feet from a local access street, fifty (50) feet from an arterial street, sixty (60) feet from a highway.
   (b) Side yard – eight (8) feet (forty (40) feet from the centerline of the right-of-way of a sidestreet).
   (c) Rear yard – fifteen (15) feet (forty (40) feet from the centerline of the right-of-way of a rear street).

(7) Transfer of Development Rights.
   (a) Development rights may be transferred from any urban property located within an Urban Very Low Density/Open Space Overlay zone or any rural property located within an Open Space Overlay Corridor. Development rights may be utilized to increase densities in the VLD/LD zoning district utilizing the transfer of development rights process of Chapter 33.26 CCC.
   (b) The base density of the VLD/LD zoning district shall not be increased above nine (9) dwelling units per acre.

(8) Land Divisions. Divisions of land are subject to the following additional requirements:
   (a) Minimum Residential Density. Four (4) dwelling units per acre with the following exceptions:
      (i) Land divisions where each lot is five (5) acres (or 1/128 of a standard section) or larger.
      (ii) Land divisions creating four (4) lots or less located more than 200 feet from a public sanitary sewer, as measured along an existing public right-of-way or utility easement.
   (b) Connection to Public Water Supply. All new lots shall be connected to a public water supply. Land divisions of two (2) lots or less located more than 200 feet from a public water system, as measured along existing public right-of-way or utility easement, are not required to connect to a public water supply, except where necessary to comply with State and County health code requirements for potable water and sewage disposal.
   (c) Connection to Public Sanitary Sewer. All new lots shall be connected to public sanitary sewer services, if available within 200 feet of the land division, as measured along existing public right-of-way or utility easement.
Port Angeles Planning Region TDR program

From Port Angeles Regional Plan:

CCC 31.04.310 City of Port Angeles urban growth area.

…

(4) General Land Use Goals and Urban Density Issue.

…

(e) [Policy No. 7] A transfer of development rights (TDR) program should be established with the City of Port Angeles. Under the TDR program, rural areas near the city experiencing downzoning, rural areas where less density would be preferable or areas designated as open spaces to be protected would become TDR sending zones where development rights could be bought from property owners. TDR receiving zones would be established inside the urban growth area including the area inside the City where the development rights could be utilized. Property owners or developers would utilize development rights to increase the density of development inside the UGA above those allowed without transfer rights.

CCC 31.04.320 Gales Addition neighborhood – Port Angeles urban growth area.

…

(3) Land Uses.

(a) [Policy No. 2] An urban neighborhood commercial land use designation shall be established in the area between Highway 101 and an east-west line established at the intersection of Gales Street and Pioneer Road. The large grocery store at the northwest corner of Gales Street and Highway 101 is an important neighborhood serving business and although it is oversized to serve a purely neighborhood need it should be allowed to expand on this site if needed to retain this use in the neighborhood.

(b) [Policy No. 3] Urban moderate density land use shall be established in the area between the urban neighborhood commercial designation and an east-west extension of 7th Avenue. This designation would allow redevelopment of moderate density dwellings within walking distance of public transit on Highway 101 and provide affordable housing opportunities for area residents.

(c) [Policy No. 4] The area north of an east-west extension of 7th Avenue shall be designated urban low density residential which allows up to nine units per acre and is usually a mix of single-family and duplex units. This designation supports the current single-family residential character of this portion of the neighborhood.

(d) [Policy No. 5] The creek ravines should be designated for urban very low residential densities with an open space overlay zone to indicate that they are areas which will be targeted for transfer of development rights in order to further protect these largely unbuildable sites and allow them to remain in a natural state. Allowing for transfer of development rights addresses the issue of a taking occurring when minimal development will be allowed.

(4) Critical Areas.

(a) [Policy No. 6] The steep-sided creek ravines and creek bottom lands of Ennis and Lee’s Creek as well as the marine bluffs on the Strait should be protected for public safety, maintenance of water quality and as linear wildlife corridors through the neighborhood. These areas when left in a natural state stabilize the geologically unstable ravine and bluff environments, filter out sediments before they reach streams and shorelines and provide critical habitat for eagles, falcons, and other birds utilizing trees for perch or nesting. Allowing transfer of development rights from these areas and providing open space tax benefits to owners will further the protection of these critical areas.
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, CPSGMHB 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.


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 handled 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