

**TDR PILOT PROGRAM**

**FEASIBILITY STUDY**

**Snohomish County**  
**Planning & Development Services**  
**Planning Division**

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## **KEY TERMS**

**CONSERVATION EASEMENT** – A legal agreement between a landowner and a qualified conservation organization or a government agency that limits specific land uses in order to maintain or protect certain conservation values on the land.

**DENSITY** – The number of housing units or development rights allowed on a parcel of land per applicable zoning and development regulations.

**DEVELOPMENT RIGHT** – The right to build a structure on a parcel per zoning, building codes and other land use regulations. For sending sites, one development right is generally viewed as the equivalent of one residential unit. On receiving sites, a development right may allow more than one residential unit or may allow an amount of commercial floor area, based on an established transfer ratio.

**GROWTH MANAGEMENT ACT (GMA)** – Adopted in 1990 by the Washington State legislature to insure that citizens, communities, local governments and the private sector cooperate and coordinate with one another in comprehensive land use planning.

**RECEIVING SITE** – A parcel of land located where the existing services and infrastructure can accommodate additional growth at urban densities. Development rights could be used on a receiving site, as allowed through the permit approval process.

**SENDING SITE** – A parcel of land that contains development rights as a part of the ownership, and that meets applicable criteria to qualify. Sending sites may transfer their development rights to a receiving site parcel or to a TDR bank. When development rights are sold and transferred, a conservation easement is placed on the parcel.

**TRANSFER OF DEVELOPMENT RIGHTS (TDR) PROGRAM** – An incentive-based tool that can help achieve land use goals, generally at little or no public expense. Such goals may include historic preservation, farmland preservation, environmental protection, scenic vista preservation, and/or growth management. To achieve these goals, TDR is used in concert with other land use tools such as zoning, subdivision regulation, and government or non-profit land purchase.

**TDR BANK** – Established by, or works in cooperation with, the local government responsible for the management or facilitation of the TDR program, with the principal function to buy and sell development rights.

## **A. Background on TDR**

Transfer of Development Rights (TDR) is a market-based tool for conserving lands or structures determined to have a public benefit. It complements other incentive-based tools, land or easement acquisition programs, and other regulatory techniques intended to achieve selected growth management objectives. A jurisdiction's objectives might include conserving land for farming and forestry, maintaining historic structures, preserving housing choices, or protecting wetlands or other critical areas.

In Snohomish County, TDR is being considered to conserve important farmlands of "long-term commercial significance" under GMA. A TDR program would help direct new growth away from such farmlands and toward urbanizing areas where urban services are both appropriate and efficiently provided.

Participating farmlands would be conserved through the sale of TDRs, and concurrent with the transaction, by dedicating an easement that would significantly limit new "non-farm" development. This limitation would prohibit or condition uses, structures and activities that do not support farming or open space. The most significant prohibitions would likely be no new or only farm-related new residential dwellings and, unless for agricultural purposes, no further subdivision of the property. New non-farm related structures, and industrial or commercial uses that are incompatible with surrounding farms, would also be limited or not allowed. The easement would not grant any public access and would be written to allow for continued farming use of the land.

Development rights (or TDRs) would be bought by developers and used to increase the density of development (or allow for greater commercial floor area, or increased or reduced parking requirements) on a receiving site. They would be incorporated into the development permit review process, and the new units would be permitted under the standard permit review process.

For TDR to be an effective tool, a market must exist for the transferred development rights. For the TDR pilot program to be successful, the price of a TDR will need to be attractive to the buyer and sufficient to the seller. This study only estimates prices, and eventually actual prices will be set by an established market or by a TDR Bank.

## **B. Using this report**

The PDS Planning Division, in cooperation with the Departments of Public Works and Parks, has conducted this Feasibility Study for developing and implementing a Transfer of Development Rights (TDR) pilot program. This study is intended to fulfill the requirements of County Council Motion 02-007, dated March 6, 2002. In that motion, the Council stated its intention to "partner with the County Executive in assessing the feasibility of establishing and implementing a pilot transfer of development rights program within 90 days."

The study is intended to be a helpful tool in deciding whether to further develop and implement a pilot TDR program. If a pilot program is pursued, this study generally describes the additional market analysis, code/procedure development, and outreach tasks that would be necessary for a successful program.

The study should be reviewed by the County Executive and County Council, by the City of Arlington and by other knowledgeable parties such as key stakeholders and interested citizens. Following review, staff may be directed to a) pursue further study, b) proceed to implement a pilot program, or c) cease work on the concept at this time. "Next steps" for the TDR pilot program could be reflected in a subsequent County Council motion or joint resolution with the County Executive.

### **C. The Study Process**

Staff from PDS, Parks and Public Works formed the core team for preparation of this report. Cascade Land Conservancy (CLC) and CIC Valuation Group were contracted for consultant services for outreach to potential sending area landowners, potential receiving area developers, and for market analysis for estimated values for development rights in both sending and receiving areas.

Through Cascade Land Conservancy, letters and surveys were sent to all 195 landowners in the proposed sending area. A total of 21 surveys were returned. The majority indicated that they had little knowledge of TDR but considered it might be a potential tool to save farmland in the area. Several noted that it might be a tool to save the land but should not be seen as a means of saving agriculture.

A Public Meeting was held on May 29, 2002, from 7:00-8:30 p.m., and all landowners in the sending area were invited to attend. Twenty-six landowners attended. CLC presented information about the history, benefits, assumptions and mechanics of TDR and provided the results of the TDR value characterization of the sending and receiving areas. The landowners were encouraged to provide feedback on the information provided.

The CIC Valuation Group collected and analyzed basic information on raw lot values and supply and demand for single-family residence lots in the Arlington/north Marysville market. They also interviewed developers and brokers who are active in the Arlington/north Marysville market to gauge their interest level in a TDR program.

## **D. Preliminary Conclusions**

This section summarizes the preliminary conclusions reached during the 90-day study period by County staff and the consultants. Following initial review by the County Executive and Council, this report and these conclusions may need to be revised or updated based on additional study.

- TDR programs have only proven workable where there is no other less expensive mechanism for a receiving site developer to achieve the same goal. If such other mechanisms are available, then TDR will likely not be used and the farmland owner would not see any financial return. Examples of potentially cheaper mechanisms are rezones, PRDs, or density bonuses in existing urban areas. Limitations for or disallowance of these mechanisms in receiving areas would likely be necessary.
- Similarly, TDR Programs have proven most effective for sending area landowners when they are the best and most attractive option to realize financial return from their property. If more money can be made sooner and/or more easily by developing the sending areas than through sale of development rights, then TDR will not be utilized.
- Three types of receiving areas were examined, in-city sites, existing unincorporated urban areas and potential new urban areas. Of these, the new urban areas appear to be the most promising because urban densities are not available now, and there appears to be market demand for such densities, so developers should be willing to pay for rights to realize those urban densities.
- There is also an opportunity to create a strategic role for rights with regard to the most promising receiving site type, namely, the expanded UGAs. If realizing the urban densities in such expansion areas were possible only through the purchase of rights, then a ready market is created, and rights likely would be purchased. Such a market appears to be of interest to the development community. If, on the other hand, the urban densities were made available by right (and thus more cheaply) through UGA expansions and County-initiated area-wide rezones, then rights would not be purchased. Please note that expanding UGAs have policy and practical implications that will require additional analysis and consultation with the Prosecuting Attorney's office.
- There appears to be sufficient interest of both potential sending area and receiving area participants to create a TDR pilot program, if the price is right. Using market data for this analysis, sending area TDRs appear to be worth about \$25,000. When asked, farmland owners said that this price would not meet their expectations and may discourage participation in a pilot program.
- Using market data for this analysis, developers appear most likely to be willing to pay about \$10,000-\$12,500 for the ability to build one additional house on a

receiving site. When asked, developers said that they would consider participating in a pilot program at that price. That price estimate was determined in comparison to raw land values (see CIC report for further information on methodology).

- To reconcile differences in these price figures and increase the likelihood of participation for each party, the County could consider the following:
  - a) Allocating two (instead of one) development rights for each 10 acres of farmland to allow for greater financial return to the farmland owner, and
  - b) Setting an attractive transfer ratio of 2:1 to encourage receiving site developers to purchase the rights and thus promote demand.

Example:

Sending area parcel of 40 acres with one existing house.

Based on 10-acre zoning, the owner could subdivide the parcel into four 10-acre lots. Two development rights would be certified for each 10 acres of land to make eight development rights, minus for the existing house, for a total of seven development rights available for transfer.

Using expected values: Seven rights x \$25,000 each = \$175,000

Potential Receiving area parcel outside of UGA, of 3 acres (vacant).

Based on rural zoning, no subdivision is possible, and the owner could build one house. Using a 2:1 transfer ratio, a developer could purchase seven rights from a farmer to build fourteen additional houses, for a total of fifteen on the 3 acres (a density of 5 houses per acre).

Using expected values: Fourteen x \$12,500 each = \$175,000

At these expected prices, the transaction would occur. These actions at first glance appear workable and may prove beneficial, but may need further evaluation before being finalized. Discussions with the Prosecuting Attorney's office would also likely be necessary.

- Creating a TDR program will require significant County staff time. In the early stages, most staff work will be in the areas of writing code and administrative procedures, providing public education, program marketing, certifying rights on prospective sending sites, and other associated tasks to administer the program. It is possible to have a third party perform some of these tasks, but a fee or other mechanism to compensate that party would also be necessary.
- An early action program to secure development rights in the sending area could be of benefit. By doing so, the County or another entity acting in partnership with the County would establish a market price, could create essentially an inventory

that would then be made available for purchase by receiving area developers, and could secure critically important farmlands that face more imminent development pressure. The County should consider the following when identifying and prioritizing properties for early acquisition:

- a) Which agricultural properties are the most productive, are in an area that Snohomish County considers critical for agriculture, and warrant conservation?
  - b) Which farm owners are willing to sell a development right? Which have an on-going commitment to farming and/or would invest TDR revenues into farming equipment or their farm operations?
  - c) How does the County avoid a “patchwork” acquisition program?
  - d) Should there be an effort to acquire development rights on adjacent properties?
  - e) A receiving area program should be in place to assure resale of the rights and forego County purchase without possible resale.
- Other receiving areas and development types should be examined. Examples of this include increases to commercial floor area or modifications to parking requirements made possible through the purchase of development rights. The CIC study was only able to examine these at a cursory level given the time allowed for this study. Promising examples exist and should be further reviewed.
  - The County Council has earmarked Conservation Futures Program funds for the purpose of purchasing development rights within the context of the pilot project. These funds can be used for the purchase of easements or the fee-simple purchase of property under the state law. With the use of these funds, a covenant will be placed on the property purchase that limits the use of the property to agriculture. Normally, these covenants follow the property in perpetuity. There is also the potential of federal or state grants that may offer opportunities to leverage local funds. Most of these funding sources have strings attached that may limit their use or make them undesirable with respect to the goals of this program.
  - The overall financial need for, and potential cost of, the early acquisitions rely on the number of willing sellers, the criteria for selection of properties, and the ultimate price that the County is willing to pay for the purchase of the development right.
  - Alternatives to TDR may also be considered to address the need to conserve farmland. Clustering of development, or other techniques that allow some financial return to farmland owners, could also be evaluated for consistency with the GMA and applicable County policies and regulations.

- There will be a need for additional discussion on several key policy questions to ensure that a TDR program has a high likelihood of success. These questions include but are not limited to: Should a TDR program be totally voluntary? Are there limitations on expanding UGA boundaries due to buildable lands or reasonable measures considerations? Can UGA boundaries be expanded in a timely manner in response to a receiving area development proposal? How should current opportunities for increasing receiving area densities be restricted in order to create demand for TDRs? Will allowing the conversion of some agricultural lands to urban uses increase remaining farmland owners' expectations of value, and reduce farmer participation? These questions lead to tough choices, but are ultimately the key to program success.

## **E. Summaries of Consultant Results**

### Cascade Land Conservancy: Outreach to Sending Area Landowners

An outside consultant, Cascade Land Conservancy (CLC), was contracted to facilitate the outreach to landowners in the proposed Sending Area. Letters and surveys were sent to all 195 landowners in the proposed sending area. A total of 21 surveys were returned.

The majority of respondents indicated that they had little knowledge of TDR but considered it might be a potential tool to save farmland in the area. Several noted that it might be a tool to save the land, but should not be seen as the only means of "saving agriculture."

A public meeting was also held on May 29, 2002, and all landowners in the sending area were invited to attend. Over 25 landowners or representatives attended. CLC presented information about the history, benefits, assumptions and mechanics of TDR and provided the results of the TDR value characterization of the sending and receiving areas.

The majority of the discussion focused on the value that might be paid for a development right. The results of the value characterization were presented for both the receiving and sending areas. Based on that report, a developer would expect to pay approximately \$26,000 for a raw lot in the urban receiving area. To provide some incentive for the developer to purchase a development right from a TDR Program, a 20% discount (\$5,200) would be applied, resulting in a value of \$20,800 for 1 development right.

Within the sending area, the per-acre value of land was determined to be about \$4,500. The value of land zoned A-10 that can only be used for agricultural purposes was determined to be \$2,500. This results in a remainder value of \$2,000/acre. For a 10-acre lot with 1 development right, the value would be \$20,000.

The landowners were encouraged to provide feedback on the information provided. In general, based on questions and feedback, it appeared that most landowners did not feel that the potential value of \$20,000 per development right would meet their expectations

and lead them to participate in the TDR Program. A follow-up telephone survey with selected landowners has not yet been completed as of the date of this report.

#### CIC Valuation Group: Potential Receiving Area Developer Interest

This study analyzed the current real estate market to assess demand for future development and the range of values presently being paid for raw lots. The study also addressed the development costs associated with bringing raw land to building site status. Seven factors were noted that must exist in a well-designed and successful program. They are:

1. The program must be legally defensible.
2. There must be commitment from the municipality to use TDRs and refuse other development options such as rezones.
3. It must be a simple, uncomplicated program for staff administration and public understanding.
4. Sending and receiving areas must be clearly identified.
5. Program incentives for buyers and sellers to participate should be included.
6. There must be market demand for increased development and density in the receiving area.
7. There must be broad public knowledge of the program.

There is a difference between the sending site owners' perceptions of the value of their development rights and the market's perception. Market research indicates a value in the vicinity of \$25,000 per raw lot presently being paid for single-family residential development.

Developers indicated a willingness to pay between \$10,000 to \$12,500 for the ability to build an additional house. Part of this difference is reflected in the underlying value of land in receiving areas.

If designed properly, a TDR program has potential to preserve natural resources at little cost to taxpayers.

#### **F. General Description of Sending and Receiving Areas**

##### Proposed TDR Receiving Area

The proposed receiving area is made up of the City of Arlington's Incorporated and Unincorporated Urban Growth Area (UGA) and the Rural Urban Transition Area (RUTA), which is located just southeast of the city.

The city's incorporated area consists of 5,047 acres with a wide mix of commercial and residential uses. Included in the city is the Arlington Airport. Population data from the 2000 Census is 12,552 for the incorporated and 8,672 for the unincorporated UGA. The Arlington Water District provides water and the City of Arlington provides sewer service.

Essential public facilities such as medical, fire, schools and the like are all located within the Arlington UGA.

The RUTA is made up of two different land use designations, Rural Residential (RR) and Rural Residential Basic (RRB). RR zoning allows one dwelling per five acres and RRB zoning permits a maximum of two dwellings per five acres.

The RR portion of the RUTA is 468 acres, comprised of 91 parcels with an average lot size of 5.14 acres. The RRB is 1,145 acres and has 171 parcels with an average lot size of 6.74 acres.

### Sending Area

The proposed 3,472 acres of sending area consists of Riverway Commercial Farmland zoned A-10. It is generally described as the area between I-5/Island Crossing, east to the City of Arlington and is bordered by the Stillaguamish River to the north. Highway 530 runs East-West through the middle of the sending area. There are about 220 parcels, owned by 122 individual owners with an average size of 15.78 acres. About 112 parcels are greater than 10 acres. There are 91 parcels designated as Ag-Open Space.

The character of the area is rural farmland with row crops, fallow fields and cows. The existing land use is agriculture and open space with limited farming-related commercial development and residential development. Each of these dwellings relies on individual wells and septic systems.

As consistent with most rural agricultural regions the proposed sending area is not serviced by public water or sewer. There is also a lack of major roads in the area. Farm tractors and other equipment regularly travel the roads including SR 530. The majority of the valley exists in the 100-year floodplain.