From:	Rebecca Messinger
To:	Oliver Orjiako; Jose Alvarez; Cnty 2025 Comp Plan
Subject:	FW: FOCC Comments on TDR"s_for the record please
Date:	Friday, January 16, 2026 9:40:55 AM
Attachments:	FOCC_Council&PC-Ltr-TDR-260114-Draft.pdf DOC Guidebook 1.pdf DOC Guidebook 2.pdf Dept of Commerce-Websie-TDR-260114.pdf FINAL Regional-Transfer-of-Development-Rights-6-30-13.pdf image001.png

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Good morning,

Please see the email below and attached docs from Friends of Clark County. Thank you.

Rebecca

Rebecca Messinger
Clerk to the Council
COUNTY MANAGER'S OFFICE

Phone: 564-397-4305
Email: Rebecca.Messinger@clark.wa.gov

From: Ann Foster <annfoster5093@gmail.com>
Sent: Thursday, January 15, 2026 3:06 PM
To: Sue Marshall <Sue.Marshall@clark.wa.gov>; Kathleen Otto <Kathleen.Otto@clark.wa.gov>; Rebecca Messinger <Rebecca.Messinger@clark.wa.gov>
Subject: FOCC Comments on TDR's_for the record please

EXTERNAL: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Chair Marshall and Manager Otto:
Please receive our comments on the Comprehensive Growth Plan and TDR's for the record. Attachments are below as well.

Again, many thanks!

Best,
Ann Foster, President
Friends of Clark County

Friends of Clark County

PLANTING THE SEEDS OF RESPONSIBLE GROWTH

January 15, 2026

Chair Sue Marshall
Clark County Council
% Kathleen Otto, County Manager
Rebecca Messinger
Public Services Center
6th Floor
1300 Franklin Street
Vancouver, WA 98660

RE: Comments ***For the Record*** for Comprehensive Plan Update on Transfer of Development Rights

By email only to Kathleen Otto at kathleen.otto@clark.wa.gov and Rebecca Messinger at rebecca.messinger@clark.wa.gov.

Dear Chair and Councilors:

My name is Ann Foster. I am the president of Friends of Clark County (FOCC).[1]

We intend to provide more detailed testimony as time allows us to develop it but, at this time we want to provide the following brief comments given the City of Ridgefield's comments and letters submitted to the record:

The development and implementation of a TDR program must be a thoughtful county wide process. Although there has been interest expressed by Councilor Little regarding a TDR program, the Council's discussions during the past year were to defer a full evaluation of the TDR program until after the completion of this Comprehensive Plan Update. Until last Thursday night (1/8/2026), no city had suggested that the County create and implement a TDR program during this Comprehensive Plan Update. They simply clamored for an Agricultural Resource Lands Study believing (wrongly) that the

[1] FOCC is a 501(c)(3) Washington State non-profit corporation that works collaboratively with community partners and policy makers to keep Clark County a beautiful and healthy place to live, work, and play. FOCC filed the appeal of the DNS at the County level and had other groups and individuals join in FOCC's comments at the County level. FOCC then participated in the hearings held on March 15, 2022, and all related subsequent hearings at the County level.

FOCC then appealed subsection 5 of section 2 of ORD 2022-07-01 to the Growth Management Hearings Board (GMHB). On March 22, 2023, the GMHB issued its Final Decision and Order which found the County's actions failed to comply with the Growth Management Act and issued an Order of Invalidity. The matter is currently in Division I of the Washington Court of Appeals oral argument now set for January 9, 2025.

lands that the cities wanted to bring into their respective UGAs, would not be found to be agricultural lands of long-term commercial significance. Now that the County's $200,000 Agricultural Lands Study has been completed finding that the lands the cities want to annex ***are agricultural lands of long term commercial significance***, the City of Ridgefield is proposing to try to jam through a TDR program as an alternative way to de-designate the property it wants to claw into its current UGA. The PC and the Council should soundly reject such a request.

The creation of a Transfer of Development Rights countywide program falls squarely within the purview of the Ag Commission. In its recommendation to the County, the Ag Commission stated:

1. They favored creating and implementing a "Transfer of Development Rights (TDR), Purchase of Development Rights (PDR), and other programs targeted toward agricultural land preservation";
2. They recognized it would be a long process involving many stakeholders;
3. They recommended a 3-year moratorium on any lands that meet the legal criteria for agricultural designation in the Agricultural Resource Lands study to so as to prevent those lands from being converted or rezoned while a preservation program could be implemented[2]; and
4. Conduct a countywide review of rural lands that meet statutory criteria for agricultural designation but are not currently designated.

The reason for the moratorium, and the studies, is because it takes time to designate the lands that need to be protected, identify the lands that would be the receivers of the rights and determine under what condition lands would be eligible for the TDR program.

Just to give the Planning Commission and Council a hint of the momentous task it would be to take on the creation and implementation of Transfer of Development Rights program, we attach the following for your review and for the record:

1. Department of Commerce "Resource Guide to Designing Transfer of Development Rights Programs in Washington State" (69 pp);
2. TDR and LCLIP Guidebook (79 pp)[3];
3. The Department of Commerce webpage on Transfer of Development Rights;
4. Final Regional Transfer of Development Rights in Puget Sound; and
5. Copy of Pierce County Development Code

[2] "Adopt a temporary moratorium on re-designation or upzoning of rural lands that meet the legal criteria for agricultural designation, including cluster development provisions, for a defined period (e.g., 36 months)".

[3] It should be noted that the WA state Department of Commerce also finds EcoNW to be a reliable and qualified consultant

Clark County Council
% Kathleen Otto, County Manager
Rebecca Messinger
October 19, 2024

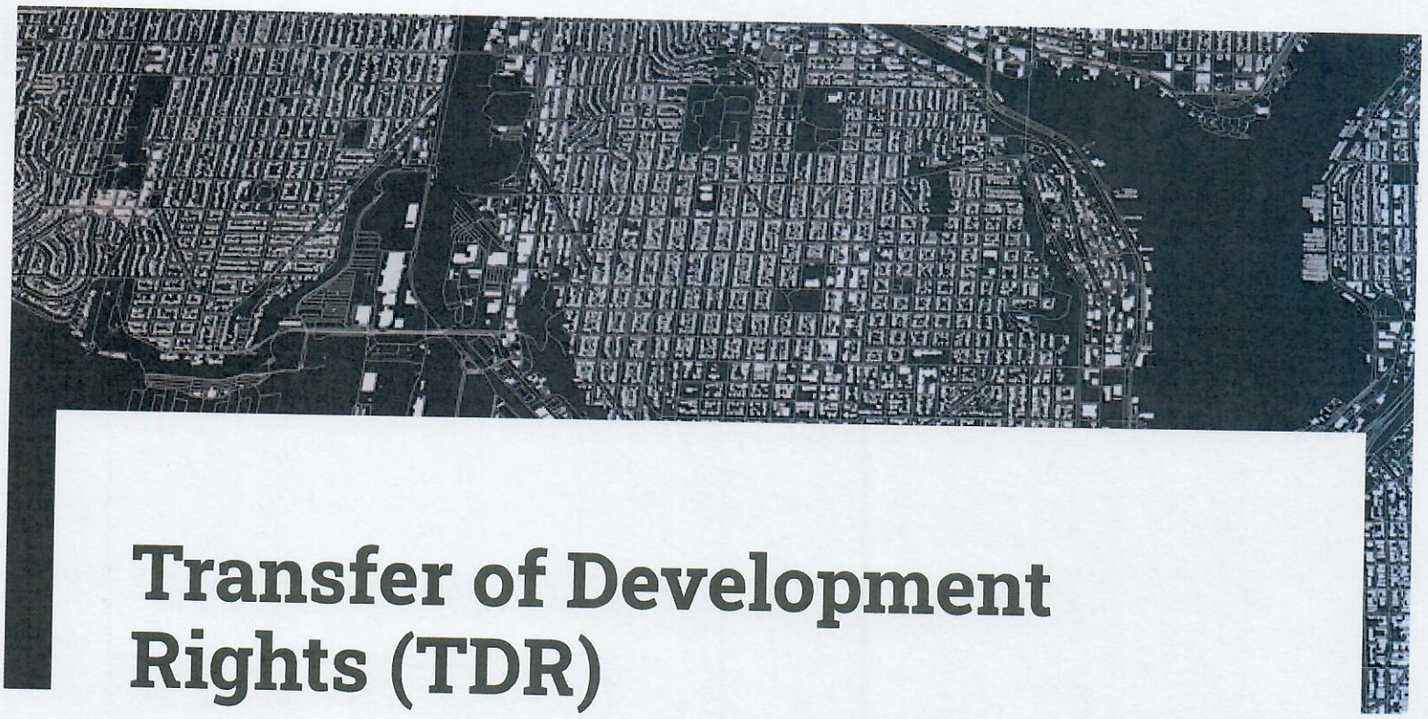
We share this information to make it clear that, despite Mr. Stuart's newly-found enthusiasm for TDR, this is a complex process that is not to be just stuffed into place as we are completing our Comprehensive Plan well past the statutory deadline. Also, we wonder that, if this was such a viable option, why the City of Ridgefield did not bring it up when it a) filed its plans with the County in August 2024, b) made strong a request for a resource lands study in December 2024 and c) demanded an agricultural resource land study in April and May of 2025 when the Council stated that they wanted to table the Study until after the completion of the comprehensive plan.

We thank you for providing us the opportunity to comment.

Best Regards,

Ann Foster

Ann Foster, President



Transfer of Development Rights (TDR)

Transfer of Development Rights (TDR) is a market-based mechanism that encourages the voluntary Growth

transfer of growth from areas a community wants to conserve to urban areas where growth should be encouraged, consistent with GMA goals.

A TDR program does not limit growth; rather, it allows communities to plan more effectively by directing that growth into areas most appropriate for it

TDR programs are recognized and encouraged in the Washington State Growth Management Act (GMA) as an innovative land use management technique. In comprehensive plans and development regulations, communities can identify which areas are suitable to grow at higher intensities and how much additional development is desired.

Jurisdictions can customize the elements of the program to reflect their conservation and development objectives, as well as market conditions and growth patterns unique to a particular area.

Landscape Conservation and Local Infrastructure Program (LCLIP)

The Landscape Conservation and Local Infrastructure Program (LCLIP, **RCW 39.108**) takes the concept of regional TDR further by creating a financial incentive for cities to use the tool. Designed by Forterra, LCLIP authorizes cities to access a form of tax increment financing in return for: 1) the creation of a TDR program; and, 2) the acceptance of a

Management

Climate Planning

Ecosystem Planning

Critical Areas Protection

Natural Resource Lands

Transfer of Development Rights (TDR)

Housing Planning

Tribal Planning

GMA Topics

Education and Outreach

Reporting, Data and Research

Contact

Angela San Filippo, AICP Ecosystem

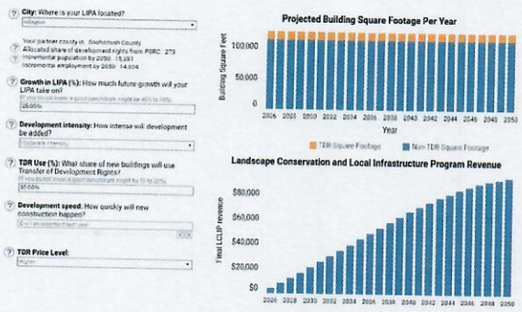
specified amount in regional development rights.

In exchange for the placement of development rights in Local Infrastructure Planning Areas (LIPA) districts, the jurisdictional county agrees to contribute a portion of its regular property tax to the sponsoring city for use for a defined period (up to 25 years). This revenue is directed to infrastructure investments that support growth in TDR receiving areas. The program is only available to select cities in the central Puget Sound counties of King, Pierce, and Snohomish. LCLIP is the first and only program of its kind in the United States.

Program Manager
Angela.SanFilippo@commerce.wa.gov
Phone: 564-233-9522

TDR Revenue and Growth Planning Tool

Commerce developed this **interactive TDR revenue projection tool** to help local jurisdictions explore how TDR could shape growth and affect revenue in Local Infrastructure Planning Areas (LIPA).



This tool is for illustrative purposes and may help educate and inform planners, community members, and decision makers on TDR and LCLIP related policy choices.

Workshop resources

Commerce hosted a TDR/LCLIP workshop in June 2025, providing an overview and answering questions about both programs. Resources from the workshop are included here for

reference.

- TDR/LCLIP workshop Q&A (PDF)
- TDR/LCLIP workshop presentation slides (PDF)
- TDR/LCLIP workshop video recording (Vimeo)

TDR guidance and resources

TDR Guidance +

Regional TDR Alliance +

TDR in other states +

Local implementation

Local TDR programs +

Example certificate/permit applications +

Interlocal agreement examples +

Example resolutions adopting interlocal terms and conditions +

Conservation easements +

LCLIP feasibility studies +

LCLIP adopted ordinances +

Example criteria

Tools for designating sending areas +

Example criteria for designating sending areas +

Examples of receiving areas +

Market analysis +

Page last updated: July 30, 2025

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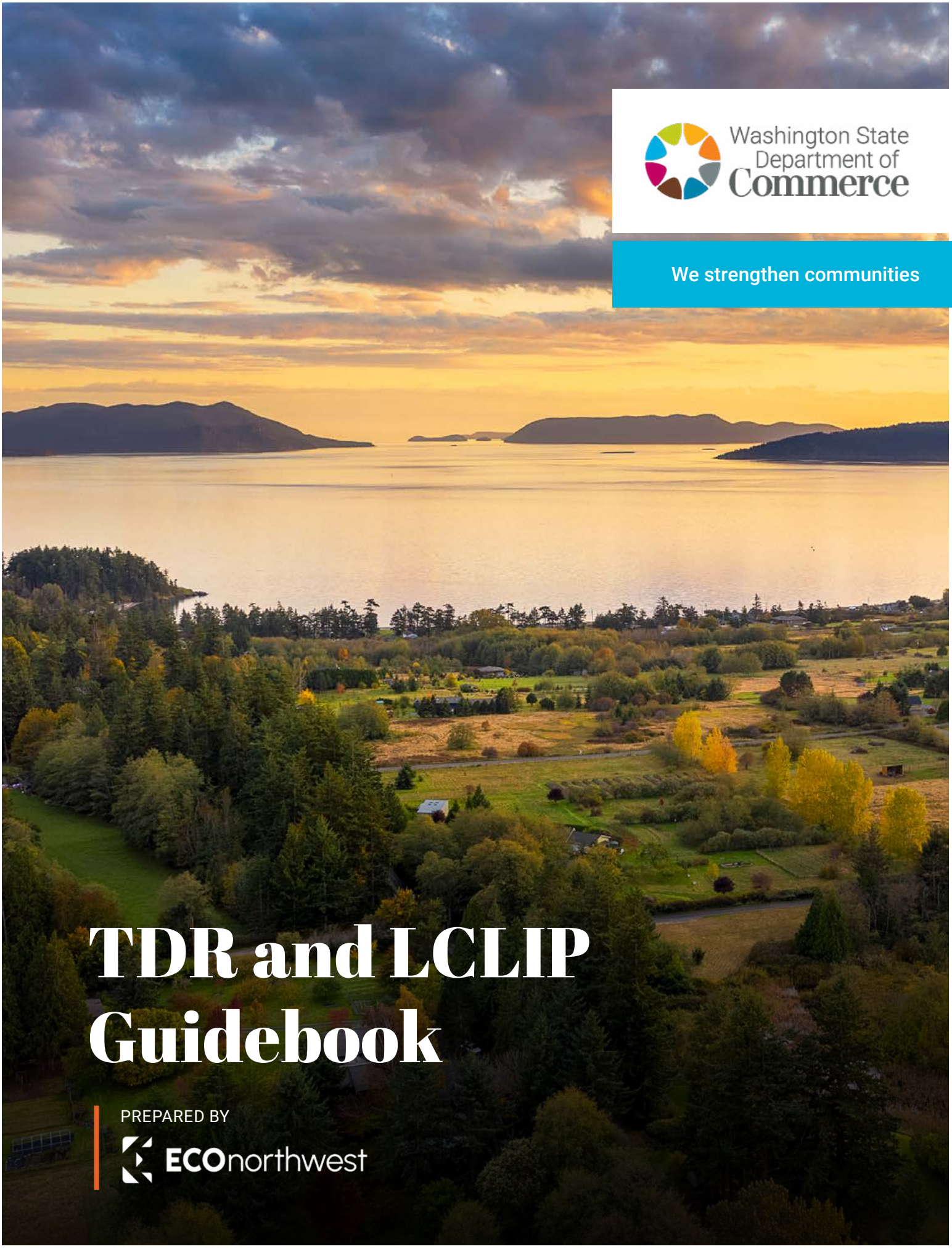

Washington State Department of Commerce

We strengthen communities

TDR and LCLIP Guidebook

PREPARED BY

ECOnorthwest

Myrtle Falls in Mount Rainier National Park / Source: Shutterstock

Acknowledgements

This guidebook was made possible through the contributions and expertise of the following individuals:

Angela San Filippo, AICP
Ecosystem Services Program Manager, Washington State Department of Commerce

Angela leads the state's Transfer of Development Rights (TDR) and Landscape Conservation and Local Infrastructure Program (LCLIP), supporting communities in leveraging land conservation tools for sustainable growth and infrastructure finance.

Morgan Shook
Director, ECONorthwest

Morgan specializes in urban economics, land use policy, and public finance. He led the development of this guidebook's financing framework and program implementation strategies, drawing on years of experience advising cities and counties across the Pacific Northwest.

Skip Swenson
Principal, Swenson LLC

Skip is a leading voice in TDR policy, bringing expertise in conservation markets and land-based policy. He led the development of this guidebook's TDR policy and program design elements.

The Department of Commerce also extends its thanks to the Regional TDR Alliance for their thoughtful review of this guidebook, and to its members for their valuable input — including Erika Harris (Puget Sound Regional Council), Nick Bratton (King County), Justin Patterson (Pierce County), Linda Neunzig (Snohomish County), Colin Poff (Kitsap County), Heather Cleveland (Kitsap County), Paul Inghram (Puget Sound Regional Council), Kristi England (Forterra), and Allen Warren (Bonneville Environment Foundation).

Neighborhood in Wenatchee / Source: Shutterstock

Orcas Island and Rosario Strait / Source: Shutterstock

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5. LCLIP Implementation and Monitoring 63

6. Resources, Tools, and Appendices 67

Cover Image: Lummi Island / Source: Shutterstock
Back Cover Image: Bellingham / Source: Shutterstock

Executive Summary

Methow Valley and the North Cascade Mountains / Source: Shutterstock

This guidebook serves as a practical resource for Washington State cities and counties considering the adoption and implementation of Transfer of Development Rights (TDR) programs and the Landscape Conservation and Local Infrastructure Program (LCLIP), highlighting how these tools can help achieve growth management goals while delivering conservation and the community and environmental benefits it affords. The guidebook provides step-by-step instructions, best practices, and real-world examples to help local jurisdictions tailor TDR and LCLIP programs to their local conditions and policy objectives, ensuring these tools contribute to meaningful, place-based outcomes.

Purpose and Benefits of TDR and LCLIP

- TDR: A voluntary, market-based mechanism that enables landowners in rural areas to sell development rights to developers in urban centers, thereby conserving rural lands while supporting urban density and growth.
- LCLIP: A complementary program for cities in King, Pierce, and Snohomish counties, linking TDR with tax increment financing (TIF) to provide cities with additional revenue for infrastructure in exchange for accepting TDR credits—aligning local development incentives with regional conservation goals and helping cities invest in growth-ready neighborhoods.

Revenue Mechanism of LCLIP

- LCLIP allows cities to captures up to 75% of incremental property tax revenues from new development within LIPAs to finance infrastructure projects supporting growth centers.
- Cities must commit to placing a specific number of TDR credits, with revenue proportional to the degree of commitment.

Infrastructure and Conservation Goals

- Incremental revenue funds vital infrastructure improvements, such as roads, parks, utilities, and transit upgrades, supporting increased density and livability in urban areas.
- Simultaneously, TDR programs conserve farmland, forests, and environmentally sensitive lands, achieving long-term regional land conservation goals.

La Conner / Source: Shutterstock

Guidance for Cities

- Cities should engage stakeholders early, including developers, landowners, and community members, to align program design with local priorities.
- Strategic planning and collaboration with county partners are essential to ensure successful program adoption and performance monitoring.
- Regular reviews of TDR market conditions and program incentives are critical to maintaining balance between urban growth and conservation outcomes.
- For local jurisdictions ready to explore these tools further, this guidebook references a suite of resources—including model ordinances, example easement language, and planning guidance—compiled in Chapter 6.

1 Introduction

Eastern Washington / Source: Shutterstock

1.1 Why a Guidebook?

Transfer of Development Rights (TDR) and the Landscape Conservation and Local Infrastructure Program (LCLIP) provide Washington State cities and counties powerful tools to support comprehensive plan and broader growth management goals, incentivizing growth where it is desired while conserving rural and designated natural resource lands. TDR is available to all jurisdictions in the state, offering a flexible, market-based means for achieving local land use goals. LCLIP is an additional tool available to select cities in King, Pierce, and Snohomish counties that provides targeted financial incentives for accepting transferred development rights.

TDR programs have conserved hundreds of thousands of acres in communities across the United States—including more than 150,000 acres in Washington State. At the same time, many TDR programs fail to achieve their goals due to ineffective design and upfront implementation. This guidebook offers topical introductions and instructions to help jurisdictions design and manage successful TDR and LCLIP programs aligned with their unique growth and conservation priorities. Local jurisdictions will learn how to structure TDR programs and apply best practices to achieve their growth management and land conservation goals. It also links to a suite of resources and examples offered by the Washington State Department of Commerce. Whether your jurisdiction is exploring TDR generally or evaluating LCLIP's financial incentives, this guidebook will support informed decision-making around program design and implementation. A suite of supporting materials—including a model TDR ordinance, definitions of key terms, market study examples, and equity-focused planning tools—is included in Chapter 6. These resources, many of which are drawn from Washington jurisdictions and regional partners like Puget Sound Regional Council, can assist local governments in tailoring programs to their unique needs

1.2 Introduction to TDR

TDR is a voluntary, market-based mechanism that simultaneously supports land use goals for growth and conservation. Through voluntary transactions, TDR allows owners of farms, forests, and other rural lands to sell their development rights to developers building construction projects, typically in cities and unincorporated urban centers.

Through these transactions, developers gain access to value-adding incentives for projects, such as an ability to construct more units than may otherwise be achievable. To reflect the sale and removal of development rights from a property, an easement permanently restricting development

is recorded with the county. The landowner retains ownership and all other rights to the land, including income-generating uses like farming or forestry.

TDR supports state and community planning goals such as encouraging compact urban development within designated urban growth areas and conserving open space and natural resources.

1.2.1 TDR in Washington State

Washington State established a sound foundation for TDR programs through the Growth Management Act (GMA) and the Regional TDR Marketplace legislation, ensuring that TDR not only aligns with state planning goals but also supports implementation across a range of jurisdictions and local contexts.[1]

The GMA requires cities and counties to adopt comprehensive plans that manage population growth against a set of 15 mandatory planning goals.[2] TDR is identified as one of several innovative techniques comprehensive plans should include to achieve these objectives.[3] In practice, TDR supports GMA goals by encouraging growth in areas where infrastructure is already in place or can be expanded efficiently, helping jurisdictions reduce sprawl and make the most of existing public investments. It protects rural, agricultural, and natural resource lands, sustaining local economies, supporting working lands, and conserving open spaces for recreation, habitat, and ecological health. In urban areas, TDR facilitates increased housing density, encouraging diverse housing options, including affordable housing, and may support transit-oriented development aligned with regional transportation goals. Through voluntary, market-based transactions, TDR allows rural landowners to monetize their development value while retaining ownership for other uses, upholding private property rights while aligning with public planning objectives. By conserving natural areas, TDR contributes to environmental quality, including the protection of air and water resources.

HISTORY OF TDR IN WASHINGTON

While some counties and cities adopted TDR programs in the 1990's following the passage of the GMA—notably, Clallam, King, and Whatcom counties—the number of transfers statewide remained limited through the early 2000's. Recognizing a need to expand TDR use beyond early adopters, in 2007 the Washington State legislature directed the Department of Commerce, Trade, and Economic Development (now Department of Commerce) to evaluate how TDR could support broader state and local planning goals. The ensuing, two-year study identified challenges to early TDR programs, such as limited market participation and inconsistent program design.

In response to the study, the legislature passed Regional TDR Marketplace legislation, focused on establishing a network of TDR programs within the four counties in Washington's central Puget Sound region: King, Kitsap, Pierce, and Snohomish. The legislation suggests a regional TDR program structure and elements, promoting the voluntary transfer of development rights across jurisdictional

1 RCW 36.70A and RCW 43.362, respectively.

2 See https://app.leg.wa.gov/RCW/default.aspx?cite=36.70A.020

3 See https://app.leg.wa.gov/RCW/default.aspx?cite=36.70A.020

boundaries within these counties, envisioning landowners in one county to sell their development rights to developers in urban receiving areas in another. Its most significant innovation was the creation of the "Commerce Rule" by which counties, cities, and towns participating in the regional TDR program may adopt by reference a common framework for interjurisdictional TDR credit transfers—streamlining program participation and reducing administrative barriers.[4]

Exhibit 1 Conservation-based TDR Programs[5]

JURISDICTION	YEAR FOUNDED	CONSERVATION GOALS
Clallam County	1998	Agricultural lands
King County	1998	Resource & Riparian lands
Kitsap County	2006	Rural lands
Kittitas County	2009	Ag & forest lands
Pierce County	2007	Ag & forest lands
Snohomish County	2004	Ag & forest lands
Thurston County	1994	Agricultural lands
Whatcom County	1999	Watersheds
Arlington	2004	Agricultural lands
Bainbridge Island	1996	Agricultural lands
Bellevue	2009	Ag & forest lands, wetlands
Bellingham	2001	Lake Whatcom Watershed, Critical areas
Black Diamond	1996	Ag & forest lands
Burlington	2007	Agricultural lands
Everett	1991	In-city critical areas
Issaquah	2005	Issaquah Creek, Adjacent rural lands
Lacey	1994	Agricultural lands
Mountlake Terrace	2012	Regional resource lands
Mount Vernon	1999	Agricultural lands, wetlands, riparian
Normandy Park	2012	Shoreline, Vashon Island
Olympia	1994	Agricultural lands
Redmond	1995	Agricultural lands and critical areas
Sammamish	2011	In-city critical areas, Adjacent rural lands
Seattle	2013	Ag, forest, and open space lands
Shoreline	2025	Ag, forest, and open space lands
Snohomish	2010	Ag & forest lands
Tacoma	2012	Ag & forest lands
Tumwater	1994	Agricultural lands
Woodinville	2007	In-city critical areas

4 See Washington Administrative Code 365-198.

5 Adapted from Kitsap County Transfer of Development Rights (Report), Forterra, May 2015.

As of January 2025, TDR programs for conservation and open space protection have been adopted in 29 counties and cities (Exhibit 1). TDR features as a strategy for achieving VISION 2050, the Puget Sound Regional Council's framework for managing growth in the central Puget Sound region. By facilitating the transfer of development rights, TDR is a listed strategy for implementing VISION 2050's core strategy of concentrating growth in urban centers while conserving rural and natural resource lands.[6]

1.3 Overview of the Landscape Conservation and Local Infrastructure Program

The Landscape Conservation and Local Infrastructure Program (LCLIP) builds on the Regional TDR Marketplace legislation, providing financial incentives for cities accepting rural and resource land TDR credits, linking conservation with infrastructure investment in designated growth areas.[7] Given their specific growth pressures and threatened resource lands, LCLIP is available in King, Pierce, and Snohomish Counties. The program incentivizes TDR by providing cities accepting regional development rights access to additional infrastructure funding where growth is planned. By linking a form of Tax Increment Financing (TIF) with TDR transactions, LCLIP allows cities to access an additional portion of property tax revenues from new development within designated districts than would otherwise be available through a revenue-sharing program with its county. These funds can be used to finance investments in roads, sidewalks, water systems, parks, and other infrastructure that supports compact growth and improves livability in neighborhoods. Funds are flexible, designed to combine with traditional, more restricted infrastructure funding sources.

> ***"At most, in addition to their own increased revenues, cities can retain 75% of the increase in the county's portion of property taxes within defined redevelopment districts where development rights are used and supportive infrastructure projects occur."***

Cities choosing to participate in the program must commit to certain TDR performance standards that can be tailored to local development patterns and market conditions, providing flexibility to match local capacity and objectives. The financial benefits a city may receive are directly tied to their chosen level of TDR commitment. At most, in addition to their own increased revenues, cities can retain 75% of the increase in the county's portion of property taxes within defined redevelopment districts where development rights are used and supportive infrastructure projects occur. Revenues stream for a 25-year financing window, provided TDR usage milestones are achieved.

Marathon Petroleum Anacortes Refinery / Source: Shutterstock

6 See MPP-DP-44, https://www.psrc.org/sites/default/files/2022-11/vision-2050-plan.pdf,

7 Adopted as "Local Infrastructure Project Areas", See https://apps.leg.wa.gov/Rcw/default.aspx?cite=39.108&full=true

LCLIP seeks to align the interests of five parties critical to the success of a regional TDR program: Washington State, counties, cities, rural landowners, and developers:

Washington State: LCLIP incentivizes the permanent conservation of agricultural and forest lands of long-term commercial significance, which the state requires counties identify and protect from conversion to other uses.[8]

Counties: For counties required to plan under the GMA, LCLIP offers an opportunity to both steer planned growth to urban areas and permanently conserve designated natural resource lands.

Cities: Cities are the largest potential receiver of development rights and, in turn, the key beneficiaries of LCLIP financial incentives. As resource lands have no allocated population growth, cities receiving transferred development rights through LCLIP are not responsible for accommodating more population than their comprehensive plans consider.

Rural Landowners: TDR offers private landowners of resource lands the opportunity to realize the development value of their land, while retaining ownership and the ability to farm or conduct forestry on the property. LCLIP bolsters demand for TDR, expanding the market available to landowners.

Developers: Developers benefit from the increased project value made possible by purchasing TDR credits. Additionally, the infrastructure improvements funded by LCLIP reduce pass-through infrastructure costs to developers.

Though LCLIP has been available to central Puget Sound area cities since 2011, its use has been limited. Two common reasons cited by cities are its complexity and the related challenge of implementation. This guidebook aims to demystify LCLIP and assist county and city planners designing LCLIP-accessing TDR programs.

Puget Sound / Source: Shutterstock

8 See https://app.leg.wa.gov/RCW/default.aspx?cite=36.70A.060, https://app.leg.wa.gov/RCW/default.aspx?cite=36.70A.170

Waterfront Seattle / Source: Shutterstock

2 Transfer of Development Rights[9]

2.1 Defining Basic Ideas and Key Terms

TDR involves several elements and terms that are essential for understanding and implementing the tool:

Allocation Rates: A market mechanism defining the number of development rights assigned to each sending site parcel based on specific criteria, such as zoning designations, land characteristics, or ecological value.

Development Incentives: Benefits that exceed what is available under current zoning and other development regulations, accessed using a TDR program.

Exchange Rates: A market mechanism used to normalize disparities in the value of development rights between sending areas and receiving areas, making transactions financially viable for both landowners and developers.

Interlocal Agreement: A legal contract between two or more counties and cities that specifies the conditions under which TDR credits may be transferred.

Receiving Areas: Designated sites where developers can place TDR credits as a means for increasing the value of a construction project, often through development incentives.

Sending Areas: Designated rural and resource land sites from which development rights are sold and removed.

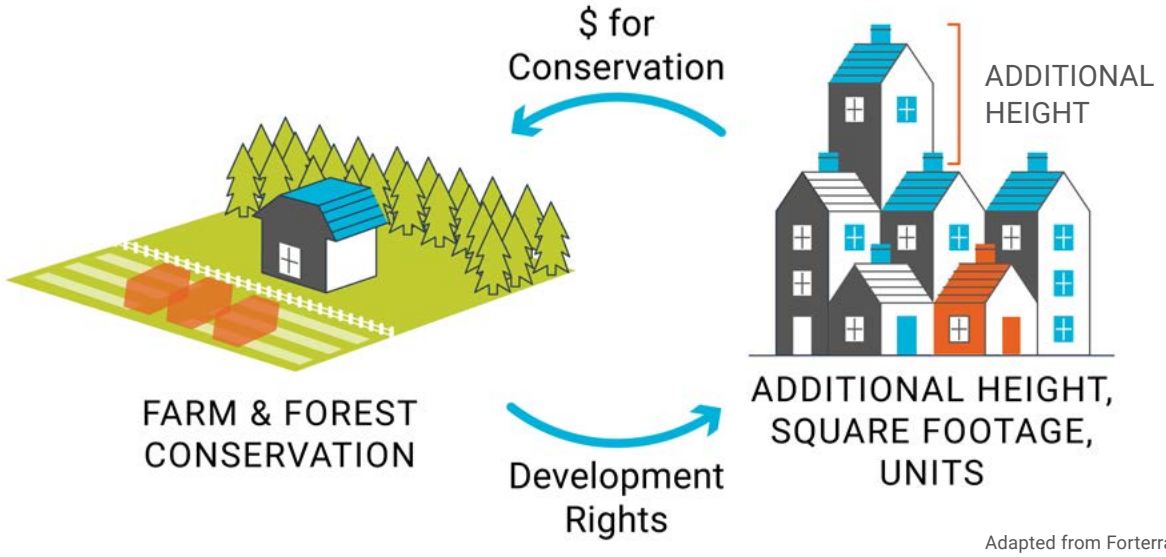
TDR/Conservation Easement: A legal instrument permanently limiting the development potential of a sending property after development rights have been removed, ensuring its conservation for resource uses or open space purposes.

Construction Site in Bellevue / Source: Shutterstock

9 Chapter is in part adapted from A Resource Guide to Designing Transfer of Development Rights Programs in Washington State, Cascade Land Conservancy, June 2009, https://deptofcommerce.box.com/s/pbi8qhqijcv6jn6u5raztdw028htjimc

2.2 How TDR Works

Transfer of Development Rights programs rely on the separation of discrete rights from property ownership and their transfer through a structured process involving landowners, local jurisdictions, and buyers.



Adapted from Forterra & King County

2.2.1 Property Rights

Property rights refer to the various legal rights held by people who own land. Examples of property rights include:

- **Providing or restricting access**
- **Income-generating uses, for example agriculture**
- **Residential development and related uses**

Development rights are one of several types of property rights that can be separated from the suite of ownership rights in certain circumstances. In TDR programs development rights can become their own assets that may be bought and sold. If development rights are removed an easement is placed on the property to enforce the permanent removal of development rights. This ensures long-term land conservation while allowing landowners to continue to exercise remaining, unsold property rights, for example to farm or harvest timber.

Adapted from Forterra

2.2.2 TDR: A Conceptual Model

To provide a sense for how TDR works conceptually, consider a scenario with three key participants: a landowner, the county in which the land is located, and a buyer. The primary steps involved in a typical removal of development rights from a property and their sale in a TDR transaction are as follows:[10]

1. **Landowner Decision:** The process begins when a property owner voluntarily chooses to sell development rights from a parcel.
2. **County Approval:** The landowner applies to the county for eligibility to participate in the TDR program. Before approving the application, the county confirms the property meets the sending site criteria for participation in the TDR program and determines the number of development rights eligible for sale from the property.
3. **Developer Interest:** A receiving-site developer seeking to realize the additional value TDR-based incentives provide contacts the landowner to negotiate the purchase. In many cases a jurisdiction facilitates these connections to help activate the TDR market.
4. **Negotiation:** The landowner and developer engage in negotiations regarding the number and price of the development rights. Once agreed, money and development right documents, issued by the county, are exchanged.
5. **TDR/Conservation Easement:** To enforce the removal of development rights, a TDR easement is recorded on the landowner's parcel. The easement is held by a qualifying entity.[11]
6. **TDR-based Construction:** With the purchase and transfer of development rights, the developer proceeds with the incentive-based development at the receiving site.
7. **Ongoing Easement Monitoring:** The easement-holding entity monitors the sending site to ensure that no unauthorized development occurs over time. If unauthorized development does occur in the future, the entity will take enforcement actions.

In practice, the acquisitions process is more involved. There is no standard transaction, as the exact steps and parties involved will differ county to county, whether the buyer is a private versus public party, and depending on the nature and source of funding for the purchase. Further, development right sellers may choose to engage

Mount Rainier / Source: Shutterstock

10 Adapted from Conserving Kittitas County Farmlands and Working Forests, Transfer of Development Rights Program, Research Findings and Program Recommendations, Cascade Land Conservancy, May 19, 2009

11 Typically a county or a nonprofit conservation organization, see https://apps.leg.wa.gov/RCW/default.aspx?cite=64.04.130

in a single transaction or structure their sales over multiple deals. Similarly, buyers can purchase a single TDR credit from one landowner or multiple credits from several sellers.

What is consistent in all Washington programs is TDR is voluntary; landowners have the option to sell all, part, or none of their development rights. Developers can choose to build at by-right zoning allowances, avoiding both the effort and benefits tied to TDR. If TDR is pursued, negotiations between buyers and sellers ultimately determine whether a transaction takes place. Without mutual agreement on terms, either party can opt not to proceed.

2.3 TDR Program Scales

TDR programs can operate at different scales, addressing land-use goals and challenges across geographic contexts. Programs can be considered in three main categories: local, interlocal, and regional. Each type offers distinct advantages and challenges depending on the geographic scope, the stakeholders involved, and the goals of the program.[12]

2.3.1 Local TDR Programs

At the smallest scale, local TDR programs operate entirely within a single jurisdiction, typically within the boundaries of a county or a city. Local programs allow for a direct, visible benefit to citizens, who can see the conservation of resources like open space or habitat close to home. For example, Redmond has an in-city TDR program focused on protecting environmentally critical areas, amongst other priority areas.[13] The protection of these areas is driven through TDR receiving sites elsewhere in Redmond.

Local programs do have limitations. For example, where programs are limited to county lands for both sending and receiving sites, there may be insufficient demand for incentive-based construction to generate significant conservation. Conversely, where programs are limited to city lands for both sending and receiving sites, the supply of land eligible for transfer may be constrained. In some cases, the costs of in-city lands limit the ability for viable TDR incentives. More broadly, in-city programs do not contribute to the statewide GMA objective for protecting resource lands of long-term commercial significance.

2.3.2 Interlocal TDR Programs

Interlocal TDR programs involve multiple jurisdictions, typically involving a county and a city within that county. In this model, development rights are transferred from sending areas in the unincorporated county to receiving areas in cities or towns. Beyond supporting statewide growth management goals, the broader geographic scope allows for a larger supply of sending sites, creating a more robust market where landowners and developers have more options. Interlocal programs can also reinforce a natural nexus between unincorporated sending areas and urban

12 Chapter 6 provides a link to model interlocal agreements, including examples from jurisdictions that have implemented the Commerce Rule for regional TDR transfers.

13 See https://redmond.municipal.codes/RZC/21.48.010?utm

development in the receiving areas. An example is the interlocal TDR program between Sammamish and King County, which allows for the transfer of development rights from rural King County viewshed lands surrounding the Sammamish Plateau into the city's town center.[14]

Interlocal TDR programs require legal agreements between the participating jurisdictions, which may create administrative requirements. Additionally, cities may not be incentivized to accept development rights the county may prioritize. These are aspects for negotiation as the parties design the interlocal program.

2.3.3 Regional TDR Programs

At the broadest scale, regional TDR programs encompass larger geographic areas, crossing county lines to include multiple jurisdictions. As outlined in Chapter 1, Washington State codified a regional TDR program in the central Puget Sound region, encompassing King, Kitsap, Pierce, and Snohomish counties, as well as the cities within those counties. Sending areas in regional programs are typically located in unincorporated rural and resource lands, while the receiving areas are urban centers that are better suited to absorb additional density. Unlike interlocal TDR programs, which transfer development rights within a single county, regional programs accommodate cross-county transactions. The geographic scope of regional programs allows for a recognition of cross-border development pressures within an integrated economic region and greater flexibility in managing dependent conservation goals.

> *"The advantages of regional TDR programs lie in their ability to align development with regional growth strategies. They require careful coordination between jurisdictions and a clear framework for managing the transfer process."*

Christine Falls / Source: Shutterstock

The advantages of regional TDR programs lie in their ability to align development with regional growth strategies. They require careful coordination between jurisdictions and a clear framework for managing the transfer process. These programs may support regional planning efforts like VISION 2050, which aims to concentrate growth and jobs in cities and unincorporated urban centers while preserving critical resource lands in the surrounding rural areas.

For a regional TDR program to be successful, there must be a well-defined market for development rights with clear rules. While any regional program will rely on local programs and administrative rules, it must also clearly articulate and deliver benefits sufficient to invite partnerships across political boundaries.

14 See https://kingcounty.gov/en/dept/dnrp/buildings-property/green-sustainable-building/transfer-of-development-rights/receiving-sites/sammamish-tdr

2.4 Approaches to TDR Program Scales

To be effective, TDR programs must be tailored to local conditions and and integrated into comprehensive plans and related planning efforts to ensure alignment with long-term community goals. There are, however, common elements to TDR program design, including:

Market Geography | **Market Mechanisms** | **Incentives** | **Administration**

Palouse / Source: Shutterstock

2.4.1 Market Geography

Sending and receiving sites are foundational to TDR programs. Not only are they the policy basis for using TDR, but they also inform, if not determine, many other aspects of TDR program design.

SENDING SITE SELECTION

Establishing sending sites involves careful consideration of various factors, including policy priorities, available tools, and the broader conservation and growth management goals. Sending site policies may involve prioritizing agricultural land, forested areas, floodplains, wildlife habitats, or other open spaces. Existing tools such as comprehensive land use plans, zoning regulations, and watershed management plans often inform sending site designation. Leveraging existing frameworks ensures sending areas align with long-term planning goals.

Ultimately, sending site selection should be locally acceptable and supportive of TDR objectives. Stakeholder engagement is crucial in the selection of sending sites. Further, TDR program should balance conservation priorities with market realities to ensure development rights are priced and positioned to support successful transactions. For example, highly expensive waterfront properties may not lend themselves to becoming sending sites, as their cost may make them unattractive to potential buyers.

APPROACHES TO SENDING SITE DESIGNATION

Several methods for designating sending sites exist, each with advantages and limitations. These include:

Map designation, where specific geographic areas are identified and designated as sending sites. This method is straightforward and easy to administer, providing clarity concerning which properties are eligible sending sites. For example, Normandy Park, in King County, used this approach to designate the shoreline and near-shore areas of Vashon Island as a sending area, which is part of its interlocal TDR program with King County.[15]

Criteria-based designation, where sending sites are chosen based on specific characteristics, such as land use, zoning, or environmental factors. This approach is more flexible and allows for a more tailored designation of lands based on conservation goals. For instance, jurisdictions may designate lands zoned as agricultural or forest lands as eligible sending sites. This is a common approach to county TDR programs. For example, Pierce County relies on a series of criteria-based designations and zoning to identify its sending sites.[16] The ease and flexibility of this method allows jurisdictions to more precisely align conservation priorities with land use decisions, enabling the designation of high-value conservation areas within existing planning frameworks.

Hybrid approach, combining both map designations and criteria-based methods to balance geographic coverage with targeted conservation efforts. This can help address specific areas of concern while maintaining a broader focus on conservation.

As with all land use programs, stakeholder engagement is an important aspect to identifying and designating receiving sites. Sending sites should reflect the conservation values of the community, which is best achieved when stakeholders inform decision-making.

RECEIVING SITE SELECTION

Receiving site designation plays a significant role in the success of a TDR program. Establishing receiving sites requires careful consideration of various factors, notably market demand and infrastructure capacity.

> *"Establishing receiving sites requires careful consideration of various factors, notably market demand and infrastructure capacity."*

When selecting receiving sites, communities must ensure that receiving sites align with the broader growth goals set out in their comprehensive plans. A jurisdiction's growth objectives and local planning documents should guide the determination of which areas are appropriate for increased density. In counties, this may include places such as urban centers or designated residential zones. In cities, this may include anywhere additional development is planned. Incorporating TDR into areas identified for increased development—such as regional growth centers, transit-oriented development nodes, or

15 See https://www.codepublishing.com/WA/NormandyPark/html/NormandyPark18/NormandyPark1882.html

16 See https://pierce.county.codes/PCC/18G.10.050

infill areas—can help jurisdictions meet multiple planning priorities simultaneously. Infrastructure capacity is a key consideration—receiving sites must have or be able to provide the infrastructure necessary to accommodate additional development, such as roads, utilities, schools, and public services. A key consideration is the demand for future construction beyond existing zoning or other regulations. For TDR to be effective, receiving sites must generate demand for development right purchases and transfers.

As with sending site selection, stakeholder engagement is critical to the process of designating receiving sites. Likewise, existing community plans and vision documents provide valuable guidance for selecting receiving areas, ensuring that the TDR program reinforces broader development efforts, such as zoning updates, subarea plans, or capital improvement planning.

Housing in Medical Lake / Source: Shutterstock

APPROACHES TO RECEIVING SITE DESIGNATION

Various methods may be used to designate receiving sites, allowing jurisdictions to select approaches that align with their existing planning tools and administrative processes. Two common approaches include:

TDR overlay, in which certain geographical areas or zones are designated as receiving sites. Creating overlays allows a jurisdiction to target specific areas with strong growth potential, providing clarity about where development rights can be applied. For example, the City of Shoreline established a receiving site map overlay and, within that overlay, identified five zoning types as receiving sites—each providing a specific set of TDR bonuses.[17] Clear overlay designations can also help jurisdictions leverage TDR as part of broader strategies, such as transit-oriented development or downtown revitalization efforts.

TDR as a condition of approval, where any expanded development is considered on its own merit, in accordance with land use policy and regulations, but final approval is conditional on the use of TDR. This strategy is more commonly an element of county receiving sites. For example, a county may add TDR as a condition to granting zoning changes allowing for higher density or increased development. This approach requires that a portion of the added development potential is transferred versus simply granted. An example is in Snohomish County, which designated all comprehensive plan amendments resulting in increased dwellings as receiving sites in the county TDR program.[18]

17 See https://www.codepublishing.com/WA/Shoreline/html/Shoreline20/Shoreline2050.html#20.50.800

18 See https://snohomish.county.codes/SCC/30.35A.080

Planning Guidance:

- **Define Sending Sites Strategically**: Use conservation priorities and land use plans to guide site selection, and pair priorities with an appropriate designation method. Ensure sites align with market feasibility, for example avoiding extremely high-value properties that do not lend themselves to a market-based tool.
- **Define Receiving Sites**: Focus on areas with strong growth potential and adequate infrastructure, such as urban centers or transit hubs, ensuring alignment with comprehensive plans. Consider how TDR will be applied, in an overlay zone or as a condition for zoning changes or increased density.
- **Engage Stakeholders**: Collaborate with landowners, developers, and community members to build consensus and address concerns.

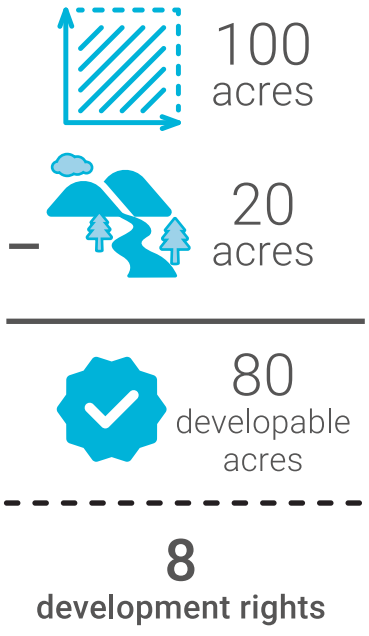
2.4.2 Market Mechanisms

Effective market mechanisms make TDR work in practice. In Washington, aligning real-world land values and development costs ensures landowners are willing to sell, developers are willing to buy, and local governments see results that meet planning and conservation goals. The two primary mechanisms through which this is done are allocation rates and exchange rates.

ALLOCATION RATES

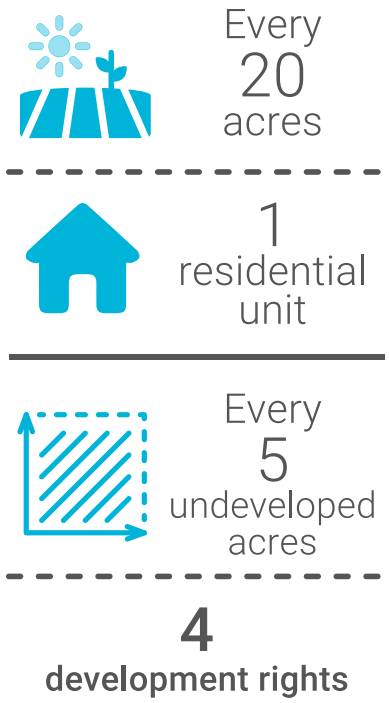
Allocation rates define the number of development rights assigned to each parcel based on specific criteria, such as zoning designations, land characteristics, or ecological value. These rates are vital to ensuring that landowners understand and are incentivized to participate in the program and that the rights they sell reflect the potential of their land. Two common methods to allocations rates are:

Zoning-based allocation, where the number of rights granted is determined by the zoning of the land, offers a clear and legally grounded method that Washington jurisdictions already understand For example, if a property is zoned for one dwelling unit per 10 acres, the landowner may receive 10 development rights for an undeveloped 100-acre parcel. This method may also account for parcel-specific reductions tied to development code, for example if a portion of the property is undevelopable due to the presence of a lake or pond. Returning to the prior example: if 20 of the 100 acres are undevelopable due to the presence of steep slopes, the landowner may receive 8 development rights reflecting 80 developable acres. This approach to development rights allocation is simple and fair, respecting commonly understood property rights associated with ownership.



Formula-based allocation, where development rights are distributed based on a predetermined formula regardless of zoning or otherwise

realizable development potential, can offer planners flexibility to set priorities and potentially improve market participation in specific contexts. This approach may be used if zoning alone may not account for factors such as undevelopable land, ecological value, or other conservation priorities. For example, a parcel may be in agricultural zoning allowing for the construction of one residential unit every 20 acres, but is regardless allocated one development right per every five undeveloped acres. By using a formula, jurisdictions can increase landowner incentives by offering more development rights than zoning would allow, potentially making otherwise expensive properties viable for TDR and helping to attract participants to the program. However, this method has trade-offs. First, given their discretionary nature, allocations greater than underlying zoning allowances have the potential to create inequities by benefiting a portion of landowners or market distortions by influencing price expectations. Secondly, in most cases allocations higher than underlying zoning allowances reduce the conservation potential of the TDR program from an acres-conserved perspective.



Both methods are viable. Which approach a jurisdiction pursues should be carefully weighed, and ultimately should be tied to the jurisdiction's conservation goals. The allocation method has a strong bearing on other aspects of the market, including exchange rate and financial incentives development.

EXCHANGE RATES

Exchange rates, also referred to as transfer ratios or multipliers, normalize the disparity in the value and measurement of development rights between sending areas and receiving areas.

In general, the market value of one dwelling unit in a rural area is significantly higher than the value of one additional unit in an urban development. Without an adjustment to account for these differences, developers would be unwilling to pay the sending site development right value, and, vice versa, landowners would be hesitant to sell their development rights.

Further, while sending site development rights are commonly considered in terms of dwelling units, receiving site urban projects may be founded in other metrics—for example, building height, square footage, or floor area ratio (FAR).

To address an imbalance between willingness to pay and willingness to accept or differences in measurement, jurisdictions establish exchange rates. These rates determine how much increase in density (or other development incentive) a developer may access per rural development right purchased. These are typically applied in metrics germane to the development project.

Exchange Rate Illustration: To illustrate how exchange rates operate, consider a situation where a forest owner wishes to sell development rights and a developer seeks to add two bonus apartment units to a construction project by using TDR:

Scenario 1: *No exchange rate*

Landowner has several development rights to sell for **$30,000 each**

Two additional units will increase the developer's profit by **$50,000**

$60,000
development right cost

>

$50,000
additional profit

In this scenario, the developer's willingness to pay is less than the landowner's willingness to accept, and consequently there will be no transaction, no conservation, and no additional residential capacity in the receiving site.

Scenario 2: *Exchange rate is 1:2 (1 development right = 2 receiving site units)*

Landowner has several development rights to sell for **$30,000 each**

Two additional units will increase the developer's profit by **$50,000**

$30,000
development right cost

<

$50,000
additional profit

In this scenario, introducing an exchange rate makes a transaction attractive to both the developer, who can now realize more profit by using TDR, and the landowner, who was able to receive the desired development right sales price.

Exchange Rate Considerations: TDR is driven by demand for development rights. Setting exchange rates competitively ensures developers receive sufficient increased value to justify the cost of purchasing the development rights.

The key to an effective exchange rate is finding a balance: if the rate is set high, it may limit the conservation potential of the program. Conversely, if the rate is set too low, it may discourage developer participation, also resulting in limited conservation outcomes. A comprehensive market analysis is essential to set the exchange rate at a level that is beneficial for both buyers and sellers. Market studies are discussed in detail later in this chapter.

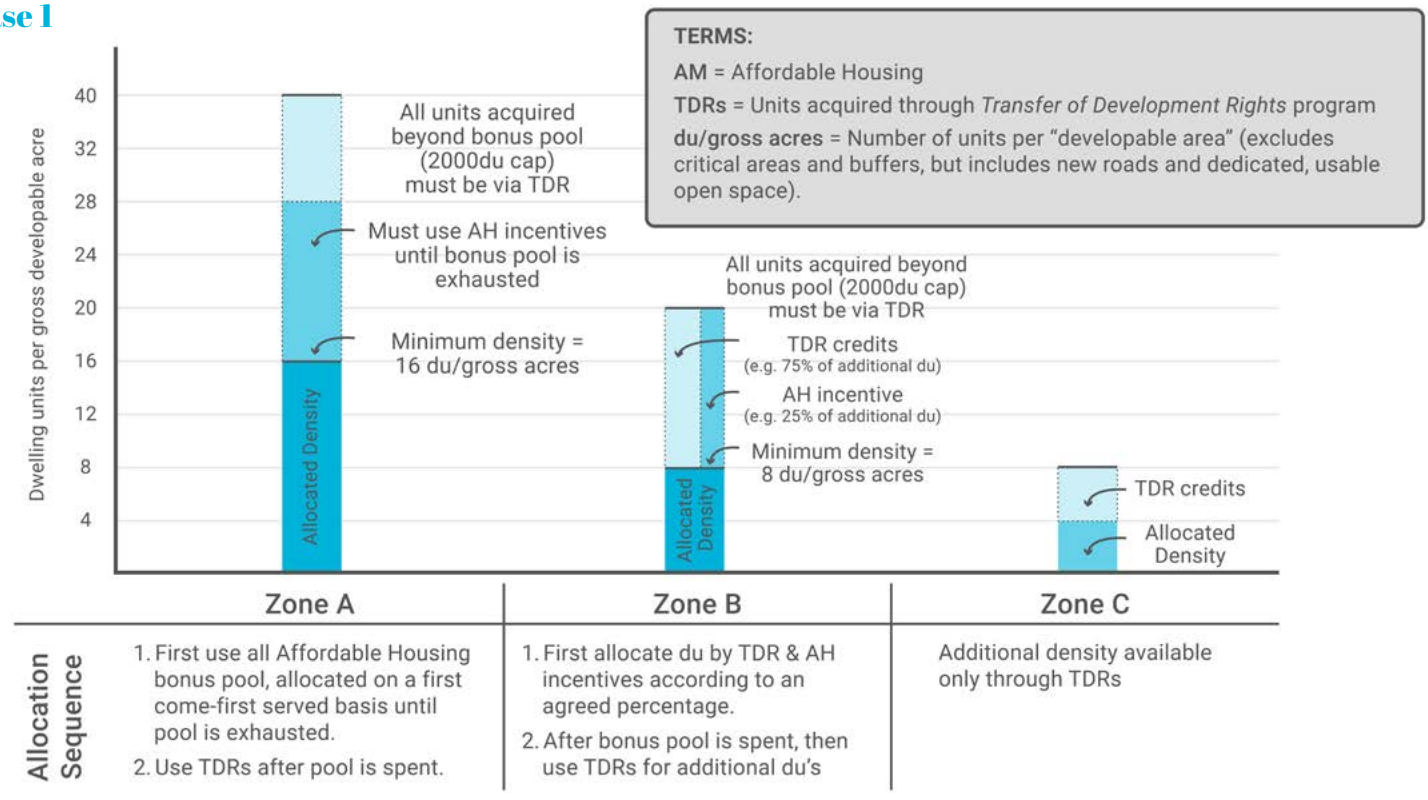
Planning Guidance[19]

- **Establish Allocation Rates**: Determine how your program will allocate sending site TDR credits. Select zoning-based or formula-based allocation methods that align with your conservation goals and market realities.
- **Set Exchange Rates Strategically**: Set rates to ensure transactions are financially viable for both parties. Conduct a market study. It is critical for exchange rates to reflect real estate market and construction cost realities.
- **Monitor and Adjust Exchange Rates**: Regularly evaluate how exchange rates perform in the market. Be prepared to adjust rates to address unintended consequences or to better align with conservation and development goals.
- **Engage Stakeholders in Allocation and Exchange Rate Design**: Work with developers, landowners, and planners to ensure allocation and exchange rates reflect practical considerations and foster trust in the program.

2.4.3 Incentives

As a market-based, demand-driven tool, providing meaningful incentives is central to effective TDR program design. Incentives generally refer to development incentives; however, in some circumstances incentives for cities are warranted.

Case 1



19 Chapter 6 provides a link to Commerce-supported market studies that illustrate credit pricing, allocation assumptions, and feasibility conditions in jurisdictions such as King, Pierce, Snohomish, Skagit, and Seattle.

20 Adapted in part from Incentives That Jurisdictions Can Provide for Developers, Regional TDR Alliance (Undated), https://deptofcommerce.box.com/s/onv1s5eca2hbx77ktvf44x5xn8lk2atf

INCENTIVES FOR DEVELOPERS[20]

The primary role of development incentives is to make TDR program participation appealing to developers by offering benefits that exceed what is available under current regulations. Incentives should not only make TDR attractive to developers, but also ensure that the resulting development is in line with the city's growth objectives. Incentives can take a wide variety of forms. Common approaches include:

> *"Incentives should not only make TDR attractive to developers, but also ensure that the resulting development is in line with the city's growth objectives."*

Incentive zoning allows jurisdictions to offer greater development potential in exchange for purchasing TDR credits. The most common incentive offered is some type of increase in density beyond base regulation limits, allowing developers to increase their return on investment. Incentives of this nature include increased units or height bonuses, square footage or floor area ratio (FAR) increases, or reduced parking requirements, all of which allow for more intensive development in receiving areas than base zoning allows. For example, the City of Issaquah provides development projects access to increased density, height, and impervious surfaces through the purchase and application of TDR credits.[21] This increases the economic viability of a project by allowing developers to maximize the use of available land or, with other incentives, reduce construction costs.

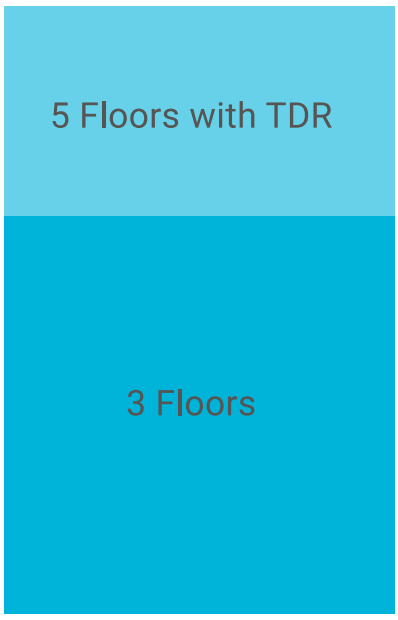
Permitting incentives tied to TDR, such as by-right and expedited permitting, simplify and accelerate the approval process.

- By-right permitting ensures that TDR project applications are subject to administrative review rather than legislative or quasi-judicial processes, allowing local planning officials to approve projects without the need for public hearings or council action. This approach removes decision variables and provides early certainty for projects.
- Expedited permitting prioritizes TDR projects in the review process, reducing overall timelines and allowing for quicker project approvals. Expediting may entail such actions as moving projects using TDR to the front of the review queue, setting shorter feedback deadlines, or streamlining redundant procedural steps.

Permitting-based incentives provide developers with predictability and efficiency, making TDR programs more attractive by removing barriers in the approval process and reducing the time and expense associated with traditional permitting.

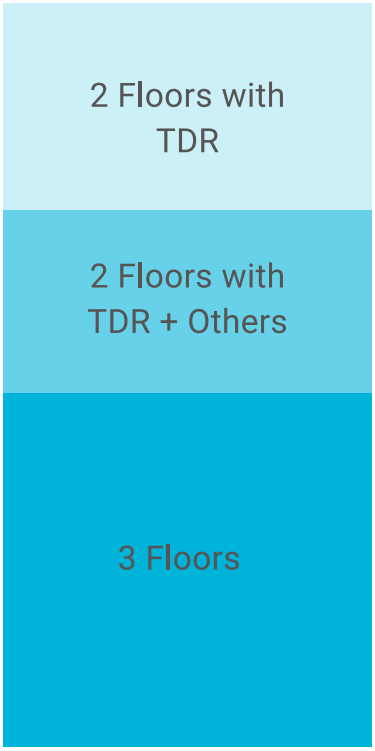
Subarea planning and Planned Actions designate specific geographic areas for increased development, providing developers with clear guidelines, enhanced density allowances, and streamlined permitting processes, reducing uncertainty, and

Case 2



21 See https://issaquah.municipal.codes/LUC/18.806.080

Case 3



reducing construction time. Integrating TDR into this approach allows jurisdictions to match their TDR incentives with the specific needs and goals of each area. An example is in Snohomish County, where subarea planning is used alongside the county's TDR program to focus development in urban centers and areas with high-density zoning.

By targeting growth in these areas, the county ensures that new development is supported by the infrastructure already in place. Similarly, Bellevue adopted subarea planning for the Bel-Red Corridor. This area was selected as a key growth zone, and the city used subarea planning to align TDR incentives with its goals for mixed-use development. By incorporating light rail connections, new streets, parks, and open spaces, the city made it an attractive place for developers to invest. By incorporating TDR, they created incentives to build more intensely.

Planned actions build on the benefits of subarea planning by conducting detailed, upfront environmental reviews for an entire receiving area. These reviews establish predefined mitigation measures and maximum build-out potential, reducing or eliminating the need for individual SEPA reviews for subsequent projects that align with the plan. The streamlined process reduces permitting delays, costs, and risks for developers. For example, the City of Snohomish adopted a planned action ordinance for its Pilchuck District, integrating TDR with a vision of a walkable, mixed-use neighborhood.[22]

Tax and fee programs aim to incentivize TDR participation by reducing project costs. Two examples involve multifamily tax exemptions and impact fee waivers.

- **Multifamily tax exemptions (MFTE)** afford property tax relief on residential improvements and are offered for 12- or 8-year periods. Whereas, 12-year MFTE has public benefit requirements relating to affordable housing provision, 8-year MFTE has no such public benefit requirements. Cities could consider making TDR use a condition of 8-year MFTE eligibility, aligning conservation goals with housing incentives and ensuring the combined package remains financially viable for developers..
- **Impact fees** are imposed to fund public infrastructure such as roads, parks, schools, and fire protection facilities. Provided governments have other means for funding infrastructure costs, instituting waivers for projects using TDR is another example of a means for reducing development project costs.

These examples demonstrate how tax and fee programs can spur TDR participation by tying it to favorable financing or fee structures for a development project.[23]

22 See https://snohomish.municipal.codes/SMC/14.212.150

23 Chapter 6 provides access to model ordinances and examples of local zoning incentives.

INCENTIVES FOR CITIES

While most discussion of incentives surrounds incentivizing developers at the project scale, incentives can be extended to cities as a means for driving interlocal TDR participation. This may be developed in some interlocal and regional programs, where there may be a weaker nexus between sending sites and receiving site communities. Incentives for cities in such cases may increase the attractiveness of conservation-based TDR to cities.

Incentives for cities often take the form of direct funding or revenue-sharing. King County has employed funding for community amenities to entice cities located in the county to accept rural development rights. For example, Bellevue agreed to accept 75 development rights into the Bel-Red corridor under an interlocal TDR agreement with King County, which in turn contributed $750,000 for a pocket park—demonstrating how interjurisdictional collaboration can deliver visible community benefits.[24]

Planning Guidance:

- **Engage Developers Early**: Conduct outreach to developers to understand what incentives will drive their participation in TDR programs. Explore a full suite of options spanning incentives that add increased development value to those that reduce construction time and cost.
- **Tailor Incentives to Goals and Developer Priorities**: Use insights from engagement to design incentives that ensure planning goals are met while inviting developer participation. Incentive design must consider all objectives relating, but not limited to, urban form, housing and commercial space targets, public benefits like affordable housing provision, and construction pace and scale.
- **Evaluate Effectiveness Regularly**: Monitor how incentives perform and adjust them based on feedback and market trends to sustain participation.

2.4.4 TDR Program Administration

Local jurisdiction is the foundation on which TDR programs operate. A government pursuing TDR must determine during the program design phase the degree to which it will participate in program administration. Administrative design issues relate to the types of transaction models a TDR program will rely upon, considering how it will:

- Engage in public outreach, educating landowners, developers, and the community about the TDR program.
- Provide technical assistance and support throughout the program.

24 See https://cdn.kingcounty.gov/-/media/king-county/depts/dnrp/building-property/tdr/documents/kc_bellevue_tdr_ila_recorded_9-23-09.pdf?rev=834f78fd447a4ae382bbbae14331bdcd&hash=66E75E29E9DD4468B00AD9B14461B2D9

Additionally, a government must consider how or whether it will:

- Administer, monitor, and enforce TDR easements or deed restrictions.
- Engage in interlocal agreements.

TRANSACTION MODELS

A key technical and policy decision when designing a TDR program is selecting an appropriate transaction model by which development rights are bought and sold. The choice of model will depend on various factors, including:

Alignment with conservation goals: Different objectives may warrant different degrees of administrative support. Program conservation goals may vary depending on whether the objective is to maximize the number of acres conserved, to encourage frequent transactions, or to target specific types of land, such as large parcels of agricultural land. For example, a program focused on protecting large rural landscapes may need a model capable of actively facilitating transactions.

Ease of participation: If the transaction model is too complex or difficult to navigate, it may discourage participation, undermining the program's success. The chosen model should make it easy for developers to purchase development rights and for landowners to sell their rights.

Cost-effectiveness of administration: The transaction model should be manageable for the agency responsible for administering the TDR program. It should not place unmanageable burdens on the agency, either in terms of financial resources or staffing.

The following are five transaction models used in TDR programs, each offering different advantages depending on the specific context and goals of a TDR program:

Buyer-Seller Transaction: The simple buyer-seller transaction is one of the most straightforward models used in TDR programs. In this model, a developer purchases development rights directly from a landowner. The transaction is typically managed on a case-by-case basis, without significant intermediary involvement. This model may be suitable where the market for development rights is well-established and both parties are familiar with the transactions process. It may not be suited for larger, more complex TDR projects.

Buyer-Seller with Public Support: A buyer-seller transaction with public support involves the same basic structure as the simple buyer-seller transaction, but with additional support from a public agency. This public support can come in the form of providing technical assistance or facilitating negotiations. In some cases, a public agency may function as an intermediary, helping to match buyers and sellers of development rights. Public support makes this model more accessible to sellers and buyers. It also allows the public sector to more directly influence the goals of the TDR program than the market alone.

Buyer-Seller with Private Support: The buyer-seller transaction with private support adds a layer of private sector involvement to the basic transaction model. This can include the participation of conservation organizations, real estate entities, or law firms, all of whom can help facilitate transactions. As with the public support model, this model can help expand the program's reach, making it easier for developers and landowners to engage in TDR transactions. Private entities can also offer incentives, such as legal support, to make the process smoother for both parties.

TDR Bank: A TDR bank is a centralized transaction model that both transacts in development rights and serves as a source of information and technical assistance. In this model, landowners sell their development rights to the TDR bank, which then resells those rights to developers who wish to increase density in receiving areas. TDR Banks may be public or private. The advantage of a TDR bank is that it provides a reliable vehicle for buying and selling development rights. Amongst other benefits, a bank helps stabilize the market, ensuring that rights are available when needed and acts as a buyer for rights from priority conservation sites in periods when broader demand is weak in the market. It also helps reduce the administrative burden on individual landowners and developers by centralizing the transaction process. For example, King County's TDR bank provides a centralized process for purchasing and selling credits, making the program more efficient and accessible. Banks require upfront and likely ongoing investment to administer.[25]

Density Fee: Typically, a feature of a program as opposed to a standalone transaction model, a density fee allows developers to use TDR directly or to pay a fee to the local jurisdiction, which amasses funds and, when sufficient, uses the revenue to purchase development rights. This approach can make it easier for developers to participate by avoiding direct engagement in the market for development rights. Density fees may be useful in markets where TDR credit supply is limited or price disparities between sending and receiving sites are not easily addressed by exchange rates alone. While it streamlines the market for end users, it adds a degree of burden to jurisdictions versus other models.

Planning Guidance:

- **Define Administrative Roles and Transaction Models:** Determine the level of government involvement desired or feasible. The transaction model should align with conservation goals, administrative capacity, and market needs.
- **Streamline Participation:** To the extent possible, simplify processes for landowners and developers while ensuring transparency and market stability—noting that simplifying the end-user relationship requires government program investment.

Ruby Beach, Olympic National Park / Source: Shutterstock

25 Chapter 6 provides a link to resources that highlight program elements from jurisdictions like King County, which has implemented a TDR bank as a central element of its TDR strategy.

ENFORCEMENT

Local jurisdictions must also determine the vehicle for enforcing the permanent removal of development potential from a sending site, how it will be monitored over time, and what occurs in the event of a violation. TDR easements, often referred to as the broader term conservation easements, and deed restrictions are tools for ensuring the long-term protection of land in sending areas. These legal instruments limit the development potential of a property, ensuring its conservation for agricultural, environmental, or open space purposes. Both conservation easements and deed restrictions ensure that the land will remain in its intended state, preserving its value while allowing for urban growth in designated receiving areas.

TDR/Conservation Easements: A TDR easement is a permanent, legally binding agreement between a landowner and an eligible conservation entity, such as a county or nonprofit land trust, which restricts the landowner's right to develop the property after development rights are removed.[26] The easement holder is responsible for ensuring that the terms of the easement are observed and inspecting the land periodically to ensure it is used in accordance with the terms of the easement. Easements are recorded in public land records, ensuring that they "run with the land", binding future owners.

To ensure that conservation easements are effective and enforceable, they typically include several key elements:

- **Purpose of the Easement**: The agreement should clearly state the conservation purpose of the easement, such as the conservation of agricultural land or wildlife habitat. This purpose forms the basis of the restrictions placed on the land.
- **Prohibited and Permitted Uses**: The easement must define what is prohibited (such as residential, commercial, or industrial development) and what is permitted (such as agricultural use, recreational activities, or forestry).
- **Enforcement and Monitoring**: The easement should specify who is responsible for monitoring compliance, how often the land will be inspected, and what the consequences will be if the terms of the easement are violated.
- **Construction and Development Limitations**: The easement should include detailed limitations on the amount of land that can be altered or developed. For example, it might specify the number of development rights retained and the type of structures allowed.
- **Rights of Access**: Easements should grant the easement holder or other parties the right to access the land for specific purposes, notably for monitoring.
- **Duration of the Easement**: Since conservation easements are typically permanent, the agreement should clearly state that the restrictions will apply in perpetuity, regardless of future ownership.

26 Some jurisdictions require an easement as a condition of sending site approval. In such cases, the easement is recorded before development rights are sold.

Deed Restrictions: An alternative to conservation easements in a TDR program is a deed restriction, which is a binding legal agreement placed on a property that restricts certain uses or development activities. Deed restrictions are generally imposed by the county. While permanent, they are often simpler and less complex to administer than conservation easements. In TDR programs, deed restrictions can be drafted to restrict specific activities or uses on the land, such as residential or commercial development, while allowing other land uses, such as agriculture, to continue.

Regardless of which enforcement vehicle is used, regular monitoring is essential to ensure program integrity, maintain legal compliance, and sustain public trust in conservation outcomes.. The holder monitors the land through regular inspections, which can include physical site visits or requiring landowners to submit reports detailing land use.

If a landowner violates the terms of a conservation easement or deed restriction, the easement holder or other designated authority has the right to enforce the agreement. This could involve court action to restore the land to its original conservation purpose or imposing monetary penalties.

Planning Guidance[27]:

- **Develop Enforcement Tools and Protocols:** Develop enforcement agreements that support TDR purposes, which typically only involve development right but extend to other conservation values in some cases. Work with attorneys with expertise in easements to ensure enforceable agreements.

JURISDICTIONAL AGREEMENTS

> *"An interlocal agreement is a legal contract between two or more jurisdictions that specifies the conditions under which TDR credits may be transferred."*

In circumstances where a local jurisdiction will participate in an interlocal or regional TDR program, the jurisdiction must also consider the vehicle, substance, and means for forming interlocal TDR agreements. An interlocal agreement is a legal contract between two or more jurisdictions that specifies the conditions under which TDR credits may be transferred. These agreements are essential for ensuring that the TDR program functions smoothly and that both public and private stakeholders are aligned in their goals. Interlocal TDR agreements may be highly complex documents detailing negotiated terms. Alternatively, they may be standardized. One such example is the "Commerce Rule", established by Washington State to streamline interjurisdictional coordination and facilitate regional transfers of development rights across counties.[28]

Planning Guidance:

- **Meet with Jurisdictional Partners:** Interlocal agreements concerning TDR range from standardized to highly complex. If contemplating participation in an interlocal or regional program, meet with partners early and often. Be prepared for negotiations and mindful of legislative timelines.

27 Chapter 6 provides a link to sample easement language to protect the conservation values of TDR sending area properties.

28 See https://app.leg.wa.gov/RCW/default.aspx?cite=43.362.050; https://app.leg.wa.gov/WAC/default.aspx?cite=365-198

Rock Cliffs Coulee / Source: Shutterstock

2.4.5 TDR Design Considerations: Design Essentials

A common misconception is TDR is only viable in the largest metropolitan cities. In reality, TDR can be implemented anywhere demand for development exceeds the existing building supply or what can be constructed by-right. Regardless of location, the following three key elements are critical to the success of TDR programs.

ZONING AND REGULATIONS

The underlying zoning and incentive-based development regulations in receiving areas play a pivotal role in determining the success of a TDR program. Market demand as it relates to base zoning determines developer interest in incentives associated with TDR programs. Developers will participate in TDR programs if the incentives allow them to achieve a financial advantage that exceeds the baseline zoning allowances and if TDR is an attractive option relative to other incentives. Aligning zoning regulations and the suite of non-TDR incentives with TDR program goals is essential to fostering participation and market activity, as well as to ensuring TDR complements, rather than competes with, other planning tools.

MARKET STUDIES

TDR works when buyers and sellers benefit financially from participating. For example, if the cost of development rights exceeds the benefit they provide buyers or, inversely, the willingness of buyers to pay is less than the willingness of sellers to accept, transactions will not occur. Likewise, demand for development must exceed base zoning allowances, otherwise there is no financial benefit to accessing development incentives. Conducting real estate market studies to assess the value of development rights from both seller and buyer perspectives is critical to designing effective incentives and exchange rates. Market studies must account for current or anticipated local conditions and be updated periodically to maintain alignment with evolving market factors.

POLITICAL WILL

Ultimately the success of TDR programs hinges on a jurisdiction's commitment. Ongoing support from jurisdictional leadership to a well-designed program maximizes the likelihood a TDR program will achieve its objectives. Conversely, programs will not succeed if jurisdictional leadership does not adopt a viable incentive zoning structure positioned to invite TDR transactions or if, post-adoption, it creates program exemptions, awards spot rezones independent of the TDR program, or otherwise undermines the receiving site incentive zoning structure.

TDR - ONE TOOL IN A TOOLBOX

With appropriate design and policy support, TDR has proven to be an effective tool for conserving rural and resource lands. However, its use and success must be evaluated within context. It is best considered an element in a long-term land use strategy, performing best when paired with complementary tools like zoning regulations and land/conservation acquisitions. As a market-based tool, TDR's participation rates are influenced by economic conditions, and, as a voluntary mechanism, it cannot guarantee the conservation of specific properties or replace targeted acquisitions for priority conservation lands. Above all, TDR moves as quickly as the market, and it is consequently unlikely to achieve conservation goals quickly.

2.5 Market Studies

2.5.1 Understanding the Role of Market Studies

Market studies are a critical tool for assessing the feasibility and success of TDR programs, helping jurisdictions calibrate incentives and align TDR design with real market behavior. These studies provide data-driven insights into the supply of development rights in sending areas and the demand for higher-density development in receiving areas. By examining these dynamics, market studies ensure that TDR programs are tailored to the economic, environmental, and regulatory conditions of a region, thereby enhancing their viability and impact.

KEY RESEARCH QUESTIONS FOR A TDR MARKET STUDY

A TDR market study should focus on understanding the feasibility, dynamics, and potential outcomes of implementing a TDR program in a specific region. The study should aim to answer the following key questions:

What is the potential supply of TDR credits in the sending areas?

- Identify the amount of development rights available for transfer from identified sending sites under the selected allocation method
- Assess any legal, policy, landowner, or other constraints affecting supply.

What is the market demand for TDR credits in receiving areas?

- Evaluate market demand for construction beyond zoning or other regulatory allowances.
- Determine the incentives (e.g., density bonuses, reduced permitting costs) that would make TDR credits attractive to developers.
- Evaluate developer's willingness to pay for incentives.

What are the financial and regulatory factors influencing TDR transactions?

- If available, analyze price trends for TDR credits and how they align with developer costs and project profitability.
- Using assessor records, estimate the value of sending site development values.
- Assess whether zoning regulations, market conditions, or infrastructure capacity support higher densities in receiving areas.

What are the projected absorption rates for TDR credits?

- Estimate how many credits could realistically be utilized over a defined period based on market conditions and development trends.
- Identify potential barriers to absorption, such as infrastructure gaps or weak developer interest.

2.5.2 What Does TDR Demand Analysis Look Like?

A TDR demand analysis assesses the feasibility and attractiveness of TDR to developers in receiving areas. It focuses on understanding market conditions, financial dynamics, and regulatory frameworks that influence developers' willingness to participate in the program. This analysis often uses development pro formas to simulate the financial impact of purchasing TDR credits and evaluates how local land use codes position TDR as a competitive, viable incentive.

Key Components of TDR Demand Analysis

Real Estate Market Assessment:

a. Identify the types of developments (e.g., residential, commercial, mixed-use) planned or likely to occur in the receiving areas.

b. Analyze zoning regulations, allowable densities, and potential bonuses developers can achieve through TDR credits.

c. Assess the capacity of receiving areas to support higher densities, focusing on infrastructure, transportation access, and market demand.

Developer Financial Feasibility:

a. Use development pro formas to model project costs and revenues with and without TDR credits.

b. Evaluate how purchasing TDR credits impacts project profitability by comparing the cost of credits to the financial benefits of increased density or other development incentives.

c. Analyze sensitivity to TDR credit pricing, ensuring that TDR-based incentives are competitive relative to other density bonus mechanisms or project alternatives.

Regulatory and Incentive Framework:

a. Examine how the local land use code supports TDR utilization through density bonuses, parking reductions, expedited permitting, or fee waivers.

b. Assess whether these incentives are sufficient to offset the costs of purchasing TDR credits and create a compelling value proposition for developers.

Absorption Capacity:

a. Estimate the number of TDR credits that developers in receiving areas are likely to purchase over a defined period.

b. Align absorption forecasts with market demand for new development and regional growth targets.

Role of Development Pro Formas in TDR Demand Analysis

Development pro formas are critical tools for understanding the financial implications of TDR participation for developers. These financial models break down the costs and revenues associated with a project, helping cities evaluate whether TDR is financially attractive.

Inputs for Pro Forma Analysis:

- Land acquisition costs.
- Construction costs and timelines.
- Expected revenues from leasing or selling units.
- Cost of purchasing TDR credits.
- Value of incentives accessed through TDR credits (e.g., additional rentable square footage, higher unit density).

Output:

- Projected return on investment with and without TDR credits.
- Break-even analysis to determine the maximum TDR credit price developers are willing to pay.
- Identification of tipping points where incentives become compelling enough to drive participation.

2.5.3 Tailoring TDR Programs to Local Conditions

Market studies offer several key benefits, including improved program design, more efficient resource allocation, reduced implementation risks, and supporting broader land use policy priorities. Market studies provide planners with the information needed to focus efforts on areas where TDR programs are most likely to succeed, while also mitigating risks such as misaligned policies or market imbalances. Market studies are an indispensable component of TDR program planning.

> *"... market studies ensure that TDR programs are informed by data, tailored to local conditions, and positioned for long-term success."*

By thoroughly analyzing supply and demand dynamics, market studies help craft programs that are practical, market-responsive, and aligned with regional conservation and development goals. When incorporated into the planning process, market studies ensure that TDR programs are informed by data, tailored to local conditions, and positioned for long-term success.

By aligning TDR program design with regional market conditions, market studies help planners ensure that the program is not constrained by insufficient demand in receiving areas. These studies provide valuable guidance for setting exchange rates, enabling fair and efficient market transactions. They also identify potential barriers to implementation, such as inadequate developer incentives or infrastructure limitations, informing strategies to address these challenges proactively.

More broadly, market studies inform successful integration of TDR into a jurisdiction's broader suite of policy objectives. TDR should support, as oppose to compete, with other city priorities. For example, if a city also wants to prioritize affordable housing incentives, a market study can inform incentive zoning design fostering both policy goals.

Planning Guidance

- Use market studies to determine appropriate exchange rates for TDR credits, ensuring they are attractive to both landowners in sending areas and developers in receiving areas. These rates should reflect market dynamics, such as land values, development costs, and zoning incentives, to enable fair and efficient transactions. Regularly review and adjust these rates as market conditions evolve to maintain program relevance and effectiveness.
- Proactively address challenges identified in market studies, such as insufficient developer incentives, infrastructure limitations, or regulatory obstacles.

2.6 Level of Effort

While every Transfer of Development Rights (TDR) program follows a different trajectory, a shared challenge across jurisdictions is setting realistic expectations for the timeline and level of effort involved in developing a functional program. TDR programs are inherently interdisciplinary—they involve legal, technical, political, administrative, and market-based decisions that unfold over time through public processes and negotiation.

The following framework outlines typical steps involved in designing and implementing a local TDR program. It reflects the kinds of decisions and work phases that programs commonly must navigate, from initial exploration through program launch and ongoing administration. Practitioners can use it to identify where they are in the process, anticipate next steps, and consider how long each phase may take in their specific local context. That said, the framework is not intended as a rigid set of steps or a schedule. The order is flexible and, in practice, often iterative. Some steps may run parallel with others, some may be ongoing throughout much of the design process, and others may occur and be revisited as new information emerges.

This structure is meant to help local governments plan ahead, allocate resources, and communicate clearly with stakeholders.

Newport Shores / Source: Shutterstock

Exhibit 2 TDR Program Design & Implementation Framework

STEP	DESCRIPTION	TYPE OF EFFORT	LOCAL FACTORS AFFECTING TIMELINE
Initial Exploration	Staff or elected officials explore TDR to meet conservation or growth objectives.	Political	Leadership interest, comp plan needs, workplan capacity
Feasibility Assessment	Evaluate TDR suitability (policy/code, market demand, zoning constraints, etc.).	Technical	Staff/consultant capacity, data access, budget
Public Communication & Education	Develop materials and appropriate outreach and review plan.	Design	Public processes, capacity
Stakeholder Engagement	Engage, landowners, developers, other key stakeholders and community throughout.	Political	Public processes, workplan capacity, public trust and political landscape
Interlocal Coordination (if applicable)	Negotiate and finalize agreements for cross-jurisdictional TDR transfers.	Legal / Political	Relationships, negotiation, policy cycles, politics
Define Sending Areas	Establish criteria and map sending areas.	Design / Technical	Policy and regulation processes, stakeholder buy-in, market analysis
Define Receiving Areas	Establish criteria and map sending areas	Design / Technical	Policy and regulation processes, stakeholder buy-in, market analysis
Define Program Administration Structure	Assign roles for credit tracking, easement recording, transaction processing.	Administrative	Existing staff workload, software availability
Develop Legal and Administrative Instruments	Draft conservation easement templates, credit issuance rules and processes, recording protocols.	Legal / Administrative	Legal and administrative review
Design Developer Incentives	Select, test, confirm incentives.	Design	Market analysis, policy and regulation processes, stakeholder buy-in
Determine Market Mechanisms	Set allocation ratios and exchange rates.	Technical	Market analysis

Exhibit 2 *continued*

STEP	DESCRIPTION	TYPE OF EFFORT	LOCAL FACTORS AFFECTING TIMELINE
Establish Program Funding	Identify fee structure, grants, or general funds to support program implementation.	Administrative / Political	Budget cycles, fee authority
Develop Code & Policy Language	Draft incentive zoning (or other) policy, development regulations, easement rules, and TDR program manual.	Legal / Administrative	Legal and administrative review, Stakeholder review
Adopt Program	Present final program to planning commissions, councils, and the public for adoption.	Political	Election and policy cycles, competing policy agendas, politics
Launch and Administer	Begin program operations, issue credits, manage transactions, and record easements.	Administrative	Internal readiness, outreach effectiveness
Build Tracking & Registry Systems	Credit tracking, registry, mapping and financial/ reporting systems.	Technical / Administrative	IT resources, Financial systems, Assessor
Monitor, Evaluate, and Improve	Track credits, land conserved, units built, and revise program as needed.	Technical / Administrative	Alignment with comp plan and LCLIP (if applicable); data access

Cascade Pass Trail Views / Source: Shutterstock

Leavenworth / Source: Shutterstock

3 Landscape Conservation and Local Infrastructure Program

3.1 Objectives of the Legislation

The Landscape Conservation and Local Infrastructure Program (LCLIP) was established by the Washington State legislature to incentivize cities in King, Pierce, and Snohomish counties to use regional TDR as a strategy for conserving rural lands, while financing public infrastructure that supports urban growth.

Building on the Regional TDR Marketplace legislation, LCLIP's intent is to address the environmental and economic challenges of rapid urbanization by directing development toward urban centers, where infrastructure is already in place or can be efficiently expanded. The program encourages the transfer of development rights from regional resource lands to receiving areas in the region's mid-sized and larger cities.

As of this publication, Seattle has adopted LCLIP in its South Lake Union, Denny Triangle, and Downtown planning zones. Since its inception in 2013, development rights representing more than 100,000 acres of conserved land have been transferred into the city. Though only a projection, the ingoing estimate was Seattle would receive more than $27 million for infrastructure investments in exchange for receiving these rights. The ultimate number is likely to exceed this figure.[29]

3.2 The Components of LCLIP: TDR and TIF

LCLIP requires a city to undertake all the same considerations for TDR programs outlined in Chapter 2, notably such factors as a demand for development, supportive policy and regulations, and the political will of leadership. In many regards, however, LCLIP is more involved, offering cities more benefits in exchange for more commitment.

LCLIP operates by combining two essential tools: TDR and Tax Increment Financing (TIF).

TRANSFER OF DEVELOPMENT RIGHTS

As outlined in Chapter 2, TDR is a market-based mechanism that allows property owners in designated sending areas to sell their development rights. Developers in urban receiving areas purchase these rights to gain additional density or other development incentives.

29 See https://www.seattle.gov/Documents/Departments/OPCD/OngoingInitiatives/SouthLakeUnion/SLU-LCLIPImplementationDirectorsReport.pdf

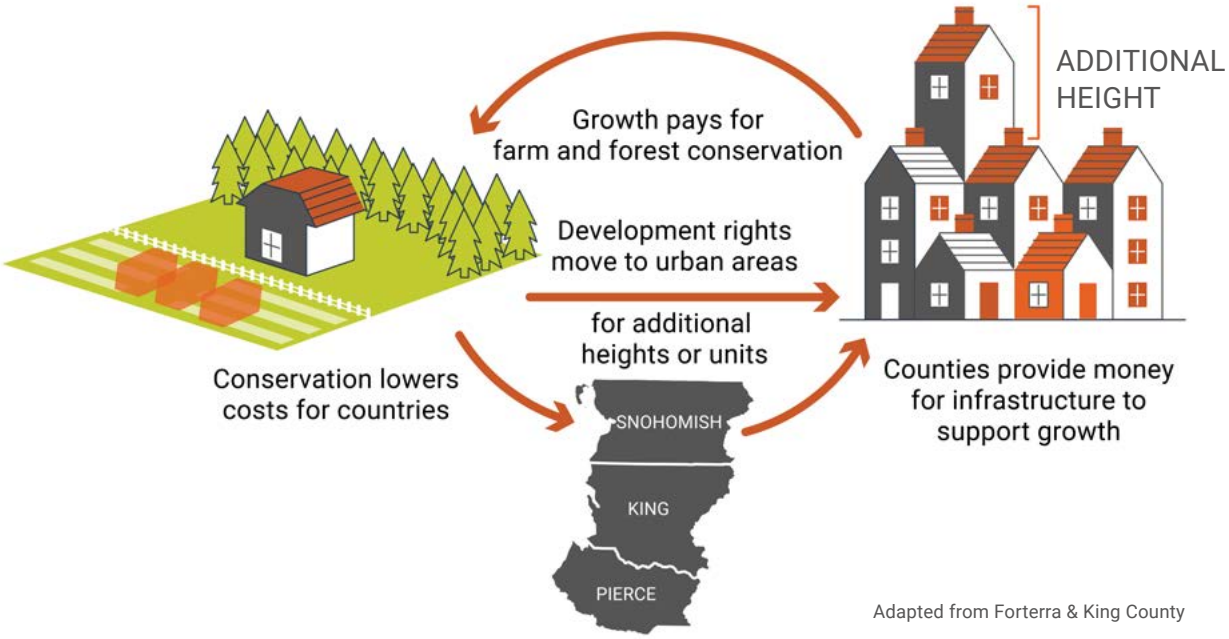
TAX INCREMENT FINANCING (TIF):

TIF enables cities to finance public infrastructure projects by capturing a portion of the property tax revenue generated from new development. In LCLIP, cities can access incremental tax revenues from counties, provided they agree to accept and utilize regional TDR credits as part of their growth strategy.

By integrating TDR and TIF, LCLIP encourages cities to embrace higher-density development, providing financial support for infrastructure while simultaneously conserving rural lands.

LCLIP

- Financial incentive for cities to use TDR
- Flexible revenue for infrastructure
- Low risk
- Growth + community investment + conservation
- Market-based

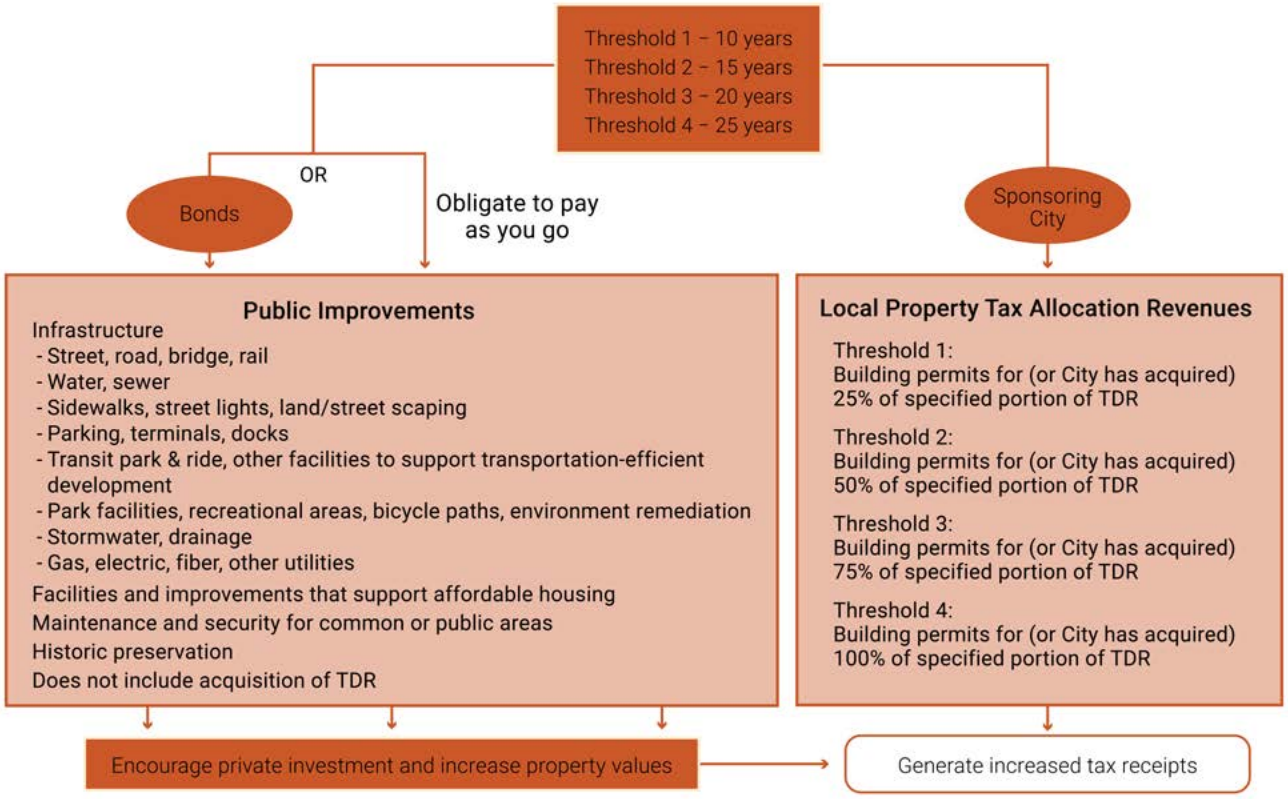


Adapted from Forterra & King County

Diablo Lake / Source: Shutterstock

Landscape Conservation and Local Infrastructure Program

Funding Public Improvements in Local Infrastructure Project Areas (Under RCW 39.108)



**Adjusted to reflect specified portion of TDR accepted.* Source: Pacifica Law Group

3.2.1 Defining Basic Ideas and Key Terms

LCLIP involves several foundational concepts and terms that are essential for understanding and implementing the program:

Incremental Revenue: The additional property tax revenue generated by new construction in LIPAs. This revenue is accessible to cities to fund infrastructure projects.

Local Improvement Project Areas (LIPAs): Specific districts within a city where infrastructure improvements are funded using incremental tax revenues.

Receiving Areas: Urban sites within LIPAs where developers can place TDR credits to increase density or achieve other zoning benefits.

Sending Areas: Designated agricultural and forest lands of long-term commercial significance and other, select rural lands in King, Pierce, and Snohomish Counties.

Sponsoring City: An LCLIP-participating receiving city that accepts all or a portion of its allocated share of regional development rights.

Sponsoring City Ratio: The proportion of a participating city's allocated share it agrees to accept.

Sponsoring City Allocated Share: The total number of transferable development rights allocated by PSRC to a sponsoring city.

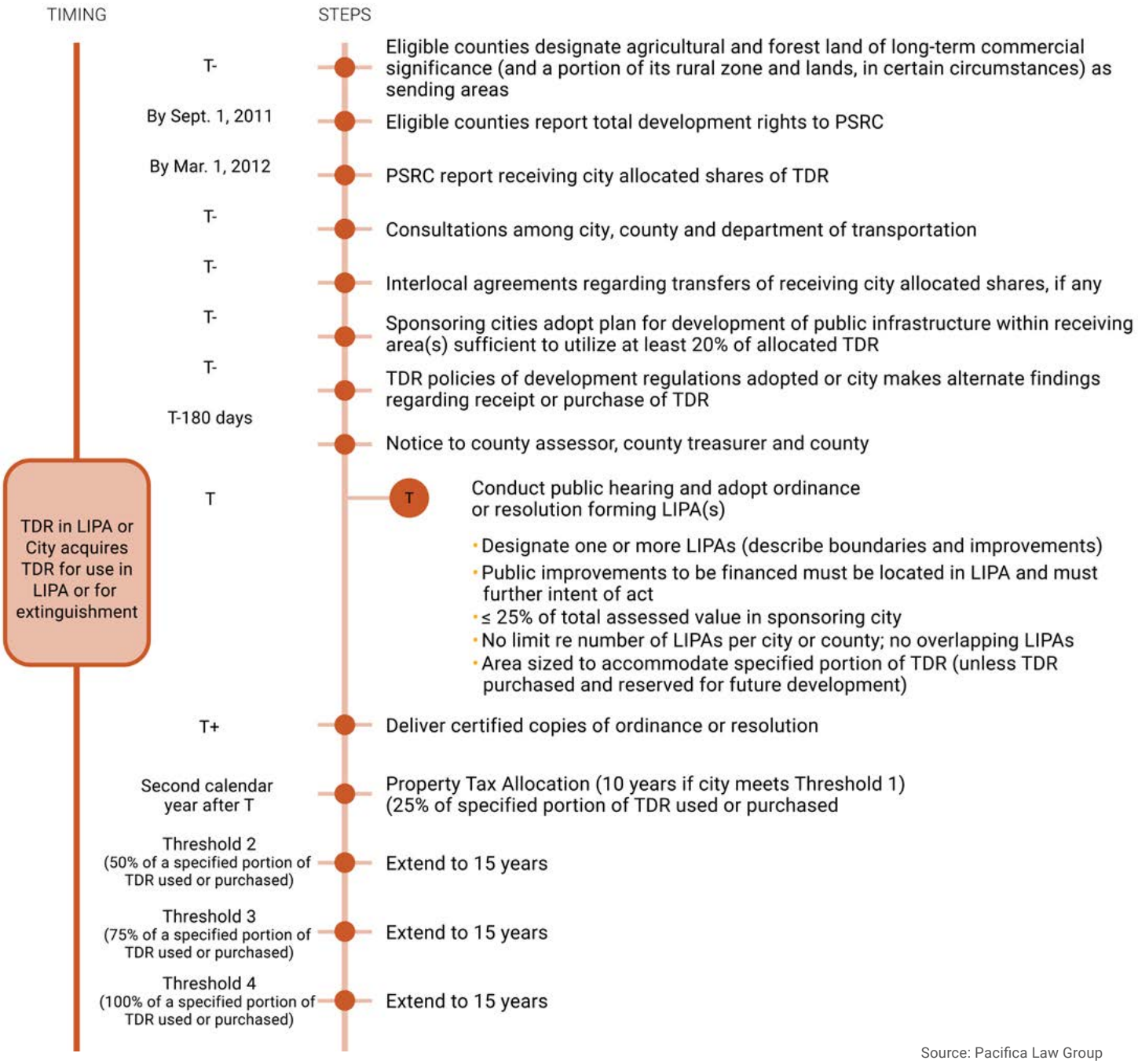
3.3 Overview of LCLIP Processes

The LCLIP process is structured to ensure that conservation and urban development goals are achieved in tandem with infrastructure funding. By following this structured process, cities can effectively implement LCLIP to balance urban growth with rural conservation while accessing vital funding for infrastructure. Each step builds on the previous one, creating a comprehensive framework that supports sustainable development and community improvement.

The following illustrate key elements in the process, LCLIP implementation requires a specific set and sequence of actions, which is covered in-depth in Chapter 5.

Forming a Local Infrastructure Project Area ("LIPA")

(Under RCW 39.108)



Source: Pacifica Law Group

3.3.1 City Participation

The process begins with the city's decision to adopt LCLIP. This involves a commitment to utilizing TDR. The city council typically approves the program through formal policy adoption. At this stage, the city also identifies the Local Improvement Project Area (LIPA), a defined district where the program will focus, such as a downtown core or a specific redevelopment zone, and identifies infrastructure needs.

Planning Guidance:

- **Evaluate Readiness:** Assess whether LCLIP aligns with your city's growth and infrastructure goals. Determine if local development trends support higher densities in targeted areas.
- **Secure Political Support:** Educate city council members and local leaders about the benefits of LCLIP. Highlight potential funding opportunities and regional conservation benefits to build support.
- **Define the LIPA(s):** Identify one or more districts where LCLIP will be implemented, ensuring it aligns with growth priorities such as transit-oriented development, downtown revitalization, or other high-density zones.
- **Coordinate with County Partners:** Engage early with county officials to outline property tax sharing agreements and ensure mutual understanding of roles and responsibilities.
- **Consideration:** Choose LIPA boundaries strategically to balance TDR use with revenue potential and infrastructure needs without exceeding 25% of the total assessed value of taxable property within the sponsoring city at the time the LIPAs are created allowed in statute (see limitations in RCW 39.108.130 – generally, LIPAs must be contiguous, cannot exceed 25% of the city's total taxable property value, and must solely fund public improvements within their boundaries. Once established, LIPA boundaries cannot be modified, and their size must be appropriate to generate the necessary incremental revenue for the city's allocated share of development rights.

3.3.2 Designation of Sending and Receiving Areas

Once the LIPA(s) are identified, the city collaborates with regional partners to designate sending areas and receiving areas.

LCLIP requires sponsoring cities to allow transfers from all eligible sending sites. However, the legislation allows cities to prioritize certain sending sites by policy. For example, Seattle prioritized farms within its foodshed and King County resource lands by awarding higher development bonuses for TDR credits purchased from those areas. The choice to set such priorities is a policy decision and is appropriate to explore as a conversation between the City and counties.

Receiving areas are urban zones identified for increased density, often near transit hubs or within redevelopment zones. This designation process requires careful coordination with planning frameworks to ensure feasibility and alignment with growth targets and support from market studies.

Planning Guidance:

- **Identify Sending Areas**: Collaborate with regional partners to determine whether sending site prioritization is warranted or supported.
- **Target Receiving Areas**: Focus on urban zones with capacity to support higher densities, such as those near transit hubs, redevelopment districts, or designated growth centers.
- **Integrate Market Feasibility**: Conduct market studies to inform receiving site program design. Evaluate whether incentives like density bonuses or expedited permitting are sufficient to drive participation.
- **Consideration**: Align sending and receiving area designations with your city's Comprehensive Plan and ensure they address both conservation priorities and urban growth targets.

3.3.3 TDR Placement

Developers in receiving areas purchase TDR credits, which allow them to achieve greater density or other development benefits. The city tracks the placement of these credits to meet program requirements, ensuring that a specified number of TDR credits are utilized within the LIPA to unlock incremental revenue.

Planning Guidance:

- **Establish Developer Incentives**: Offer meaningful benefits for using TDR credits, such as increased building heights, reduced parking requirements, or expedited permitting in receiving areas.
- **Track Placement**: Set up a robust tracking system to monitor the number of credits used and their impact on sending and receiving areas. Ensure the system can provide data for performance monitoring.
- **Promote Early Adoption**: Identify early adopters among developers and showcase successful TDR-based projects to demonstrate feasibility and reduce perceived risk..
- **Consideration**: Create flexible TDR policies that can adapt to market conditions.

3.3.4 Incremental Revenue Generation Projections

As new development occurs within the LIPA, the increased property values generate additional property tax revenue. This incremental revenue—the difference between pre- and post-development property tax assessments—typically is divided between the city, the county, the state, and other taxing districts. LCLIP allows the city to retain its share and a portion of the county's share of incremental tax revenues for up to 25 years. The city's share of this revenue is determined by the Sponsoring City Ratio, which is based on its commitment to using TDR.

Planning Guidance:

- **Understand Revenue Mechanics:** Familiarize yourself with how incremental property taxes are calculated (discussed in Section 4).
- **Determine an appropriate portion of the allocated development rights:** Identify the number of credits the LIPA(s) are likely to accommodate, ensuring the city can meet its obligations and maintain incremental tax revenues throughout the 25-year LCLIP program period.
- **Plan for Timing Delays:** Incremental revenue collection typically starts in the second calendar year after LIPA creation. Cities can bond against anticipated revenues or invest funds as they are received. Plan your funding needs accordingly.
- **Model Revenue Potential:** Use conservative growth projections to estimate potential revenue and avoid overcommitting funds.
- **Consideration:** Ensure that revenue projections account for market fluctuations and adjust plans as needed to align with actual revenues.

3.3.5 Infrastructure Investments

The city uses its share of the incremental revenue to fund infrastructure projects within the LIPA(s). Public improvements funded through LCLIP must be located within the LIPA (or LIPAs) and support the program's objectives. These projects can include road improvements, utilities, parks, public spaces, or transit upgrades that support the increased density in receiving areas. Infrastructure investments are prioritized based on adopted LCLIP-based infrastructure plans. Plans can be amended over time.

Planning Guidance:

- **Prioritize Projects:** Identify infrastructure projects in the LIPA(s) that both support projected growth and reinforce public confidence in the TDR-LCLIP strategy—such as complete streets, utility upgrades, parks, and transit facilities—demonstrating visible community benefits.
- **Align with Comprehensive Plans:** Ensure selected infrastructure projects support broader land use and transportation strategies outlined in your city's Comprehensive Plan.
- **Engage the Community:** Involve residents and stakeholders in deciding which infrastructure projects to prioritize, ensuring transparency and public support.
- **Consideration:** Incremental revenues must be spent on infrastructure projects within the LIPA(s).

Mt. Baker Highway / Source: Shutterstock

3.3.6 Performance Monitoring

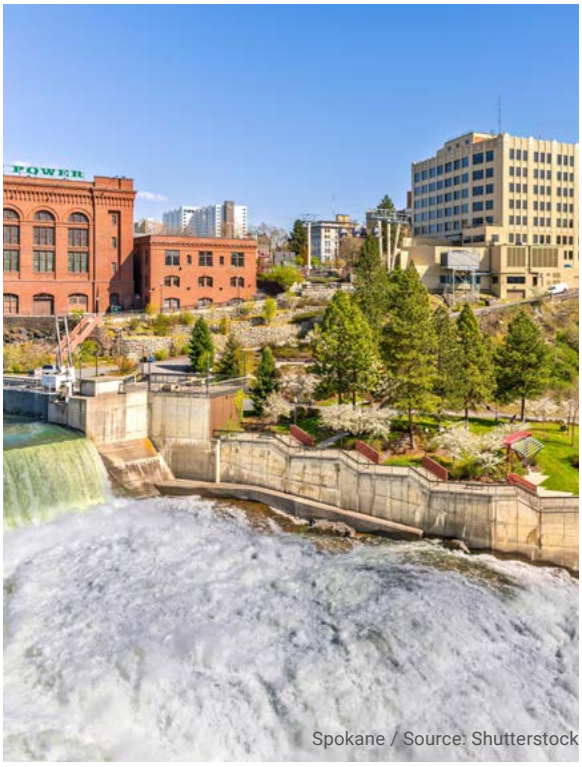
Throughout the LCLIP process, the city must meet specific performance thresholds to maintain its eligibility for incremental revenue. These thresholds include achieving milestones for TDR placement and demonstrating progress on infrastructure projects. Regular monitoring and reporting ensure transparency and accountability, allowing both the city and the county to evaluate the program's effectiveness.

Planning Guidance:

- **Set Clear Benchmarks:** Define specific TDR placement milestones and infrastructure project goals that align with LCLIP requirements.
- **Develop Monitoring Systems:** Establish a robust system for tracking progress on TDR credit usage, infrastructure investments, and revenue collection. Regular updates ensure transparency and accountability.
- **Report to Stakeholders:** Provide regular reports to county officials, the Department of Commerce, and the public detailing program outcomes, including conservation metrics and infrastructure impacts.
- **Adjust Strategies as Needed:** Use performance data to refine policies, incentives, or project priorities to ensure program success.
- **Consideration:** Ensure consistent monitoring to extend incremental revenue collection periods (up to 25 years) and maximize program benefits.

3.4 City Eligibility

LCLIP has clear technical definitions for which counties and cities are eligible to participate in the program.[30] These translate to King, Pierce, and Snohomish counties, and 35 cities located within them being eligible to participate in LCLIP (see Exhibit 2). The legislature mandated these counties enumerate the number of saleable development rights from resource lands of long-term commercial significance and other eligible rural lands, reporting this to PSRC. In turn, PSRC was mandated to allocate these development rights to the eligible receiving cities based on growth targets and other factors. This allocation plays a significant role in LCLIP implementation, as will be discussed in Chapters 4 and 5.



Spokane / Source: Shutterstock

30 See https://app.leg.wa.gov/RCW/default.aspx?cite=39.108.010

Exhibit 3 LCLIP City Eligibility

	DEVELOPMENT RIGHTS ALLOCATION	FEASIBILITY STUDY PURSUED	PROGRAM ADOPTION
Arlington	273	X	
Auburn	596		
Bellevue	1081	X	
Bothell	365	X	
Burien	273	X	
Covington	92	X	
Des Moines	213		
Edmonds	189		
Everett	1491		
Federal Way	444		
Issaquah	452	X	
Kenmore	213		
Kent	519		
Kirkland	501	X	
Lake Stevens	252		
Lakewood	370		
Lynnwood	461		
Maple Valley	92		
Marysville	593		
Mercer Island	92		
Mill Creek	92		
Monroe	212		
Mountlake Terrace	92	X	
Mukilteo	92		
Puyallup	364	X	
Redmond	587		
Renton	849		
Sammamish	215	X	
SeaTac	561		
Seattle	3440	X	X
Shoreline	231	X	
Tacoma	1843	X	
Tukwila	405	X	
University Place	232		
Woodinville	218		

Source: PSRC and WA Department of Commerce

3.5 Community Involvement in LCLIP Planning and Decision-Making

Community involvement is a cornerstone of successful land use planning and implementation, and this principle applies to LCLIP. Engaging community members ensures that the program aligns with local needs, minimizes adverse impacts, and fosters public support. By creating opportunities for meaningful engagement, cities can strengthen legitimacy, reduce implementation risks, and ensure decisions reflect community-informed priorities . Inclusive and transparent decision-making processes help build trust and accountability while addressing concerns from diverse stakeholders, particularly vulnerable populations.

> *"Inclusive and transparent decision-making processes help build trust and accountability while addressing concerns from diverse stakeholders, particularly vulnerable populations."*

According to RCW 36.70A.030, "vulnerable populations" are groups at higher risk for poor health outcomes due to environmental harms, influenced by factors like unemployment, high housing and transportation costs, limited access to nutritious food and healthcare, linguistic isolation, and increased sensitivity factors such as low birth weight and higher hospitalization rates. This includes, but is not limited to, racial or ethnic minorities, low-income populations, and those disproportionately impacted by environmental harms.[31]

3.5.1 Why Community Involvement is Essential

Identifying Local Priorities: Community members provide critical insights into the needs and priorities of their neighborhoods, such as preferred infrastructure improvements and housing options.

Addressing Equity Concerns: Vulnerable populations, including low-income residents, communities of color, and individuals with disabilities, are often disproportionately affected by land use and infrastructure projects. Inclusive planning ensures these groups are heard and their needs are addressed.

Fostering Public Buy-In: Transparent communication about the goals and benefits of LCLIP helps build trust and reduces resistance to development and conservation initiatives.

3.5.2 Community Engagement Strategies

Stakeholder Mapping: Identify key community groups, local businesses, property owners, and advocacy organizations that may be impacted by or benefit from LCLIP projects.

Public Outreach and Education: Conduct informational workshops, open houses, and online webinars to educate the public about LCLIP, including its goals, processes, and potential benefits in clear, accessible terms.

31 Chapter 6 provides a link to the Washington Department of Commerce's Racially Disparate Impacts Guidance, which outlines steps for assessing and addressing racial disparities in housing and land use planning.

Participatory Planning: Host listening sessions, focus groups, and surveys to gather community input on proposed LIPA(s), infrastructure projects, and TDR policies.

Ongoing Communication: Use a variety of communication tools—such as newsletters, social media, and community meetings—to provide updates on LCLIP implementation, highlight milestones, and share opportunities for continued involvement.

Highlands of Newcastle / Source: Shutterstock

3.5.3 Incorporating Community Feedback

Refining LIPA Boundaries: Community input can guide decisions on the geographic boundaries of LIPAs to ensure they reflect local needs and avoid activities with unintended consequences, such as displacement.

Shaping Infrastructure Projects: Feedback helps prioritize infrastructure investments, such as public transit, parks, or utilities, that align with community goals and improve quality of life.

TDR Policy Adjustments: Engaging developers and residents can help to confirm that TDR incentives, such as density bonuses or parking reductions, meet local expectations and encourage equitable outcomes.

3.5.4 Formalized Community Input

Public Hearings: Required before adopting LIPA ordinances, public hearings provide a platform for residents to voice their opinions and influence final decisions.

Advisory Committees: Establishing citizen advisory groups can offer ongoing guidance throughout LCLIP planning and implementation, ensuring sustained community representation.

Equity Assessments: Incorporating tools like equity impact assessments (EIA) ensures that community feedback informs decisions in a way that promotes inclusion and mitigates adverse impacts on vulnerable groups.

EIAs help communities evaluate policies and programs to ensure they do not disproportionately impact vulnerable populations. The Washington State Department of Commerce recommends a structured approach that includes understanding community demographics, analyzing data, evaluating policies, and making necessary adjustments to promote equity to satisfy the GMA requirements in RCW 36.70A.070(2)(e-h).[32]

32 Chapter 6 provides a link to the Washington Department of Commerce's racial equity guidance (Book 3), which outlines how to assess and mitigate displacement and exclusion.

The recommendations stress conducting equity impact assessments through a structured methodology comprising several key steps[33]:

Understand Your Community: The first step is to develop a clear understanding of your community by gathering relevant data on racial, ethnic, and socioeconomic groups. Key indicators such as homeownership rates, housing cost burdens, access to public services, and displacement risks should be identified. Engaging directly with community organizations and residents is essential to ensure that quantitative data is complemented by lived experiences. Mapping tools and demographic studies can further help visualize disparities across neighborhoods, making it easier to identify areas that may be disproportionately impacted by development or policy changes.

Analyze the Data: Once data is collected, communities should conduct an in-depth analysis to assess how different groups are affected by current policies and trends. Reviewing disparities can highlight structural inequities. It is also important to identify areas where zoning laws may contribute to racial disparities in homeownership or limit access to affordable housing.

Evaluate Existing Policies: After analyzing the data, existing policies should be carefully reviewed to determine whether they support or exacerbate disparities. Land use regulations, zoning laws, and permitting processes should be examined for their impact on racial equity and economic inclusion. Policies should be assessed based on their effectiveness in preventing displacement. Classifying policies as supportive, neutral, or problematic can help guide decisions on where adjustments may be needed.

Revise Policies: If inequities are identified, communities should take steps to revise policies to reduce disparities. Communities should establish a monitoring system to track changes in displacement risks and ensure that equity goals are being met over time.

Review and Revise Regulations: Governments can ensure that policies and implementing regulations are consistent and interconnected. They can guide regulatory changes based on updated policies to address and undo impacts related to racially disparate impacts, displacement, or exclusion.

3.6 Understanding Equity and Social Impacts

Land use and infrastructure projects can significantly impact various community groups, particularly vulnerable populations such as low-income residents, historically excluded communities of color, and individuals with disabilities. These groups often face challenges like displacement, reduced access to essential services, and environmental health risks due to development activities. Potential impacts on vulnerable populations include:

33 Chapter 6 provides a link to the Washington Department of Commerce's Racially Disparate Impacts Guidance, which describes a multi-step methodology for conducting equity impact assessments, including data analysis, policy review, and revision strategies.

- **Displacement:** Infrastructure projects can lead to gentrification, increasing property values and rents, which may force low-income residents to relocate.
- **Access to Services:** Changes in land use can alter the availability and accessibility of services like public transportation, healthcare, and education, disproportionately affecting those who rely on them.
- **Environmental Health Risks:** Construction and development can introduce pollutants and hazards, posing greater health risks to communities lacking resources for mitigation.

3.6.1 Strategies to Mitigate Impacts

Engage vulnerable populations early in the planning process to understand their needs and concerns. Use public forums, surveys, and targeted outreach to gather input from underrepresented groups and vulnerable populations.[34]

Equity-Focused Policies:

- Implement complementary policies that prevent displacement, such as:
  - Market based affordable programs like the MFTE.
  - Permanently affordable, income qualified housing to preserve affordable housing.
  - Inclusionary zoning requirements.

Improved Access to Services:

- Prioritize infrastructure projects that enhance access to transportation, healthcare, and education for vulnerable communities.
- Ensure infrastructure investments are strategically planned to support connectivity and equitable access, with a focus on ensuring all communities have access to essential services and opportunities. Connectivity refers to how efficiently people can move between places within a community, focusing on well-linked streets, pathways, and transit networks that provide multiple, direct routes to key destinations. Accessibility ensures that all individuals, regardless of ability, income, or transportation mode, can reach essential services such as jobs, healthcare, and education efficiently. High connectivity enhances accessibility by reducing travel times, supporting multimodal transit options, and creating walkable, bike-friendly environments.

Environmental Protections - include environmental mitigation measures, such as:

- Air quality monitoring during construction.
- Stormwater management systems to prevent contamination.
- Green infrastructure to reduce urban heat islands.

34 Chapter 6 provides links to the Puget Sound Regional Council's Equity Impact Assessment tool, Equity Tracker, and Legacy of Structural Racism report, which support jurisdictions in applying equity frameworks to land use and infrastructure planning.

Benefit-Sharing Mechanisms:

- Ensure vulnerable populations directly benefit from development projects and infrastructure investments through job creation, affordable housing units, and/or improved public spaces.

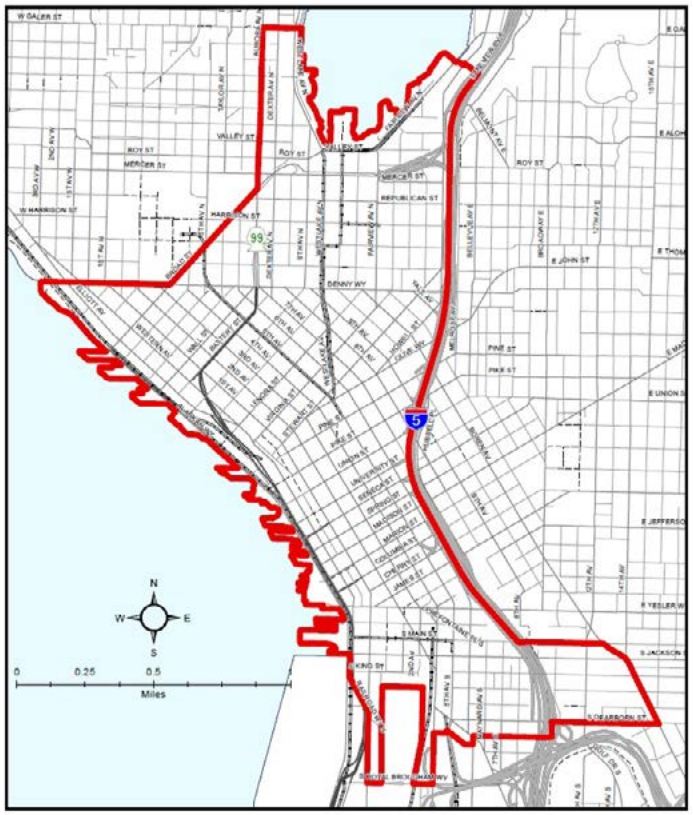
South Lake Union / Source: Shutterstock

3.7 Case studies

3.7.1 Case Study: LCLIP Implementation in Seattle's South Lake Union Neighborhood

BACKGROUND

The South Lake Union (SLU) neighborhood in Seattle is one of the city's most dynamic urban centers, experiencing significant growth and transformation over the past two decades. In the early 2010s, Seattle adopted LCLIP to facilitate sustainable development while preserving rural lands through the TDR mechanism. SLU, a neighborhood designated for high-density, transit-oriented development, became a focal point for implementing LCLIP.



Map A for 23.58A.044

WHAT HAPPENED

Adoption of LCLIP:

In 2013, Seattle became the first city to adopt LCLIP, aiming to address growth management challenges while promoting rural land conservation. The city identified the SLU neighborhood as a Local Infrastructure Project Area (LIPA) due to its existing urban infrastructure, proximity to transit hubs, and capacity for increased density.

TDR Integration:

Developers in SLU used TDR credits to achieve higher density in their projects. The city incentivized developers by offering residential and commercial square footage bonuses in exchange for purchasing development rights from resource lands in King County. This approach aligned with regional conservation goals and addressed the rising demand for housing and office space in SLU.

Incremental Revenue Generation:

The development boom in SLU generated substantial incremental property tax revenues. The city captured a portion of these revenues under the LCLIP framework to fund infrastructure improvements, including:

- Upgrades to utility systems, such as stormwater management.
- Expansion of pedestrian pathways and bike lanes.
- Enhancements to public transit facilities and streetscapes.

Community Engagement:

Throughout the process, the city engaged with stakeholders, including developers, community organizations, and conservation advocates, to align project outcomes with local and regional goals.

KEY OUTCOMES

Rural Land Conservation:

The program transferred development rights representing over 100,000 acres of conserved farm and forested land in King County during the first 10 years of the program. The implementation of LCLIP in Seattle has generated significant activity in the TDR market, illustrating the program's ability to balance urban growth with rural conservation while providing infrastructure funding. Two key types of TDR transactions have occurred:

- **Private TDR Sales:** As of 2024, Seattle has recorded 531 private sales of development rights, demonstrating strong market engagement by developers and landowners.
- **Seattle Developers Purchase from King County TDR Bank:** Developers acquired 1,297 development rights from the King County TDR bank that directly support regional conservation goals. These sales reflect the integration of TDR into Seattle's growth strategy, particularly in areas targeted for higher-density development.

Urban Development:

SLU emerged as a vibrant, mixed-use urban center with high-density residential and commercial developments, including office spaces for tech companies, retail establishments, and new housing units.

Infrastructure Investments:

Incremental revenue from SLU developments funded public infrastructure improvements, enhancing the neighborhood's livability and accessibility. As a result of these TDR transactions and the LCLIP

agreement with King County, Seattle will receive substantial revenue. The initial forecast projected that the program would generate $27.5 million in incremental property tax revenue over its 25-year duration, though this estimate was likely conservative. By the end of the 2024 tax year, covering the first 10 years of the program, developments utilizing TDR credits had already generated $8.8 million in shared incremental property tax revenue between the county and the city, indicating strong early financial performance. The city has utilized its share of this revenue to fund infrastructure improvements within its designated LIPA that support increased density and ensure that growth aligns with sustainability goals.

South Lake Union / Source: Shutterstock

LESSONS LEARNED

Strong Market Demand is Crucial:

SLU's success with LCLIP was driven by its high demand for urban development, particularly from technology firms and housing developers. Cities considering LCLIP should assess whether their receiving areas have sufficient market interest to drive TDR credit absorption.

Incentives Must Be Meaningful:

Offering tangible benefits, such as increased floor area ratios for residential and commercial projects, encouraged developers to participate. Clear and attractive incentives are essential for maximizing TDR placements.

Infrastructure Alignment with Growth and Related Policy Goals:

Revenue generated through LCLIP was strategically invested in infrastructure projects that supported SLU's rapid growth. Aligning infrastructure priorities with development needs ensures long-term community benefits. The TDR program was designed to work in concert with affordable housing incentives and other neighborhood design programs.

Community Engagement Matters:

Early and consistent engagement with stakeholders helped address concerns about displacement, affordability, and environmental impacts. Transparent communication established trust and ensured that projects aligned with community values.

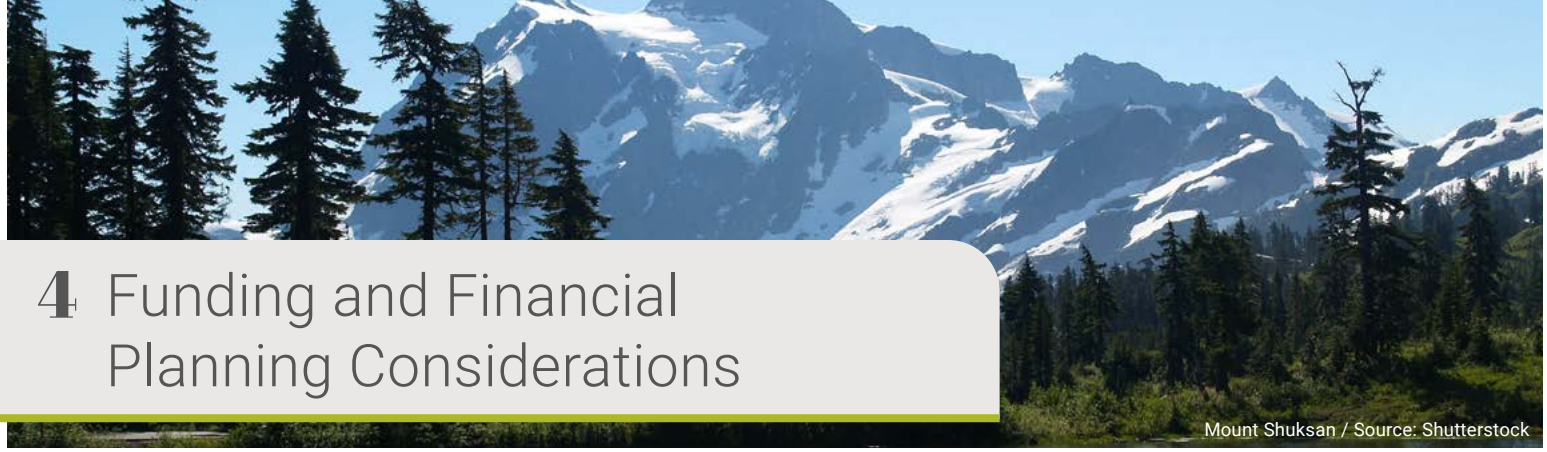
Performance Monitoring Ensures Success:

Seattle's tracking of TDR placements and revenue milestones helped maintain accountability and extend the revenue collection period, maximizing the program's benefits.

FINAL TAKE-AWAY

The implementation of LCLIP in Seattle's SLU neighborhood highlights the program's potential to balance urban growth and rural conservation while funding essential infrastructure. By fostering collaboration among stakeholders, aligning incentives with market dynamics, and investing in strategic infrastructure, SLU became a model for sustainable development through LCLIP. Future cities adopting LCLIP can draw on Seattle's experience to tailor the program to their unique circumstances and goals.

South Lake Union / Source: Shutterstock



Mount Shuksan / Source: Shutterstock

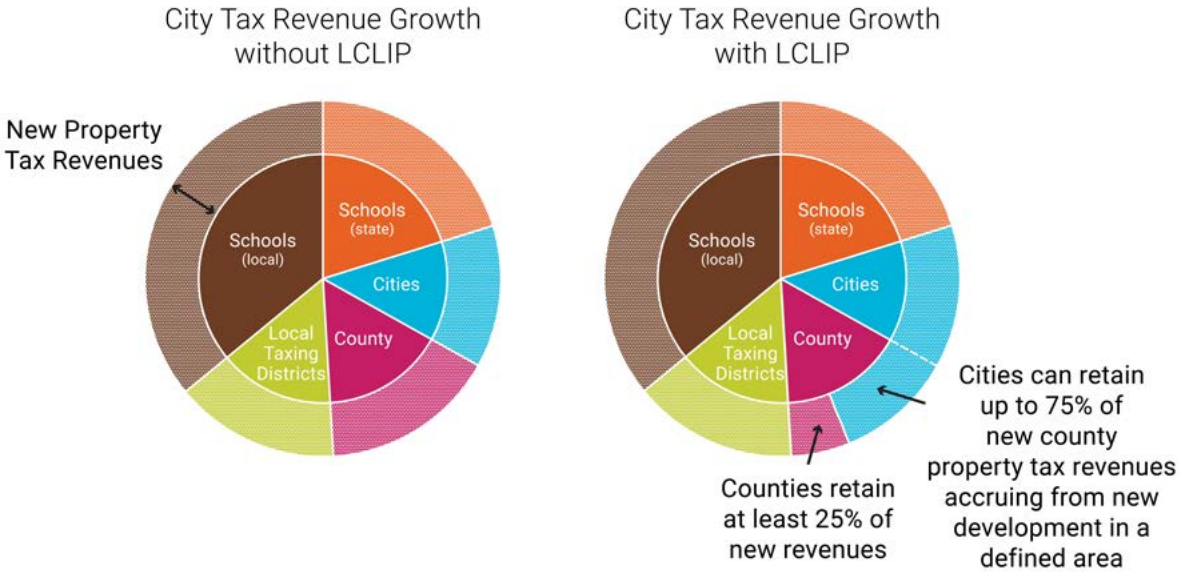
4 Funding and Financial Planning Considerations

4.1 How LCLIP Leverages Incremental Revenues

LCLIP

City can spend revenue on public improvements.

Infrastructure can include parks, transit, streetscapes, utilities, security, storm water, maintenance.



Adapted from Forterra & King County

LCLIP captures incremental property tax revenues generated from new construction and improvements within designated LIPAs. Incremental revenue is calculated based solely on the assessed value of newly built or redeveloped properties and does not include background appreciation of existing properties, ensuring that only growth-driven increases contribute to funding infrastructure investments. This funding mechanism uses up to 75% of incremental city and county property tax revenues from the increase in assessed property values (incremental value) to finance infrastructure improvements. Participating taxing districts, including counties and cities, contribute regular property tax revenues on the incremental value, providing a sustainable revenue stream for infrastructure projects that support higher-density development. Cities pursuing LCLIP must commit to allocating both the retained county portion and their own portion of property tax revenue from new construction in the LIPAs to infrastructure improvements in the LIPAs.

Seattle / Source: Shutterstock

4.2 Establishing the Local Infrastructure Project Area

As discussed in Chapter 3, an early step in LCLIP is for a city to designate a LIPA, which includes defining the geographic boundaries from which incremental revenues will be captured and identifying eligible infrastructure projects to be financed. The city must ensure:

- The LIPA comprises contiguous parcels without isolated territories.
- The total area does not exceed 25% of the city's total assessed taxable property value at the time of creation.
- The proposed infrastructure projects align with LCLIP's objectives of supporting growth and conservation.

A city may have multiple and non-contiguous LIPAs provided the areas meet the requirements of containing no more than 25% of the city's assessed value (in aggregate) and do not exclude any areas within them. While a city may create multiple LIPAs, LCLIP works on a cumulative citywide basis and not an independent district basis—meaning the same program parameters apply to all LIPAs regardless of start date and configuration. Therefore, if a city is considering multiple LIPAs, it is advantageous to establish them all at the program launch rather than adding them incrementally over time, which would result in foregone revenue.

4.2.1 TDR Commitment

In adopting LCLIP, a city must select a specific number of TDR credits to accept based on a regional allocation set by PSRC (known as the sponsoring city allocated share). The selected share is referred to as the City Specified Share in the LCLIP framework. The program requires that, to participate in LCLIP, a city must commit to accepting between 20% and 100% of its allocated credits. Rather than an all-or-nothing proposition, cities can choose to commit to a number of credits within the acceptable range that reflect their own needs or projected likelihood of placement.[35]

The decision of how many credits to accept directly affects the amount of revenue a city retains. LCLIP links TDR use to revenue: the more credits a city commits to accepting, the more revenue is shared with the city. For example, if a city is allocated 500 TDR credits but chooses to accept the minimum number of credits (500 credits * 20% = 100 credits), its revenue will be 20% of the share it is eligible to retain. In choosing how many credits to accept, the city is trying to select the number of credits it anticipates new construction will place over a 20-year period to meet the threshold requirements (discussed below) and extend the program (and revenues) to the full 25 years. In choosing how many credits to accept, the city is balancing the likelihood of TDR being used by development against the amount of revenue LCLIP can generate.

While LCLIP can run for a maximum of 25 years, the program requires participating cities to demonstrate performance on the use of credits within their LIPA(s). Cities using LCLIP must meet a

35 Chapter 6 provides links to Washington State Department of Commerce resources, including LCLIP feasibility studies and modeling tools that can help jurisdictions evaluate TDR credit commitments and revenue projections.

series of performance thresholds for placing credits to continue accessing the program revenues. The purpose of these thresholds is to give counties assurance that cities are making progress towards their TDR placement commitments while counties are sharing their property tax revenues. The program gives counties recourse if cities do not meet their TDR placement commitments. Counties can stop revenues if cities do not hold up their end of the program.

Cities begin accruing revenue from the time they adopt an ordinance starting LCLIP. The earliest those revenues will be paid is in year 2 of the program and payments are made on an annual basis thereafter provided cities keep pace with the milestones laid out below.

LCLIP performance thresholds are as follows:

1. Placement of 25% of the TDR credits a city agrees to accept is required to start the revenue stream.[36] This is not a time-based milestone, but rather a performance-based milestone.
2. Placement of 50% of the TDR credits is required by year 10 to extend the revenue stream another 5 years.
3. Placement of 75% of the TDR credits is required by year 15 to extend it by another five years.
4. Placement of 100% of the TDR credits is required by year 20 to extend it by five years to its conclusion.

4.3 What Can LCLIP Fund?

LCLIP is specifically designed to finance public infrastructure projects within designated LIPAs. These projects are critical for supporting increased density and urban growth while ensuring long-term community sustainability.

ELIGIBLE INFRASTRUCTURE PROJECTS

LCLIP funding can be used for a variety of infrastructure improvements, including but not limited to:

Transportation Infrastructure:

- Roads, streets, and bridges.
- Sidewalks, bike paths, and pedestrian pathways.
- Public transit facilities, such as park-and-ride lots and transit hubs.

Utility Systems:

- Water and sewer systems, including treatment facilities.
- Stormwater and drainage management systems.
- Electric, gas, and fiber optic utility infrastructure.

36 With regard to LCLIP performance thresholds, "placement" typically refers to issuing building permits for development projects using TDR credits. However, performance thresholds may also be met through the direct acquisition of development rights by the city. See https://app.leg.wa.gov/RCW/default.aspx?cite=39.108.150

Public Spaces and Amenities:

- Parks, recreational areas, and open spaces.
- Environmental remediation projects.
- Landscaping, streetlights, and streetscaping for urban beautification.

Affordable Housing Support:

- Facilities and infrastructure that support the development of affordable housing, such as utility connections and transportation access (but not the construction of affordable housing directly).

Historic Preservation:

- Activities that conserve historic properties, provided they align with local preservation goals.

LCLIP funds cannot be used for:

- The direct acquisition of TDR credits.
- Projects outside the designated LIPA boundaries.
- Non-infrastructure-related expenses, such as administrative costs or operational subsidies.

ELIGIBLE EXPENSES FOR LCLIP-FUNDED PROJECTS

Within the scope of the LCLIP, eligible expenses are directly tied to public infrastructure projects within designated LIPAs. These expenses are focused on capital costs that support development, improve community facilities, and enhance livability in higher-density urban areas.

ELIGIBLE CAPITAL COSTS

LCLIP funding is specifically targeted at capital expenses that enable cities to build or improve infrastructure critical to supporting urban growth and community development.

Planning and Design:

- Engineering, architectural, and environmental studies required for project planning.
- Feasibility studies and master plans for infrastructure development within the LIPA.

Construction and Installation:

- Costs associated with building roads, bridges, and sidewalks.
- Installation of utilities such as water, sewer, stormwater systems, and electrical infrastructure.
- Construction of parks, recreational facilities, and public transit infrastructure.

Land Acquisition:

- Purchasing land or property rights necessary for infrastructure projects, such as transit hubs, park expansions, or rights-of-way for utility lines.

Environmental Mitigation:

- Expenses related to environmental remediation or mitigation required to comply with regulations, such as stormwater management systems or habitat restoration.

4.4 Generating Incremental Property Tax Revenue

Incremental property tax revenue is the financial backbone of LCLIP. It is generated from the increase in assessed property value within a designated LIPA as new development and improvements occur.

BASELINE VALUE AND INCREMENTAL VALUE

Baseline Value (Property Tax Allocation Revenue Base Value)

The assessed value of properties in the LIPA at the time of its creation. This serves as the starting point for determining incremental property value growth.

Incremental Value

The increase in assessed property value resulting from new construction, significant property improvements, or rehabilitation projects initiated after the LIPA's designation. For example, if the baseline value of properties in a LIPA is $50 million, and new developments add $20 million in value, the total incremental value is $20 million.

Incremental revenue arises from various development activities within the LIPA:

- **New Construction**: Any new buildings or structures added to the area's tax rolls after the LIPA is created.
- **Property Improvements**: Significant renovations or upgrades to existing properties that increase their taxable value.
- **Rehabilitation Projects**: Specific improvements to housing or historic properties that qualify as "new construction" for property tax purposes.

PROPERTY TAX LEVIES IMPACTED

The incremental revenue under LCLIP is drawn from regular property taxes levied by participating taxing districts within the LIPA. However, certain levies are excluded to comply with state laws and maintain fairness.

Seattle Neighborhood / Source: Shutterstock

Regular Property Taxes Included

- City and county regular levies.
- Fire district levies (must opt in).
- Library district levies (must opt in).
- Parks and recreation district levies (must opt in).

Excluded Property Tax Levies

- State School Levy: Taxes levied by the state for funding public schools.
- Port and Utility District Levies: Regular levies for paying general indebtedness.
- Excess Levies: Special voter-approved taxes for specific purposes (e.g., school bonds, public safety levies).
- Certain Local Option Levies: Taxes excluded through interlocal agreements between the city and taxing districts.

Participating taxing districts must agree to contribute their incremental property tax revenues to the LCLIP, ensuring that funds are available for infrastructure financing while preserving some revenue for their operations.

APPLYING THE 75% FACTOR

Under LCLIP, up to 75% of city and county incremental tax revenues from the incremental value is used to calculate the revenue eligible for distribution. Additional revenues distributed to the city through LCLIP come from this retained portion of the county's incremental revenues. The remaining 25% flows to the county, and the portions of the increase for the state and other taxing districts, such as schools, fire districts, remains in the regular tax base.

Example Calculation:

$20M
Incremental Value

75% of Incremental Value = $20M × 75% = **$15M**

This $15 million becomes the property tax allocation revenue value, the portion eligible for LCLIP funding.

4.5 Revenue Distribution

4.5.1 Property Taxes on Baseline Value

Cities and participating taxing districts, such as counties and port districts, continue to receive their regular property tax revenues based on the baseline value of properties within the LIPA. The baseline value is the assessed value of properties at the time the LIPA is established. This ensures that existing public services funded by these taxes remain unaffected by LCLIP implementation.

Planning Guidance

- Communicate early with taxing districts to explain how baseline property taxes are preserved. This fosters collaboration and avoids misunderstandings about revenue impacts.
- Ensure baseline tax revenues are allocated as intended for non-LIPA services to maintain community support.
- Use public meetings and stakeholder workshops to foster transparency and address concerns from taxing districts and community members.

4.5.2 Incremental Revenue Allocation

Incremental revenue is generated from the increase in property values due to new development and improvements within the LIPA. The portion of property taxes on this incremental value—calculated after applying the 75% factor—is distributed to the city.

Example Calculation:

$20M
Incremental Value
(increase in assessed property value)

$20M × 75% =
$15M
Applicable Revenue Value

Property Tax Rate
$1.00 per $1,000
of assessed value

Incremental Revenue
$15M ÷ 1,000 × $1.00 = **$15,000 Annually**

Planning Guidance

- Use conservative estimates for incremental revenue projections. Consider potential delays in factors such as slower-than-expected development.
- Regularly update projections to reflect actual market activity, ensuring realistic budgeting for infrastructure investments.

4.5.3 Sponsoring City Ratio

The Sponsoring City Ratio determines the share of incremental revenue allocated to the city for LIPA improvements. This ratio results from a city choosing to accept less than 100% of its allocated share of TDR credits. The remaining incremental revenue supports other taxing districts.

Example Calculation:

$15,000	50%	City's Share
Total County Incremental Revenue	Sponsoring City Ratio	$15,000 × 50% = **$7,500 Annually**

Planning Guidance

- Approach TDR credit absorption with a clear understanding of your city's infrastructure funding needs.

4.5.4 Timing and Performance Requirements

As discussed earlier, incremental revenue generation begins in the second calendar year after the LIPA is created once new developments are reflected on the tax rolls. To maintain or extend the duration of incremental revenue collection (up to 25 years), the city must meet performance thresholds for placing TDR credits within the LIPA.

To extend the period during which the city can collect incremental revenues, the city must meet specific performance thresholds related to TDR placements:

Threshold Levels: Incremental revenue collection can extend up to 25 years based on milestones reached for TDR use in the LIPA:

- Level 1 (10 years): 25% of the specified TDR portion placed or extinguished.
- Level 2 (15 years): 50% of the specified TDR portion placed or extinguished.
- Level 3 (20 years): 75% of the specified TDR portion placed or extinguished.
- Level 4 (25 years): 100% of the specified TDR portion placed or extinguished.

The city must certify its progress toward these thresholds to the county treasurer, who adjusts the duration of revenue collection accordingly. "Placed or extinguished" means that the credit has either been actively used in development or permanently retired from circulation, both of which contribute toward meeting the TDR placement thresholds required to extend incremental revenue collection under LCLIP. For example, a city or entity acquires and retires TDR credits as a conservation strategy, ensuring that the associated development rights are never used (i.e., extinguished).

Planning Guidance

- Implement robust tracking systems to monitor TDR placements and progress on LIPA improvements. Regularly review performance data to ensure compliance.
- Align project timelines and milestones with revenue collection periods to maximize funding opportunities.

WHAT HAPPENS IF NO INCREMENTAL VALUE IS GENERATED?

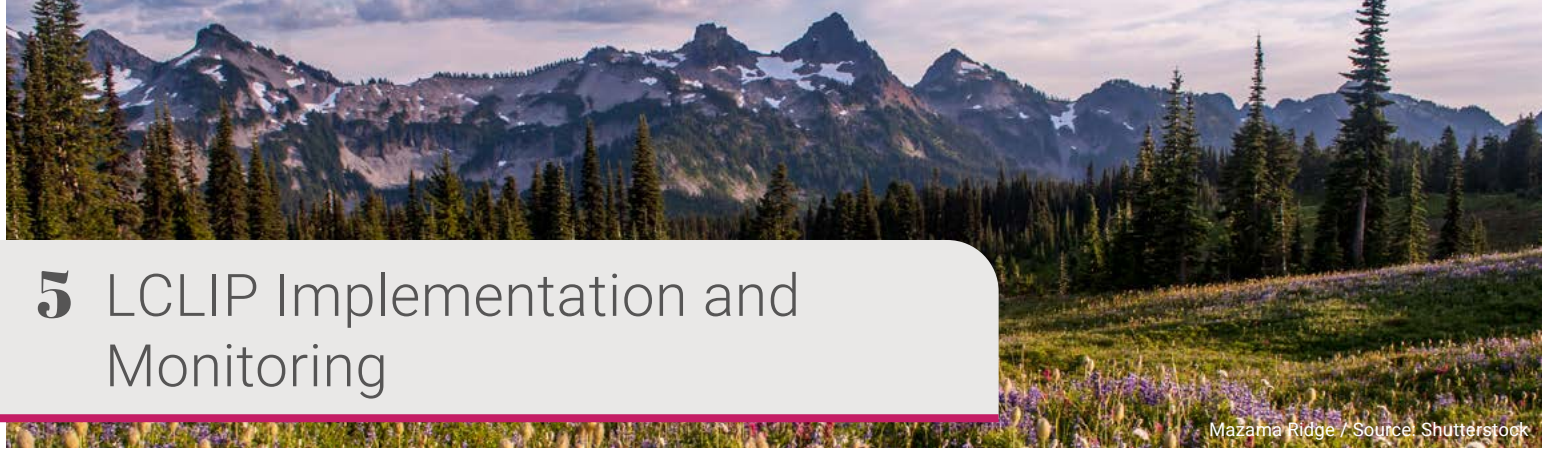
If no new development or improvements occur, the assessed property values in the LIPA remain unchanged, and no incremental revenue is generated. In such cases, the city only receives regular property taxes based on the baseline value.

WHAT HAPPENS IF THERE IS POOR TDR PERFORMANCE?

If the demand for growth does not materialize, counties have the option to end the program. This translates to:

- Counties can stop sharing revenue if cities fall short of performance milestones. This is an opportunity cost for cities, as the compounding effect of LCLIP means that revenues are highest in the later years of the program.
- There is no penalty or fee to cities if the program ends early.
- Cities retain all the revenue already collected.

Governor's Mansion / Source: Shutterstock



Mazama Ridge / Source: Shutterstock

5 LCLIP Implementation and Monitoring

5.1 Implementation Roadmap for LCLIP

The best way to achieve the objectives of LCLIP is to adopt an implementation strategy that is most likely to succeed: Program design mapping to anticipated scale and pace of receiving site redevelopment, appropriate incentives for using TDR, exchange rates matched to the market, and an administrative model that meets the needs of participants.

Adopting LCLIP requires a detailed, step-by-step approach to ensure compliance with legal requirements and alignment with local and regional goals. This roadmap provides an actionable plan for implementing LCLIP, with clearly defined steps and timelines.

5.1.1 Step 1: **Due Diligence and Feasibility** ***(3-6 Months)***

CONDUCT PRELIMINARY FEASIBILITY STUDY

Evaluate the potential for LCLIP implementation, updating previous studies if necessary to reflect current development projects, growth patterns, and revenue potential. Include assumptions that maximize revenue, such as using the largest allowable LIPA geography.

COLLABORATE WITH KEY STAKEHOLDERS

Work with city staff, consultants, developers and others to gather detailed project data, such as building types, construction timelines, and costs. This information is critical for accurate revenue projections.

VERIFY FINANCIAL AND LEGAL DETAILS

Confirm county property assessment schedules and explore the city's capacity for funding mechanisms, such as issuing bonds. Engage legal counsel to address potential concerns, such as ensuring compliance with public fund use regulations.

Leonard Round Barn / Source: Shutterstock

5.1.2 Step 2: **Provide Notice of Intent *(Immediately)***

ISSUE FORMAL NOTIFICATION TO THE COUNTY

Provide the county with a 180-day notice of the city's intent to explore or implement LCLIP as required in RCW 39.108.120. This step signals the city's commitment and begins coordination with county partners.

5.1.3 Step 3: **Define LIPA *(3-6 Months)***

IDENTIFY GEOGRAPHIC BOUNDARIES

Establish contiguous boundaries for the LIPA, ensuring no "islands" or overlaps with existing TIF districts. The LIPA must:

- Not exceed 25% of the city's total assessed taxable property.
- Be of sufficient size to support the designated number of TDR credits and associated infrastructure projects.

DETERMINE INFRASTRUCTURE SCOPE

Include all public improvements to be financed within the LIPA, such as roads, utilities, or parks, ensuring alignment with growth priorities and conservation goals.

5.1.4 Step 4: **Accept Responsibility for TDR Credits *(Concurrent with Step 3)***

COMMIT TO TDR CREDITS

Accept a specified number of TDR credits allocated to the city by regional or interlocal agreements. If applicable, evaluate the potential to integrate additional credits from neighboring counties.

The city must determine how much demand there may be for building projects that will utilize TDR. The placement of TDR credits through incentive mechanisms determines how developers will use the tool.

5.1.5 Step 5: **Develop and Adopt LIPA Plans and Policies *(6-9 Months)***

ADOPT A PUBLIC INFRASTRUCTURE PLAN

Prepare a plan detailing:[37]

- Public improvements to be financed within the LIPA.
- Estimated costs and project timelines.
- The number of TDR credits required to achieve density goals.

37 Chapter 6 provides links to Washington State Department of Commerce resources, including LCLIP infrastructure plan templates and model ordinances to support program adoption.

ESTABLISH TDR POLICIES AND INCENTIVES

Implement zoning regulations and developer incentives within receiving areas to encourage TDR credit use. These policies should:[38]

- Offer density bonuses, reduced parking requirements, streamlined permitting, and/or environmental review exemptions.
- Set clear exchange rates for TDR credits, enabling translation of TDR credits into benefits like building height, floor area, or parking reductions.

5.1.6 Step 6: **Hold Public Hearing and Adopt Ordinances *(6-12 Months)***

HOLD A PUBLIC HEARING

Provide formal notice and conduct a public hearing to gather community input on the proposed LIPA, TDR policies, and infrastructure plan per RCW 39.108.120.[39]

ADOPT LIPA ORDINANCES OR RESOLUTIONS

Pass ordinances to:

- Finalize LIPA boundaries and public improvements.
- Set the date for using local property tax allocation revenues.
- Identify participating tax districts, including county and city commitments.

NOTIFY COUNTY OFFICIALS

Deliver certified copies of the adopted ordinance to the county assessor, treasurer, and all participating tax districts within the LIPA per RCW RCW 39.108.120.

5.1.7 Step 7: **Launch LCLIP and Begin Revenue Collection *(Year 2 and beyond)***

INITIATE INCREMENTAL REVENUE COLLECTION

Start collecting incremental property tax revenue in the second calendar year following LIPA creation. Allocate funds exclusively for public improvements within the LIPA.

TRACK AND REPORT PROGRESS

Monitor TDR credit placements and revenue milestones to ensure compliance with performance thresholds. Submit an annual report to the Department of Commerce, detailing TDR transactions, conservation impacts, infrastructure projects, and economic outcomes.

38 Chapter 6 provides links to the Puget Sound Regional Council's Equity Impact Assessment and Equity Tracker, which support the evaluation of how zoning changes and development incentives may affect different communities.

39 Chapter 6 provides links to community engagement and equity planning tools from the Puget Sound Regional Council, including resources that help cities evaluate the distributional impacts of land use decisions.

Skagit Valley / Source: Shutterstock

5.1.8 Step 8: **Evaluate and Adjust *(Ongoing)***

PERFORMANCE MONITORING

Evaluate progress against TDR placement thresholds to extend incremental revenue collection periods (10-25 years). Adjust policies or project priorities as needed to meet goals.

PERIODIC UPDATES

Update LIPA boundaries, infrastructure plans, or TDR policies to reflect changing needs or opportunities.

Latah / Source: Shutterstock

6 Resources, Tools, and Appendices

6.1 Resources

6.1.1 TDR/LCLIP PROGRAM DESIGN and IMPLEMENTATION

WASHINGTON STATE DEPARTMENT OF COMMERCE GUIDANCE

The Washington State Department of Commerce Growth Management Services maintains a comprehensive TDR/LCLIP website providing program resources and educational materials, including:

- TDR program design
- TDR incentive design
- Tools
- Certificate examples
  - Interlocal agreement examples
  - Easement examples
  - Ordinance and resolution examples
- Studies
  - TDR market analyses
  - LCLIP feasibility studies

Denny Creek / Source: Shutterstock

6.1.2 PLANNING FOR EQUITY

WASHINGTON STATE DEPARTMENT OF COMMERCE GUIDANCE

The Washington State Department of Commerce provides resources to help local jurisdictions create equity-focused land use policies.

Addressing Racially Disparate Impacts: Guidance on identifying and mitigating racially disparate impacts in housing and land use planning, ensuring equitable development outcomes.

By utilizing these resources, local jurisdictions can plan and execute land use and infrastructure projects that consider the needs of vulnerable populations, promoting equitable and sustainable community development.

PUGET SOUND REGIONAL COUNCIL

PSRC maintains a website linking to a number of tools to support equity-based land use planning for cities in the Central Sound. These include:

- Equity Tracker: Uses reliable and regularly updated data to identify disparities between people in different communities.
- Legacy of Structural Racism: An interactive report designed to build an understanding of policies rooted in racism and help inform community members, local jurisdictions, and others to shape strategies that effectively address the consequences of these issues.
- Equity Impact Assessment: An assessment tool intended to help local jurisdictions use community feedback to identify key issues in their comprehensive plans and apply a racial equity lens to land use planning decisions.

The site also offers and links to a wealth of community engagement resources, data and research, and best practices.

6.2 List of Tools

Web-based calculator for LCLIP education

6.3 Appendices

Park by Columbia River / Source: Shutterstock

6.3.1 LCLIP Model Ordinance

CITY OF XXX

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE creating Local Infrastructure Project Areas to implement the Landscape Conservation and Local Infrastructure Program.

WHEREAS, in 202X, the City Council adopted subarea plans in the light rail station areas and identified these neighborhoods as receiving areas for transferable development rights (TDR); and

WHEREAS, in 2011, the State enacted legislation creating the Landscape Conservation and Local Infrastructure Program (LCLIP, RCW 39.108), providing for financing for infrastructure in neighborhoods designated to be receiving areas for regional transferable development rights; and

WHEREAS, in 202X, the City conducted feasibility studies to evaluate the benefits of LCLIP to the City and Council gave direction to prepare a legislative package to adopt the program and make code changes to optimize program outcomes; and

WHEREAS, the City notified the Washington State Department of Commerce in DATE of its intent to hold hearings to consider adoption and implementation of LCLIP; and

OTHER ADDITIONS TO CONTEMPLATE closer to adoption:

- mentioning the creation of a standalone TDR code chapter,
- amendments to other parts of the development code to expand TDR use
- Reference the ILA as a parallel process

WHEREAS, the City consulted with King County and the Washington Department of Transportation in developing the plan for investing in public infrastructure within City-designated Local Infrastructure Project Areas; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF XX AS FOLLOWS:

Section 1. The City establishes, as authorized by RCW 39.108, Local Infrastructure Project Areas, as shown on Map A, to include the geographies encompassing [describe areas].

Section 2. The proposed public improvements to be financed in the Local Infrastructure Project Areas are those listed in the Landscape Conservation and Local Infrastructure Program Infrastructure Funding Plan.

Section 3. The City of [XX] commits to the placement of XX regional TDR credits, or XX% of its allocation under the program.

Section 4. The use of local property tax allocation revenues from the Local Infrastructure Project Areas will commence on DATE TBD – [Note: This will be 2 years from effective date. Note that the accumulation of revenue begins at the effective date of the ordinance, however the county doesn't begin making payments until 2 years after adoption.]

Section 5. XX County will be the participating taxing district for the Local Infrastructure Project Area.

Section 6. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by [City] Municipal Code Section XX.

Passed by the City Council the ____ day of _____, 20___, and signed by me in open session in authentication of its passage this

_____ day of _____, 20XX.

_____

President _____of the City Council

Approved by me this ____ day of _____, 20___.

_____

_____, Mayor

Filed by me this ____ day of _____, 20XX.

_____

_____, City Clerk

(Seal)

ATTACHMENTS:

Map A establishing Local Infrastructure Project Area Boundaries

LCLIP Infrastructure Plan

6.3.2 Definitions and Key Terms

Allocation Rates: A market mechanism defining the number of development rights assigned to each sending site parcel based on specific criteria, such as zoning designations, land characteristics, or ecological value.

Development Incentives: Benefits that exceed what is available under current zoning and other development regulations, accessed using a TDR program.

Exchange Rates: A market mechanism used to normalize disparities in the value of development rights between sending areas and receiving areas.

Incremental Revenue: The additional property tax revenue generated by new construction in LIPAs. This revenue is accessible to cities to fund infrastructure projects.

Interlocal Agreement: A legal contract between two or more counties and cities that specifies the conditions under which TDR credits may be transferred.

Local Improvement Project Areas (LIPAs): Specific districts within a city where infrastructure improvements are funded using incremental tax revenues.

Receiving Areas: Designated sites where developers can place TDR credits as a means for increasing the value of a construction project, often through development incentives.

Resource Lands: Agricultural, forest, and mineral lands, as state law requires cities and counties designate under RCW 36.70A.170.

Sending Areas: Designated rural sites from which development rights are sold and removed.

Sponsoring City: An LCLIP-participating receiving city that accepts all or a portion of its allocated share of regional development rights.

Sponsoring City Ratio: The proportion of a participating city's allocated share it agrees to accept.

Sponsoring City Allocated Share: The total number of transferable development rights allocated by PSRC to a sponsoring city.

TDR/Conservation Easement: A legal instrument limiting the development potential of a sending property after development rights have been removed, ensuring its conservation for resource uses or open space purposes.

6.3.3 TDR Program Tracking Template

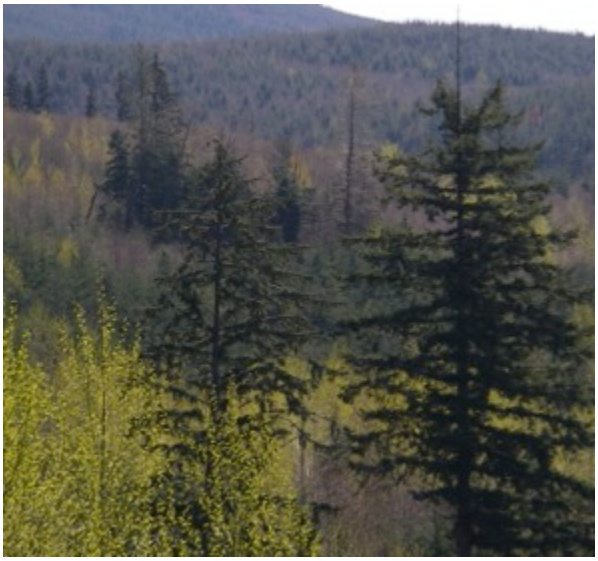
Tracking TDR program performance is an important for performance evaluation and informing periodic improvements. For those participating in LCLIP, metric tracking may also support reporting requirements. While the exact metrics and format for reporting will vary between programs, the following example may serve as a template from which to tailor a locally relevant tracking tool.

Category	Metric	Static or Ongoing	Tracking	Description or Notes
Program Setup & Design	TDR Program Establishment Year	One-time		
Administrative Capacity	Policy or Code Updates in Last 5 Years (Yes/No; date)	One-time		
Administrative Capacity	Use of Interlocal Agreements (Yes/No; list partners if Yes)	One-time		
Administrative Capacity	Lead Agency or Department	One-time		
Administrative Capacity	Number of Dedicated Staff (FTE or estimate)	Ongoing		
Conservation Outcomes	Number of Parcels Conserved	Ongoing		
Conservation Outcomes	Total Acres Conserved (per year and cumulative)	Ongoing		
Development Outcomes	% of Development in Receiving Areas Using TDR (Estimated)	Ongoing		
Development Outcomes	Commercial Sq. Ft. Built Using TDR	Ongoing		
Development Outcomes	New Housing Units Built Using TDR	Ongoing		
Development Outcomes	Number of Projects Using TDR Credits	Ongoing		
TDR Credit Usage	Average TDR Credit Price (Rolling average)	Ongoing		

Category	Metric	Static or Ongoing	Tracking	Description or Notes
TDR Credit Usage	Average Number of TDR Transactions per Year (Rolling)	Ongoing		
TDR Credit Usage	TDR Credits Enrolled, Unsold	Ongoing		
TDR Credit Usage	TDR Credits Transferred (annual)	Ongoing		
TDR Credit Usage	TDR Credits Transferred (cumulative)	Ongoing		
LCLIP-Specific Metrics	LCLIP Participation (Yes/No)	One-time		
LCLIP-Specific Metrics	Year LCLIP/LIPA Adopted (if applicable)	One-time		
LCLIP-Specific Metrics	Date of Last Performance Report Submitted to State	Ongoing		
LCLIP-Specific Metrics	Infrastructure Investment in LIPA (cumulative)	Ongoing		
LCLIP-Specific Metrics	Number of TDR Credits Transferred (cumulative)	Ongoing		
LCLIP-Specific Metrics	TDR Credits Required Under LCLIP Agreement	Ongoing		
LCLIP-Specific Metrics	Tax Increment Revenue Collected/Distributed (cumulative)	Ongoing		
LCLIP-Specific Metrics	Infrastructure Investment in LIPA (cumulative)	Ongoing		
LCLIP-Specific Metrics	Public Improvements Financed in LIPA (description and cost)	Ongoing		

Washington State Department of Commerce

www.Commerce.WA.gov



Regional Transfer of Development Rights in Puget Sound

A Regional Alliance of Puget Sound Counties, Cities, the Puget Sound Regional Council, Forterra and Department of Commerce

Department of Commerce
Innovation is in our nature.

Puget Sound Regional Council
PSRC

FORTERRA
CREATING GREAT COMMUNITIES and CONSERVING GREAT LANDS

June 2013
Report to the U.S. Environmental Protection Agency

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[1] Formerly Cascade Land Conservancy

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Special thanks to the cities and counties who are participating in the Regional Transfer of Development Rights Alliance.

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For broken links or more information, go to the Regional TDR website at www.commerce.wa.gov/tdr.

For people with disabilities, this report is available on request in other formats. To submit a request, please call 360-725-4000 (TTY 360-586-0772).

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Executive Summary

Overview

The challenge in Puget Sound is to accommodate the more than 1.5 million new people expected to live here by 2025, and adapt to a changing climate, without increasing pressures on Puget Sound from habitat and land use, storm water, toxic pollution, and transportation[2]. Between 2000 and 2006, Puget Sound counties added 315,965 people, a rate of more than 50,000 people per year. Many farm and forest land areas are being converted to residential and commercial development. Between 1991 and 2001, 190 square miles of forest land in the Puget Sound basin was converted to other uses, equaling 2.3 percent of remaining forests.[3]

Counties and cities have been working together on Puget Sound conservation goals through the regional transfer of development rights (TDR) since King County and the Cities of Seattle and Issaquah adopted interlocal agreements in 2001. This report provides a history and summary of the regional accomplishments to date, with a focus on TDR programs recently adopted by cities (see City Case Studies) under a U.S. Environmental Protection Agency (EPA) Watershed Management Assistance Agreement[4].

Forterra began working with counties and cities on regional TDR as a market-based conservation strategy to implement its Cascade Agenda, adopted in 2005 with goals for the next 100 years. The Puget Sound Regional Council (PSRC) and Washington State Department of Commerce (Commerce) became involved in regional TDR when Commerce was directed by legislation in 2007 to work with an advisory committee to develop a regional TDR marketplace in central Puget Sound that includes, but is not limited to, supporting strategies for financing infrastructure and conservation[5]. TDR implements multi-county planning polices PSRC adopted in VISION 2040.

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[2] The 2012 Action Agenda for Puget Sound, Puget Sound Partnership.
[3] *State of the Sound 2007*, Puget Sound Action Team.
[4] EPA Assistance Agreement PO-00J093-01-0.
[5] RCW 43.362.020(1)(a).

Legislation implementing the consensus recommendations of the advisory committee was passed by the Legislature and signed into law by the governor in 2009[6], contingent upon Commerce finding another funding source to implement it. Through an EPA West Coast Estuary Initiative grant, this Watershed Management Assistance (WMA) grant and a WMA grant to King County, all intended to implement the Puget Sound Action Agenda, the regional partners (King County, Pierce County, Snohomish County, Kitsap County, PSRC, Forterra and Commerce) have been able to implement the legislation and keep regional TDR moving forward.

Regional Accomplishments

All four central Puget Sound counties (King, Pierce, Snohomish, and Kitsap) have adopted TDR policies and regulations, and 10 cities have in place or are working on regional transfer of development rights in three of the counties.

- Over 180,000 acres of farmland, forestland, and open space are under conservation easement.
- 2,628 transferable development right credits have been purchased from farmland, forestland, and open space.
- Over 250 credits have been transferred into cities and unincorporated urban growth areas.

Benefits of Regional TDR

Regional TDR benefits landowners, developers, cities, counties, and neighborhoods:

- The Action Agenda recognizes that maintaining land in farming and forestry through reduces stormwater runoff and protects water quality.
- Regional TDR encourages cross-jurisdiction coordination, including protection of lands outside a city's boundaries that they care about.
- Cities participating in TDR make the regional market for conservation and development larger than an individual jurisdiction.
- TDR programs help cities grow wisely while preserving lands important to their residents. Builders can provide more homes and space for local businesses by purchasing development rights from farm, forest, and open space landowners.
- Through voluntary transactions, TDR allows owners of farms, forests, and open spaces to receive financial return and continue to own and use the land.
- TDR programs allow developers to increase development capacity in their projects with purchases of development rights from farm, forest, and open space landowners.

[6] Chapter 43.362 RCW, as amended in 2009.

Next Steps for TDR in Puget Sound

Counties and cities continue to work on regional TDR programs using EPA Watershed Protection and Restoration Grants. King County is recruiting more city partners, and using the Landscape Conservation and Infrastructure Program (LCLIP), to accomplish its goal of achieving a critical mass of development capacity for regional TDRs. King County is also working to integrate its regional TDR program with programmatic compensatory mitigation actions.

Snohomish County is implementing its newly adopted countywide TDR program, including work with the cities. Pierce County is working to recruit more cities and further implement its program. The Cities of Mountlake Terrace and Tacoma are evaluating the feasibility of participation in the Landscape Conservation and Local Infrastructure Program. Skagit County is working with the City of Burlington. Forterra continues to work with the counties and to reach out to the Cascade Agenda cities to consider participation in TDR.

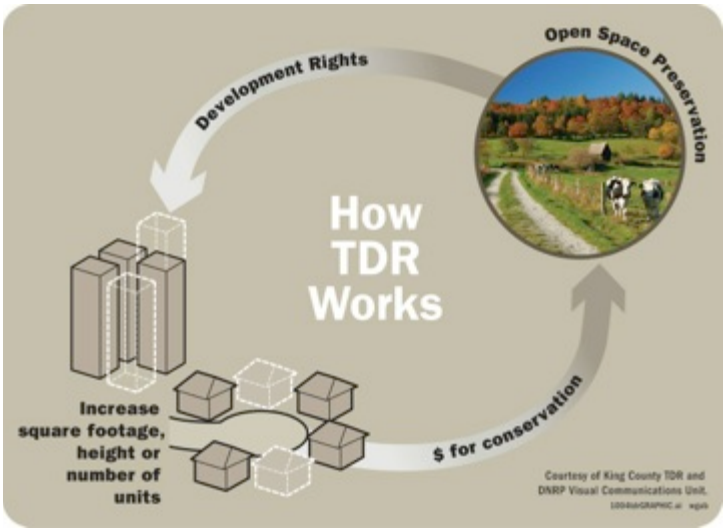
The biggest challenge remains resources for local governments to implement TDR, but especially for cities planning for increased development capacity. Infrastructure financing is still difficult to obtain as federal, state, and local legislators deal with ongoing budget issues.

Introduction

What is TDR?

Transfer of development rights (TDR) is a market-based land use tool that cities and counties use to develop compact communities while conserving natural resource and open space lands. A TDR program contains several elements. A community identifies areas that it wants to conserve, such as privately owned farms, forestland, open space or other lands, depending on the local program. These lands, known as "sending areas," provide jobs, food, outdoor recreation, timber, and open space.

Through voluntary transactions, landowners in sending areas sell their right to build homes on their land to developers in urban areas. Landowners receive money from the sale and continue to own and use their land, while developers in urban areas pay for the right to build more homes or commercial space than zoning would otherwise allow. These "receiving areas" designated for development rights are identified by the community as being better suited for locating additional growth, and are often located in cities. Planning for more compact development in receiving areas should result in more walkable communities with access to transit, a variety of shops and services, amenities such as open space and street trees, and a reduced need to drive.



Under some programs, development rights can be converted to additional building height or commercial floor space, or revised parking or stormwater requirements. Receiving areas should have, or should be planning for, the infrastructure and services capacities to meet the needs of increased growth.

Conversion Commodities

In most TDR programs that seek to protect open space or natural resource land in sending areas, the sending-area development right available for sale is the right to build a residential unit. In some TDR programs, however, the development right for sale from the sending area can be converted into another type of commodity in the receiving area. For example, a TDR created by extinguishing the right to build a residential unit in a residential area could be converted into the right to build additional commercial floor area or additional building height in the receiving area.

The use of such "conversion commodities," may help stimulate the TDR market by providing receiving-area landowners with more options for TDR use. A receiving-area developer can make a project "pencil" (that is, make a project "pencil out" as profitable) through additional office or retail space, reduced parking ratios. These could be provided among other development rights, rather than just increased residential density, which is what TDRs are traditionally used for.

In theory, a conversion commodity could include a waiver or relaxation of anything that can be regulated or restricted through the land use process for which a developer would be willing to pay. Some such commodities are already used in TDR programs around the country. For example, the City of Issaquah allows TDR to be used to increase impervious surface limits on a receiving site. Others are not currently used in TDR programs but could be because they are regulated or restricted by the land use regulation system.

Commodities that can be purchased in TDR programs include:

- Commercial Floor Area (CFA)
- Building Height
- Parking Ratio
- Impervious Surface
- Parkland and Open Space
- Setbacks
- Floor Area Ratio (FAR)
- Impact Fees and Concurrency Conformance

When conversion commodities function properly, they save developers money while conserving open space.

What is Regional TDR?

Regional TDR involves the transfer of development rights across jurisdictional boundaries. Regional TDR in Puget Sound has been focused on transfers from county-designated sending areas to city-designated receiving areas. The intent is to reduce development potential in rural and natural resource lands by transferring that potential to receiving areas in cities where urban densities and infrastructure are planned.

The state focus for receiving areas has been on cities in central Puget Sound because the Legislature enacted the recommendation of the Policy Advisory Committee to focus state efforts on cities. As the providers of urban services under the GMA, cities are best equipped to plan for and accommodate increased residential and commercial density.

There are a few other regional TDR programs in the country. The Pinelands National Reserve in New Jersey was created by Congress under the National Parks and Recreation Act of 1978. The reserve is the first national reserve in the nation, underlain by aquifers containing 17 trillion gallons of water. It encompasses approximately 1.1 million acres covering portions of seven counties and all or parts of 56 municipalities. The Pinelands Commission created by the state of New Jersey adopted a mandatory TDR program for the municipalities to protect the aquifer.

The Tahoe Regional Planning Agency cooperatively leads the effort to preserve, restore, and enhance the unique natural and human environment of the Lake Tahoe region. The governors and lawmakers in California and Nevada approved a bi-state compact that created a regional planning agency to oversee development at Lake Tahoe in the late 1960s. In 1969, the U.S. Congress ratified the agreement and created the Tahoe Regional Planning Agency. The Tahoe Regional Plan, updated in December 2012, encourages property owners to transfer development rights from sensitive or outlying areas to existing town centers with the goal of restoring these lands. However, all municipalities in the Tahoe Region are required to participate in the TDR program.

Puget Sound is a nationally recognized estuary under the federal National Estuary Program. It is a resource of national significance similar to the Pinelands National Reserve and Lake Tahoe Region. However, regional TDR in Puget Sound is voluntary. As it appears to be the only voluntary regional program of its kind for counties and cities in the country, the work being done here in the Puget Sound is leading edge in its scope and accomplishments.

Why Regional TDR? What are the Benefits?

The benefits of a successful regional transfer of development rights program are the conservation of rural, agricultural, and forest lands[7]. Removing the development rights from these lands will help keep them in farming and forestry. It will also help provide drinking water and aquifer protection, and reduce stormwater runoff to Puget Sound. Transferring growth to urban areas where public facilities and services are available will facilitate vibrant, economically viable compact communities. Directing growth to compact communities where people can live close to where they work or have access to transportation choices will reduce vehicle miles travelled, reducing fuel consumption and emissions that contribute to climate change.

Benefits for Counties

Regional TDR is a tool counties can use to meet their conservation goals because it increases the market demand for development rights from sending areas. Counties are charged under the GMA with designating and conserving agricultural and forest land of long-term commercial significance. They are required to maintain and enhance natural resource industries, as well as protect them from incompatible adjacent uses. While TDR provides a tool for counties to incentivize landowners to keep their land in farming or forestry, regional TDR makes the market for conservation and development larger than the market that county receiving areas alone provide.

King County won a 2013 Governor's Smart Communities Award for the County's White River Forest project that permanently preserves 43,000 acres of the White River Forest through TDR.

Benefits for Cities

TDR programs help cities grow wisely while preserving lands important to their residents. Builders can provide more homes and space for local businesses by purchasing development rights from farm, forest, and open space landowners.

TDR benefits cities by:

- Encouraging cross-jurisdiction coordination, including protection of lands outside a city's boundaries that they care about.
- Supporting the $280 million agricultural industry that provides fresh produce and meat to farmers markets and local grocers.

---

[7] Given the economic and environmental importance of these lands, PSRC published a natural resource lands trends report in 2011 that explores the resource land designation criteria, changes in the amount of land, changes in designations, residential development, and parcel sizes of resource designated land in the four counties. See *Natural Resource Lands Trends in Central Puget Sound*.

- Supporting the $365 million forest industry that provides timber and protects water quality.
- Protecting water and habitat resources that are part of the regional identity and economy.
- Conserving lands that provide focus for local celebrations and festivals and family-friendly experiences.

Three cities have won a Governor's Smart Communities Award for work they did in TDR receiving areas:

- Bellevue's Bel-Red Corridor Plan received the award for comprehensive planning in 2010.
- Tacoma's Mixed-use Centers Update Project received the award in 2010 for implementation of a comprehensive plan.
- The City of Normandy Park won a 2013 award for its Manhattan Village subarea plan and planned action ordinance that includes receipt of TDRs from King County.

Certain cities can take advantage of infrastructure funding through the Landscape Conservation and Local Infrastructure Program (LCLIP) if they choose to participate.

Benefits for Landowners

Farming and forestry in the central Puget Sound region is threatened by development pressure, increasing land values and taxes, and a shrinking land base. TDR has the potential to help. Through voluntary transactions, TDR allows owners of farms, forests, and open spaces to sell their right to develop. In exchange, they receive financial return and continue to own and use the land.

TDR benefits landowners by:

- Providing money for protecting their land and lowering their tax burden.
- Removing development pressures that impact long-term economic viability.
- Making it more affordable for farmers and foresters to purchase land they want to farm or maintain in forestry.
- Maintaining control over the terms of sale and price of development rights.
- Maintaining a high quality of life for future generations.

Benefits for Developers

TDR programs allow developers to increase development capacity in their projects with purchases of development rights from farm, forest, and open space landowners.
TDR benefits developers by:

- Increasing the number of units or square footage in a project.
- Increasing project profits.
- Making projects more "green."
- Making compact development projects more attractive to communities.

TDR is:

- Used in large and small developments.
- A way to add flexibility in the permitting process.
- Available for residential and commercial project.s
- Permanent and supported by state law.

For more information about incentives/benefits that cities and counties can provide for developers in receiving areas, see *Transfer of Development Rights Incentives That Jurisdictions Can Provide for Developers* on the Commerce Regional TDR website.

Benefits for Neighborhoods

Comprehensive planning for more compact development in receiving areas should result in more walkable communities with access to transit, a variety of shops and services, amenities such as open space and street trees, and a reduced need to drive.

TDR can be used to encourage the kind of development a community envisions with incentives for building that supports a planned mixed of uses or access to transit. TDR can support existing plans for the neighborhood, such as plans for open space and parks, trails, and transit. Concentrated development can take advantage of existing infrastructure, and move development out of areas critical for watershed protection.

An effective TDR program requires adequate resources be devoted to the program's design and implementation, including planning, funding, and implementation for capital facilities in receiving areas. Capital facilities include water, sewer, roads, transit, recreation, community services, and schools.

What Benefits Have Been Realized from Regional TDR?

The Highlights

All four central Puget Sound counties (King, Pierce, Snohomish, and Kitsap) have adopted TDR policies and regulations, and 10 cities have in place or are working on regional transfer of development rights with the counties.

- Over 180,000 acres of farmland, forestland, and open space are under conservation easement.
- 2,628 transferable development right credits have been purchased from farmland, forestland and open space.
- Over 250 credits have been transferred into cities and unincorporated urban growth areas.

The legislation authorizing regional TDR directs the Department of Commerce (Commerce) to develop quantitative and qualitative performance measures. The Regional TDR Alliance developed these measures that counties and cities report biannually to Commerce.

Acres Under Conservation Easement

The number of acres under TDR conservation easement provides a measure of success in conserving urban open space in cities and counties, rural land, and resource lands through TDR programs. Rural land includes working farm and forest land, as well as open space and habitat. Three of the four counties have conservation easements in place as shown in Table 1[8].

Table 1: Number of Acres Under TDR Conservation Easement

County	Urban Open Space	Rural Land	Agricultural Land	Forest Land	Total
King	121	2576	170	181,754	184,621
Pierce	0	90.1	120.5	0	210.6
Snohomish	0	0	74	50	124
Total	146.5	2666.1	290.5	181,804	184,955.6

[8] Kitsap County is not included because it has not yet experienced any acquisitions or transfers.

Transactions that Have Occurred

King County has had the most transactions to date with a program that has been active since 1998. Table 2 shows the number of transactions since 1998. A "transaction" occurs whenever a TDR changes hands from an owner to a buyer, including transactions between speculators until they are finally used. Most transactions involve more than one TDR. Table 2 includes all transactions whether regional (county to city) or intra-jurisdictional (county to county). The number of transactions is broken out between public and private transactions. Public transactions include acquisitions by a bank or any other acquisition using public funds, such as the use of state grant funds by a non-profit. Private transactions are between a developer and the owner of the land.

Table 2: Transactions in the Three County TDR Programs

County	Public Transactions (including bank and Forterra transactions)	Private Transactions	Total
King	12	66	78
Pierce	3	0	3
Snohomish	2	0	2
Total	17	66	83

Credits that Have Been Purchased

Public credits are those credits that have been purchased by a local government, by a bank established by the local government, or by a non-profit with government funds. Private credits are those credits that have been purchased directly by a private developer from a landowner. Table 3 shows the number of credits bought and sold since 1998.

Table 3: Credits Transactions in the Three County TDR Programs

County	Public Credits[9]	Private Credits	Total
King	2,055	464	2,519
Pierce	103	0	103
Snohomish	66	0	66
Total	2,224	464	2,688

For more information about market trends in the King County TDR program, go to TDR Market Information on the King County TDR website.

[9] Including acquisitions by Forterra

TDR Credits Transferred and Used in a Project

While Table 3 provides information on the total number of TDR credits transferred from county sending areas, Table 4 shows the number of those credits that have been transferred into the county unincorporated urban growth area (UGA) and city receiving areas. To date, only King County has transferred TDR credits into receiving areas.

Table 4: King County Credits Transferred to City Receiving Areas

Receiving Area	Number of Credits
King County UGA	122
Seattle	68
Issaquah	63
Total	253

Development in City Receiving Areas

Cities tailor allowable uses of TDR credits to encourage the type of development they want in the receiving areas. Although most of the development that has occurred to date using TDR credits from King County is residential, the cities in all four counties have adopted a variety of types of development that will be encouraged in receiving areas as listed in Table 5.

Table 5: Development in City Receiving Areas

Type of Development	Units (e.g. residential, square footage, height)	Amount
New residential units	Residential units	136
New residential units in relation to units development rights extinguished in sending areas	Ratio of residential units extinguished in sending vs. used in receiving areas	1 unit extinguished for every 2 units created 68/136
Additional commercial floor area	Square footage of commercial area	496,000
Additional building height	Feet of building height	≈225
Number of required parking spaces reduced	Parking spaces reduced	0
Number of additional parking spaces allowed	Parking spaces allowed	5
Amounts of additional impervious surface allowed	Square feet of impervious surface allowed	1000

Regional TDR Programs Adopted

Three of the counties have interlocal agreements with cities to transfer development rights, and more are in process. Ten cities adopted or updated policies and regulations for receiving areas that will accept county TDR credits, using 13 EPA grants from PSRC, Commerce, and King County. Of those 10 cities, seven have adopted or are very close to adopting TDR programs that will accept TDR credits from the counties.

Subarea Plans and Up-Front Environmental Review

All nine cities, including the seven cities using EPA Watershed Management Assistance funds, that have adopted or are about to adopt regional TDR have developed and adopted subarea plans or rezones for their TDR receiving areas. Subarea plans are plans for neighborhoods or distinct areas within a city or county that further refine zoning and capital improvements, and can include design guidelines, streetscape design, and other amenities for the community.

Subarea planning for a TDR receiving area benefits the community and developers by providing a process to gain community buy-in to development with TDR[10]. The process provides more certainty for developers and the community. The planning process allows the community to discuss what types of development they would like to see in the plan and to discuss TDR as a tool for developers to implement the plan. Subarea planning also provides a process that can be used to conduct more detailed up front environmental review under the State Environmental Policy Act (SEPA).

Some sort of up-front environmental review was conducted on almost all of the subarea plans adopted by the cities. Up-front environmental review, also called defined mitigation, provides more certainty to developers and the community[11]. The review includes and addresses any impacts to the natural or built environment that will be generated by allowed development, including a development project receiving extra development capacity by using a TDR credit.

The **Manhattan Village Subarea Plan/EIS** and planned action, including TDR, envisions redevelopment of an area with a mix of commercial and residential development, including vacant buildings and underutilized parcels in Normandy Park. The City seeks an increasingly intense level of development that promotes a dynamic urban environment and achieves a compact form, satisfying the community's needs for housing diversity and economic vitality.

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[10] See *Transfer of Development Rights Incentives That Jurisdictions Can Provide for Developers* for more information about subarea planning and up-front environmental review for TDR receiving areas.

[11] A study recently completed by the Department of Commerce in July 2010, *State Environmental Policy Act Case Studies*, found that predefined mitigation in all eight case study cities resulted in greater certainty and predictability for developers, and a decrease in the number and scale of required environmental assessments and technical studies at the project level.

The Seattle City Council adopted a **substantial rezone of South Lake Union** that allows for increased density and greater building heights through an incentive zoning program, including the use of regional TDR. The legislation is an important step for the South Lake Union neighborhood as it continues to develop as an Urban Center and a dynamic hub of economic development for Seattle and the region.

The **Central Issaquah Plan** will guide the long-term evolution of the City of Issaquah's 1,100-acre commercial core from a collection of strip malls, parking lots, and office buildings into a more sustainable urban area that will meet the community's needs for environmental protection, jobs, housing and rapid transit. For developers, the plan means streamlined review and permitting processes and an expansion of the TDR receiving area, as well as increased code flexibility to fulfill the vision.

The **Bel-Red Corridor subarea plan** adopted by the City of Bellevue involved extensive environmental review, and includes a TDR receiving area. The plan adopted in 2009 establishes a vision for new mixed use neighborhoods supported by light rail, new streets, parks and open space.

The City of Arlington adopted a **subarea plan for West Arlington** that is a cohesive long range plan to effectively manage growth and unify development within the sub-area. It incorporates principles of New Urbanism, Smart Growth, and Sustainability, and promotes diversity in terms of housing options and business types. It has resulted in an expansion of the TDR receiving area for county credits.

Mountlake Terrace's **Freeway/Tourist Are**a is part of the City's designated Subregional Growth Center as defined in VISION 2040, designated for regional funding sources to meet the community vision for additional retail, housing choices, employment opportunities, and transportation choices. Special zoning provisions and a planned action provide incentives for developers in the Freeway/Tourist Area, in addition to TDR.

The City of Snohomish adopted its **Pilchuck District** subarea plan and planned action ordinance with TDR for a historic district along the Centennial Trail. The neighborhood planning effort for the Pilchuck District was intended to shine a light on the area, to capitalize on its positive aspects, to bring its disparate parts into harmony over time, and to create opportunities for public and private investments and improvements that will make it a more distinctive and enjoyable place to live, work, and play.

The City of Tacoma is in the final stages of adopting the **MLK Subarea Plan and FEIS**. The purpose of the MLK Subarea Plan is to anticipate, support, and guide the long-term redevelopment of the MLK District. The plan will serve as a statement of the City's commitment

to and direction for future development in the MLK Subarea in addition to serving as a resource for potential investors, property owners, the community and other public agencies. The MLK subarea is a designated mixed-use center and TDR receiving area.

The vision for the **Sammamish Town Center** is a vibrant, urban, family friendly gathering place in a healthy natural setting. The City of Sammamish's sense of community reflects a balance between its natural and urban characteristics. The vision includes preservation and enhancement of the Town Center's natural setting by focusing new development away from natural resources and critical areas, including the use of TDR and other tools.

History of Regional Transfer of Development Rights in Puget Sound – How Did We Get Here?

The challenge in Puget Sound is to accommodate the more than 1.5 million new people expected to live here by 2025, and adapt to a changing climate, without increasing pressures on Puget Sound from habitat and land use, storm water, toxic pollution, and transportation[12]. Between 2000 and 2006, Puget Sound counties added 315,965 people, a rate of more than 50,000 people per year. Many farm and forest land areas are being converted to residential and commercial development. Between 1991 and 2001, 190 square miles of forest land in the Puget Sound basin was converted to other uses, equaling 2.3 percent of remaining forests.[13]

Local governments need as many land use tools as possible to slow the conversion of rural, farm, and forest land. Upcoming updates to land use plans and regulations, starting in 2015 in central Puget Sound, provide an opportunity for counties and cities to consider new or to enhance existing conservation tools. The current economy and housing market provide an opportunity to put in place market-based tools that will be available when the market improves.

The Washington State Growth Management Act (GMA) requires counties and the cities within them to adopt comprehensive plans and development regulations that meet 14 goals and a number of requirements. The goals include conservation of productive forest and agricultural lands and discouragement of incompatible uses;[14] encouragement of development in urban areas where adequate public facilities and services exist or can be provided efficiently;[15] and reduction of sprawl.[16]

TDR programs are recognized and encouraged in the GMA as an innovative land use management technique[17] that transfers development from areas a community wants to conserve to urban areas where growth should be encouraged, consistent with GMA goals. All four central Puget Sound counties have adopted a TDR program, as have a number of cities and a few other counties around the Sound. Statewide, 27 programs have been adopted.[18] Seventeen of these are regional TDR programs, meaning that TDRs are authorized to transfer across jurisdictional lines between a county a city.

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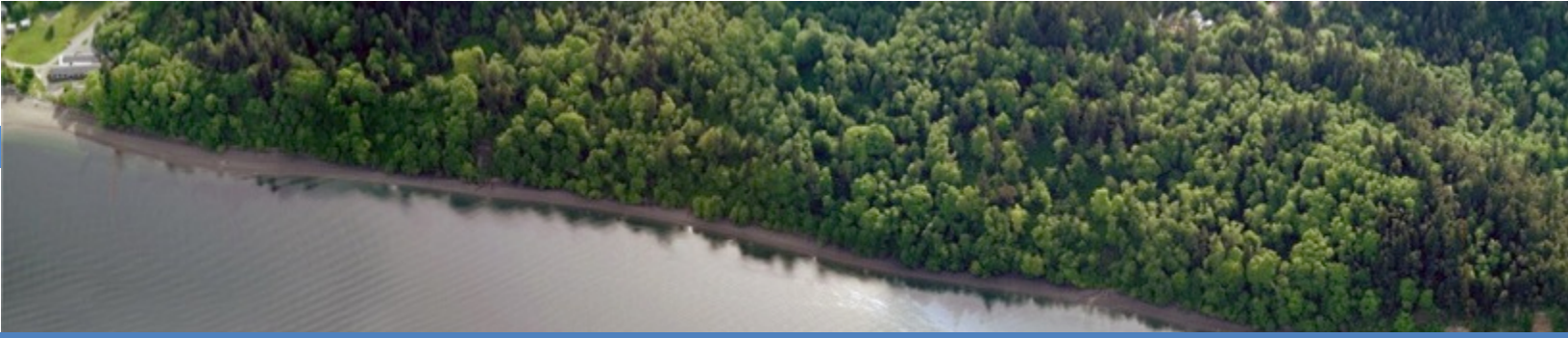
[12] The 2012 Action Agenda for Puget Sound, Puget Sound Partnership.
[13] *State of the Sound 2007*, Puget Sound Action Team.
[14] RCW 36.70A.020(8)
[15] RCW 36.70A.020(1)
[16] RCW 36.70A.020(2)
[17] RCW 36.70A.090
[18] For an inventory of TDR programs adopted in Washington State, see *Transfer of Development Rights (TDR) in Washington State: Overview, Benefits, and Challenges*.

Most of the Washington State programs are aimed at agricultural land preservation or environmental protection. Some reflect other goals, such as affordable housing (Seattle), historic preservation (Seattle and Vancouver), and watershed protection (Whatcom County). Programs that have protected the greatest amount of acreage for conservation are located in King County.



King County

Conservation Goals

The King County Comprehensive Plan, which recognizes the many values of forest lands, commits to promoting forestry and reducing conflicts with resource uses, and calls for conservation of working forest through acquisition of development rights and for King County to demonstrate leadership in the provision of a regional open space system. King County committed to conserve 200,000 acres of forest landscape as part of the 2004 Cascade Foothills Initiative. With its latest acquisition in the White River, as noted below, it has met that target.

TDR in the Tool Box

King County developed a pilot TDR program in 1988. The King County Council directed the Department of Natural Resources and Parks to develop a TDR program for implementation through a community planning process.

- A "Transfer of Development Credits" (TDC) program was established, which allowed density transfers only into unincorporated urban residential areas of King County.
- This early program allowed both urban and rural sending sites.
- The code provided for a 1:1 transfer ratio.
- Sending sites were required to subtract unbuildable acreage prior calculating TDCs, e.g. wetlands, streams, steep slopes.
- Sending sites in the R-1 zone were initially only allocated 1 TDC per acre (now 4 TDRs/acre); and rural receiving sites were allowed in Rural Area 2.5 and 5 acre zones.

Between 1988 and 1995 only one transfer was completed.

In March 1996, the Council appropriated $125,000 to match $125,000 from the Washington State Legislature to fund a "Transfer of Development Rights Receiving Area Plan" which included a market analysis and public process. The King County Comprehensive Plan policies called for the TDR mechanism to allow rural to rural transfers as well.

A 1997 Receiving Area Plan process resulted in revisions to the TDR program:

- Market analyses indicated a need for a 2:1 transfer ratio to encourage transfers from rural areas into urban areas.

- Identified a need to establish a "regional" TDR approach whereby cities would be compelled to participate and the need to pursue a pilot program with a city within King County to work out the model.
- Identified the need to establish a TDR Bank to help finance transactions countywide.

In 1999, the Council appropriated $1.5 million to the TDR program to purchase and "deposit" credits in the King County TDR bank. The King County Council also:

- Authorized a series of pilot projects focused on reaching agreements with cities to accept additional density.
- Dedicated $500,000 as amenities to urban communities willing to accept rural density credits.

The Council converted the pilot program in July 2001 into permanent status and established much of the TDR code language in current code. Major changes included:

- Changed name from Transfer of Development "Credits" to "Rights."
- Focused efforts into cities, with TDR bank and amenity funding language.
- Established a 2:1 transfer ratio for "rural" TDRs (i.e., two additional urban units per one rural unit transferred).
- Removed language that netted out unbuildable sensitive areas.
- Removed urban sending sites (except for properties with R-1 zoning).
- Changed the Rural Area one acre zoning allocation to 4 "urban" TDRs per acre.
- Allowed properties in the Agricultural (A) zone to transfer one TDR per five acres rather than at density allowed by zoning.

Also in 2001, the County successfully negotiated and entered into interlocal agreements with the cities of Seattle and Issaquah. Under the Seattle agreement, 68 TDR credits were transferred and used in projects in South Lake Union such as the Olive 8 and Aspira. That agreement sunset in 2006, but the County is working with Seattle to adopt a new interlocal agreement. Sixty-three TDR credits were transferred and used in the Issaquah Highlands development to build an additional 8000 square feet of commercial floor area per TDR credit. The Issaquah agreement is still in place, but is being updated.

In the ensuing years up through 2008, the program showed meaningful market results and significant land protection. During that time period 54 private transactions occurred. Private credits are those credits that have been purchased directly by a private developer from a landowner. Those transactions resulted in 411 TDR private credits being bought and sold.

In 2008, King County Council adopted the new comprehensive land use plan with a host of new TDR policies and code language. Some of these policies include:

- Use of TDRs to help meet greenhouse gas emissions targets for new development projects.
- Use of TDRs to satisfy traffic concurrency requirements for development in rural areas.
- Higher transfer ratios in Rural Area 10 acre zones.

However, in 2008 the market plummeted with the economy, resulting in zero TDR transactions for the year. Since development demand drives the TDR market, the TDR market directly reflects the oscillations in the local real estate markets. There have been a few transactions since 2008, but the market has remained slow.

The better news is that the TDR market, over the medium and longer terms (3-10 years), has tremendous potential for growth. As the housing market continues to strengthen in King County, as it will undoubtedly do with the County as a regional and international employment center, developer demand for additional density via TDR will also grow.

TDR Transactions

King County has issued certificates for development rights from significant tracks of land, with some acquisitions using the TDR bank. The first major acquisition was from Hancock Timber for the Snoqualmie Tree Farm in 2004. The County acquired 990 TDRs, conserving 91,354 acres of forest land. TDRs from the County's purchase of development rights form the 250-acre Sugarloaf Mountain in the Cedar River watershed – Seattle's watershed – were used by developers in Seattle's Denny Triangle per the initial interlocal TDR agreement between King County and Seattle.

King County issued 514 TDR certificates to Plum Creek in 2008 in the Green River watershed for 45,000 acres of forest land – the City of Tacoma's watershed. The company will still own, manage and be able to log its land in southeast King County, but future housing development is precluded forever, and no tax money is involved.

In 2009, King County bought the development rights on 4,000 acres at the headwaters of the Raging River for approximately $3.6 million. The state Department of Natural Resources purchased an estimated $22 million for the entire property from Fruit Growers Supply, which will remain in forest production. These development rights are being held by King County's TDR bank for future sale into the Bel-Red Corridor per the King County-Bellevue interlocal agreement adopted in 2010.

TDR enabled the owners of the "Nature's Last Stand" farm, the husband-and-wife team of John Huschle and Anna Davidson, to buy the land in order to keep it active as a farm that provides locally grown food for years to come. The farm has consistently supplied Seattle's farmers markets with fresh local food for over 16 years. They had been leasing for years, but were able to buy this land in 2010 because the sale of the development rights from the property made the land more affordable.

King County Executive Dow Constantine and the Camp Fire USA Central Puget Sound Council signed a land preservation agreement in 2011 that will permanently protect one mile of pristine Puget Sound shoreline on southwest Vashon Island from development and allow Camp Sealth, a recreational and environmental education camp, to continue its legacy of providing the region's youth with fun and

educational outdoor activities. EPA funds, through King County's Watershed Management Assistance (WMA) grant, helped the County purchase the Camp's development rights. The City of Normandy Park has entered into an interlocal agreement with King County to accept these rights in its Manhattan Village subarea. Normandy Park also used WMA grant funds from King County and Commerce to complete the Manhattan Village subarea plan and rezone.

King County and Puget Consumers Co-op Farmland Trust partnered in 2012 to acquire development rights and preserve the 110-acre Carnation-area Jubilee Farm, one of the region's largest and longest-running community-supported agriculture operations. King County's TDR Program and the trust contributed equal amounts of funding to complete the $340,000 deal and preserve the 107-acre Jubilee Farm.

In March 2013, King County Executive Dow Constantine announced that he had reached an agreement with Hancock Timber to permanently protect 43,000 acres of the White River Forest east of Enumclaw from development. This project received the Governor's Smart Communities Award for implementing a comprehensive plan in June 2013.

The White River Forest has been managed as a working forest for nearly 100 years. Until this project was complete, it was the largest swath of unprotected forestland remaining in King County. The $11 million deal used $9.89 million in Conservation Futures Funds and $1.25 million in Parks Levy Funds.

Along with previous conservation easements secured at Snoqualmie Forest, Raging River Forest and Plum Creek Forest, as well as other King County-owned forestland, and city, state and federally owned forest lands, conservation of the White River Tree Farm completed a "wall against sprawl" ensuring public conservation of a nearly contiguous north-south wall of forestland in eastern King County.

Work with the Cities – Creating More Capacity

As a result of the County's success with acquiring development rights for the bank and issuing certificates, the County has needed to work with more cities to develop the market capacity for accepting these development rights.

During the economic downturn years, the County worked diligently with cities to increase the receiving area capacity for TDR credits for when the market rebounds. This work has included cities within both King and Pierce Counties.

King County successfully negotiated and adopted an interlocal agreement with the City of Bellevue to receive credits in the Bel-Red Corridor Plan in 2010. In 2011, the City of Sammamish adopted and the County approved an interlocal agreement to accept TDR credits in the City's Town Center.

King County received an EPA Watershed Management Grant to acquire development rights, and to work with Pierce County and the cities of Normandy Park, Tacoma and Puyallup on regional TDR. This has resulted in the Cities of Tacoma in 2012 and Normandy Park in 2013 agreeing to accept development rights from the County.

The County has been working with the cities of Seattle and Issaquah on updated interlocal agreements to accept development rights with funds for the cities from the Commerce EPA grant. The county received an NEP Watershed Protection and Restoration Grant from Commerce and Ecology in 2012 to work with the City of Kirkland on an interlocal agreement. The County is also pursuing an interlocal agreement with the City of Bothell.

Pierce County

Conservation Goals

Pierce County adopted its Agriculture Strategic Plan in 2006 to increase the economic viability of agriculture in response to the loss of agricultural land, especially along the urban fringe. Pierce County has enjoyed a long tradition of agriculture – some family farms are over 100 years old. The focus of agricultural activity has long centered on the Puyallup Valley, which benefits from fine silty and sandy, alluvial soils. Much of the production of vegetables, berry fruits, nursery plants and other crops remains concentrated here. Yet agriculture is present in other parts of Pierce County, too.

In Pierce County, industry observers confirmed that the amount of land devoted to agricultural production is declining. About 48,000 acres of agricultural land remain, with 29,000 of these acres still in production. Farmland, especially sites with highly productive soils in the Puyallup Valley, is being converted for developed uses. Upland pasture land is also being developed. A systematic examination of the local agricultural sector resulted in a number of recommended strategies, including TDR.

The countywide planning policies and county Comprehensive Land Use Plan call for a TDR program to provide public benefits by permanently conserving resource and rural agricultural lands, in addition to recreational trails, open space and habitat areas.

TDR in the Tool Box

The 2006 Washington State Legislature appropriated funds for TDR pilot programs in Pierce and Snohomish counties. Each county received $100,000. Pierce County used the funds to hire Forterra to develop a TDR program. The program was adopted in 2007 and went into effect in April 2008.

Designated sending areas include:

1. Agricultural Resource Land or Rural Sensitive Resource.
2. Forest Lands.
3. Alderton-McMillin or Mid-County Community plan areas zoned as rural residential, meeting statutory definition of open space, and used for agriculture.
4. Private land that extends or is close to and enhances public trails systems.

5. Land identified as habitat for species listed by Washington Department of Fish and Wildlife, U.S. Fish and Wildlife Service or a tribe, and is appropriate for preservation or acquisition.
6. Recreational Conservation Lands.
7. Lands designated in an interlocal agreement with a city.
8. Tribal lands that meet one of the above criteria.
9. Conservation Futures properties that meet criteria 1- 8.
10. Washington State Department of Natural Resources trust land that meets criteria 1-7.

Agricultural Resource Land and Rural Sensitive Resource in the Alderton-McMillin and Mid-County Community plans are high-priority sending sites.

Receiving areas within the County include rural areas and expansions of the UGA – any time an upzone is requested in the unincorporated area, the applicant must go through the comprehensive plan amendment process and use TDR if the amendment is approved. Maximum densities may be achieved in Major Urban Centers, Community Centers, and Mixed-Use Districts with TDR.

The program provides for a TDR bank to facilitate transactions between landowners and developers.

In the last two years, the King County EPA funds have been crucial for Pierce County to:

- Identify, map, and prioritize ecological sending sites.
- Establish TDR bank administrative procedures, process, and tracking and monitoring of certificates.
- Appraise four identified priority TDR sending sites in Pierce County.
- Use site economic analysis provided by the appraisal data to establish a TDR Transfer Ratio with the City of Tacoma.
- Provide opportunities to seek out and build partnerships to leverage funding for other acquisitions (i.e., Puget Consumers Co-op Farmland Trust, Forterra).
- Consummate a conservation easement for the Reise Farm Site and sign agreements with Puget Consumers Co-op Farmland Trust to receive 73 development rights.
- Coordinate and collaborate with the Regional TDR Alliance partners.

TDR Acquisitions

Pierce County's first TDR acquisitions were conducted by Forterra in 2009. Together these totaled 30 development rights representing 90 acres of habitat and forest land.

Forterra used state capital funds to purchase the development rights on 25.75 acres owned by the Van Eaton family near Eatonville. The property is 94 acres in total and had been historically managed as a working forest, last harvested in the 1980s. To complement the TDR acquisition, Forterra partnered

with Nisqually Land Trust, which purchased the fee ownership of the property with a goal of maintaining it as working forest. The fee acquisition occurred in phases, and was completed in 2012.

Forterra also purchased six development rights on 64.38 acres from the Soler family in South Prairie.

Pierce County received funds through the King County EPA grant that leveraged County Conservation Futures funds to acquire development rights for its TDR bank. The EPA funds were crucial to consummating a signed conservation easement for the Reise Farm Site, and signing agreements with PCC Farmland Trust to receive 73 development rights. The County acquisition of the development rights reduced the development value of the property, allowing Puget Consumers Co-op Farmland Trust to buy the property at an affordable price.

The Reise Farm is a 120 acre working farm and habitat. A local farmer currently leases the site and produces blueberries, corn, pumpkins and squash for sale in local markets. The blueberries located in the central portion of the property are approximately 70 years old, and some of the varieties are considered heritage species. The property also contains habitat values, with forested wetlands and the headwaters of Ball Creek that drains into the main stem of the Puyallup River. Much of the property is within 1000 feet of the urban growth area (UGA), and was highly threatened with the pressure to convert prior to Puget Consumers Co-op Farmland Trust partnering with the County to buy the property.

The acquisition of the development rights by the County is the first deposit in the county TDR bank. The rights can be sold to a developer, generating funds to acquire additional development rights from county farm, forest land, and habitat.

The County is actively negotiating with additional landowners to complete acquisition of farmland in priority sending areas.

Work with the Cities

Pierce County worked with the Cities of Tacoma and Puyallup on interlocal agreements with the King County EPA grant funds. The County was successful in partnering with Tacoma on development of a market study. The County's work with the City resulted in adoption of an interlocal agreement to transfer development rights from the County to the City in 2012. The interlocal agreement with Pierce County provides for the acceptance of 369 TDR credits from the County, at which point the agreement will be reviewed and may be extended by the two jurisdictions.

County staff have engaged in discussions with elected officials, planning staff and city managers of Fife and University Place regarding the possibility of TDR programs.

Snohomish County

Conservation Goals

Conservation of agricultural and forest land has been an important goal for Snohomish County for more than three decades. The County has implemented a number of regulatory and incentive programs to conserve farm and forest land. Incentive programs include Purchase of Development Rights, open space taxation, and Focus on Farming. Focus on Farming is a website maintained by the County Economic Development Division that serves primarily as a one-stop business information site for anyone working in Snohomish County's agricultural industry.

TDR in the Tool Box

Snohomish County entered into its first interlocal agreement in 2006 with the City of Arlington to conserve farmland in the Stillaguamish Valley adjacent to the City. In exchange for an expansion of the UGA, the County entered into an interlocal agreement with the City to transfer development rights from the Stillaguamish Valley to the extended UGA. However, due to development constraints in the expanded UGA, no transfers have occurred since the agreement was adopted.

Snohomish County used the 2006 state pilot program funds to develop a countywide TDR program, but did not adopt the program due to opposition from landowners and developers. Snohomish County did adopt a provision in 2009 that would allow the County to designate additional sending areas by Council motion, with possible future consideration of a countywide program. There were no receiving areas specified for the new sending areas.

In May 2010, the County developed new policies and regulations for increased density in designated Urban Centers in the unincorporated UGA. The policies include designation of Urban Centers as TDR receiving areas, increasing the capacity for the County to accept development rights. Zoning regulations set minimum, maximum, bonus, and super bonus zoning limits. If developers wish to build above maximum base zoning they can do so by choosing from a table of incentives (including TDR) to gain additional density. The code update also creates a density fee that developers can pay in lieu of incorporating bonus features into the project.

The County hired Forterra to review its PDR and TDR programs, and to make recommendations for a countywide TDR program that would look at expanding the designated sending areas for conservation. One objective was to identify ways in which the County's PDR and TDR programs could not only be made more effective individually, but how they could better work together. In May 2011, Forterra made a number of recommendations for better implementation of the TDR program, including criteria for establishing sending areas, encouraging cities to pursue TDR policies that protect county sending areas, and revising exchange ratios and bonus densities in county receiving areas. Forterra also recommended that the County retain private transactions as its only market mechanism with county support in response to stakeholder preferences.

The County adopted revisions to its TDR program to expand the program countywide in October 2012 as follows:

- Designating all future UGA expansions that add residential land capacity as TDR receiving areas.
- Designating all Urban Centers as TDR receiving areas and requiring development approvals in Urban Centers to be consistent with TDR policies.
- Allowing owners of qualifying rural land to opt into the TDR program and have their land re-designated as resource land.
- Allowing lands to be added to the commercial farmland designation as part of the TDR program if they are at least five acres.
- Adding policies for continuing the Arlington pilot program and administering it independently of the countywide TDR program.
- Under the countywide TDR program, designating all designated farm and forest land is as a TDR sending area.
- Allowing the County to designate additional sending areas for the countywide TDR program by interlocal agreement, development agreement, or code amendment.
- Allowing density greater than allowed by the current comprehensive plan and development regulations in receiving areas only through participation in the TDR program.

TDR Acquisitions

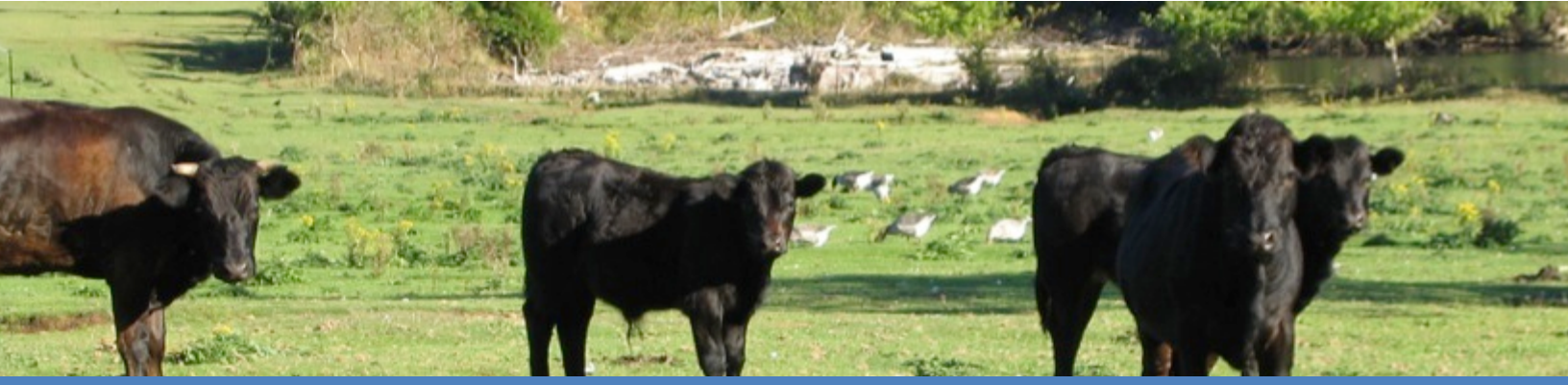
Snohomish County used Conservation Futures funds to purchase development rights from a farm in the Stillaguamish valley. The County spent approximately $2.1 million to acquire 49 development rights from 74 acres. The goal is to transfer these rights into Arlington through the County's TDR pilot program with the City.

In 2009, Forterra acquired 17 development rights on 60.89 acres of the Hidden Valley Camp with state capital funds. The camp, which is nestled in the Cascade Mountain foothills and is bordered on three sides by state Department of Natural Resources land, manages its property for forestry in addition to camp operations.

Work with the Cities

Snohomish County worked with four cities that were awarded Commerce EPA grants to plan for receiving areas – Arlington, Everett, Mountlake Terrace, and Snohomish. The original intention was to update the existing interlocal agreement with Arlington. However, the County decided that adoption of the Commerce Interlocal Terms and Conditions Rule would require it to adopt only once rather than adopting separate interlocal agreements with the cities. The Cities of Arlington and Mountlake Terrace agreed, and have adopted the rule. The Commerce rule is currently under consideration by the County.

The County and City of Snohomish chose to adopt an interlocal agreement rather than the rule as negotiations had been ongoing prior to the EPA grant. The City adopted the interlocal agreement in July 2012, and the County adopted it in January 2013.



Kitsap County

Conservation Goals

Kitsap County adopted its Strategic Agricultural Plan and Inventory in August 2011. Kitsap County has a long history of addressing elements of the food system through interactive roundtables, community plans, surveys of farm producers and other public outreach to the agricultural community. With the assistance of a $25,000 grant from the Washington State Conservation Commission, Kitsap County was able to combine and overlay these efforts into a strategic community-based agricultural plan.

The plan recommends a number of strategies to assess viable ways to preserve farmland countywide and bolster the food chain. One strategy would expand Comprehensive Plan policies and development regulations regarding local farming and foods, including refocusing the transfer of development rights program.

TDR Program

Kitsap County adopted TDR regulations in December 2006 as part of an update of its comprehensive plan, development regulations, and zoning. The regulation designated all parcels located within rural designated lands and zoned Rural Wooded, Rural Residential, Rural Protection, or Forest Resource as sending areas based on their zone's permitted density. Receiving areas are limited to urban growth areas and rezones to a higher density. UGA expansions may also require TDR at the discretion of the Board of Commissioners.

Part of the TDR program was appealed to the Growth Management Hearings Board. In August 2007, the hearings board determined the program was partially invalid and non-compliant with the Growth Management Act (GMA). The board decision directed the County to resolve the TDR Program as it relates to the 40-year period of development right reuse. On February 13, 2008, the Board of County Commissioners deliberated and approved a modified TDR program that clarified Comprehensive Plan policies of the program's overall intent, and replaced a 40-Year deed restriction for property development right reuse with a provision that the conservation easement must be in perpetuity.

Using EPA funds passed through Port Orchard from Commerce, the County revisited its TDR sending area designations and developed new goals and policies for conserving agricultural land utilizing TDR. These amendments were approved by the Board of County Commissioners in December of 2012. The County also developed code to further its receiving site program that would incentivize agricultural land for TDR use with a ratio of 2:1. These proposed regulations will be rolled up into the County's next GMA update process for consideration.

No transfers have occurred under the current program.

TDR Policy Advisory Committee

In the 2007 session, the Legislature passed Second Substitute House Bill 1636, calling for the creation of a regional TDR marketplace and program that builds upon existing programs. The legislation codified in Chapter 43.362 RCW directed Commerce to establish an advisory committee that included a wide-cross section of stakeholders, including counties, cities, farmers, developers, environmentalists, realtors, and others.

The TDR Policy Advisory Committee adopted a consensus set of recommendations in a December 2008 report to the Legislature and the Governor[19]. The recommendations support the concept of creating a voluntary, incentive-based regional TDR program in the central Puget Sound region that is separate, but compatible, with existing local TDR programs. However, given the financial status of cities and counties, the committee believed that the state needed to provide some financial and technical assistance incentives in to generate a sufficient number of transactions to address the conservation need.

Some of the advisory committee's recommendations were enacted in Second Substitute House Bill 1172 during the 2009 session and codified in amendments to Chapter 43.362 RCW. This bill was legislation requested by Commerce. The bill had the Governor's support contingent upon finding a source of funding other than state funds. Key provisions of the bill included:

- Sending areas are limited to county-designated natural resource and rural lands.
- Receiving areas are limited to cities.
- Participation is voluntary.
- Commerce is directed to develop a clearinghouse of TDR resources on its website.
- Commerce is directed to develop an interlocal terms and conditions rule that counties and cities may adopt by reference in lieu of an interlocal agreement to facilitate cross-jurisdictional TDR transfers.

[19] *Creating a Regional Transfer of Development Rights Program in Central Puget Sound: Recommendations from the Transfer of Development Rights Policy Advisory Committee*, December 2008.

EPA Grants for TDR

Consistent with the Governor's direction regarding HB 1172, the Legislature did not include any of the financial incentives that were recommended by the Policy Advisory Committee – namely, funding for Commerce to implement the program under HB 1172, financial incentives for cities to develop TDR programs, and financial incentives (such as infrastructure funding) for cities that accept transfers from county-regulated lands. The legislation provided for implementation contingent upon finding another funding source.

West Coast Estuary Initiative Grant – The Regional TDR Alliance

Recognizing the state could not provide funding for the regional program, a set of partners applied to the U.S. Environmental Protection Agency (EPA) for a West Coast Estuary Initiative grant in 2008. Partners included the Puget Sound Regional Council (PSRC) as lead applicant, King County, Pierce County, Snohomish County, Forterra, and Commerce. The partnership was successful and a $570,000, two-year grant (with $200,000 in local match) was secured to implement the regional TDR program.

Key provisions of the grant included:

- Presentation and marketing materials to recruit participation from cities, landowners, and developers.
- Technical assistance materials for cities and counties.
- A Commerce website with a clearinghouse of TDR resources for cities and counties, and performance measures report.
- Commerce and PSRC provision of direct technical assistance to cities and counties.
- Assistance for Snohomish and Pierce Counties to continue to develop and implement their programs.
- A Commerce rule that cities and counties could adopt by reference in lieu of an interlocal agreement to transfer development rights.
- Outreach to landowners and developers.
- PSRC provision of GIS/quantitative analysis and performance measures

The grant partners met quarterly during the course of the grant to track progress, share information and coordinate outreach to the cities. This included the development of regional TDR brochures, and a series of workshops in all three counties, plus Kitsap County. As a result of this collaboration, the partners agreed that the proper description of their work was the "Regional TDR Alliance" rather than

a program. This was because there was no formal state program and the work was being done through an alliance of the county TDR programs, rather than a single regionally-adopted program.

PSRC administered the grant, organized and led the TDR Alliance meetings, worked with Commerce on technical assistance, and provided quantitative analysis on growth and economic trends in sending and receiving areas. This included a natural resource lands trends report in 2011 that explores the resource land designation criteria, changes in the amount of land, changes in designations, residential development, and parcel sizes of resource designated land in the four counties[20].

Snohomish County used the funds to enhance its TDR program by designating additional sending areas, to work with the City of Snohomish on an interlocal agreement, and to identify additional county receiving areas in its urban centers. Pierce County worked to implement the program it had adopted in 2008, establishing a TDR bank and administrative procedures. King County used the funds from the grant to assist Pierce and Snohomish Counties in the further development and implementation of their programs.

Forterra continued to work with jurisdictions in the region to implement new TDR programs, including the Cities of Sammamish, Snohomish, and Tacoma. It also continued to work with jurisdictions seeking to improve their TDR programs, including Pierce County and the City of Seattle.

Commerce developed and maintains a website with TDR resources at www.commerce.wa.gov/tdr. Commerce adopted the Interlocal Terms and Conditions Rule[21] for cities and counties to adopt in lieu of an interlocal agreement to transfer development rights in September 2010, with sample resolutions for counties and cities and an Interlocal Agreement Checklist posted on the website. Commerce worked with the partners to develop performance measures that are posted on the website. All tasks and deliverables were completed and the grant ended in June 2012.

Watershed Management Assistance Grant – City Planning for TDR Receiving Areas

Recognizing that cities still need incentives to participate in a regional TDR program, the TDR Alliance partners coordinated to apply for two separate Watershed Management Assistance Grants to implement the 2008 Action Agenda. The Action Agenda specifically called for support of the regional TDR program[22]. The results of those efforts are the main focus of this report (see City Case Studies),

[20] See *Natural Resource Lands Trends in Central Puget Sound*.
[21] Chapter 365.198 WAC.
[22] Near Term Action A.2.9 - Support and implement recommendations from the Washington State Department of Community, Trade, and Economic Development TDR Policy Advisory Committee. Prioritize state funds for cities with TDR programs, and provide funds for counties and cities to implement TDR programs or to complete Environmental Impact Statement/State Environmental Policy Act (SEPA) analyses within TDR-receiving neighborhoods.

with additional related information about other regional TDR efforts to paint the full picture of regional TDR in Puget Sound.

PSRC, Commerce, and Forterra partnered to apply for a grant to pass through to cities to plan for TDR receiving areas. The partners were successful and received an award of $1 million (with $333,000 in match from Commerce and Forterra) that was passed through Commerce in grants to 10 cities. For ease of reference, these are referred to as "Commerce grants" in this report as Commerce directly administered the grants.

King and Pierce Counties partnered to apply for funds for each of the counties to acquire development rights for their respective TDR banks and for administrative processes, as well as to partner with four cities to plan for TDR receiving areas. They received an award of $1 million to fund these efforts. Half of the funding went to cities for developing TDR capacity and partnerships with cities. King County used the funds to acquire development rights from Camp Sealth on the shoreline of Vashon Island, and to develop interlocal agreements with the Cities of Normandy Park and Seattle.

For Pierce County, the funds have been crucial to establishing administrative procedures, appraising priority sending sites, consummating conservation easements, and signing agreements with Puget Consumers Co-op Farmland Trust to receive development rights. For ease of reference, the grants to the three cities are referred to as "King County grants" as King County was the lead applicant and grant administrator for the partners.

The cities were awarded funds from the Commerce and King County grants for TDR planning as follows:

- Arlington – Commerce funding for up-front environmental analysis, capital facilities planning, market analysis, policy development, and working towards an updated interlocal agreement with Snohomish County for the West Arlington subarea for TDR (Commerce $130,000).
- Everett – Commerce funding for a feasibility study of what will make TDR receiving areas viable (Commerce $30,000).
- Issaquah – Commerce funding for up-front environmental analysis, market analysis, and working towards an updated interlocal agreement with King County for a TDR receiving area in the Central Issaquah Subarea plan (Commerce $100,000).
- Mountlake Terrace – Commerce funding for a planned action EIS and ordinance, sending and receiving area identification, subarea planning, market analysis, and working towards an interlocal agreement with Snohomish County for a TDR receiving area around the new transit center and in the Freeway/Tourist District (Commerce $100,000).
- Normandy Park – Commerce and King County funding for a market study, planned action EIS and ordinance, subarea planning, zoning and design guidelines, TDR regulations, stormwater low-impact development planning, and working towards an interlocal agreement with King

County for TDR in Manhattan Village, the future downtown (Commerce $100,000 and King County $49,000).

- Port Orchard – Commerce funding for TDR policies and regulations for a receiving area in the downtown, sending and receiving area identification, and working towards an interlocal agreement with Kitsap County (Commerce $97,000).
- Puyallup – Commerce and King County funding for a planned action EIS and ordinance, TDR policies and regulations, and working towards an interlocal agreement with Pierce County for receiving areas in downtown and South Hill (Commerce $100,000 and King County $119,000).
- Seattle – Commerce funding for a market analysis, subarea planning and TDR policies and regulations, and working towards an interlocal agreement with King County for South Lake Union and Northgate (Commerce $153,100). Seattle was awarded additional unspent funds from the cities to develop cost estimates and engineering design for priority LCLIP projects in South Lake Union (Commerce $65,000).
- City of Snohomish – Commerce funding for water utility planning for a TDR receiving area, and working towards an interlocal agreement with Snohomish County in the Pilchuck District (Commerce $100,000).
- Tacoma – Commerce and King County funding for a market analysis of mixed-use centers as regional TDR receiving areas, a draft code for the City TDR program that incorporates in-city and county-based TDR receiving sites, subarea planning and upfront environmental review for a TDR receiving area in the Hilltop/Martin Luther King Mixed-Use Center, and working towards an interlocal agreement with Pierce County (Commerce $100,000 and King County $109,000).
- Bothell and Sammamish – King County used unspent grant funds for the Cities of Bothell and Sammamish to complete studies of the feasibility of participating in LCLIP (King County $39,000).

National Estuary Program Puget Sound Watershed Protection and Restoration Grant

The state Department of Ecology (Ecology) and Commerce are managing funds received from EPA to coordinate a six-year implementation strategy to protect and restore watersheds that drain into Puget Sound. This strategy is based on working in partnership with local and tribal governments and other regional entities to implement practical solutions that advance the priorities of the Puget Sound Action Agenda. Commerce and Ecology are implementing programs across four activity areas, including land use and working lands. After two rounds of competitive grant awards, grants have been awarded for land use and working lands that includes work on TDR programs as follows:

- Skagit County is working to study and develop a countywide TDR program to conserve natural resource lands. The County will consider county receiving areas, but it also working with the City of Burlington as a possible recipient of regional TDRs from the County.
- King County is integrating regional TDR and programmatic compensatory mitigation actions, and will demonstrate how these two distinct efforts can be combined to accomplish greater

environmental benefits at lower costs to taxpayers than when used in isolation. The County is also working with the City of Kirkland to develop a TDR interlocal agreement.

- Snohomish County adopted countywide TDR policies, and is now working on development regulations to implement those policies.
- The Cities of Tacoma and Mountlake Terrace are conducting studies of the feasibility of participation in the Landscape Conservation and Local Infrastructure Program.

Forterra Acquisitions and TDR Resources

In 2007, the Washington State Legislature appropriated $4 million for Forterra to work with family forestry organizations and local governments to demonstrate proof of concept for transferring, securing, or leasing development rights and conservation easements from forest landowners who want to keep their lands in forest management.

$1 million in state general operating funds was used by Forterra to work with landowners, developers and counties to develop TDR programs that would allow the acquisition and transfer of development rights from family forest land. The funds were also used to develop a series of white papers to assist the TDR Policy Advisory Committee in their deliberations, and to produce a TDR resource guide[23].

Most of $3 million in state capital funds was used by Forterra to acquire development rights in Snohomish, Pierce and Kittitas Counties. Upon the sale of those rights, Forterra must deposit the proceeds into a revolving account for the acquisition of more development rights. To date, 151 acres of family forest land in Pierce and Snohomish counties have been conserved with these funds. Commerce managed the contracts for these funds that ended June 30, 2009.

[23] See the Regional TDR webpage at www.commerce.wa.gov/tdr.

Landscape Conservation and Local Infrastructure Program

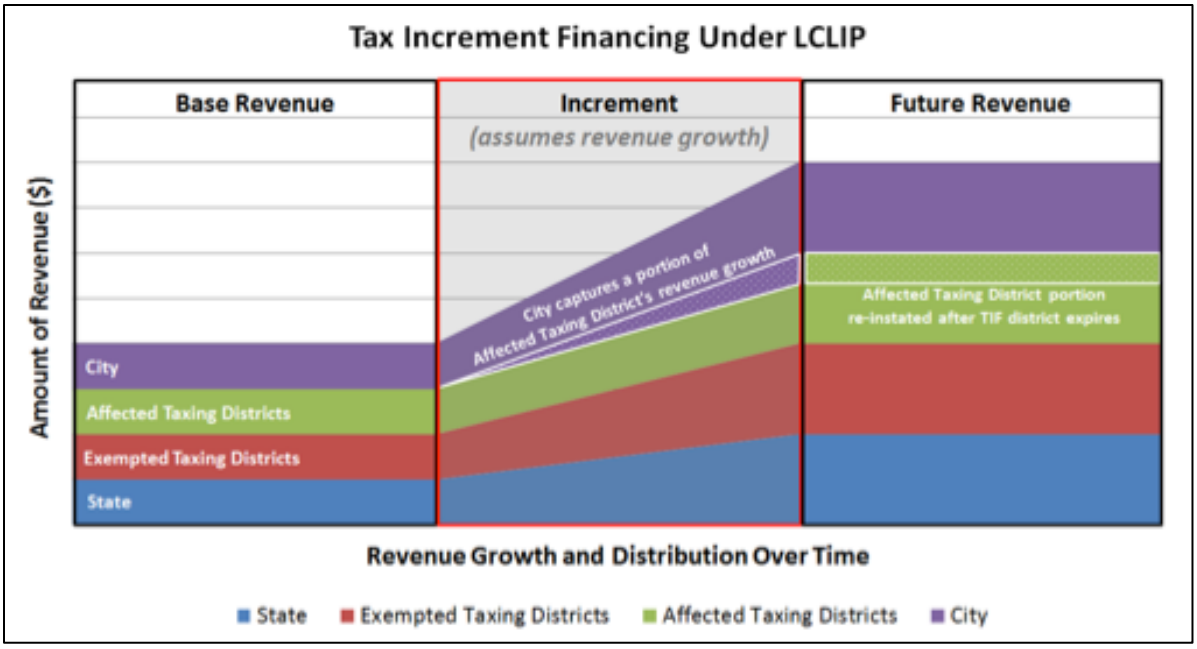
One of the greatest challenges for cities planning for increased density in TDR receiving areas, and increased density in general, is funding for the infrastructure to support that increased density. Reductions in federal, state, and local revenues due to legislation, citizen's initiatives and the economy have exacerbated the problem.

The Landscape Conservation and Local Infrastructure Program (LCLIP) legislation passed by the legislature and signed into law by the Governor in 2011 provides a financing tool for certain cities in King, Pierce, and Snohomish Counties to invest in infrastructure in designated TDR receiving areas. Eligible cities are cities with a population and employment of 22,500 or more in the three counties. Consistent with the regional TDR program in Chapter 43.362 RCW, transfers must be from county sending areas to incorporated city receiving areas.

King, Pierce, and Snohomish Counties were required to calculate the number of development rights from agricultural and forest land of long-term commercial significance eligible for transfer to receiving areas as of January 2011. Counties that have conserved at least 50 percent of their agricultural and forest land of long-term commercial significance may identify an additional 1,500 development rights from designated rural land with high conservation values[24]. The counties reported the total number of transferable development rights to the Puget Sound Regional Council (PSRC) by September 1, 2011. In consultation with the eligible counties and receiving cities, PSRC allocated the development rights among the eligible receiving cities based on growth targets, as determined by established growth management processes, and other relevant factors[25].

A city may choose to participate in the program by accepting all or at least 20 percent of its allocated share of development rights, adopting a plan for infrastructure in the receiving area sufficient to utilize its TDR obligation, and creating one or more local infrastructure project areas. The bill provides an incentive for cities to agree to accept more than 20 percent of their allotment of TDR (from PSRC's process) – or more than 20 percent for their "sponsoring city allocated share". The city may receive proportionately more tax revenues if they accept a higher percentage of the allocated share.

[24] To date, King County is the only county that has reached the 50 percent threshold.
[25] For more information about the regional allocation by PSRC, see Appendix A.



As of the date of this report, eight cities are either implementing LCLIP, considering LCLIP adoption, or are evaluating LCLIP's feasibility – Seattle, Bothell, Issaquah, Sammamish, Kirkland, Mountlake Terrace, Tacoma, and Bellevue.

What's Next for Regional TDR?

More Counties and Cities Working on TDR

As noted above, more counties and cities are working on regional TDR programs using EPA Watershed Protection and Restoration Grants. King County is recruiting more city partners, using the LCLIP tool, to accomplish its goal of achieving a critical mass of development capacity for regional TDRs. King County is also working to integrate its regional TDR program with programmatic compensatory mitigation actions. The County will demonstrate how TDR and compensatory mitigation can be combined to accomplish greater environmental benefits at lower costs to taxpayers than when used in isolation.

Snohomish County is using its grant funds to implement its newly adopted countywide TDR program, including work with the cities. Skagit County is working with the City of Burlington to consider regional TDR. The Cities of Mountlake Terrace and Tacoma are evaluating the feasibility of participation in LCLIP.

Forterra continues to work with the counties and to reach out to the Cascade Agenda cities to consider participation in TDR.

Infrastructure Funding Needs for Cities

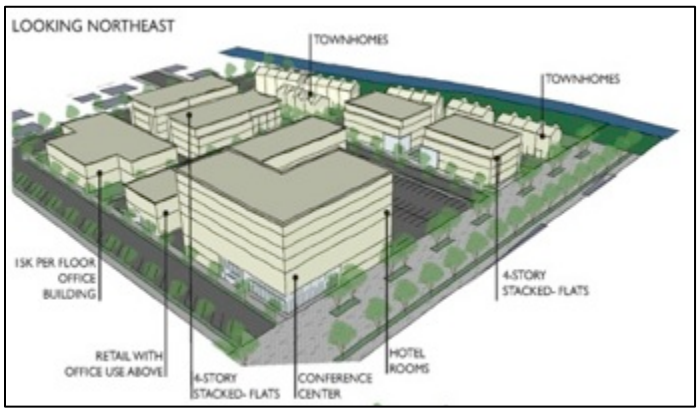
The biggest challenges remain resources for local governments to implement TDR, but especially for cities planning for increased development capacity. Infrastructure financing is still difficult to obtain as federal, state and local legislators deal with ongoing budget issues.

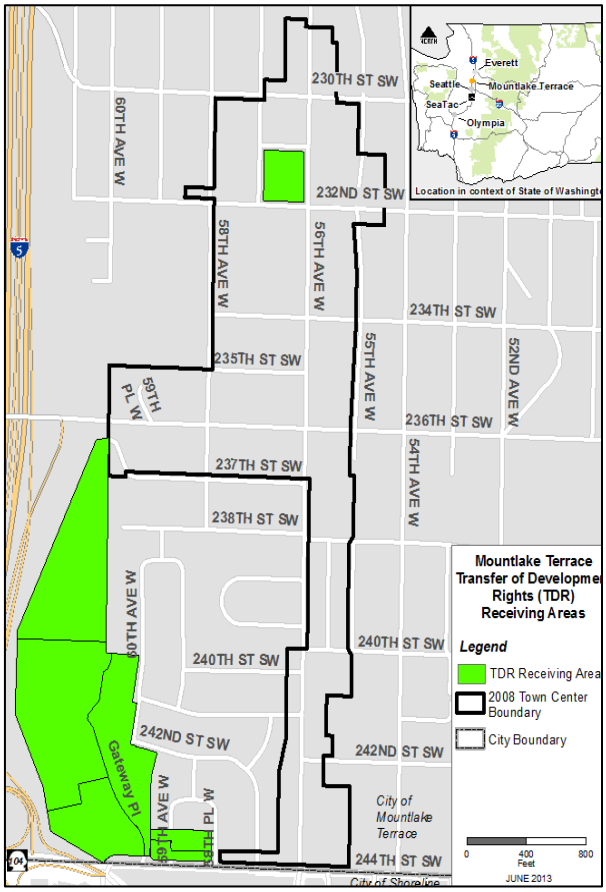
LCLIP is a tool that the City of Seattle recently adopted and other cities are considering. The Cities of Mountlake Terrace and Tacoma are using NEP Watershed Protection and Restoration Grants to study the feasibility of the program. But cities will also need to continue to pursue other sources of infrastructure financing to support increased density with or without TDR.

City Case Studies

Ten cities have adopted or are about to adopt regional TDR programs that will allow them to accept development rights from county rural and resource lands. Eight of these cities received EPA Watershed Management Assistance funds to develop or enhance their programs. . For ease of reference, these are referred to as “Commerce grants” or “King County grants”. Two cities – Bellevue and Sammamish – developed and adopted their programs without EPA funds.

Arlington	Sammamish	Issaquah	Tacoma
Bellevue	Seattle	Mountlake Terrace	Port Orchard
Everett	Snohomish	Normandy Park	Puyallup





Arlington

Overview of the Program and Grant Accomplishments

The City of Arlington has a strong interest in conserving farm land in the Stillaguamish Valley adjacent to the City. In exchange for an expansion of the urban growth area (UGA), the City entered into an interlocal agreement with the County to transfer development rights from farm land in the valley to the extended UGA. However, due to development constraints in the expanded UGA no transfers have occurred since the agreement was adopted in 2006.

The City's commitment to make TDR work and conserve the Stillaguamish Valley continues. Arlington was awarded a Commerce EPA grant to implement the 2011 West Arlington subarea plan, including a market analysis, regulations that include TDR, and an updated interlocal agreement with the County.

The City conducted a market analysis that includes a feasibility study for LCLIP. Updated TDR regulations were adopted on February 19, 2013. The City is close to adopting a form-based code for West Arlington. The City also adopted the Commerce Interlocal Terms and Conditions Rule by reference on February 19, 2013, thereby expanding the sending areas from which they would receive development rights to natural resource lands in Snohomish, King, and Pierce Counties. Proposed adoption of the Commerce rule is under County consideration.

Sending Areas/Conservation Goals

The Stillaguamish Valley has over 100 years of agricultural use in and around the sloughs, streams, and remnants of remaining forests that once covered the river valley. With time, changes have come to the valley. This has spurred the Arlington community to work together with Snohomish County and landowners to save the remaining farmland and agricultural industry while preserving the natural beauty that comes with the river valley. The City's commitment to conserve farmland has been

extended through the adoption of the updated TDR program to conserve farm and forest land in three counties – Snohomish, King, and Pierce. The resolution adopting the Commerce Interlocal Terms and Conditions Rule places no limits on the number of development rights that the city is willing to receive.

Development Potential in Receiving Areas/Exchange Ratios

The City's updated TDR regulations reflect the following exchange ratios in Table 6.

Table 6: West Arlington Receiving Area TDR program Exchange Rates

Receiving Zone(s) and Type of Exchange/Location of Sending Area	Sending Area Ratio	Receiving Area Ratio/Bonus Density from Farmland TDRs	Receiving Area Ratio/Bonus Density from Forestland TDRs
SD – Single Purpose Residential from Pilot Sending Area	1 Certificate per 10 Acres/parcel	1 Certificate = 10,000 sq. ft. of gross floor area	N/A
West Arlington T4 - T6 from Pilot Sending Area	1 Certificate per 10 Acres/parcel	6 Additional Units =acre/Certificate	N/A
SD – Single Purpose Residential from Stillaguamish Watershed sending area	1 Certificate per 10 Acres/parcel	1 Certificate = 8,000 sq. ft. of gross floor area	1 Certificate = 4,000 sq. ft. of gross floor
West Arlington T4 - T6 from Stillaguamish Watershed Sending Area	1 Certificate per 10 Acres/parcel	5 Additional Units =acre/Certificate	2 Additional Units =acre/Certificate
SD – Single Purpose Residential from King or Snohomish County regional program areas. (Not Pilot Sending Area)	See current County Ordinances	1 Certificate = 4,000 sq. ft. of gross floor area	1 Certificate/2,000 sq. ft. of gross floor area
West Arlington T4-T6 from King or Snohomish County Regional Program. (Not Pilot Sending Area)	See current County Ordinances	2 Additional Units/acre/Certificate	1 Additional Units/acre/Certificate

City Goals and Vision

The City still places a high value on conserving farm land in the Stillaguamish Valley. However, it has included farm and forest land in Snohomish, King, and Pierce counties in its sending areas. The extension to the other counties is due, in part, to the requirements for participation in the LCLIP program that would provide infrastructure funding for West Arlington.

Working with the Community/Neighborhoods

The City held three public meetings, including a visioning workshop and design charrette. The meetings were well attended. The City had developed an active citizen base through its previous development of the West Arlington subarea plan that served it well in this process.

City Observations from Working on a TDR Program

The most significant challenges for the City were the setting of the exchange values, and convincing stakeholders that the program has to be attractive to the sending area participants. The multiple players and sending area types in the regional program make setting exchange rates complicated. A jurisdiction has to establish exchange ratios to assure equity, as well as using the exchange ratios as a tool to protect what is most important to the jurisdiction.

The second challenge was getting people to understand the importance of sending area landowners' involvement in establishing the program. The incentive for landowners to participate is limited. If it is only up to the receiving area users seeking certificates, the emphasis for exchange ratios will be on affordability. The retirement for many conservation landowners is based on the development value of the land. They will not participate if they are not compensated for the true value their land has if developed.

The TDR process was easier for Arlington as they participated on the Commerce regional technical and policy teams that developed the regional program and the Commerce rule. It was very easy for the City to adopt the Commerce rule rather than spend a lot of time re-writing their existing interlocal agreement with the County.

A city contemplating participation in regional TDR should find out from their citizens what they think is important to save, and what they are willing to accept in additional density in order to preserve it. In contemplating a TDR program, communities need to think 100-200 years in the future to see the value. Around the world there are examples of how development has gone up instead of out. These examples of Growth Management principles are a result of the need to protect resource lands after experiencing war, famine and disease. There is a growing population in the United States that is becoming aware of the need to conserve resource lands in the face of what may come in the future.

Bellevue

Overview of the Program and Grant Accomplishments

The Seattle Times

Microsoft to open retail stores

Re-envisioning Bel-Red

The City of Bellevue adopted a subarea plan for the Bel-Red Corridor that includes TDR as part of the floor area ratio, or FAR density, incentive. The Bel-Red Corridor Plan provides for the transformation of a 900-acre urban infill area into mixed-use, transit-oriented neighborhoods, while restoring ecological functions, and creating thousands of new jobs and housing units. The plan components include a new subarea plan, land use code, development incentives, design guidelines, and capital plan.

The Bel-Red Corridor Plan received a Governor's Smart Communities Award for comprehensive planning in 2010.

Sending Areas/Conservation Goals

The City identified the following sending areas as conservation priorities from which it will receive development rights:

- The Greenway Focus Area, which is composed of the following three sending site areas: the Lower Snoqualmie Farm and Forest Area, the I-90 / SR 18 Area, and the Mount Si to Rattlesnake Mountain Connector Area.
- The White River Focus Area which is composed of the following three sending site areas: the Mud Mountain-Grass Mountain Area, the Highway 410 Area, and the Greenwater Area.

Under the interlocal agreement with King County adopted by the City in 2009, the total bonus building area in the Bel-Red Subarea and Land Use districts allowed with the use of rural TDR credits is limited to either 75 rural TDR credits or 100,000 square feet of bonus building area earned through the use of rural TDR credits, whichever is arrived at first.

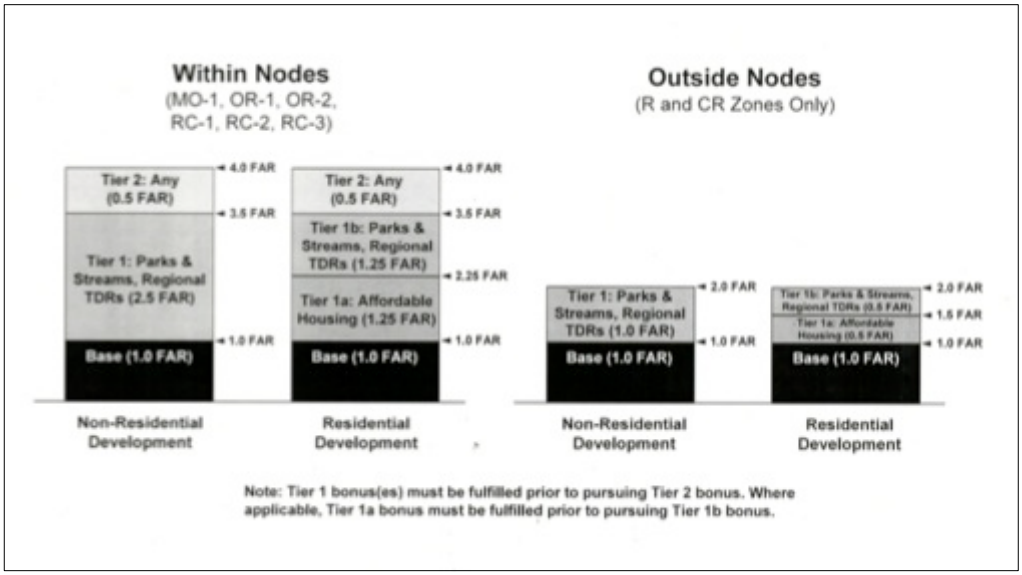
Development Potential in Receiving Areas/Exchange Ratios

The City spent a significant amount of time and effort on crafting a strong, well defined, and innovative incentive system to deliver desired policy outcomes, while presenting a clear and predictable process to prospective developers. The Bel-Red incentive system prioritizes the restoration of streams and ecologically sensitive areas, provision of parks and open space, and the provision of affordable housing. The incentive system was crafted with outreach to developers and business and property owners for feedback. Detailed pro forma analysis of proposed density bonuses was used to ensure that the new incentive system would be economically supportive of new development. The analysis focused on the change in the residual land value of a project at a base development level and at a higher, intensified level.

Once a preliminary incentive system was crafted, the City convened an independent panel of reviewers from the Urban Land Institute, and refined the framework based on their feedback. This resulted in a system that had buy-off from the development community and the city policy makers, who were guided by the principle that new development should help provide new amenities in the area.

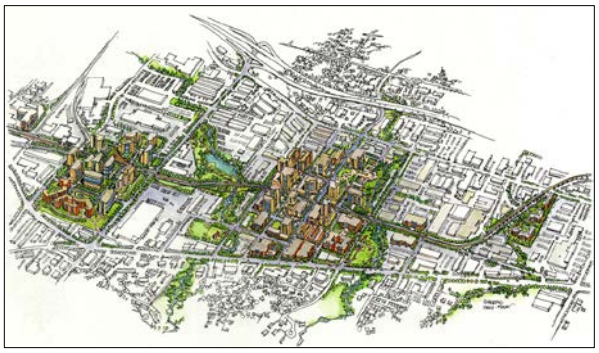
The Bel-Red Corridor plan creates a tiered program of incentives for residential and non-residential development within and outside of specific “nodes”identified in the zoning code. Tier 1 bonuses must be fulfilled by the developer before they can pursue Tier 2 bonuses. That is, a development within a single project limit must first fully utilize Tier 1 amenity bonuses before using Tier 2 amenity bonuses. To achieve the maximum FAR for the district, amenities from Tier 1 and Tier 2 must be provided at the specified ratio for every additional square foot to be built beyond the base limit.

Bel-Red Incentive Zoning with TDR



Regional TDR credits from the County are available in Tier 1 within zoning nodes and within residential zones outside the nodes. Outside the identified nodes, only Tier 1 may be pursued. Additional FAR for development in nodes is capped at 4.0, and outside nodes at 2.0 FAR.

City Goals and Vision/TDR benefits



As one of five designated metropolitan centers under the central Puget Sound region's growth strategy, Vision 2040, the City of Bellevue is working to use its urban land efficiently, and to integrate land use and transportation planning consistent with the regional vision.

By 2030 the Bel-Red area is expected to generate:

- 10,000 new jobs and 5,000 new housing units in a transit-oriented development form.
- Renewal of a brownfield infill location that is currently in decline.
- Two new transit-oriented centers and one of the largest mixed use development opportunities in the state (Spring District).
- Restored streams and ecological functions.
- New parks, trails, bike paths, and amenities that help transform the area to create dynamic and livable neighborhoods and better connect the area to the rest of the City.
- Significant new economic development opportunities for the Puget Sound region and Washington State.

Working with the Community/Neighborhoods

The Bel-Red Subarea Plan is the product of a three-year collaborative planning process. The successful transformation of Bel-Red from an underutilized industrial corridor to a series of new urban neighborhoods is not just about implementation of transit-oriented development. The extensive public outreach and community involvement of the project created many opportunities for people to participate meaningfully in the growth and change of the City. Outreach and participatory efforts connected people to government in significant ways, created interest and investment in the area, and most importantly, served as a model for effective public input in City decision making.

The planning effort was led by a specially created steering committee, who convened and facilitated many meetings of stakeholders to get focused community input, and by six city boards and commissions, who worked together and separately to create opportunities for community participation. The Bellevue City Council also enabled public access to the planning effort. The Council received briefings at key milestones in the project, including a joint meeting with Redmond City Council at which issues of mutual concern were discussed.

The process used both traditional and previously untapped ways to reach out to people, including opportunities for in-depth interaction at workshops, open houses, and public hearings; an expanded website; panel meetings; and joint meetings of the City's boards and commissions. The Bel-Red Plan's extensive public involvement is significant. The plan is powerful because the urban future it imagines is based not just on innovative planning ideas, but on unique insights gathered from this community engagement.

City Observations from Working on a TDR Program

The most significant challenge was setting aside a share of the zoning incentive system for the regional TDR program rather than utilizing the entire Bel-Red incentive system on needs internal to the planning area. This is because the area rezone brought with it an enormous need for new amenities and infrastructure, and the incentive system was one key element of meeting these new internal needs. Without new development helping to pay for these amenity and infrastructure needs, the rezone would likely not have been feasible. Every dollar spent on regional TDRs was one less dollar available to be spent on needs internal to the Bel-Red planning area and critical to enabling the rezone to occur in the first place.

Several elements helped address this challenge:

- The King County offer of funding to jump-start open space acquisition in the area, in return for accepting a share of regional TDRs, helped offset some of the lost internal revenues.
- Setting a maximum limit on the number of regional TDRs (75) limited the total amount of incentive revenues that could be spent on TDRs rather than internal needs.
- Identifying specific rural sending areas of interest to the Bellevue community made the benefits of regional TDRs more tangible than they otherwise would have been.

A second challenge was the complexity of establishing a regional TDR system. While the general idea of regional TDRs is fairly straightforward, it is much more difficult to convey to the public the mechanics of such a system in the detail needed for the land use code. Addressing this challenge required multiple City Council study sessions with very clear materials.

The county assistance proved critical to adoption of the Bel-Red regional TDRs. There is a balance between conveying the local benefits and the regional benefits of regional TDRs, so having the County

interlocal agreement identify specific rural sending sites that are of interest to the Bellevue community was helpful.

For a city contemplating participation in regional TDR:

- Start with the broader planning goal and make it relevant and tangible. Establish and communicate the critical relationship between local planning goals and regional growth management; show how regional TDRs are a tool to help realize these goals.
- Secure needed competencies in development economics to ensure the regional TDR program is well grounded in the market.
- Anticipate some tension between local needs and the broader regional needs met through regional TDRs.

Everett

Overview of the Program and Grant Accomplishments

Two market studies by Snohomish County in 2007 and the Department of Commerce in 2008 looked at the feasibility of a TDR program in downtown Everett. The Snohomish study concluded that developers are currently not building up to the maximum density allowed in downtown zones because rents are not high enough to support the higher cost of concrete and steel construction necessary for buildings over seven stories. However, developers indicated that a TDR program might be feasible in higher density residential zones.

The 2012 study funded by a Commerce grant looked at mixed use prototypes in downtown Everett with five floors of apartments over a two floor base. The analysis concluded that "...based on existing market conditions, the project is currently not economically feasible. Rents would have to go up 40 percent to 50 percent to create sufficient revenues that would be the foundation of a TDR model."

The City used EPA grant funds from Commerce for a consultant to study the market feasibility of TDR outside the downtown. The study looked at five different zoning classifications as follows:

- C-2ES zone near the Everett Station where no residential is currently allowed (other than live-work units or projects on sites two acres or larger), and where a major transit station and related public investment is in place.
- C-1 zone (general commercial), B-2 zone (community business with residential), and E-1 zone with proposed mixed-use overlay (transit-oriented and pedestrian-friendly, commercial and residential mixed-use) on Evergreen Way along the SWIFT Bus Rapid Transit route.
- R-3 zone (medium density multi-family) which is extensive and where the current allowed density is low.
- R-2 zone (medium density single family) where duplexes could be allowed on smaller lots.

- R-1 zone (low-density single family) where cottages could be developed at twice current densities to expand the range of available housing alternatives.

As a result of the study, the City Council adopted a resolution in August 2012 stating that "[T]here are opportunities for the use of Transfer of Development Rights to encourage growth in targeted areas where growth is desired in Everett through an inter-jurisdictional program with Snohomish County." The resolution directs city staff to initiate contact with Snohomish County to determine how an inter-jurisdictional TDR program could work in a manner that benefits both jurisdictions.

While they have had general presentations and discussions with several neighborhoods on growth targets and reasonable measures for neighborhood infill, the City will not specifically engage the neighborhoods about the TDR potential in specific neighborhoods until they conduct their GMA plan update process. Based on the large increases in residential capacity called for by the Vision 2040 Regional Growth Strategy, TDR may have a role in increasing residential capacities. However, a variety of other strategies that provide more meaningful increases in capacity that have proven effective in Everett and elsewhere will also be required for Everett to come close to meeting the regional expectations.

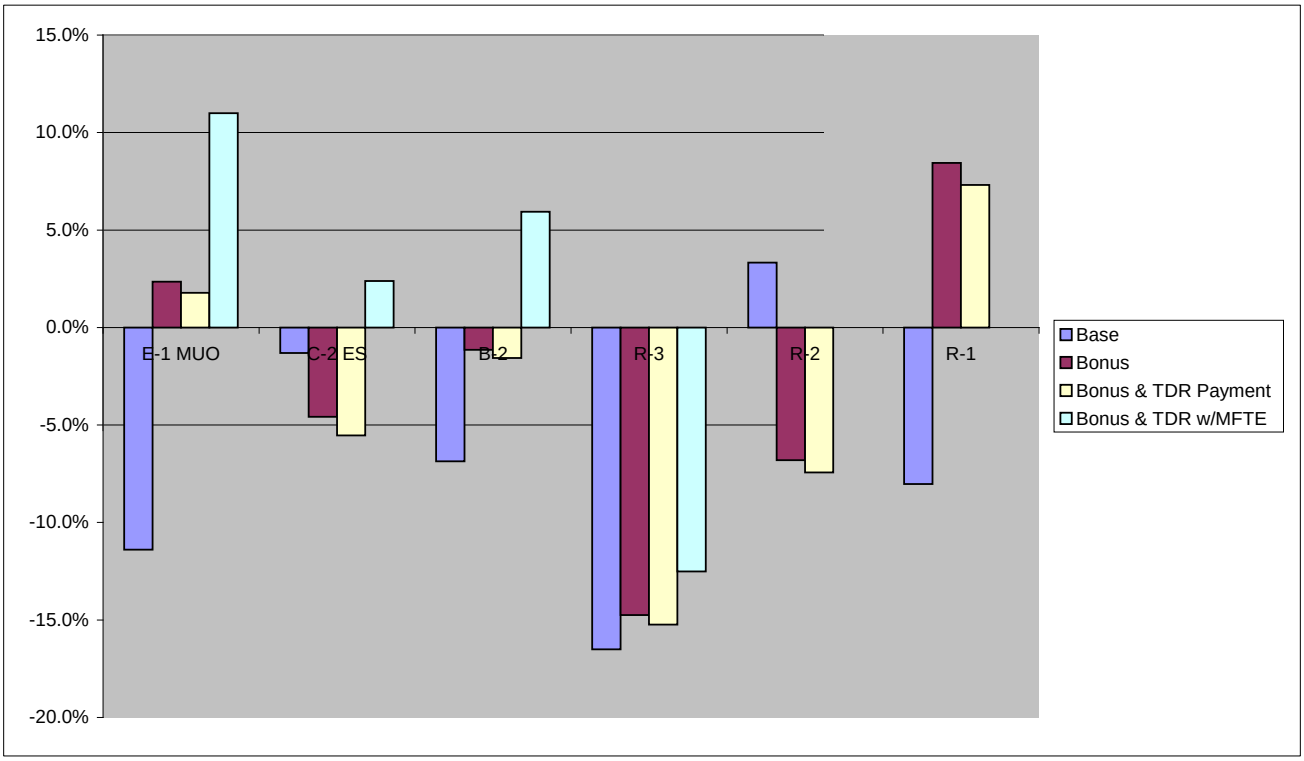
Sending Areas/Conservation Goals

The cty recognizes the importance of preserving farm and forest land, and sees that TDR programs are a means to achieve this goal, and as a tool to guide growth to urban areas. Since the last GMA update, all subarea plans and implementing regulations have recognized the value of TDR, and have created a placeholder for an inter-jurisdictional TDR program with Snohomish County.

The B-3 (Central Business District), BMU (Broadway Mixed Use), and the E-1 / MUO (Evergreen Way and Mixed Use Overlay) zones all provide for use of TDR as a bonus incentive to increase permitted residential or non-residential capacity. While the details of the program have not yet been developed, the City could place a higher priority on TDR credits transferred from agricultural and forest lands in the County than on other resources. The City has not yet developed the policy choices for consideration in the TDR program with Snohomish County.

Development Potential in Receiving Areas – Summary of Financial Results

Table 7: Entrepreneurial Return as Percent of Development Cost Development Scenarios



The TDR feasibility study found that higher density scenarios achieve improved economic performance in most cases, but fall short of targeted entrepreneurial return of 10 percent, per Table 7. The cases that show the strongest performance are those that take advantage of the Multifamily Tax Exemption program. The E-1 MUO scenario achieves a rate of return that exceeds 10 percent.

The E-1 MUO scenario benefits from a very low parking ratio. The R-1 Cottage Housing scenario also performs well. It achieves a large increase in density without requiring an expensive construction solution.

For many of the other scenarios with the tax exemption program, the target return could be achieved with realistic potential increases in rents beyond assumed levels.

The E-1 MUO is the only case that supports a positive value for the TDR credits at $5,200. Assuming a sending site value of $15,000 per unit, the equivalent transfer rates would be 2.9 receiving site units per sending site unit.

Ultimately it is the multifamily tax exemption program that makes the bonus schemes even marginally feasible. Application of both a TDR and a tax exemption program would have the effect of funding rural land preservation through the foregone tax revenues from the tax exemption, rather than the payments from developers.

City Goals and Vision

TDR fits with the City's goal to increase density and create vibrant neighborhoods. Under certain circumstances, an inter-jurisdictional TDR program with Snohomish County to allow development rights in agriculture and forestry areas within unincorporated Snohomish County to be transferred to receiving areas in the City may be both economically viable and desirable to encourage redevelopment in targeted areas of Everett.

Working with the Community/Neighborhoods

The resolution adopted by the City states that there are potential changes to city development regulations that are identified in the consultant report that could make the use of TDR more economically viable, but such changes have not been presented in detail to the public or neighborhoods that could be affected by such changes. Additional analysis and public outreach is necessary before the City can determine if establishing an inter-jurisdictional TDR program with Snohomish County is in the best long term interests of the City.

City Observations from Working on a TDR Program

At the present time, other higher priority work program items demand more immediate attention than TDR. TDR will be part of a menu of strategies that can be used to increase permitted densities as part of the comprehensive plan update and implementation programs, but the City need's to prioritize its growth target and residential capacity changes at this time.

Lessons learned from the feasibility include that there is not a proven market for TDR in Everett at this time. However, there are areas where TDR may be viable in the future.

It is unlikely that the regional TDR program would create enough demand in Everett to fund significant infrastructure investment through the LCLIP program. The number of TDR credits Everett would have to accept is too large and there are too many other measures available for a developer to add density to a project that are less costly, or that would more directly benefit their project than purchasing TDR credits. There are also other methods of infrastructure financing available to the City that do not create the obligations and commitments that result from the possible failure to sell all the development credits. Perhaps there are adjustments the City can make in the current codes that would make TDR more feasible, but these would have to be evaluated for locally defined priorities – for example, affordable housing vs. farmland preservation.

If a city is serious about TDR as a means to increase density, and the goal of farmland or forest land preservation is a higher priority than other bonus elements that are often used to increase density (affordable housing, public open space, private open space, public art, etc.), then limit the way density increases are permitted to fit those priorities. If a developer does not have to buy a TDR credit to increase density, they will probably spend the money on a design element that directly benefits their project rather than pay the same amount for a TDR credit that will not yield a similar benefit to the development.

In a city like Everett where rents are not high enough to generate demand for greater density than already allowed by zoning, TDR is not a useful tool. That can change over time, but under GMA, cities must balance their priorities among worthy but potentially competing objectives. TDR may work among a menu of incentives, but in the City's case, it cannot be the only incentive. It just has not proven to be something developers are willing to pay for in Everett.

Issaquah

Overview of the Program and Grant Accomplishments

The City of Issaquah was an early participant in a regional approach to TDR. Under a 2001 interlocal agreement with King County, the City accepted 63 TDR credits that were used in the Issaquah Highlands development. The developer was able to build an additional 8,000 square feet of commercial floor area per TDR credit. While that initial agreement with the County is still in effect, the City accepted the Commerce grant to expand the City receiving area under the Central Issaquah Plan (CIP), to develop a planned action for the CIP, and to increase the number of TDR credits it could accept from the County.

The City used the grant funds to do a TDR market study, and to use up-front SEPA analysis to evaluate and compare impacts of alternatives for using TDR in the CIP. The City adopted the combined FEIS and subarea plan for central Issaquah, including a planned action ordinance, on December 17, 2012.

Development and design standards to implement the plan, including density bonus provisions for TDR, were adopted on April 15, 2013. Revisions to the TDR regulations to facilitate TDR transfers that promote design and development consistent with the City's vision and established in the Comprehensive Plan; Olde Towne Design Standards; Urban Villages; and the CIP are proposed to be adopted in late summer, 2013.

An updated interlocal agreement with King County to accept additional TDRs in Issaquah is before the City Council as of the date of this report.

Sending Areas/Conservation Goals

The City's initial conservation goal was to protect the Issaquah Creek Watershed. That goal is maintained in the updated TDR regulations. Sending areas include King County Rural and Resource zones in the Issaquah Creek Basin. However, the CIP and the updated interlocal agreement could expand sending areas and conservation goals to include the Squak Mountain forested area.

Development Potential in Receiving Areas/Exchange Ratios

The updated TDR regulations allow use of TDRs to meet the provisions of an approved development agreement or to exceed allowable development limits. A number of conversion commodities may be obtained with TDR as follows:

- **Residential Units**: One TDR may be approved for one additional residential unit through a City of Issaquah Commission review up to an increase of 25 percent of the base density, or as specifically allowed through a development agreement or the CIP.
- **Building Height and/or Gross Floor Area**: TDR may be used in a variety of multi-family residential, mixed-use residential, retail, and commercial zones for building height and/or gross floor area. One TDR may be approved for 2,000 square feet, and additional height in some zones, if it complies with all development standards, including the "wedding cake" setbacks, through an Administrative Adjustment of Standards[26]. One TDR may be approved for 1,000 square feet, and additional height in some zones, with a deviation in building height adjustment standards, including deviation of the "wedding cake" setbacks through an AAS, or through a development agreement subject to through a City of Issaquah Commission review. For properties in the CIP, see below.
- **Impervious Surface Limits**: TDR may be used to increase impervious surface limits on a receiving site in CIP zones and a number of other zones. Lower percentages are approved through an AAS, and higher percentages require a City of Issaquah Commission review. For properties in the CIP, see below.
- **Properties in the CIP**: For commercial, retail, other non-residential, residential, and mixed-use residential, TDR may be used for two thirds of the public benefit required for a density bonus.

City Goals and Vision/TDR benefits

The Central Issaquah Plan will guide the long-term evolution of the City's 1,100-acre commercial core from a collection of strip malls, parking lots and office buildings into a more sustainable urban area that will meet the community's needs for environmental protection, jobs, housing, and rapid transit.

This plan is Issaquah's opportunity to create a vibrant urban center, while also protecting its current neighborhoods and natural environment. For developers, the plan means streamlined review and permitting processes, as well as increased code flexibility to fulfill the vision. The plan means increased opportunities for conservation in the Issaquah Creek Watershed, and increased opportunities for density of development in the urban core, through an improved TDR program.

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[26] The purpose of the Administrative Adjustment of Standards is to provide for flexibility in modifying the Development and Design Standards while maintaining consistency with the vision, goals and policies of the Central Issaquah Plan. The vision, goals, and policies within the Central Issaquah Plan are fixed, methods to implement can be flexible.

Working with the Community/Neighborhoods

The Central Issaquah Plan process began with three public workshops held in July 2007, November 2007, and March 2008. The purpose of the workshops, respectively, was to develop guiding principles for the plan, map where and what kind of redevelopment, and at what densities, should occur, and review and confirm those conclusions. The City Council endorsed the guiding principles in 2007.

In 2009, the Mayor appointed a task force consisting of property owners, business owners, environmentalists and interested citizens. Their mission was to connect the guiding principles and planning concepts established during the three community workshops into a draft plan, and related design and development standards for Central Issaquah.

The Task Force spent nearly 1000 volunteer hours over the course of a year preparing a recommendation for the Mayor. The recommendation includes an overall vision, visions for the ten districts, and a starting point for development regulations and design guidelines for the redevelopment of central Issaquah. The task force presented its final recommendation to the Mayor in November 2010, at which point the Planning Policy Commission began its review of the task force recommendation and, subsequently, the Central Issaquah Plan. The City's work with the CIP Task Force laid the ground work with the public for adopting the CIP and TDR regulations in 2013.

City Observations from Working on a TDR Program

Adopting Issaquah's first TDR program was accomplished due to the successful momentum of the Mitchel Hill TDR transfer from King County to Issaquah. The interlocal agreement with King County was a natural outcome from city/county collaboration on the Mitchel Hill TDR transfer. The initial phase of developing a local TDR program was working with environmental groups and developers to find out what TDRs would be used for, so the City could create the "demand" and also to find out TDRs environmental worth, so the City could create the "supply." This also created ownership in the program for these environmental groups and developers.

Although several King County TDRs have been transferred to the City since entering into the interlocal agreement, the national economic recession slowed land development, including the City's TDR program. Instead of the original momentum from the building boom years, the economic down turn allowed a more detailed look at our TDR program in an attempt to make the process more streamlined for applicants and easier to understand the benefits in using TDRs.

Issaquah, in partnership with Forterra, Berk, and King County, is considering LCLIP at this time, reviewing the analysis showing costs and benefits to the City. The challenge being faced by decision makers is whether the economic market for another building boom and use of TDRs is around the corner or farther in the future. Issaquah hopes to make a decision on whether to participate in LCLIP in 2013.

The City would advise other cities considering TDR to work directly with King County and Commerce staff, as they are helpful and collaborative. Their experience and resources have been a major part of Issaquah's success. Also, work with local developers and environmental groups early in the process to help determine the "demand" and "supply" piece for the TDR program to work.

Mountlake Terrace

Overview of the Program and Grant Accomplishments

The City of Mountlake Terrace built on the considerable amount of planning and environmental review that it has done for its Town Center and transit center. The City used Commerce grant funds to conduct a TDR market study, and to develop and adopt an FEIS for the Freeway/Tourist District adjacent to the Town Center and transit center. The City adopted the TDR regulations for designated receiving areas in the Freeway/Tourist District on December 3, 2012. A planned action ordinance based on the FEIS was adopted for the Freeway/Tourist District on February 4, 2013.

Adoption of a planned action will streamline permits for developers in the Freeway/Tourist District, including developers choosing to use TDRs in their projects.

Sending Areas/Conservation Goals

Sending areas identified by the City include all land designated by King, Snohomish, and Pierce Counties as agriculture or forest lands of long-term commercial significance and rural lands that meet the sending area criteria for LCLIP in RCW 39.108.050.

The City adopted by reference the Commerce Interlocal Terms and Conditions Rule to accept development rights from the Counties on December 17, 2012. There is no limit on the number of development rights that may be accepted from counties. Adoption of the rule by reference is currently under consideration by Snohomish County.

Development Potential in Receiving Areas/Exchange Ratios

The TDR regulations provide as follows for exchange ratios in the receiving area:

- For sending areas situated in Snohomish or King Counties, one TDR allows 10,000 square feet of bonus commercial area or two bonus dwelling units.

- For sending areas situated in Pierce County, one TDR allows 5,000 square feet of bonus floor area.

City Goals and Vision/TDR benefits

The TDR program was established as an incentive for protecting farms, forests, rural lands, and environmentally critical areas while encouraging greater development within appropriate areas of Mountlake Terrace. It is also a potential way to obtain infrastructure financing through LCLIP.

Working with the Community/Neighborhoods

The City used newsletters, an open house, a web page, and public meetings to reach out to the public for input on the planned action and TDR program.

City Observations from Working on a TDR Program

The most significant challenges to adopting a TDR program were the public hearing process; the reporting and billing requirements, considering that other staff were primarily working on the grant project; designating the receiving areas and what the exchange ratios would be; and managing the EIS consultant because of frequent staff changes. The City overcame the challenges by continuing to move forward with the project. They knew what had to be completed for the project and what the project deadlines were, so they made sure to meet the project requirements.

A city contemplating participation in regional TDR should make sure that they have adequate staffing to manage their consultants and to complete all of the reporting requirements and public process; have a concept of how their plan may end up as a finished product so that their TDR has a direction from the onset. If a city has the infrastructure resources and thinks that TDR can work in their community, then TDR will be a benefit to the city.

The TDR grant was very beneficial to the City. They were able to develop a market study and an EIS for the Freeway Tourist District, which produced a TDR plan that can be a success in the City. County staff was always a pleasure to work with, and the City appreciated their input and assistance with the project.

Next Steps

The City is evaluating how the LCLIP program can be implemented in its Town Center and Freeway/Tourist District under a 2013 Watershed Protection and Restoration Grant award grant from Commerce and Ecology. This will help determine how the City might pay for infrastructure to support increased development in TDR receiving areas.

Normandy Park

Overview of the Program and Grant Accomplishments

The City of Normandy Park had an interest in developing a subarea plan for Manhattan Village. Manhattan Village is an area with a mix of commercial and residential development, including vacant buildings and underutilized parcels.

With decreased revenues resulting from initiatives and legislation, the City made economic development planning a priority. The City took advantage of Commerce and King County grants to conduct a market study, and develop a subarea plan and planned action ordinance for Manhattan Village that includes receipt of TDRs from King County.

This process was designed to prepare the subarea plan/EIS and immediately adopt implementing regulations and programs. The subarea plan adopted by the City on May 17, 2012, established policy objectives, responding to community direction and fine-tuning comprehensive plan elements for the subarea. The zoning amendments , design standards and TDR program (adopted November 27, 2012), will create a vibrant, walkable environment accessible to all Normandy Park by encouraging high quality design with careful consideration of the pedestrian experience. The planned action ordinance adopted on December 11, 2012, will provide incentives for new infill and re-development along the First Avenue South corridor.

The City's TDR program includes use of TDR for both residential and commercial development. Regional TDR is the only incentive that the City offers for increased density of development, such that the TDR program is not competing with other City incentive programs.

Sending Areas/Conservation Goals

The City chose the near-shore and shoreline properties surrounding Vashon Island in King County as the sending area from which it would receive TDRs. This rural area is important to the ecology of Puget Sound and is part of the rural scenic and open space views from the City across the waters of Puget Sound.

The City signed an interlocal agreement to accept Vashon Island development rights from King County in January 2013. Up to 75 TDR credits may be used for increased residential density or commercial development capacity in the Manhattan Village receiving site.

Development Potential in Receiving Areas/Exchange Ratios

The interlocal agreement anticipates the City receiving up to 75 TDR credits for increased residential density or commercial development capacity in the Manhattan Village receiving site. TDR credits may be used for bonus height or density in the Neighborhood Center (NC), Mixed-Use (MU), and High-density Multi-family (RM-1800) zones. Bonus heights range from 40 to 75 feet in neighborhood center and high-density multi-family zones, depending upon adjacent land uses. Bonus density is allowed per Table 8.

Table 8: TDR Density Incentive Table

Receiving Zone	NC	MU	RM-1800
Bonus Density	4300 sf	2,500 sf or 2.5 units*	2,500 sf or 2.5 units
**Bonus units in the Mixed Use zone must be used for cottage housing developments consistent with the zoning code.*			

Working with the Community/Neighborhoods

Normandy Park began this process with a skeptical community. The process used an active engagement program to rebuild trust and begin planning for the subarea's future, expanding the conversation to discuss land use, transportation, economic development, community design, storm water management, capital facilities, utilities, and neighborhood conservation.

Normandy Park began this process facing at least four major hurdles:

- Many in the community were distrustful of the City, concerned that leaders intended to condemn property and relocate Cty Hall, integrating it and a nearby park with the Manhattan Village shopping center.
- With 98 percent of available land zoned residential and trends showing significant "bleeding" of sales revenue to surrounding shopping venues, optimizing the Manhattan Village center was seen as a critical part of maintaining fiscal solvency for the City.
- A similar, recent development along the City's southern edge had proven disappointing to residents, failing to meet community expectations regarding design, and (so far) function and economic success.
- A center with the type of density needed to spur redevelopment and provide TDR compatibility meant a brand-new archetype be embraced by residents acclimated to "park-like" low-density development.

The process used an active engagement program to rebuild trust and, eventually, to solicit constructive feedback on planning for the subarea's future. Commonly used workshop techniques were implemented in highly effective ways, giving residents an opportunity to vent, express ideas, and work together to consider ways to solve issues. More than 200 agitated community members attended the first workshop, yet these same residents ultimately welcomed the plan, the dramatic (for Normandy Park) changes it facilitates and the implementing zoning and TDR programs the city subsequently adopted.

City Observations from Working on a TDR Program

TDR can be a controversial and complicated concept in some communities. In particular, communities like Normandy Park are sensitive to dense development since this type of community was originally incorporated with values and desires to maintain a rural character.

The concerns about increased density and complexity of the TDR program were addressed during the numerous public meetings by city staff, consultants, and King County TDR Program Manager Darren Greve. It was important for the community to clearly understand the reasons why TDR was necessary to achieve the goals of the subarea plan and that TDR was not a trigger for increased affordable housing.

Lessons learned/advice for other cities:

- Involve the community early in the process.
- Spend time working with the community to explain the program and rule. This process took two years to complete and without the significant time spent communicating with community members it would not have been supported.
- Make sure consultant contracts are aligned with the scope of work and requirements of the grant. The City negotiated a contract with a consultant for assistance with the subarea plan prior to clearly understanding the requirements of the county program or Commerce rule. This resulted in misalignment of the consultant's scope of work and the grant requirements of the

County and Commerce. Reporting and consultant deliverables became a challenge as a result of the misalignment.

- Spend time up front to select a competent consultant to conduct the TDR analysis and work with county staff to make sure the consultant selected has the knowledge and experience necessary.

Sammamish

Overview of the Program and Accomplishments

The City of Sammamish has developed a subarea plan for the Sammamish Town Center, which includes incentives for increasing residential and commercial capacity. The City developed the TDR program as part of its package of incentives for increasing capacity in the Town Center.

The purpose of the TDR program is to provide a market-based tool to permanently preserve partially developed or undeveloped land with important public benefits, such as farmland, forestland, open space, and wildlife habitat, through the private acquisition of the development rights on those lands.

Properties eligible for preservation through the TDR program are located both within the city limits of Sammamish and in unincorporated King County. Properties within Sammamish are expected to provide increased protection of particularly sensitive sub-basins on the Sammamish plateau. The lands within unincorporated King County are made up of large tracts of undeveloped open space and former forest lands that are expected to create an "emerald necklace" to the east of Sammamish. It is expected that the TDR program will result in the subsequent transfer of development rights to lands more suitable for development in the Town Center.

The Town Center subarea plan was adopted by the City Council in June 2008 and the TDR program for Town Center was adopted in 2011.

City Goals and Vision/TDR benefits

The community's adopted vision statement indicates that the Sammamish Town Center is designed to be a vibrant, urban, family friendly gathering place in a healthy natural setting. The City's sense of community reflects a balance between its natural and urban characteristics. The vision includes preservation and enhancement of the Town Center's natural setting by focusing new development away from natural resources and critical areas. The TDR program provides a tool for preserving the natural setting both within the City and adjacent to the City in King County.

Sending Areas/Regional Conservation Goals

The City of Sammamish is on the edge of the urban growth area, and is striving to achieve its GMA-mandated goals of balancing growth with appropriate environmental protection. Sammamish is unique in that several of the streams on the west edge of the City provide critical habitat for Sammamish Kokanee. Further, the western slopes of the City above Lake Sammamish are critical for the protection of water quality in Lake Sammamish. Lake Sammamish is on the list of impaired and threatened waters (stream/river segments, lakes) that the Clean Water Act requires all states to submit for EPA approval. The TDR sending sites within Sammamish provide for increased protection of these critical sub-basins, while still allowing for appropriate development.

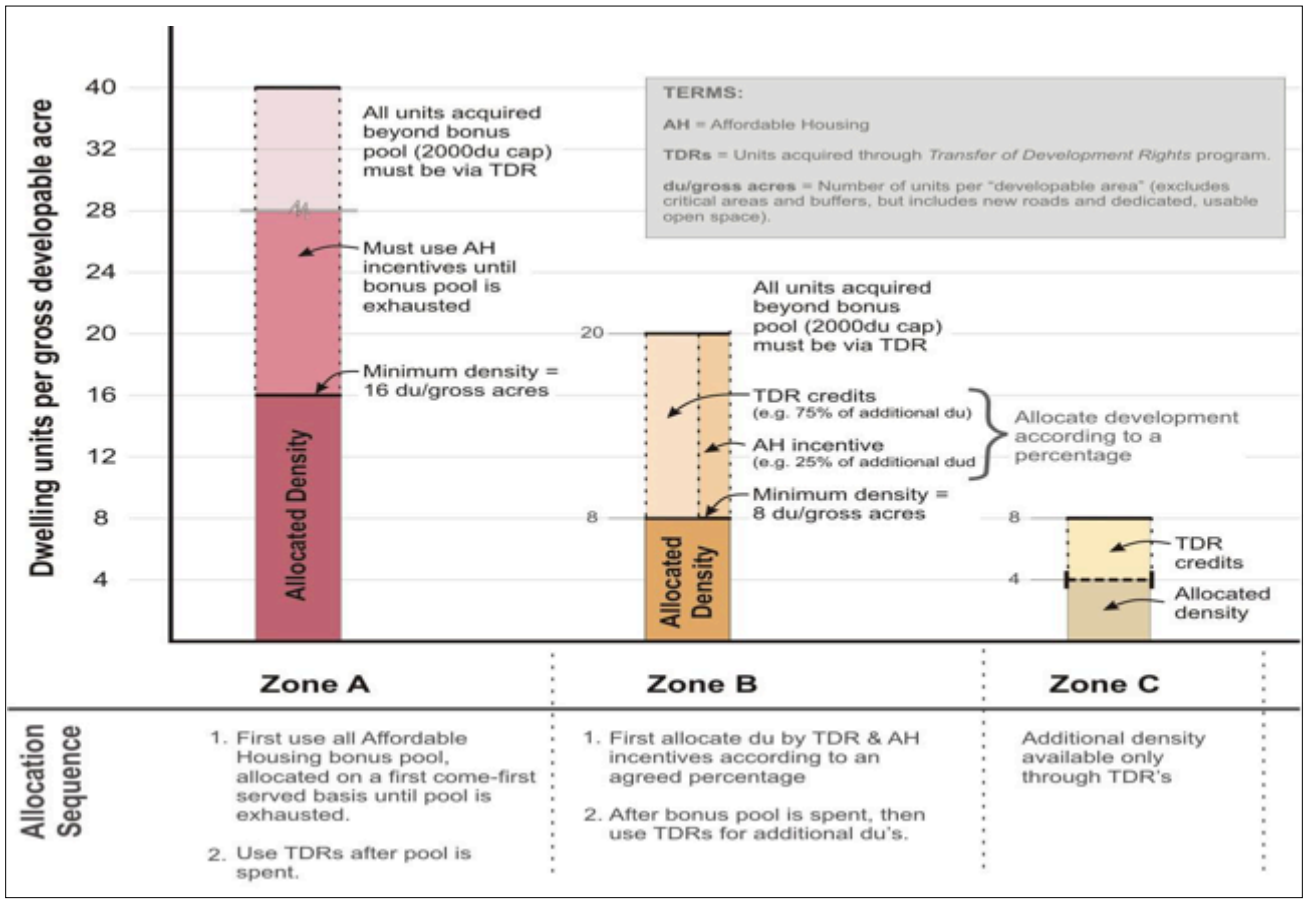
King County's rural and resource areas are recognized by the City as containing important countywide public benefits such as forestry, agricultural, wildlife habitat, and scenic resources and recreational opportunities. In an interlocal agreement with King County, the City has provided for the protection of a sending area directly to the east of the City, south of State Route 202, and north of Issaquah-Fall City Road. This area of rural King County, which is adjacent to Soaring Eagle Park (also known as Section 36) is largely undeveloped, forested, and creates an "emerald necklace" on the east side of the Sammamish plateau. Properties within this area that possess recreational trail opportunities, possess significant ecological value, or are used for forest or farm land purposes that benefit the city and its residents are considered priorities. The interlocal agreement provides for the receipt of 75 TDR credits from this area.

Development Potential in Receiving Areas/Exchange Ratios

The City of Sammamish's Town Center (TC) plan provides incentives for increasing density above the allocation, through the provision of affordable housing and TDR. TDRs may come either from unincorporated King County (through the King County TDR program) or from qualifying sites within the City.

- In the TC-A zone, the developer must first use affordable housing incentives until the bonus pool is exhausted before acquiring additional units through the acquisition of TDRs.
- TDRs may be also be used in the TC-B and TC-C zones, without a requirement to use affordable housing first.

Sammamish Town Center Zoning with TDR



The receiving sites in the Town Center A, B, and C zones use Table 9 to calculate the unit or commercial square footage yield from TDR sending sites.

Table 9: Receiving Site Incentive Table

		Sending Zoning			
		R-1	R-4	R-6	KC Lands
Receiving Zoning	Commercial	7,716 sq. ft.	3,560 sq. ft.	2,600 sq. ft.	3,560 sq. ft.
	Zone C	4 du	2 du	1 du	2 du
	Zone B	7 du	3 du	2 du	3 du
	Zone A				5 du

Working with the Community/Neighborhoods

The Comprehensive Plan and initial vision for the future Town Center was prepared by the City's Planning Advisory Board and adopted by the City Council in 2003, and was itself a product of numerous community discussions, environmental analysis, and direction from the goals contained in the GMA. This plan was informed by a continuation of those public discussions, Sammamish Town Center Committee meetings, and Planning Commission and City Council briefings.

The City initiated the Town Center planning process in August 2004 by establishing a 20-member citizen task force to help guide and advise the City Council as it developed a vision for the "Special Study Area," which was to become the future Town Center Study Area. In January 2005, the task force made their final recommendations as the City continued to solicit public input and feedback.

After the adoption of a Town Center Vision Statement in March 2007, the City continued to employ a number of strategies to involve and gather input from many interested parties. These strategies included the maintenance of a project website, property owner forums, public open houses, a visual preference survey, attendance at a Sammamish Youth Board meeting, property owner and citywide surveys, community bus tours, a design charrette, and a series of public discussion forums. With this public input and extensive analysis of market conditions, infrastructure needs, and design options, city staff and consultants were able to develop four Town Center alternatives. The preferred alternative included a TDR system to use market forces to better protect ecological resources and open space with public benefits.

In April 2007, the City Council adopted the Preferred Town Center Alternative – which called for a balance of civic and community amenities, retail and office opportunities, residential choices, and environmental functions and values in the future Town Center. The City Council also directed the planning team to move forward with drafting the Sammamish Town Center Plan and a TDR program. During winter and spring, 2008, the Planning Commission reviewed the draft plan and submitted recommendations to the City Council. The council amended and adopted the plan in June 2008, adopted the Town Center regulations in December 2010 and adopted the TDR program in September 2011.

City Observations from Working on a TDR Program

The most significant challenges for the City in adopting a TDR program were:

- TDR programs are inherently complex, in that you are essentially creating a private market authorizing trade of a publicly created commodity (zoning). So simply explaining it correctly is

hard. Also, creating the mechanisms (sending site certification, rules to authorize use of TDR credits, conservation easement language, etc.) each involve local choices and analysis.

- The City did its best to use graphics and pictures, and to make incremental decisions. They also used documents and code language from other jurisdictions, and relied on experts to help staff and decision-makers work through the complexity.
- In general, under TDR land will be preserved in counties where the sending sites are located, and consequently cities will get more density as receiving sites. It is critically important that cities understand and are able to document why adding more units to the City will provide a net overall benefit. A reasonable nexus (i.e., a proximate location or a strong policy connection for say salmon recovery) between sending and receiving areas helps to ensure that benefit is clear and meaningful.
- The LCLIP law is complex and implementing it locally involves a number of choices, some of which involve risk or the perception of risk. The Legislature has tended to create these highly complex financial tools which, while well intentioned, may not prove as effective as a simpler tool.

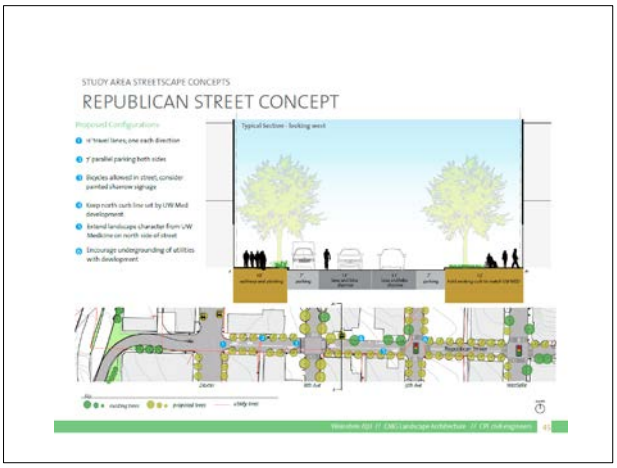
Overall, the City had a very good experience working with King County. The County has both listened to local concerns and initiated helpful responses and offers to overcome those issues. As with any interlocal agreement, it is important for local leaders to clarify objectives and goals, and then let the staff work on the details to achieve those goals.

For a city contemplating regional TDR, it will take some time and energy, but it is worth it for the regional benefit TDR will provide. It might be helpful for the state or Puget Sound Regional Council to provide a series of workshops on TDR and LCLIP to help spread the word and encourage local participation.

Seattle

Overview of the Program and Grant Accomplishments

The City of Seattle was an early participant in a regional approach to TDR. Under a 2001 interlocal agreement with King County, the City created a market for 68 TDR credits that were used in Denny Triangle for projects such as the Olive 8 and Aspira projects. While that initial agreement sunset in 2006, the City accepted the Commerce grant to conduct a market study of South Lake Union, downtown, and other areas of the City for future receiving area potential, to conduct streetscape design for the area, and to consider for adoption a new interlocal agreement for TDR with the County.



The market study includes an assessment of the City's participation in LCLIP, including how it can provide infrastructure funding for South Lake Union and downtown development. Additional funds made available under the grant program were used to develop engineering and cost estimates for LCLIP projects in South Lake Union.

The City Council adopted a rezone of South Lake Union on May 6, 2013. The substantial rezone allows for increased density and greater building heights through an incentive zoning program, including the use of regional TDR. The legislation is an important step for the South Lake Union neighborhood as it continues to develop as an urban center and a dynamic hub of economic development for Seattle and the region. The zoning changes:

- Advance the City's growth management strategy as set out in the Comprehensive Plan and South Lake Union Neighborhood Plan.
- Promote a neighborhood that will provide a more diverse mix of housing and employment.
- Support the continued growth of the City's economy.
- Encourage a safe and active pedestrian environment.
- Create new infrastructure financing tools that, together with affordable housing incentives and direct city investments, will:
    - Provide the critical public infrastructure needed to support the area's dramatic growth.
    - Ensure South Lake Union remains an attractive and livable neighborhood for all who live and work there.

In the process of assessing participation in the LCLIP program, it became apparent to the City that the TDR capacity and property tax revenue value in South Lake Union was insufficient to make the LCLIP program viable. Accordingly, the City has included both South Lake Union and downtown as TDR receiving areas for the LCLIP program.

An interlocal agreement with King County to accept TDRs in South Lake Union and downtown is anticipated to be transmitted to the King County Council and the Seattle City Council in June, 2013.

Sending Areas/Conservation Goals

Seattle's TDR program is designed to permanently conserve land in the following types of sending areas:

- Agricultural-, Forest-, and Rural-zoned lands within King County.
- Agricultural- and Forest-zoned land in Pierce and Snohomish Counties in accordance with these respective county TDR programs, except that Rural-zoned lands in Pierce and Snohomish counties may be allowed in the future if the requirements of RCW 39.108.050 are met[27].

The interlocal agreement anticipates a regional TDR program with the capacity to permit development that uses at least 800 regional TDR credits over a 20-year period.

Development Potential in Receiving Areas/Exchange Ratios

The South Lake Union neighborhood is one of the most active real estate markets in the state. Designation of this area and the Seattle downtown for receipt of TDRs from King County creates significant capacity to conserve agriculture and forest land. Purchase of development credits from one of three counties allows the developer additional square feet of residential or commercial development. Although the exchange ratios are likely to vary over time to response to market conditions, the initial ratios will be as indicated in Table 10 for residential and Table 11 for commercial development.

[27] RCW 39.108.050 provides that counties that have conserved at least 50 percent of their agricultural and forest land of long-term commercial significance may identify an additional 1,500 development rights from designated rural land with high conservation values.

Table 10: Regional Transferable Development Credit Exchange Ratios – Residential

County of Origin	Type of Credit	Square Feet per Credit
King County	Agricultural credits	1640
	Forest or Rural credit, provided that the proceeds from the sale are used to purchase Agriculture credits	1500
Pierce County	Agricultural credits	420
	Forest credit, provided that the proceeds from the sale are used to purchase Agriculture credits	860
Snohomish County	Agricultural credits	980
	Forest credit, provided that the proceeds from the sale are used to purchase Agriculture credits	860

Table 11: Regional Transferable Development Credit Exchange Ratios – Commercial

County of Origin	Type of Credit	Square Feet per Credit
King County	Agricultural credits	1120
	Forest or Rural credit, provided that the proceeds from the sale are used to purchase Agriculture credits	1030
Pierce County	Agricultural credits	290
	Forest credit, provided that the proceeds from the sale are used to purchase Agriculture credits	590
Snohomish County	Agricultural credits	670
	Forest credit, provided that the proceeds from the sale are used to purchase Agriculture credits	590

City Goals and Vision/TDR benefits

The South Lake Union incentive zoning program, including TDR, will provide affordable housing and new infrastructure investment (investment in roads, sidewalks, and other neighborhood amenities). This will support growth of 12,000 households and 22,000 jobs over the next 20 years.

Inclusion of TDR in downtown will also support the creation of new streetscape and park investments.

Working with the Community/Neighborhoods

The City's work with the South Lake Union neighborhood has been going on since 2004, when the Seattle City Council designated the South Lake Union Neighborhood as one of the City's six urban centers. This designation reflected the recent growth in both jobs and housing in the neighborhood and signified that South Lake Union will continue to receive a regionally significant share of growth in the future.

In January 2008, the Department of Planning and Development began working with the South Lake Union Community to develop a height and density recommendation that would advance the Comprehensive Plan and Neighborhood Plan goals for future development of the neighborhood. This work resulted in the development of the South Lake Union Urban Design Framework, which included recommendations for urban design, transportation investments, and potential incentive zoning benefits, and rezone legislation that was adopted by the City Council in 2013.

City Observations from Working on a TDR Program

The City of Seattle's work on developing a TDR program identified the following key challenges:

- Competition among amenities – the City of Seattle has had incentive zoning programs, allowing additional floor area where developers provide public benefits such as affordable housing, on-site open space, streetscape investments, and historic preservation, since the 1970s. Considering regional TDR as an additional option can result in difficult discussions about the relative value of each type of benefit and conflicts between stakeholder groups.
- Balancing local and regional priorities – incentive zoning has been very popular as it helps to ensure that growing communities receive the investments necessary to make dense communities feel vibrant and livable. Shifting the benefits from local investments such as open space to regional benefits such as farm and forest protection would not have been possible with the LCLIP tool which provided alternative local benefits.
- Finding resources for developing and implementing programs – significant resources are needed to undertake the economic modeling to support the program, develop the interlocal agreement and legislation, train staff, provide customer service to developers, track funding, and monitor the program over time.

The following represent the key lessons learned in responding to these challenges:

- Significant economic modeling is necessary to understand the impacts of TDR programs. At a minimum it is important to have an economic consulting team to understand the value of additional development potential and the cost of TDR credits over time to establish the program. Developing a LCLIP program requires this effort plus modeling of development expectations, long-term tax rates, and fiscal modeling. Seattle utilized a consultant team consisting of a real estate economist, government finance economist, and a TDR expert to

provide this expertise and developed a detailed model that allowed for risk modeling of all variables.

- Analysis of LCLIP should be done on a city-wide basis. The key to making LCLIP viable is sizing the program to capture significant tax revenues. While every city will be different, Seattle found that the program needed to be very large to be viable. Additionally, the state-enabling legislation makes it very difficult to add additional project areas at a future date, so all opportunities should be considered at one time.
- LCLIP can result in a more flexible funding source than traditional incentives, but also favors certain types of investments. One reason that Seattle decided to implement the LCLIP program is that it creates a pool of flexible funding that can be used by the City to fund key priorities. Since traditional incentive programs can be limited by state legal requirements in the types of benefits they can produce, this flexibility can be a significant benefit. On the other hand, the LCLIP programs demonstrated that it may be more appropriate for funding amenities that are traditionally implemented by cities (parks, community centers, utilities, corridor improvements) and less effective in implementing amenities that might be more cheaply implemented by developers (small privately-owned/publicly-accessible open space, sidewalk improvements, affordable housing, historic preservation).
- LCLIP programs need to be managed over time to achieve program goals. Since market conditions can vary substantially over a 25-year period, it is important to plan to analyze and modify the program on a periodic basis to ensure that project goals are met.
- Due to the complexity of the LCLIP tool and vagueness of the state-enabling legislation, Seattle found that the specifics of any LCLIP program need to be negotiated between the City and the County. City staff recommend that cities include county representatives in all aspects of modeling and program development to ensure it meets the needs of both governments. Ultimately, interlocal agreements will need to be approved by elected officials in both governments for the program to work.

City of Snohomish

Overview of the Program and Grant Accomplishments

The City of Snohomish began planning for TDR in 2009 when it received a grant from Forterra to develop a subarea plan, infrastructure analysis, and planned action for the Pilchuck District[28]. The Pilchuck District is a neighborhood comprised of an unusually wide assortment of land uses – single-family, multi-family, industrial, commercial, and an assortment of public functions.

The City adopted the Pilchuck District Comprehensive Plan Goals and Policies, Subarea Plan and Planned Action Ordinance, Design Standards, and Development Regulations on March 15, 2011. The City adopted TDR regulations on December 20, 2011, under which the City identified receiving areas and established incentives for use of TDR certificates in the Pilchuck District. The City adopted an interlocal agreement with the County in July 2012. The interlocal agreement was adopted by the Snohomish County Council in January 2013.

The City developed a water system plan for development in the Pilchuck District TDR receiving area with Commerce grant funds. This infrastructure planning will support development at increased densities with TDR.

Sending Areas/Conservation Goals

The City is interested in conserving county working farms and forest land, and certain open space and natural areas, which is in the interest of all Snohomish County residents.

[28] Forterra awarded $149,995 of the state capital funds it received to Snohomish for this work.

The interlocal agreement with Snohomish County and the City's TDR regulations provide for the initial acceptance of 17 TDR credits from county forest lands, acquired and currently held by Forterra. Following absorption of all of the initial credits, the City reserves the right to adopt criteria to limit county sending sites eligible for TDR to city receiving areas. However, the City and County agree to work cooperatively with each other to identify sending areas that further the conservation goals of both the City and County.

City Goals and Vision

The neighborhood planning effort for the Pilchuck District was intended to shine a light on the area, to capitalize on its positive aspects, to bring its disparate parts into harmony over time, and to create opportunities for public and private investments and improvements that will make it a more distinctive and enjoyable place to live, work, and play. The plan also implements goals and strategies contained in the City's adopted Strategic Plan to:

- Encourage urban densities near the downtown.
- Support a livable, pedestrian-friendly community.
- Support downtown redevelopment potential and options, including redevelopment potential for Second Street.
- Support a vibrant live/work community.
- Strengthen the community's orientation to its rivers.

Development Potential in Receiving Areas/Exchange Ratios

The subarea plan, planned action and TDR provisions for the Pilchuck District create the capacity for conserving agricultural and forest lands by providing for additional development potential as follows:

- Each TDR credit associated with a development application determined complete prior to January 1, 2017, has an exchange rate of 18,000 square feet of gross floor area above the third story.
- Each TDR credit associated with a development application determined complete on or after January 1, 2017, has an exchange rate of 14,000 square feet of gross floor area above the third story.

Working with the Community/Neighborhoods

The City held an open house in November 2009 to gather public comments, including input on how to make the district more pedestrian-friendly, design and aesthetics issues, land use patterns, and a name for the district. Subsequently, the City hosted 24 public meetings with neighborhood groups and before the City Council and various advisory boards to solicit community input on the subarea's form, function, policies, and regulations.

City Observations from Working on a TDR Program

The City's most significant challenge in adopting a TDR program was determining an appropriate exchange rate for credits. Among the project stakeholders were proponents of economic development who resisted making the TDR credits a significant cost for, and perceived deterrent to, new development, and those who were more concerned with absorption of the greatest number of TDR credits. Those more sensitive to the development cost side favored a high exchange rate and those more concerned with accommodating the greatest number of credits advocated for an exchange rate close to the developer "indifference point" identified in the economic analysis. Ultimately, the adopted exchange rate was a compromise between the two perspectives.

Another challenge, related but not exclusive to establishing a TDR program, was the process of garnering community support for increased development potential in the TDR receiving area. This was a slow process of ongoing community discussion until citizens and the City Council achieved a level of comfort with the proposed change in the vision for future land use and urban form. In this case, it took several years of ongoing outreach and discussion until widespread buy-in to the concepts was achieved. However, once there was agreement on what the build-out of the subarea should look like, there was reluctance in certain quarters to impose the TDR costs associated with the maximum development potential.

Once the development policies and regulations for the subarea and the TDR program were adopted, the process of executing an interlocal agreement with Snohomish County was non-contentious.

Tacoma

Overview of the Program and Grant Accomplishments

The City of Tacoma first adopted provisions for transfer of development rights receiving areas as part of its mixed-use centers designation in 2010. The work done under the Commerce and King County grants in 2011-2012 sought to build on that foundation by refining the City's current approach to include transfers within the City and from county-designated natural resource lands. The City explored approaches where these TDR transactions would occur in exchange for higher density, height, and other benefits to developers.

The City used funds from the King County grant to develop a market analysis of TDR sending areas and receiving areas that generated estimated TDR prices and values. Exchange rates and demand analyses were used to present a detailed framework for a proposed TDR program in Tacoma.

On September 25, 2012, the City adopted a TDR administrative code establishing procedures for the operation of the City's TDR program. The program provides for transfers from sending areas in Pierce, King and Snohomish Counties, as well as from within the City for conservation of habitat and landmarks. On September 18, 2012, the City adopted an interlocal agreement with Pierce County, and adopted by reference the Commerce Interlocal Terms and Conditions Rule to facilitate transfers between King and Snohomish Counties and the City.

The City used funds from the Commerce grant to develop a subarea plan for the Martin Luther King/Hilltop mixed-use center that consolidates a myriad of policies pertaining to the area into a single document with a single vision statement. The plan provides specific, implementable action strategies designed to achieve the vision. The plan includes a planned action environmental impact statement (EIS). The Planned Action designation indicates that adequate environmental review has been completed and further environmental review under the SEPA, for each specific development proposal or phase, will not be necessary if it is determined that each proposal or phase is consistent with the development levels specified in a Planned Action Ordinance. The planned action will streamline the permit process for developers, including developers using TDRs in their project.

Sending Areas/Conservation Goals

Consistent with GMA goals, Tacoma's TDR program is designed to permanently conserve land in the following types of sending areas:

- Agriculture and forest resource lands in Pierce, King, and Snohomish counties.
- Air rights from landmark sites in Tacoma's downtown and mixed-use centers.
- Habitat corridors located inside Tacoma.

The interlocal agreement with Pierce County provides for the acceptance of 369 TDR credits from the County, at which point the agreement will be reviewed and may be extended by the two jurisdictions. There is no limit on the number of development rights that may be accepted from King and Snohomish Counties, but the resolution adopting the Commerce rule by reference does not go into effect until either of the two counties also adopts the rule by reference. Adoption of the rule is currently under consideration by Snohomish County. The City left open the option of also entering into an interlocal agreement with King County or Snohomish County to transfer development rights.

Development Potential in Receiving Areas/Exchange Ratios

The subarea plan, planned action and TDR provisions in MLK/Hilltop, as well as the TDR administrative provisions for all of the mixed-use centers, creates the capacity for conserving agricultural and forest lands in Pierce, King, and Snohomish Counties by creating additional development potential as follows.

- Bonus floor area in the mixed-use centers and downtown receiving areas is permitted in the following increments: 3,750 bonus square feet for each Pierce County TDR; and 10,000 square feet for each King County TDR.
- Alternatively to purchasing TDRs, a developer can pay $2.00 per square foot of bonus floor area, to be deposited into the City's Open Space Fund for TDRs. Revenue accrued for TDRs must be used for TDR purchases from in-city and/or TDRs from the counties.

City Goals and Vision

Tacoma's Mixed-use Centers Update Project received the Governor's Smart Communities Award in 2010 for implementation of a comprehensive plan. The project set forth a balanced set of innovative regulatory approaches to promote new growth and development in the City's 16 mixed-use centers. The TDR program builds upon these innovative approaches with the inclusion of TDR.

The TDR program implements and goes beyond the City's 2008 Climate Action Plan provision to initiate a regional TDR program by including all three counties' sending areas.

Working with the Community/Neighborhoods

The City's work with the neighborhoods started with the Mixed-Use Centers Update Project. City staff and consultants went to great lengths to fully involve all affected parties, interest groups, and the general public by combining the more traditional GMA public participation processes (e.g., public notices, public hearings, and SEPA and state agency review) with innovative methods that included two interactive 3-D models, a 24-hour planning inquiry phone line, and extensive community meetings. When it came time to develop the TDR administrative code, it was a matter of adopting the administrative procedures for TDR that were already allowed in mixed-use centers and downtown as a result of the Mixed-Use Centers Update Project.

A similar public participation process was used with the MLK Subarea Plan, including an extensive survey of residents, businesses and non-governmental agencies, and several open houses for the community to participate in design charrettes and review final proposals.

City Observations from Working on a TDR Program

Given all the work already done by Commerce, some of which is set forth in the Commerce Interlocal Terms and Conditions Rule, adopting a TDR program was very straightforward. For a city contemplating participation in regional TDR, putting the mechanism in place in advance of major new developments is advantageous.

Next Steps

The City is studying the functionality of the LCLIP program in the City of Tacoma under a 2013 Watershed Protection and Restoration Grant award grant from Commerce and Ecology. This will help determine how the City might pay for infrastructure to support increased development in TDR receiving areas.

Port Orchard

Overview of Grant Accomplishments

The City of Port Orchard received a Commerce grant to study its downtown for possible designation as a TDR receiving area. Some of the funds were passed through to Kitsap County to provide them with the resources to work with the City. City staff conducted a market survey and developed a market study f or TDR in the downtown. Staff drafted a TDR program ordinance and proposed resolution to adopt Commerce's Interlocal Terms and Conditions Rule by reference. The planning commission recommended approval by the City Council.

Upon consideration of the TDR ordinance, the City Council voted not to adopt the program. Some Council members indicated that TDR might be more appropriate in other parts of the City than the downtown. They discussed the possibility of looking at TDR again in the future. There was also concern that they had worked hard on the downtown regulations and this would make changes to those regulations.

The County used the funds to work with the City on adopting the Commerce Rule Interlocal Terms and Conditions Rule by reference. The County revisited its TDR sending area designations and developed new goals and policies for conserving agricultural land utilizing TDR. These amendments were approved by the Board of County Commissioners in December of 2012. The County developed code to further its receiving site program that would incentivize agricultural land for TDR use with a ratio of 2:1. These proposed regulations will be rolled up into the County's next GMA update process for consideration.

City Observations from Working on a Regional TDR Program

There were many concerns with the impacts to the downtown receiving area without any real perceived benefit to the City. The benefits that were identified were an asset to the private developer, not to the City – while it would be City infrastructure that would be impacted negatively. The issue of parking supply for increased demand was a big issue for the City Council.

For a city contemplating participation in regional TDR, involve the City Council and Planning Commission early on in the process and provide them with the opportunity to assist with developing the scope of the project. The TDR program is too complex and overwhelming to involve the City Council toward the end of the adoption process.

The main things that would have made the program more successful for the City would have been to:

- Have the City Council attend the presentations by Commerce.
- Clearly lay out the expected benefits to the City.
- Involve the Planning Commission, City Council, and public together from the start of the local program development.

Puyallup

Overview of Grant Accomplishments

The City of Puyallup received Commerce and King County grant funds to study its downtown and South Hill for possible designation as TDR receiving areas. The City hired a consultant to do a market study, develop a planned action EIS and ordinance, and develop TDR regulations for the downtown.

Prior to consideration of the proposed TDR regulations, several City Council members became concerned about the impacts of increased development in the downtown. They decided to discontinue the TDR study and terminated the grant.

Appendix A

Puget Sound Regional Council
PSRC

ACTION ITEM March 22, 2012

To: Executive Board

From: Bob Drewel, Executive Director

Subject: **Proposed Regional Allocation of Transferable Development Rights – the Landscape Conservation and Local Infrastructure Program**

AT ISSUE

In the 2011 legislative session, the Washington State Legislature passed and the Governor signed the *Landscape Conservation and Local Infrastructure Program* (LCLIP – codified in 39.108 RCW). This program provides a new voluntary infrastructure financing tool that is predicated upon a jurisdiction accepting transferable development rights (TDRs) from county designated natural resource and rural lands.

The Puget Sound Regional Council is required to allocate the total number county-calculated, theoretically available TDRs to eligible cities on a regional basis. The deadline for this allocation is March 2012.

At its March 8 meeting, the Growth Management Policy Board made a consensus recommendation that the Executive Board adopt the attached *Regional Allocation of Transferable Development Rights*.

ACTION

The Executive Board of the Puget Sound Regional Council adopts the Regional Allocation of Transferable Development Rights per RCW 39.108.070. (See Attachment 1)

DISCUSSION

Since July 2011, Puget Sound Regional Council staff has worked with stakeholders to develop a recommended methodology and allocations. This included working with countywide planning groups, the Regional TDR Alliance, LCLIP eligible cities, PSRC's Regional Staff Committee, and PSRC's Growth Management Policy Board and Executive Board.

A draft proposal was brought to the Growth Management Policy Board in January 2012 and the Board deferred action in order to provide staff additional time to work with affected eligible stakeholders. During the past two months, a variety of factors were explored and staff were successful in securing agreement on a set of adjustments to the initial methodology and allocations.

The updated methodology and allocations were brought to the Growth Management Policy Board for action at their March 8 meeting. At the meeting, the Growth Management Policy Board made a consensus recommendation that the Executive Board adopt the attached *Regional Allocation of Transferable Development Rights*.

NEXT STEPS

When adopted by the Executive Board, the Puget Sound Regional Council is required report each city's allocation to eligible cities and to the Washington State Department of Commerce.

If you have questions or comments, please contact Ivan Miller at (206) 464–7549 or imiller@psrc.org.

Attachment 1: Regional Allocation of Transferable Development Rights per RCW 39.108.070

Attachment 1

Regional Allocation of
Transferable Development Rights per RCW 39.108.070

March 1, 2012

Per the requirements of Chapter 39.108.070 Revised Code of Washington, related to the Landscape Conservation and Local Infrastructure Program, the following regional allocation of eligible transferable developments are provided for eligible cities in the three[i] eligible counties.

Table 1: Allocation for Cities Meeting Eligibility Threshold in 2011

City	*Allocation*	*City*	*Allocation*
Arlington	**273**	**Marysville**	**593**
Auburn	**596**	**Mercer Island**	**92**
Bellevue	**1,081**	**Mill Creek**	**92**
Bothell	**365**	**Monroe**	**212**
Burien	**273**	**Mountlake Terrace**	**92**
Covington	**92**	**Mukilteo**	**92**
Des Moines	**213**	**Puyallup**	**364**
Edmonds	**189**	**Redmond**	**587**
Everett	**1,491**	**Renton**	**849**
Federal Way	**444**	**Sammamish**	**215**
Issaquah	**452**	**SeaTac**	**561**
Kenmore	**213**	**Seattle**	**3,440**
Kent	**519**	**Shoreline**	**231**
Kirkland	**501**	**Tacoma**	**1,843**
Lake Stevens	**252**	**Tukwila**	**405**
Lakewood	**370**	**University Place**	**232**
Lynnwood	**461**	**Woodinville**	**218**
Maple Valley	**92**		

Table 2: Allocation for Cities Targeted to Meet Eligibility Threshold in the Plan Horizon
Note: These allocations will take effect *when* the city meets eligibility threshold.

City	*Allocation*	*City*	*Allocation*
Bonney Lake	**176**	**Sumner**	**236**
Fife	**166**		

Support for Revisiting Allocations in 2017

The regional TDR allocation is based upon a number of factors that are fixed in time – the number of theoretically available TDRs from eligible sending area lands under existing county TDR programs, the number of eligible cities that meet the population and employment threshold within the planning horizon, and the first round of growth targets adopted in the central Puget Sound region to begin to align with the VISION 2040 regional growth strategy.

Given that each of these factors will change, and given the complexity of this new theoretically market-based tool, there was general support among the stakeholders in PSRC's LCLIP process for revisiting the county calculations and regional allocations. This work would likely be done in 2017, after the next round of comprehensive plans are updated.

Regional Allocation Methodology, per RCW 39.108.070

In the 2011 legislative session, the Washington State Legislature passed and the Governor signed Engrossed Substitute Senate Bill 5253 – the Landscape Conservation and Local Infrastructure Program (LCLIP). The program, now codified in RCW 39.108, provides a new voluntary infrastructure financing tool that is predicated upon a jurisdiction accepting transferable development rights (TDRs) from natural resource and rural lands.

RCW 39.108.030 to .050 require eligible counties to calculate and report to the Puget Sound Regional Council the total number of development rights that may be available on eligible natural resource and rural lands. RCW 39.108.070 then requires the Puget Sound Regional Council to regionally allocate[ii] among eligible receiving cities the total number of development rights reported by eligible counties.

Each receiving city allocated share is to be determined by the Puget Sound Regional Council, in consultation with eligible counties and receiving cities, based on growth targets, determined by established growth management processes, and other relevant factors as determined by the Puget Sound Regional Council in conjunction with the counties and receiving cities. The allocation is to be reported to the cities and to the Washington State Department of Commerce on or before March 1, 2012.

A. Determination of Eligible Counties and Cities

RCW 39.108.010 – Definitions, Subsection 2 states:

> *Eligible county means any county that borders Puget Sound, that has a population of six hundred thousand or more, and that has an established program for transfer of development rights.*

Based on the statute, PSRC has determined the eligible counties to be as follows:

- King County
- Pierce County

- Snohomish County

RCW 39.108.010 – Definitions, Subsection 16 states:

> *Receiving city means any incorporated city with population plus employment equal to twenty-two thousand five hundred or greater within an eligible county.*

Neither this section of the statute, nor any others, provides a date by which the city must meet the eligibility threshold. Based on this, allocations are provided for all cities that meet the eligibility threshold as of the effective date of the bill (July 2011) and to cities targeted to meet the eligibility threshold within their growth targets planning horizon.[iii]

The "growth targets planning horizon eligible cities," include Fife, Bonney Lake, and Sumner. The cities will be eligible to accept the allocations and use the LCLIP tool when they meet the threshold. With these cities included, PSRC has determined the eligible receiving cities[iv] to be as shown in the following table.

Table 3: List of LCLIP Eligible Receiving Cities

	Current Year Population and Employment		*Horizon Year Population and Employment*[v]	
City	*Total*	*Eligible?*	*Total*	*Eligible?*
Arlington	**26,096**	✓	**44,552**	
Auburn	**109,180**	✓	**150,620**	
Bellevue	**253,766**	✓	**327,093**	
Bonney Lake	**21,175**	**x**	**26,429**	✓
Bothell	**60,191**	✓	**83,920**	
Burien	**43,023**	✓	**74,687**	
Covington	**22,646**	✓	**25,071**	
Des Moines	**35,466**	✓	**45,428**	
Edmonds	**52,463**	✓	**60,231**	
Everett	**191,890**	✓	**318,625**	
Federal Way	**119,871**	✓	**149,973**	
Fife	**20,774**	**x**	**26,390**	✓
Issaquah	**48,158**	✓	**74,190**	
Kenmore	**24,633**	✓	**34,417**	
Kent	**153,909**	✓	**214,822**	
Kirkland	**83,362**	✓	**152,757**	
Lake Stevens	**31,090**	✓	**47,386**	
Lakewood	**83,995**	✓	**105,697**	

City	Current Year Population and Employment		Horizon Year Population and Employment[v]	
	Total	*Eligible?*	*Total*	*Eligible?*
Lynnwood	**61,019**	✓	**97,797**	
Maple Valley	**26,558**	✓	**29,865**	
Marysville	**70,433**	✓	**117,698**	
Mercer Island	**30,155**	✓	**32,857**	
Mill Creek	**23,572**	✓	**26,100**	
Monroe	**24,940**	✓	**37,660**	
Mountlake Terrace	**28,026**	✓	**32,140**	
Mukilteo	**29,602**	✓	**32,843**	
Puyallup	**61,181**	✓	**80,121**	
Redmond	**136,050**	✓	**179,055**	
Renton	**144,094**	✓	**202,976**	
Sammamish	**46,141**	✓	**56,588**	
SeaTac	**52,530**	✓	**98,008**	
Seattle	**1,114,923**	✓	**1,374,937**	
Shoreline	**72,475**	✓	**82,177**	
Sumner	**18,889**	**x**	**29,669**	✓
Tacoma	**309,093**	✓	**436,821**	
Tukwila	**64,943**	✓	**92,253**	
University Place	**37,594**	✓	**47,972**	
Woodinville	**23,743**	✓	**33,384**	

B. County Calculation of Available Transferable Development Rights

RCW 39.108.030 to .050 define the parameters by which the eligible counties designate TDR "sending areas" and calculate and report the theoretically available TDRs that may be available. Section .030 states that the county must designate all agricultural and forest land of long-term commercial significance within its jurisdiction as sending areas for conservation under the eligible county's program. Section .050 allows up to 1,500 TDRs on rural lands to be included if a county has met certain conservation and planning thresholds; as of the date of the calculation, only King County meets these thresholds.

Sections .030 to .050 further requires that counties calculate the number of TDRs available through base zoning and/or the county's TDR program, plus any TDRs already publicly or privately held but not redeemed. The counties were to report the number of TDRs to PSRC by September 2011.

The counties worked collaboratively through the Regional TDR Alliance[vi] to develop a generally consistent methodology that took into account the following factors:

- zone type (agriculture, forest, rural),
- allowed development rights under base zoning (# of units allowed under zoning),
- program multipliers (allowed TDRs in county TDR programs that could exceed units allowed under zoning)
- removal of publicly owned parcels (unless eligible under county TDR programs),
- removal of parcels that are already protected under known conservation easements,
- removal of parcels without development potential because of size thresholds,
- determination of remaining development potential and net acreage on parcels with existing units (i.e., the number of additional units that could be built on the remaining net undeveloped acreage)
- inclusion of publicly and privately held TDRs, and
- inclusion of rural TDRs, where eligible.

Each of the counties used this calculation methodology, although minor differences remained given the differences in each of the county's zoning, resource land designation criteria, land development pattern, and TDR programs. Based on the consistent methodology, the following table shows the number of theoretically available TDRs that were reported to PSRC by the three eligible counties.

Table 4: County Calculation and Reporting on Available Transferable Development Rights

	Number of TDRs	*Sending Area Acreage*	*Share of TDRs*	*Share of Acreage*	*Percentage as Share of:*
King County	**7,643**	**270,783**	**31.0%**	**33.4%**	*Region*
Agricultural	**2,313**	**24,143**	**30.3%**	**8.9%**	*County*
Forest	**2,259**	**99,829**	**29.6%**	**36.9%**	*County*
TDR Bank	**1,053**	**93,802**	**13.8%**	**34.6%**	*County*
Privately held	**518**	**45,509**	**6.8%**	**16.8%**	*County*
Rural	**1,500**	**7,500**	**19.6%**	**2.8%**	*County*
Pierce County	**5,371**	**230,507**	**21.8%**	**28.4%**	*Region*
Agricultural	**2,614**	**10,951**	**48.7%**	**4.8%**	*County*
Forest	**2,757**	**219,556**	**51.3%**	**95.2%**	*County*
Snohomish County	**11,619**	**310,245**	**47.2%**	**38.2%**	*Region*
Agricultural	**7,165**	**56,469**	**61.7%**	**18.2%**	*County*
Forest	**4,427**	**253,430**	**38.1%**	**81.7%**	*County*
Local Forest	**10**	**281**	**0.1%**	**0.1%**	*County*
Privately held	**17**	**65**	**0.1%**	**0.0%**	*County*
Region	**24,633**	**811,535**	**100.0%**	**100.0%**	*Region*
Agricultural	**12,092**	**91,563**	**49.1%**	**11.3%**	*Region*
Forest	**9,453**	**573,096**	**38.4%**	**70.6%**	*Region*
Banked + Private	**1,588**	**139,376**	**6.4%**	**17.2%**	*Region*
Rural	**1,500**	**7,500**	**6.1%**	**0.9%**	*Region*

C. Compilation of Growth Targets

- PSRC is required to regionally allocate the total number of eligible development rights based on "growth targets...and other relevant factors" to eligible cities. Initial discussion with stakeholders in the fall of 2011 resulted general agreement to use growth targets and take a narrow technical approach, rather than to incorporate as-of-yet undefined other relevant factors. Based on this,
- PSRC worked with the eligible counties to compile their growth targets and develop a consistent, normalized set of population and employment figures.
- In Pierce and King counties, growth targets were recently updated to align with VISION 2040 and were therefore ready for use (note: however, final technical adjustments were still being made during the fall of 2011; these adjustments were completed in February 2012 – *see footnote viii*).

- In Snohomish County, growth targets were last adopted in 2006 (planning for the year 2025), and interim information was made available in 2010 titled *Vision 2040 Preliminary Growth Distribution Working Paper* in (planning for the year 2035). The targets in the working paper provide a preliminary, unofficial breakdown of possible post-2025 population and employment growth based on the VISION 2040 regional growth strategy. Beginning in October, PSRC worked with the membership of Snohomish County Tomorrow planning group to determine whether to use the adopted 2025 numbers or the 2035 numbers. In November, the Snohomish County Tomorrow Policy Advisory Committee made a consensus recommendation that the 2035 numbers be used for the regional allocation process.

- Having determined which targets to use for the eligible counties, PSRC staff made a number of technical revisions in order to create one consistent set of growth targets. Revisions included conversions from housing targets to population targets (in King County), consistent employment categories (in Pierce County), and consistent target horizon years (among all counties).

- The resulting measure, *Average Annual Targeted Levels of Population and Employment Growth per City*,[vii] was applied to the total number of available TDRs (24,633) reported by the counties. Using this approach, if a jurisdiction is targeted to receive 5% of total regional growth, the jurisdiction was allocated 5% of total regional TDRs. The resulting initial draft TDR Allocations were published in December 2011; these were finalized in February 2011 to reflect the final King County residential targets.[viii]

- <u>D. Inclusion of "Other Relevant Factors"</u>

- After the initial draft allocations were released, PSRC continued to work with stakeholders regarding the inclusion of "Other Relevant Factors." A number of potential factors were considered[ix] in the period between January 2011 and February 2012. Shown below are the factors considered and the general agreement on whether to use or reject each one.

Table 5: Description and Conclusions Regarding Other Relevant Factors

Factor	*Conclusion*
General Agreement to Use	
Allocation to "planned" eligible cities	Allocate to cities that meet threshold based on growth targets. This allows three cities in Pierce County that were close to the eligibility threshold to use LCLIP when they reach the threshold. This broadens the number of eligible cities in Pierce County from 4 to 7, which slightly reduces other cities allocations. This factor is consistent with the statute that requires that PSRC allocate the total number of available TDRs to eligible cities but does not specify a date for eligibility.
Use a county sending-area "market discount factor"	This factor reduces the county calculation of TDRs by 25% and reflects the facts that not all landowners will participate and that county unincorporated lands will absorb a portion of the theoretically available TDRs. The market reduction factor reduces the total number of county reported TDRs for allocation from **24,633** to **18,576**. This factor is consistent with county practices under Buildable Lands (an analogous process of quantifying development potential) and consistent with the statute which requires counties to calculate the total number of TDRs "that may" be available.
Capped minimum allocation	Allocate .005% of the total number of TDRs to cities that had allocations below .005%. With the Sending Area Market Discount Factor noted above, the capped minimum is 92 TDRs. This ensures that cities that capture the county property tax increment support a meaningful level of conservation through TDR. This factor is consistent with the "other relevant factors" language in the statute.

General Agreement to Reject	
Factor	*Conclusion*
- County recalculations using base zoning - County recalculations to remove "smaller" parcels - Minimum allocation + share of remainder - Using "surplus capacity beyond the target" - Retain original proposal (with final King County targets) - Using a within-county calculation and allocation method	These factors were rejected based on a variety of technical, legal, or policy considerations.

The net effect of the three Other Relevant Factors (i.e., the "planned" eligible cities, the .005% capped minimum allocation, and the sending area 25% market reduction factor) is shown in the following table. Also shown is how this compares to the revised final growth target-based allocations.

Table 6: Net Effect of Supported Other Relevant Factors

	Final Target Allocations (2011 Eligible Cities)	*All Supported Other Relevant Factors (All Cities)*	*Difference (# change)*	*Difference (% change)*
Arlington	**295**	**273**	**(-22)**	**-8%**
Auburn	**824**	**596**	**(-228)**	**-28%**
Bellevue	**1,617**	**1,081**	**(-536)**	**-33%**
Bonney Lake	**-**	**176**	**-**	**-**
Bothell	**447**	**365**	**(-81)**	**-18%**
Burien	**296**	**273**	**(-23)**	**-8%**
Covington	**83**	**92**	**9**	**11%**
Des Moines	**197**	**213**	**16**	**8%**
Edmonds	**158**	**189**	**31**	**20%**
Everett	**2,287**	**1,491**	**(-797)**	**-35%**
Federal Way	**575**	**444**	**(-131)**	**-23%**
Fife	**-**	**166**	**-**	**-**
Issaquah	**588**	**452**	**(-136)**	**-23%**
Kenmore	**197**	**213**	**16**	**8%**
Kent	**699**	**519**	**(-179)**	**-26%**
Kirkland	**669**	**501**	**(-168)**	**-25%**
Lake Stevens	**260**	**252**	**(-9)**	**-3%**
Lakewood	**453**	**370**	**(-84)**	**-18%**
Lynnwood	**604**	**461**	**(-142)**	**-24%**
Maple Valley	**108**	**92**	**(-16)**	**-15%**
Marysville	**819**	**593**	**(-226)**	**-28%**
Mercer Island	**73**	**92**	**19**	**26%**
Mill Creek	**50**	**92**	**42**	**85%**
Monroe	**196**	**212**	**16**	**8%**
Mountlake Terrace	**88**	**92**	**5**	**5%**
Mukilteo	**78**	**92**	**15**	**19%**
Puyallup	**445**	**364**	**(-81)**	**-18%**
Redmond	**809**	**587**	**(-222)**	**-27%**
Renton	**1,238**	**849**	**(-389)**	**-31%**
Sammamish	**200**	**215**	**15**	**7%**

	Final Target Allocations (2011 Eligible Cities)	*All Supported Other Relevant Factors (All Cities)*	*Difference (# change)*	*Difference (% change)*
SeaTac	**767**	**561**	**(-206)**	**-27%**
Seattle	**5,475**	**3,440**	**(-2,036)**	**-37%**
Shoreline	**227**	**231**	**4**	**2%**
Sumner	**-**	**236**	**-**	**-**
Tacoma	**2,864**	**1,843**	**(-1,021)**	**-36%**
Tukwila	**512**	**405**	**(-107)**	**-21%**
University Place	**228**	**232**	**4**	**2%**
Woodinville	**206**	**218**	**12**	**6%**
All Cities Totals	24,633	18,576	(-6,635)	-25%

Based on the figures shown in the preceding table, these three factors (shown in the column "All Supported Other Relevant Factors") are included in the proposed Final Allocation of Transferable Development Rights. The proposed Final Allocations are shown in Tables 1 and 2.

E. Adoption Process

At its March 8 meeting, the Growth Management Policy Board made a consensus recommendation that the Executive Board adopt the attached *Regional Allocation of Transferable Development Rights*.

[PROPOSED] At its March 22, 2012 meeting, the Executive Board adopted the regional allocations.

F. Notes and Sources

[i] The three eligible counties include King, Pierce and Snohomish Counties. Kitsap County and its cities are not eligible per Revised Code of Washington 39.108.010.

[ii] Revised Code of Washington 39.108, sections .070, .005 (2)(b), .010 (17)(18)(20), .030, .090 (7)

[iii] Sources for county Growth Targets:

- *King County: Countywide Planning Policies Table LU-1 Adopted 2011 Targets.*
- *Pierce County: County Council Ordinance 2011-36, Exhibit A, Table 1 and Table 3.*
- *Snohomish County: Vision 2040 Preliminary Growth Distribution Working Paper, Attachment 4*

[iv] Notes for 2011 Eligible Cities:

a) *For the 2011 eligible cities, eligibility is based on 2011 Population Data from the Office of Financial Management (per RCW 39.108 (9) and 2010 Employment Data (per RCW 39.108 (3)) from the Economic Services Department, as adjusted and geo-coded by PSRC.*

b) *RCW 39.108 (3) states that employment data is to be based on Office of Financial Management (OFM) records. However, official employment data is not provided by OFM, but rather by the Economic Services Department.*

c) *PSRC has used 2010 employment figures. The 2011 employment figures will not be available until after the statutory reporting date.*

[v] See footnote iii for county Growth Target sources.

[vi] Members of the Regional TDR Alliance include: King County, Kitsap County, Pierce County, Snohomish County, Forterra, the Washington State Department of Commerce, and the Puget Sound Regional Council. Given that Kitsap County and its cities are not eligible under RCW 39.108, Kitsap County has not been actively involved in the LCLIP discussions.

[vii] See footnote iii. Additionally, Local growth targets under GMA are structured differently in each of the three eligible counties. Working with the counties, PSRC created a consistent set of targets through three primary conversion and adjustments:

a) *Convert to equivalent population and employment values. King County population targets were developed from adopted housing targets using conversion factors provided by county staff. Pierce County's total employment targets were converted to "adjusted employment" (using a conversion factor published in the adopted targets package) to create consistency.*

b) *Using the population and employment values at common planning horizons, create a standardized measure: Average Annual Targeted Levels of Population + Employment Growth per City.*

[viii] During this December 2011 to February 2012 period, PSRC finalized the King County city residential targets to address persons-per-household assumptions, annexations and other technical issues. Based on these adjustments, growth shifted among King County cities. The overall amount of growth in these cities (i.e., growth shifted from ineligible unincorporated King County to eligible King County cities) is higher than what was provided in December 2011 by about 17,000 residents. This slightly increases King

County cities' share of total TDRs. No changes were made to King County employment targets, and no changes were made to Pierce or Snohomish counties employment or populations targets.

[ix] PSRC held four meetings in the period between January and February 2012 with the eligible cities and counties and the Regional TDR Alliance.

A Resource Guide to Designing Transfer of Development Rights Programs in Washington State

Cascade Land Conservancy
for

Washington State Department of
Community, Trade, and Economic Development

June 2009

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Introduction[1]

The Washington State Growth Management Act (GMA) requires all fully planning counties and the cities within them to adopt comprehensive plans and development regulations that meet 14 goals and a number of requirements. The goals include conservation of productive forest and agricultural lands and discourage incompatible uses (RCW 36.70A.020(8)); encouraging development in urban areas where adequate public facilities and services exist or can be provided efficiently (RCW 36.70A.020(1)); and reduction of sprawl (RCW 36.70A.020(2)).

Transfer of development rights (TDR) programs are recognized and encouraged in the Washington State Growth Management Act (GMA) as an innovative land use management technique (RCW 36.70A.090) that transfers development from areas a community wants to conserve to urban areas where growth should be encouraged, consistent with GMA goals.

CTED has produced a collection of resources, in conjunction with the Cascade Land Conservancy, that local governments can draw upon for guidance in developing TDR programs. This guide is one component of the TDR information portfolio.

How to Use This Guide

This guide is intended to serve as a practical source of information and guidance for planning staff, elected officials and policy makers who are considering adopting a transfer of development rights program or want to design one in their jurisdiction. It can also be used to help inform an updating process for existing programs.

This guide explains the fundamental concepts of TDR. It introduces and discusses technical and policy issues local governments should address when considering the adoption of a new program or revisions to an existing one. Information contained in this guide is drawn from a variety of sources, including Cascade Land Conservancy's research on TDR, reviews of programs in Washington State, reviews of other programs from around the country, and resources produced by CTED.

This guide walks officials and staff through the steps necessary to design and implement a successful TDR program. It examines many questions that are likely to arise and presents objective analysis to help planners and officials decide how to answer those questions. This guide covers many of the complex details of TDR and provides an extensive list of references to more comprehensive sources of information. Other practical resources included are samples of ordinances, agreements, and contact information for technical assistance.

[1] Adapted from CTED report "Creating a Regional Transfer of Development Rights Program for Puget Sound," December 2008.

What is TDR?[2]

TDR stands for transfer of development rights, a market-based land use tool for helping implement a jurisdiction's growth policies. A transfer of development rights program contains several elements. A community identifies areas that it wants to conserve, known as "sending areas." For conservation purposes, these can be privately owned farms, forestland, open space, or other types of property. Landowners in these sending areas may request certificates representing the land's development potential be issued from their county or city, which they can choose to sell. These certificates are purchased by developers who wish to increase the development potential of projects in "receiving areas." These areas are identified by the community as being better suited for locating additional growth, and are often located in urban cores or suburban cities. Receiving areas have the infrastructure capacity and services to meet the needs of increased growth.

By purchasing the development potential from a sending area, developers gain access to incentives for projects in receiving areas. In return for compensation from the sale of development potential, a sending site landowner places a conservation easement on the property that permanently prohibits development of the land. The landowner retains ownership of the land and may continue to use it for other purposes, such as forestry or agriculture.

A TDR program does not limit growth; rather, it allows communities to plan more effectively by directing that growth into areas most appropriate for it. In comprehensive plans and development regulations, communities can identify which areas are suitable to grow at higher intensities and how much additional development is desired.

From a policy point of view there are three key features of a TDR program:

• ***It is voluntary.*** In a TDR program transactions take place between willing buyers and sellers. If landowners in sending areas choose not to participate, they are entitled to develop as permitted by current zoning and development regulations. Likewise, in receiving areas, developers not participating in TDR are allowed to build to current zoning. To receive development incentives such as additional density or height, developers must purchase TDR credits.

• ***It is market-based.*** TDR programs create a marketplace that allows property owners to buy and sell development rights to one another. Individual property owners, developers, or other parties may freely negotiate prices for the purchase and sale of these rights.

• ***It is flexible.*** TDR programs can be designed to accommodate the needs of each community. Jurisdictions can customize the elements of the program to reflect their conservation and development objectives. Furthermore, flexibility means that TDR

[2]This section adapted from *Transfer of Development Rights (TDR) in Washington State: Overview, Benefits, and Challenges*, Cascade Land Conservancy, October 2008

programs can be adapted to suit market conditions and growth patterns unique to a particular area.

Why Washington Communities Would Consider a TDR Program[3]

In response to public concern about population growth and the impacts of development, the Growth Management Act (GMA), Chapter 36.70A RCW, was enacted in 1990 and subsequently amended. The GMA requires fully planning local governments to adopt comprehensive growth management plans and development regulations in accordance with the act's provisions. The GMA recognizes and encourages "innovative land use techniques" such as TDR to help local governments achieve their planning goals.

TDR goes beyond traditional zoning by compensating landowners who give up their right to develop, by protecting property from development in perpetuity, and by engaging the market to generate private funding for land conservation. By helping to concentrate development in areas best suited for growth, TDR can help mitigate many of the public costs and impacts of sprawl. These include:

Loss of farm and forest lands. While the GMA requires designation and protection of productive agricultural lands, Washington continues to lose farmland (including ranchland) at the rate of about 23,700 acres per year.[4] Since the late 1980s, Washington's forest land area has declined by over 17%.[5] In addition, forestlands on or near the urban-rural fringe now have a development value of 15-20 times their value as forests.[6] This suggests that as the region grows, an even greater percentage of working forests will be at risk for conversion.

Infrastructure costs. Following a pioneering study for the federal government in 1974,[7] numerous studies have documented the public costs of sprawl. In 2005, the Puget Sound Regional Council reviewed these studies and concluded that, while methodologies vary, sprawl is more costly than compact patterns of development.[8] Savings on the capital costs of infrastructure are particularly significant with compact development.

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[3] This section adapted from *Transfer of Development Rights (TDR) in Washington State: Overview, Benefits, and Challenges*, Cascade Land Conservancy, October 2008,

[4] USDA Census of Agriculture data, 1997 and 2002.

[5] College of Forest Resources, University of Washington. *The Future of Washington's Forests*: *Washington Department of Natural Resources Report.* 2007.

[6] Ibid.

[7] Real Estate Research Corporation. *The Costs of Sprawl: Environmental and Economic Costs of Alternative Residential Development Patterns at the Urban Fringe.* 3 vols. Washington, D.C.: U.S. Government Printing Office, 1974.

[8] Puget Sound Regional Council. *VISION 2020 + 20 Update: Information Paper on the Cost of Sprawl.* Puget Sound Regional Council, December 19, 2005.

Environmental quality. The environmental impacts of sprawl are well documented. Compact growth patterns use up to 21% less acreage than sprawling development.[9] Sprawling development leads to the creation of new impervious surface, increased flooding and increased stormwater management costs. Sprawl also contributes to loss of wildlife habitat and other environmental impacts.

Jobs and the economy. Loss of forest and farmland associated with sprawl could significantly affect these sectors of the economy. Some key indicators include:

- The value of Washington's food and agricultural production (including food processing) was assessed at $5.6 billion in 2001.[10]
- Farms and farm-related activities provide more than 523,000 jobs in Washington State.[11] Farm employment represents over 82,000 jobs.[12]
- Total employment in the state's forest products industries was approximately 45,000 in 2005.[13]
- The 2005 gross business income for the Washington forestry and forest-products sector was about $16 billion.[14]

Climate change. The link between sprawl and global warming has only recently come to the forefront of public consideration. A book published by the Urban Land Institute analyzed scores of academic studies and concluded that compact development could do as much to lower emissions through reduced vehicle miles traveled as many of the climate policies now promoted by state and national politicians.[15]

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[9] Robert W. Burchell, Anthony Downs, Samuel Seskin, et al. *Costs of Sprawl 2000.* Washington, D.C.: Transit Cooperative Research Program, Transportation Research Board, National Research Council: TCRP Report 74, 2002.
[10] Municipal Research and Services Center of Washington, Agricultural Lands Introduction Web page.
[11] USDA Website. Accessed December 5, 2007.
[12] Ibid.
[13] Washington State University Website: accessed December 10, 2007.
[14] College of Forest Resources, University of Washington, op. cit.
[15] Smart Growth America Website, "Growing Cooler: The Evidence on Urban Development and Climate Change" accessed January 1, 2008.

Goals and Requirements of the Growth Management Act

The Growth Management Act outlines 14 planning goals that counties and cities must consider in adopting comprehensive land use plans and implementing development regulations. The goals are: [16]

1. Encourage development in urban areas where adequate public facilities and services exist or can be provided.
2. Reduce sprawling, low-density development.
3. Encourage efficient multimodal transportation systems.
4. Encourage the availability of affordable housing to all economic segments of the population.
5. Encourage economic development.
6. Protect private property rights.
7. Process permits in a timely and fair manner.
8. Maintain and enhance natural resource industries.
9. Retain open space and habitat areas and develop recreation opportunities.
10. Protect the environment and enhance the state's high quality of life.
11. Encourage citizen involvement in the planning process.
12. Ensure adequate provision of public facilities and services to support development.
13. Encourage historic preservation.
14. The goals and policies of the Shoreline Management Act.

The benefits of TDR programs for local jurisdictions meet a number of these goals. For example, a TDR program can enhance agricultural and resource industries by allowing a landowner to sell the development rights, invest the proceeds from the sale, and keep the land in production. It can also encourage development in urban areas and reduce sprawl by transferring development potential from rural areas.

The Washington State Office of Financial Management calculates population projections that extend 20 years for counties fully planning under the GMA. The counties must use these projections as planning targets. During the planning process, counties consult with cities and decide how these growth projections are allocated in designated urban growth areas and rural areas. The outcome of this allocation process can inform the decision to adopt a TDR program.

Community Comprehensive Land Use Plan Policies and Goals

Counties and cities considering a TDR program need to review their policies and goals for how they plan to grow. Many jurisdictions' comprehensive plans already include discussion of TDR as a possible means to achieve desirable growth and conservation

[16] RCW 36.70A.020 and 36.70A.480.

patterns. Review of these policies and goals can help determine whether a TDR program is an appropriate tool to achieve adopted policies and goals.

One example of the role of the review process can be seen in Pierce County. The county had a policy in its comprehensive plan to develop a TDR program, but did not act upon this policy for several years. Throughout the county's comprehensive plan are policies to use a TDR program to protect farmland, forestland, parks, endangered species habitat, and recreational land. The comprehensive plan identified Major Urban Centers, Mixed Use Districts, and Community Centers as appropriate TDR receiving areas for additional development[17]. The county acted upon these goals in 2007 by designing and adopting a TDR program that emphasized the protection of agricultural land, forest land, endangered species habitat, land contributing to public trail systems, and recreational land.

Alternatively, TDR can be a driver for how land use policies and goals are revised during the update process. Experience gained through designing and applying a TDR program can help a jurisdiction articulate these policies and goals and understand how they change over time.

Existing Programs for Conservation and Growth

Counties and cities need to review other adopted programs to ensure consistency with a proposed TDR program. The evaluation for consistency should be made in two ways: how would a TDR program influence existing programs and how would existing programs influence the functioning of a future TDR program?

One element would be reviewing existing conservation programs with regard to sending areas. For receiving areas, it might include existing incentive programs that apply in the receiving area. The City of Bremerton already has a Bonus Amenity Program in place, for example, and downtown Tacoma has Design Standards for Increasing Allowable Floor-Area Ratio. In addition to reviewing existing programs, jurisdictions should consider the effects of proposed programs. In Redmond, the Bel-Red Overlake Transportation Study proposes measures that will influence the market for development rights. Understanding how current or proposed development bonus programs will interact with a TDR program will help inform the design process.

Market Conditions

Because TDR is a market-based program, adequate demand for increased density (or other development incentives) is essential to the emergence of a robust TDR marketplace. The nature of the housing and commercial real estate markets is another consideration in weighing the appropriateness of TDR. What kinds of development are occurring? The decision to adopt a TDR program does not need to depend on short-term growth in the real estate market. A jurisdiction can design and implement a

[17] Pierce County Code. Comprehensive Plan, Title 19A.

program during any part of a real estate market cycle. Long-term growth and planning goals are more important to consider in a TDR program than short-term fluctuations. Guidelines for assessing market conditions are covered in the Market Analysis section.

Landowner Willingness

As a voluntary program, a key to success is a supply of development rights that landowners are willing to sell. Understanding perspectives of landowners is essential to informing the decision to adopt a TDR program. Likewise, landowners should understand the opportunities a TDR program will offer them in terms of new land use options and adding value to existing resources. Outreach is critical to creating this understanding.

As part of an outreach effort, the jurisdiction should seek to answer a few questions, which include, but are not limited to:

- Do farmers and foresters want to keep their land in production?
- What views do landowners hold towards conversion pressures?
- Are landowners concerned about conservation or incompatible land uses?
- What are other land use options for landowners?
- What is the relationship between rural or resource landowners and the government?
- Do landowners view their property as an investment they plan to sell?
- What are landowner opinions on conservation easements?

Learning the answers to these questions is important in the early stages of program design and will help jurisdictions to cater the program to the interests of the constituents it will serve. Landowner perspectives can be measured in a variety of ways, including surveys, interviews, and public meetings. It is important to recognize the subjectivity of these questions. They can be framed and interpreted in different ways, and the responses to these questions could vary depending on how they are worded, who is asking them, and who is answering them. When conducting outreach, the jurisdiction should expect a wide range of answers, and should weigh these in the context of the community's planning goals.

Developer Demand

One of the factors determining the success of TDR programs is the demand for growth, and hence development, in urban areas. In order to best understand this demand, local government should seek to involve developers in the program design process. Local governments should make a priority of reaching out to developers and determining what their needs are, what they think the market is or will be doing, and where the demand for growth and economic development is in the community. Beyond the immediate advantages of learning their perspective on the market, there are other important reasons to approach developers.

Creating and maintaining positive relationships with developers will have beneficial effects on adopting a TDR program and how a program functions in the long term. With any publicly adopted program, local support is key to actually adopting a TDR program. Developers are typically well connected in the community and ensuring their support for TDR will help build broader support. One of the fundamental tenets of TDR is that it is a demand-driven process, and developers are part of the engine driving demand for higher density and other development incentives. Program design will be improved by considering their input and understanding their concerns, particularly around certainty and risk. The objective is to identify ways in which the demand for development can advance conservation goals while adding value for developers and communities. This subject is covered in greater depth in the Market Analysis section.

Benefits to Receiving Area Community

One element that is key to a successful TDR program is tangible benefit to the receiving area community. The idea of TDR can be abstract, and some communities may not find the notion of protecting land "out there" to be sufficient motivation to accept higher density. Identifying a direct connection between the sending sites and receiving areas can strengthen community interest in conservation. Protecting a drinking water watershed, conserving farms that supply local farmers' markets or grocers, or improving recreational opportunities all provide concrete benefits to which the public can relate. Other benefits include contributing to climate change solutions and creating a sense of place in the community. If a community has a vested interest in conserving resource land, it may be more open to accommodating changes to the community that would be ushered in by higher density development. Similar to landowner attitudes, the local government should measure community interest in conservation through outreach.

Policy Decisions

Once a local government has made the decision to adopt a TDR program, it should start a design process to ensure that the program incorporates elements that will effectively accomplish the policy objectives identified by the jurisdiction. Designing a TDR program involves a number of steps, including, but not limited to:

1. Define the program's goals
2. Conduct public outreach and policy/data research
3. Evaluate interaction of TDR with other programs and regulations
4. Perform market analysis
5. Identify sending areas
6. Identify receiving areas
7. Determine incentives
8. Select a transaction mechanism

Program Goals

Clear goals are important to a TDR program because they define its intent and help create benchmarks by which success can be measured. In defining the scope of a TDR program a community should start by answering questions about what outcomes it wants to achieve, including:

- What are the community conservation goals?
- What are the community's planning goals for growth?
- What scale of program is appropriate to achieve planning goals?

Answers to these questions are interrelated. Clearly articulating conservation and planning goals will help a jurisdiction identify what scale of program will achieve the best results.

Conservation Goals

In identifying conservation goals, a jurisdiction should aim to answer the question of what types of land or areas does it want to protect? Outreach is essential to gain input from residents in both sending and receiving areas. A TDR program should conserve land that citizens and the government have identified through their comprehensive plan policies as being important to the community. A public dialog will help inform policy makers what conservation priorities they should set.

Planning Goals

On the other end of the process, jurisdictions must have a clear vision of where and what types of development they want to promote using a TDR program. Some questions to consider include:

- Where does the community want to encourage growth?
- Is it interested in establishing or revitalizing a downtown, or encouraging development in designated centers for growth?
- What is the desired community composition of the receiving area?
- What type of development is the community interested in? Is the emphasis on office buildings in commercial centers, single family housing, multi-family housing, or mixed-use centers?
- How will the receiving area change over time as the TDR program is used?
- What infrastructure needs will the receiving area face?
- What quality of life issues are important to the citizens who will be affected by changes in the receiving area?

Community input in determining the future character of the receiving area is crucial. Public meetings, surveys, and requests for comments are starting points for an outreach process to determine clear growth goals.

Program Scale

What geographical area should the program encompass? Generally there are four scales at which a TDR program can operate in Washington:

Scale	Description	Sending Sites	Receiving Sites	Notes
City	Transfers occur entirely within city limits.	Within city limits	Within city limits	Smallest scale, limited supply of sending sites.
County	Transfers occur entirely within a county.	Unincorporated county (open space, resource lands)	Within urban growth areas, fully contained communities (FCC)	Large scale, potentially wide ranging demand from UGA receiving sites.
Inter-jurisdictional	Transfers occur between counties and cities.	Unincorporated county (open space, resource lands)	Incorporated cities or towns.	Medium to large scale, can involve an interlocal agreement between city and county.
Regional	Transfers occur between counties and cities, can cross county lines.	Resource and rural lands in Pierce, King, Snohomish, and Kitsap Counties.	Incorporated cities or towns in these counties.	Large scale, interjurisdictional transfers happen without interlocal agreement.

Table 1: Comparison of different TDR program scales.

Each of these scales has advantages and limitations, and should be weighed accordingly.

Intrajurisdictional - City

Pros:

- Effective on a small scale for conserving open space, historical sites, and affordable housing within a limited area;
- Citizens can see a direct benefit for a sending area within their community such as open space or habitat.

Cons:

- Supply of sending sites may be constrained;
- Sending sites are not a good match for cities wanting to conserve resource lands.

Examples: Cities of Seattle and Redmond (WA)

Intrajurisdictional- County

Pros:

- Sending area supply of development rights is large and potential market players more numerous;
- Greater range of sending sites can contribute to a more efficient market by offering buyers more choices;
- Strong nexus between conservation of sending sites and development in receiving areas.

Cons:

- Demand in receiving areas may be constrained by lower limitations on maximum densities in the county than within a city;
- Increased density or intensity inconsistent with city plans prior to annexation may create inconsistencies;
- Resulting development patterns may not reflect long term growth goals of the county and its cities as density transfers are not going into cities.

Examples: King County and Pierce County (WA)

Interjurisdictional

Pros:

- Sending area supply of development rights is large and potential market players more numerous;
- Demand for development incentives may be higher in cities;
- Urban receiving areas are better suited to higher intensity development;

Cons:

- Interlocal agreements between cities and counties may be complex and create administrative burden;
- Cities may be reluctant to accept additional density from outside their borders.

Examples: Cities of Arlington and Issaquah (WA)

Taken together, the consideration of conservation goals, planning goals, and program scale will shape the overall policy objectives of a TDR program. Once these goals are outlined, more specific decisions about its design will define the ways in which the scale of the program advance these policy objectives.

Market Analysis

A market analysis is one of the most important steps in establishing a successful TDR program. Understanding the factors driving demand on the receiving side and the issues of supply on the sending side will help the jurisdiction establish transfer mechanisms that will be equitable and will encourage all stakeholders to participate in the program. Given the complexity of conducting a market analysis and to avoid bias or the perception of bias, some jurisdictions may elect to hire an independent specialist to perform the study.

A market analysis should examine at a minimum:

- Supply of development rights in sending areas.
- Values of development rights in sending areas.
- Determining the market price for TDR credits.
- Exchange rates (see Exchange Rates section).

Supply of Development Rights

In order to estimate the number of potential development rights available for transfer, planners should first have an idea of how the sending areas will be designated (i.e. map, criteria; see Establishing Sending Areas). Based on the designations and other factors such as underlying zoning, planners can calculate the projected inventory of development rights.

Values of Development Rights

Calculating development right values on sending properties is a complex process. Two approaches yield valuations at different scales. To calculate the value of development rights on a specific property, a "before and after" appraisal compares the value of the property under its resource use to its value at its highest and best use (typically maximum buildout). Factors considered in this approach include access to roads, infrastructure, and services, and conversion pressure. A second approach would determine the value of development rights in general across a range of sending areas is best done by examining comparable sales.

Examples of Market Analysis

For an example of a high-level market analysis, see this 2008 study done by DC&E for CTED:

"Market Analysis for Regional Transfer of Development Rights in Puget Sound"

Snohomish County analysis:

Transfer of Development Rights for Farmland Preservation: Model Policy and Regulatory Strategy for Snohomish County

Determining the Market Price[18]

In determining the market price of a TDR credit, a developer will weigh the revenue and cost impacts on a project based on a set of assumptions. The developer will choose to purchase TDR credits if the risk adjusted profit is projected to be the same as, or better than, it would have been in the absence of TDR credits. The value of increased density is equal to the increased revenue minus the increased costs.

Revenue is a function of the additional units or area of building that is feasible to build in increments, but is also subject to market factors such as demand for the product, size of the unit or lot, and views. In some locations, the higher density is beyond what consumers are willing to buy, in which case there would be no revenue increase.

Costs vary widely depending on type of construction, and some do not increase proportionately to revenue. This can reduce the value of a TDR credit to a developer. The following list identifies some costs that developers might incur when building to increased density:

- Parking. These costs can take a wide range depending on development regulations. In some markets, the cost of providing structured parking can exceed the cost of the land for additional units.
- Construction type. The combination of local building and international building code regulations can highly alter construction costs. There are many construction types, each with different costs and the ability of developers to maximize building envelopes within each construction type will result in the greatest financial return.
- Mitigation. Additional traffic created by a project can trigger concurrency requirements. Other issues which may increase costs include water, sewer, and storm water infrastructure.
- Process. Zoning thresholds or State Environmental Policy Act requirements can impose additional costs and delays.
- Predictability and risk. Increased density or change of use may result in additional time for processing or permitting and/or can provoke opposition to the project, causing delays and increasing costs.

Revisiting Market Analysis

Market analysis does not end with a study for program design purposes. Just as real estate markets fluctuate, so does the market for development rights. In order for a TDR program to continue to function effectively, it may require fine tuning to reflect the state of the market. Without subsequent assessments of the market, a program can stagnate because the demand for development no longer aligns with the incentives offered by the program, the value of the incentives may no longer be commensurate with the cost of participating, and actual population

[18] This section adapted from "TDR's That Work in the Marketplace" by Judd Kirk, Port Blakely Communities, presented to the CTED Regional Transfer of Development Rights Policy Advisory Committee on August 14, 2008.

or economic growth may vary from projections. Therefore, in order to promote the long term viability of a TDR program, local governments should plan to examine market conditions periodically. Market characteristics to examine over time include:

- Changes in the volume of transactions,
- Trends in sale prices of TDR credits,
- Numbers of landowners willing to participate,
- Population growth,
- Changes in building permit application volumes,
- Rate of conversion of lands targeted for conservation,
- Real estate prices.

The frequency at which a jurisdiction should review the market analysis can vary depending on the scale and activity of the program. Jurisdictions should plan a schedule for assessing the market- it is easier to make subtle adjustments along the way than to resuscitate a defunct program. See also Program evaluation and updates.

Evaluating TDR Interaction with Other Programs and Regulations

A TDR program does not operate within a vacuum and, through its implementation, can interact in a variety of ways with existing programs and regulations. In order to anticipate how TDR programs might affect other programs or regulations, and vice versa, jurisdictions should consider evaluating the potential for these interactions. Examples highlighted here include affordable housing programs and regulations addressing design and safety.

Affordable Housing

The challenge of providing affordable housing is a wide-reaching and complex subject. While it is too large of an issue to address comprehensively in this guide, there are a few basic points that deserve special attention for the way they interact with TDR. An effective program will identify ways for TDR to avoid competition with, and possibly complement, existing or pending affordable housing programs. A detailed analysis of the relationship between TDR and housing affordability is made in the Cascade Land Conservancy's paper *Analysis of the Impacts of Transfer of Development Rights Programs on Affordable Housing*[19].

Incentives

Affordable housing programs and conservation TDR programs can both be designed to advance specific policy goals through the use of incentives. Certain incentives, such as density bonuses, can be common to both programs. In situations where two different programs award similar bonuses, developers will be able to choose between multiple sources to gain that bonus. This arrangement can result in outcomes that do not reflect policy goals. If it is less expensive for a developer to achieve a desired bonus through TDR than through the affordable housing program, the effectiveness of the affordable housing incentive will be diminished. This is a simplification of the relationship between the two programs, but the point is that jurisdictions should be aware of the potential for overlap between TDR and affordable housing programs.

One way a jurisdiction can strengthen a TDR program's approach to improving affordable housing options is to recognize potential overlap and design the program using alternative incentives. One approach a jurisdiction might take to promote compatibility is:

- Inventory current or pending affordable housing programs and any proposed changes to them.
- Assess the structure and incentive components of affordable housing resources as part of the TDR market analysis.
- Explore the use of *conversion commodities* as a way for the TDR program to offer different incentives from an affordable housing program.
- Separate how or where incentives are provided between the programs.

[19] *Analysis of the Impacts of Transfer of Development Rights Programs on Affordable Housing*, Cascade Land Conservancy, May 2009.

- Consider a policy decision that defines the roles and community goals of conservation TDR and affordable housing as part of a comprehensive livability strategy.

Examples of jurisdictions with both TDR and affordable housing programs:
City of Seattle (WA), Palm Beach County (FL), Montgomery County (MD)

Other references for Affordable Housing and TDR Programs

The Impact of Zoning on Housing Affordability

Why do Homes in Washington Cost So Much?

Existing Regulations

In addition to examining existing programs for potential interactions with TDR, jurisdictions should conduct the same process with regulations. This is discussed in the Establishing Receiving Areas section in the context of GMA. In summary, local governments should examine how increased development intensity will meet existing regulations. Examples of regulatory areas to consider include fire code and design guidelines.

Establishing Sending Areas

The establishment of sending areas creates new land use options for landowners. This process can be informed by lessons learned from earlier design stages. Having already identified the conservation goals on a broader scale, a jurisdiction can focus on more specific questions:

- What kind of land do we want to protect?
- How much land should we aim to conserve?
- Over what period of time?
- What are the conversion pressures?
- Do sending areas contain an adequate supply of TDR credits?

It is important to initiate stakeholder outreach in this stage. Thorough program design will result in the designation of sending sites in which many eligible landowners are interested in selling their development rights. Through this process the goal should be to balance landowner interest with conservation priorities. A program with low landowner interest will not generate the desired volume of transactions, but a program designed entirely around willing landowners may not yield conservation patterns that reflect the community's priorities. Local jurisdictions are best positioned to determine this balance.

What kind of land do we want to protect?

Cities and counties have numerous policy options for targeting land for conservation. They include local comprehensive plan priorities, local watershed plan priorities, and priorities in regionally and state-adopted plans. Furthermore, the marketplace will be structured to reward jurisdictions whose programs accomplish conservation of these lands.

Examples of other policy options for conservation include:

- Agricultural and forest land;
- Floodplains;
- Land in the watershed from which a city draws its drinking water; and
- Open space;
- Wildlife habitat;
- Land of other special importance to a community.

How much land should we aim to conserve?

The amount of land a community can protect through TDR is closely tied to the capacity of the receiving areas to accommodate additional development. While there is flexibility in this relationship, it is important for a community to quantify a conservation objective. This will help inform the design process and reflects conservation priorities. In many cases, the amount of land targeted for conservation is connected to the type of land a community wants to protect.

Over what period of time?

Many factors can affect the pace at which TDR transactions occur, some of which are beyond the jurisdiction's control. For example, during periods of economic expansion the demand for development will be high and may result in more conservation than during recessionary periods. Counties planning under GMA are required to plan for growth using population

projections from the Office of Financial Management. These data can help inform an estimate of the rate at which a county or city will be able to achieve conservation of prioritized land. If some amount of growth will be accommodated through a TDR program, then this portion will result in conservation. Population projections should be considered alongside the observed growth that a community has experienced and the expected demand for different types of development.

What and where are the conversion pressures?

Cities and counties may find it helpful to identify what conversion pressures are being exerted in rural and natural resource lands and where those pressures are greatest. Using state and county data to measure the conversion patterns of unincorporated areas outside designated urban growth areas, they can compare how growth projections compare to actual distributions of growth. Evaluating data from several years will help paint a picture of development trends over time. Examining parcel data from development applications using geographical information system (GIS) software will show where new growth is emerging and how development patterns are changing. Understanding these trends can help counties and cities select and prioritize lands for inclusion in sending areas.

Methods frequently used to define sending areas:

Three methods are frequently used to designate sending areas:

- Map designations
- Criteria
- Land Use Designation/Zoning Designation

Map Designations

This method is the most straightforward and is simple to administer. The agency administering the TDR program (managing agency) draws a line around the areas it wants to protect via the TDR program and designates all properties within those areas as sending sites. This geographic determination is made as a result of the jurisdiction identifying its conservation priorities. The City of Arlington, for example, wanted to conserve a specific area of farmland in the Stilliguamish River valley. Accordingly, Snohomish County designated that area of farmland on a map as a sending area for its inter-jurisdictional program with the City.

Advantages

- Maps provide clarity about which properties are eligible sending sites.
- The government or a community can target specific areas it wants to protect.
- Over time the map can be amended to reflect changes in sending site supply, program participation, conversion pressures or conservation priorities.

Disadvantages

- Map designations have the potential to create winners and losers: the line has to be drawn somewhere and some landowners may disagree with this decision.
- This approach may not capture the full extent of properties that the jurisdiction wants to conserve.

- The potential exists for blocs of landowners in a sending area to exert influence on development right prices.
- Map amendments may happen on a cycle that doesn't allow for frequent updates.
- Map designations may artificially limit the number of potential sellers in the market, resulting in inflated prices for TDR credits.

Examples
Cities of Arlington, Issaquah, and Redmond; Snohomish County (WA).

Criteria for Sending Areas

This approach, while more complex than map designations, allows a jurisdiction to more precisely translate its conservation goals to the program level. The managing agency decides upon a set of criteria to determine sending site eligibility. These could be parcels of a certain size range, property characteristics like wetlands or wildlife habitat, land use designations like agriculture or forest land, zoning, or threat of conversion. In this way the government and community can tailor the criteria to be specific about what types of land it wants to protect, rather than identifying specific parcels.

Advantages
- The jurisdiction can be selective in choosing what types of land it wants to conserve.
- The program can be flexible in modifying the criteria to address shifts in goals or to respond to the marketplace.
- Because criteria-based sending sites are potentially distributed over a greater area, sale prices of development rights are less vulnerable to influence by single transaction.

Disadvantages
- The resulting patterns of conservation may not be consistent with program goals as landowner participation may vary geographically.
- Participation in the program becomes more complex as landowner eligibility must be evaluated instead of being predetermined.
- Identifying eligible landowners and marketing the program to potential sending-site landowners may require more effort.

Land Use Designation

One specific subset of a criteria-based method of choosing a sending area is by land use designation. Using this approach, a jurisdiction can identify parcels with specific land use designations as eligible sending sites based on its general use designation. All lands zoned for and used as forest land or farmland within a certain area can be sending sites. For example, King County has designated a forest production zone and Pierce County has designated Agricultural Resource Land within a specific community plan (Alderton-McMillin)[20] as sending areas.

[20] Pierce County Code 18G.10.040(D)(1)

Advantages

- Land use designation enables landowners in a large area to participate in the program.
- This approach supports conservation objectives of protecting large, contiguous areas.
- Basing the designation on land use or zoning designations is easy to administer.

Disadvantages

- This approach is broad, and would have to be combined with other designations if a jurisdiction has more specific conservation priorities.
- This approach may create more sending area development potential than receiving areas can absorb.
- Land use designation may be politically infeasible.

These approaches may be combined to address certain limitations of each. For example, a jurisdiction could designate a broad area on the map within which individual parcels must meet criteria to gain sending site eligibility, or combine general land use designations with specific map designations.

Examples
Palm Beach County (FL), King County (WA)

Defining Development Right Allocations – Sending Area Ratios

Having identified sending sites, how should the program allocate the number of development rights to eligible landowners? Two possible approaches are:

- Zoning designation
- Formula

Regardless of what allocation system is adopted, it is essential that the jurisdiction clearly define how many TDR credits are assigned per development right and how that quantity is determined by the enabling ordinance.

Zoning

Under this approach, the number of TDR credits a sending site may be certified to sell is determined by the number of dwelling units allowed under the zoning of the property. For example, if a landowner has a 100-acre parcel zoned for 1 dwelling unit per 10 acres, the number of development rights allocated will be 10. Rights are not issued for existing dwelling units or encumbered properties.

Advantages

- Basing the allocation on applicable zoning is simple and objective.
- Basing the allocation on applicable zoning is consistent with the current development potential.
- Zoning is often a proxy for conversion pressure. Parcels zoned at higher densities may face a greater development threat, but also have more development rights to sell and therefore hold higher profit potential for the landowners.

Disadvantages

- Zoning is not a permanent designation, and as it changes the number of development rights a landowner may sell will also change. If an expectation of zoning changes is created, it may deter landowners from entering the marketplace in anticipation of higher future allocations.
- Zoning alone does not capture other conservation values that are related to ecological function of the land, such as wetlands, habitat, or recreation opportunities.
- Zoning does not take undevelopable land into account, such as steep slopes.

Examples
King County and Pierce County (WA)

Formula

A jurisdiction may allocate development rights based on a formula. In its simplest form, this could be "for every X acres a landowner receives Y development rights." This approach gives jurisdictions a wide range of flexibility in deciding how to allocate rights.

Advantages

- A program can use a formula to increase landowner incentive for participation by increasing the allocation of rights beyond zoning.
- Formulae can be calculated to match the supply of development rights with the desired additional density in a receiving area.

Disadvantages

- This approach involves a greater level of complexity.
- An improperly calculated formula can create unfavorable market conditions for one or both sides of a transaction, deterring program participation.
- This approach could create inequities between landowners.

Examples
Pierce County, King County, Snohomish County (WA)

Establishing Receiving Areas

Receiving areas are the locations to which development potential is transferred in the form of TDR credits. They can be within city limits or within an unincorporated urban growth area depending on the scale of the program (see Program Scale section). Within these areas developers may gain bonus uses by purchasing TDR credits. Perhaps more than any other element of design, the establishment of receiving areas is a step that influences a TDR program's effectiveness.

The receiving area plays multiple roles. At the program level, demand for incentives in the receiving area funds the conservation of sending sites. At the community level, the receiving area reflects the growth goals that a jurisdiction wants to achieve. Therefore the designation of receiving areas should be approached in the context of GMA goals for accommodating growth. For jurisdictions that fully plan under GMA, some of the work used to inform the selection of receiving areas will already be completed as part of the comprehensive planning process. Communities will want to draw on this prior work to identify potential receiving areas.

- What areas are planned for growth?
- What areas are not experiencing planned growth that might benefit from a TDR program?
- What areas might become appropriate for growth because of planned infrastructure improvements?

Because the local community has an interest in the shape growth takes in a receiving area neighborhood, a transparent decision-making process involving public outreach is important. As with any local planning process, it may be impossible to allay every concern. But there are many steps that governments should take to improve livability in receiving areas, such as ensuring adequate transit, public services, infrastructure, and amenities to meet the needs of a growing population.

GMA Considerations

In establishing receiving areas, cities and counties should ensure that these areas are consistent with their comprehensive plans as adopted under the Growth Management Act.

- RCW 36.70A.020 establishes planning goals to encourage development in urban areas, reduce sprawl, ensure adequate public services to serve development, maintain and enhance natural resource industries, retain open space, and protect the environment.
- RCW 36.70A.070 requires local comprehensive plans to address land use, affordable housing, funding for capital facilities, and protection of rural character.
- RCW 36.70A.110 and115 discuss requirements for communities to plan sufficient land capacity for 20 years of population growth.

Cities and counties should take certain policy considerations into account when locating receiving areas.

- Existing plans or community vision documents: What strategic goals has the community identified?
- Population trends: Which neighborhoods or areas are experiencing growth, or are planned or projected to grow?
- Infrastructure upgrades or investments: What plans exist for improving services or infrastructure, and do capital facilities plans support designation of a receiving area?
- Transit: How can receiving areas best be served by existing and future transit?
- Community composition: What are the economic uses, the character, and attributes that the community desires for the receiving areas?
- What other programs are in place or are being contemplated that need to be considered in designating a receiving area? For example, incentive programs for affordable housing or amenities such as streetscapes and parks.

Methods for Establishing Receiving Areas

Receiving areas may be established in a number of ways:

TDR Overlay

This approach involves the government designating one or more geographical areas to be the only eligible locations into which development rights may be transferred. Different overlays are appropriate for different development bonuses. In a program where the purchase of development rights provides higher density bonuses, the jurisdiction may identify receiving areas around transit corridors. In a program where the development incentives are conversion commodities like increased height or FAR (floor-area ratio), the most appropriate receiving areas may be commercial parks or a downtown office core.

As part of this approach, the jurisdiction should examine the work already done in planning for growth. Evaluating indicators of growth and understanding what areas are experiencing development will help inform decisions to locate overlays. Coordinating overlays with existing plans for growth will increase efficient use of planning resources and infrastructure.

Advantages:

- An overlay can target growth in an area consistent with the goals of a comprehensive plan.
- Overlays can help shape the composition of a designated area, for example by encouraging commercial, residential, or mixed-use development.
- There is certainty in where development rights may be used.

Disadvantages:

- Overlays only capture demand for development bonuses in a limited area.
- Opinions on the appropriateness of the overlay may vary within the community.

TDR Upzone

This approach requires that any area of the jurisdiction requesting a zoning change to a higher use purchase development rights as a condition of granting the change. Developers may still build to previous zoning without having to purchase development rights.

Advantages

- This approach captures the demand for higher density or other development bonuses.
- Upzones can target specific areas for growth.

Disadvantages

- It limits a jurisdiction's ability to direct growth to designated areas that are planned for growth.
- It may result in proposals for increased growth in areas where adequate facilities and services are not planned to support increased density or intensity with TDR. This adds uncertainty to the process for developers. If there is not adequate infrastructure planned, the jurisdiction will either have to deny the request to upzone, or amend its capital facilities plan and either require the developer to pay for the infrastructure or find another source of funding.

Examples:
Pierce County (WA)

Redevelopment

When a developer replaces an existing building with a new structure in an urban area, this indicates that market conditions make the cost of doing this favorable. A TDR program could capture these market conditions by linking the purchase of development rights to the replacement of existing buildings with larger ones. As land prices rise and demand for housing in urban areas grows, the opportunity to share redevelopment costs among more units becomes increasingly attractive. Redevelopment can also be planned by jurisdictions. For example, in the City of Sammamish, the revised Town Center Plan calls for the use of TDR in redevelopment. Additionally, the City of Snohomish is pursuing a TDR program as a way to help revitalize the Maple District redevelopment process.

Example: City of Snohomish

In its plan, Imagine Snohomish, the city identifies five strategic planning goals for the long term growth and redevelopment of the community. Subsequent to the publication of this plan, the city chose to explore TDR as one way of achieving its planning goals, particularly the redevelopment of the Maple District near its historic downtown. A TDR program would help support revitalization and create development patterns consistent with the strategic goals of the plan, including:

- Increase walkability within the city,
- Improve access to bicycle trails,
- Grow and diversify the city's economy and employment base,
- Maintain and enhance the city's special character and identity.

Advantages

- This approach captures the demand for higher density or intensity in areas that are already urbanized.
- This approach complements existing redevelopment plans.

Disadvantages

- Patterns of growth through redevelopment can be unpredictable and widely distributed if not planned.

Receiving Area Ratio

As a demand-driven tool, an effective TDR program must offer development rights at a price that developers are willing and able to purchase. The receiving area ratio is the number of additional dwelling units (or other development bonus) that a TDR credit may be used for in a receiving area development project beyond what base zoning allows. The allocation rate must be structured in such a way that the return on the investment justifies the additional cost to the developer and the risk of increasing the scale of the project.

During the design stage jurisdictions should seek input from developers to improve the level of participation in a TDR program. Developer demand is instrumental in successful TDR programs. If developers do not find the price of the development right to be cost effective, the program will fail to achieve the greater policy objectives. Jurisdictions should be prepared to encounter a range of ideas from the development community, and this varied input should be considered along with the results of the market analysis in structuring incentives.

Meeting with developers is a crucial step, and the government should target from which developers to seek input based on the proposed scale and planning goals it has already established. For example, if the desired scale of the program is within the city and the community planning goals are to concentrate office space in a downtown core, then the government should approach commercial developers for input.

Conversion Commodities

The most common use of a TDR for developers in TDR programs is a residential density increase. In return for purchasing development rights, the developer is allowed to build to higher density than is allowed by base zoning. Some existing programs cap the additional density that can be gained through TDR at a number of units or a percentage of the base density (King County, for example). However, this tool is flexible and can offer a wide range of incentives to developers depending on where demand exists in the market.

Other incentives that can supplement or substitute for increased density in TDR programs are commonly referred to as *conversion commodities*. These are useful in situations where demand exists for incentives that extend beyond the housing market. A sample of conversion commodities includes: [21]

1. Commercial Floor Area (CFA)
2. Building Height
3. Parking Ratio
4. Impervious Surface
5. Parkland and Open Space
6. Setbacks
7. Floor Area Ratio (FAR)
8. Impact Fees and Concurrency Conformance

Commercial Floor Area

As a marketable commodity, commercial floor area (CFA) consists of the ability to create or retain additional built square footage for commercial purposes. Frequently employed as part of an economic development strategy, policies regulating commercial floor area can be used as an alternative or in addition to a residential density bonus under a traditional TDR program. Many communities that are experiencing a jobs/housing imbalance choose to place a "cap" on whichever of the two is in greater supply to ensure a proper mix. Rather than limit residential development, the option to purchase more commercial square footage can result in the same outcome. In the Puget Sound area, TDR programs in both Issaquah and Redmond allow receiving-area developers to convert a TDR into increased commercial square footage. One TDR credit in Issaquah equates to the following:

- One residential dwelling unit/or comparable additional commercial
- square footage in commercial zones; and
- the associated number of p.m. peak hour trips; and
- impervious surface; or
- building height

21 Adapted from DC&E Market Analysis for Regional Transfer of Development Rights in Puget Sound

Case Study: Commercial Floor Area

In Redmond, Washington, receiving-area landowners can purchase TDR credits from a sending area in the form of a residential right, and are able to convert it to multiple commodities, including commercial floor area (CFA). They can be used in any number of combinations in commercial and mixed-use zones. Each TDR credit in the city of Redmond may be used to increase the amount of building floor area by 8,712 square feet, or one-fifth of an acre. Microsoft has been a significant program participant both for floor area and parking in the Overlake district, which is overlaid with a cap on CFA agreed to by the Cities of Redmond and Bellevue. TDR program participants can exceed development intensity allowed by base zoning regulations, but only within the overall maximum floor area restrictions.

Building Height

Additional building height is one of the most commonly used development commodities available for purchase through a TDR program. Combined with a regulated floor area ratio, or FAR, additional building height enables developers to fit more square footage within the building envelope than would otherwise be the case. In Seattle, the Olive 8 tower downtown was built higher than the 300-foot limit with the purchase of TDR credits. Additionally, the City of Redmond allows TDR credits to be used to increase the height limitation on a project by up to one story over each increment of floor area of 8,712 square feet.

Parking Ratio

Parking requirements can either be increased or decreased through the land use regulation process. Developers who seek to provide less parking than required by the local government can buy that right by purchasing a TDR credit. Typically measured as a percentage of floor area square footage or number of spaces, the parking ratio can also be decreased to allow developers to fit more parking into a project. Redmond permits developers to purchase and combine TDR credits to add up to 25 percent or 30 percent more parking per 1,000 square feet of gross floor area than would be allowed by regulations. However, the total parking ratio must not exceed five spaces per 1,000 square feet of gross floor area.

Impervious Surface

In jurisdictions where there are specific regulations on storm water run-off, either for watershed protection or public health and safety, there may be an opportunity to incorporate impervious surface area in a TDR program. Generally expressed as a percentage of the proposed project site, the amount of impervious surface, either as a man-made structure or paved surface that restricts water from reaching the underlying land, can trigger development review or be restricted at the entitlement phase. Impervious surface is a tradable commodity in some cities in King County as well as in other areas, such as the Tahoe Basin. For each underlying zoning district in Issaquah, there is a set of conditions that enable the augmentation of impervious surface area. In Issaquah, one TDR credit equals the following amount of

impervious surface area in addition to one residential unit or the comparable commercial square footage:

- 2,000 square feet of impervious surface outside the Critical Aquifer Recharge Area (CARA), or
- 1,000 square feet of impervious surface inside the CARA.

Case Study: Impervious Surface

The process and conditions for increasing impervious surface ratio limits in receiving sites are based on the type of zone and the associated impervious surface ratio allowed in that underlying zoning district, including multifamily, mixed-use and commercial zones. Issaquah is also currently investigating ways to increase the permitted amount of lot coverage for a project that incorporates Low Impact Design (LID) techniques. Redmond permits developers to increase the maximum impervious surface or maximum lot coverage by 8,712 square feet, provided that the total increase does not exceed 10% of the project site. Because storm water run-off can counteract conservation efforts, impervious surface area ratios in receiving areas are tailored to improve storm water management of specific land uses.

Parkland and Open Space

Developers are often required to provide parkland and open space as a community benefit accompanying development, which also fall within the realm of marketable commodities. Each TDR credit in Redmond may also be used to substitute for the requirement to provide 8,712 square feet, or one-fifth of an acre, of public or private parkland.

Setbacks

Similar in theory to the parking ratio or impervious surface area, waived or decreased setback requirements on a project site enable developers to increase residential and/or commercial floor area. Taken together, setbacks and building heights create the building envelope but can also contribute to the "wedding cake," or tiered, appearance of tightly grouped buildings. Issaquah permits developers to exchange one TDR credit for 1,000 square feet to modify building setbacks, minimizing the "wedding cake" effect.

Floor Area Ratio

Many zoning ordinances restrict non-residential building size by restricting the floor-to-area ratio (FAR). FAR is the ratio of building square footage to square footage of the underlying land. For example, if a lot is 10,000 square feet and the FAR is 1:1, this means that the building can be no greater than 10,000 square feet. Even for zoning ordinances that do not have an explicit FAR limit, the amount of square footage is implicitly restricted by the combination of setback and height requirements. Thus, FAR is an important consideration in defining the size and shape of buildings in any urban area. If a jurisdiction's planning goals include the growth or distribution of commercial development, offering FAR as an incentive can help achieve these goals.

Case Study: Floor Area Ratio

In the City of Everett, developers can transfer unused floor area per the maximum FAR standards for historic properties to a proposed development site within the B-3 (Central Business District) zone, provided the proposed development does not exceed the maximum FAR. In addition, an explicit or implicit FAR limit may come into play if a TDR credit can be converted into either commercial floor area or additional building height. For example, a receiving-area landowner may obtain more height by purchasing a TDR credit but may not be able to use that additional height because of FAR restrictions.

Exchange Rates (Sending and Receiving Area Ratios)

Also referred to as transfer ratios or multipliers, sending and receiving ratios correct the imbalance in value between development rights in sending and receiving areas. The market value of one dwelling unit on a 10-acre parcel in a rural area is often worth more than the value of one additional unit in an urban apartment building to a developer. Developers would be unwilling to pay the rural value for one right, and landowners would be unwilling to sell their rights at urban values.

Examples

A linear exchange rate/ratio is the simplest to implement. In King County's program, for example, for every one development right purchased a developer can build an additional two dwelling units in a receiving area, up to 200% of the base density. Pierce County uses a formula to determine how many rights a developer must purchase for any given project. Exchange rates can similarly be established for conversion commodities. One example of this is building height. The jurisdiction can establish the additional height a developer may obtain in an amount that adds sufficient value to the project to justify the cost.

The higher the receiving area ratio, the more it will favor developers. Setting it too high, however, will reduce the amount of conservation the program achieves. Finding an exchange rate that approximates an equilibrium for both buyers and sellers should be one of the objectives of a market analysis.

Incentives for Developers

What will motivate developers to participate in a TDR program? A developer will pay for increased revenue or reduced costs and risk. Depending on the market, a variety of incentives could be appropriate to encourage program participation. The key to answering this question is to discuss the issue with the intended users. Outreach to developers will help a jurisdiction inform program design. For example, one incentive in which developers have expressed interest is expedited permitting and review under the State Environmental Policy Act (SEPA). The cost of environmental review can represent significant additional expense for a project. Any delay to a construction project during the permitting process can have compounding effects on the cost of financing. For developers, time is money and certainty is critical to estimating costs. Local governments should consider the following optional incentives for developers.

"By Right" Permitting

"By right" permitting is means that project applications for permits that use transferable development rights would be subject to administrative review. Administrative review allows a local planning official to approve a project without noticed public hearings.
By linking TDR to a "by right" process, developers will benefit from predictability and time savings. The value of these benefits can often be sufficient motivation for purchasing development rights.

Advantages

- More certainty is provided to developers.
- Time and money savings will be appealing to developers.

Disadvantages

- The city or county will need to ensure the public is engaged in the designation of the receiving area and understands future development potential as they will not have a significant opportunity to engage in the permit decision through a public hearing.

"Up Front" Environmental Review of Receiving Areas

One incentive that a city can offer developers is up front environmental review in conjunction with the designation of a receiving area. The review would include and address any impacts to the natural or built environment that will be generated by a development project using a TDR. This can take a variety of forms under SEPA.

Subarea plans

Doing more substantial and detailed environmental review of the impacts of the use of TDRs in a designated receiving area through a subarea plan will benefit proposed projects using TDRS. The impacts identified in the subarea plan will not have to be re-reviewed in conjunction with

the project permit application. The developer will know up front what the impacts are and can address them. This adds certainty to the permit process for the developer.

Categorical exemption for infill development

SEPA provides a categorical exemption for infill projects that meet the requirements of RCW 43.21C.229. A city or county may categorically exempt development that is new residential or mixed-use development proposed to fill in a designated urban growth area where current density and intensity of use in the area is lower than called for in the goals and policies of the applicable comprehensive plan. An environmental impact statement must have been prepared in conjunction with the comprehensive plan. A city or county with a designated receiving area that meets this requirement could categorically exempt projects that use TDR to meet comprehensive plan density and intensity goals.

Planned Actions

SEPA allows jurisdictions to provide a more streamlined environmental review process of permits by performing a more detailed environmental review to assess the impacts of a receiving area being built to maximum capacity using development bonuses. Designating planned actions and adopting a planned action ordinance requires more work up front on the part of the government, but yields the unique result of making subsequent participation in the TDR program very easy. Under RCW 43.21C.031 (Significant impacts), a local government can perform a SEPA analysis evaluating the impacts of maximum desired build-out assuming use of TDR in a designated receiving area. By planning for this level of development and doing the detailed environmental review, a city or county can thereby approve development permits consistent with designated planned actions without requiring further SEPA analysis at the individual project level and without an appeal under SEPA. The savings in time and money to developers are substantial.

Advantages

- This approach establishes certainty for developers.
- Time and money savings in projects for developers will be appealing.

Disadvantages

- The government bears the burden of initial time and cost of this approach.
- The city or county will need to ensure the public is engaged in the designation of the receiving area and environmental analysis, and understands future development potential, as they will not have a significant opportunity to engage in the permit decision through a public hearing.

Planned Action Ordinances

For more comprehensive information on planned action ordinances, refer to the RCW 43.21C.031; WAC 197-11-164, 168 and 172; and the SEPA Handbook.

Example:
City of Mountlake Terrace application of a Planned Action Ordinance.

Planning for Infrastructure and Amenities

An effective TDR program requires that a community devote adequate resources to the program's design and implementation, including planning for infrastructure in receiving areas. In designating a receiving area, a community will need to ensure that the existing capital facilities plan includes adequate infrastructure to support any increases in density or intensity as a result of using TDR in a project. If not, the capital facilities plan may need to be amended in conjunction with the designation of receiving areas.

For further discussion of infrastructure and amenity funding, please refer to Cascade Land Conservancy's paper,

Capital Funding for Infrastructure and Other Amenities in Cities – Incentives for Participation in a Transfer of Development Rights Program.

Transaction Mechanisms[22]

A technical and policy decision in designing a TDR program is the selection of a transaction mechanism, or the means of conducting the purchase and sale of development rights. The range of alternative transaction mechanisms that a TDR program may employ is broad. These mechanisms form a central component of a program and should be considered in light of these factors:

- Conservation goals: Is the objective to maximize acres conserved, maximize the number of transactions, target large or small parcels?
- Effectiveness in policy implementation: Which transaction mechanism is best suited to achieving the conservation goals of the program?
- Ease of participation: Is the transaction mechanism simple to use and understand?
- Cost effectiveness and ease of administration**:** What will the burdens be on the public agency that will be responsible for operating the TDR program? Is the mechanism appropriate for the program's resources?

This section gives a brief overview of several proven alternatives and weighs their relative advantages and disadvantages. The five most common transaction mechanisms are:

1. Simple buyer-seller
2. Buyer-seller with public support
3. Buyer-seller with private support
4. TDR bank
5. Density fee

Other alternatives exist or have been proposed, so this list is not comprehensive. Some TDR programs, such as King County's, have successfully combined multiple mechanisms.

Simple buyer-seller

Simple buyer-seller transactions occur when an eligible landowner sells development rights or credits directly to a buyer. The two parties negotiate the sale terms and price, which can vary depending on market conditions. The landowner sells an easement, which is recorded on the property from which the development rights have been severed. The buyer can apply the rights towards a development project on the receiving site. Conceptually this is the most distilled form of TDR. However, it still requires the local government managing the program to issue, track and redeem TDR certificates.

[22] This section is adapted from *Alternative Transfer of Development Rights (TDR) Transaction Mechanisms*, Cascade Land Conservancy, July 2008

Advantages:

- This mechanism relies heavily on the private market.
- A transaction can take any form agreed to by buyer and seller.
- Public costs are the lowest of any alternative presented.

Disadvantages:

- The limited availability of information is often a major obstacle to buyers and sellers finding each other, especially at the outset when the marketplace is not well established.
- Buyer and seller interests may not align over time. Developers may need to act quickly in a rapidly growing real estate market, while sellers might want to time their sale to maximize their financial advantage.
- The private market on its own may not be effective in protecting contiguous areas, since individual developers may need to purchase only a portion of the development rights from a large sending site.
- Large projects may require the negotiation of several development rights transactions, which create added burdens for developer participation.

Examples
King County (WA), San Luis Obispo County (CA), Pitkin County (CO)

Buyer-seller with public support

The agency managing a TDR program can take several steps to improve the transparency and ease of buyer-seller transactions. These mainly involve enhancing the availability of information about the process, and include:

- Maintaining public registries of eligible landowners and interested buyers.
- Publishing historical data about the program (details of past transactions).
- Marketing the program to eligible participants.
- Influencing the marketplace by setting price floors for development rights.

Advantages

- This mechanism helps interested buyers and sellers to find each other, increasing marketplace efficiency.
- Public agency support reduces uncertainty and streamlines decision-making for the participants. As players know more about market conditions they are better prepared to make decisions about entering the market.
- Public agency support helps to address the market timing issues in simple buyer-seller transactions by better connecting buyers who need to act quickly with sellers.
- Elements of this mechanism facilitate interactions between buyers and sellers.

Disadvantages

- Land protected via this mechanism may not reflect the community's conservation priorities.
- The higher level of service provided by the managing agency requires an increase in resources.

Examples
Redmond (WA), Collier County (FL), Pinelands (NJ)

Buyer-seller with private support

This alternative relies on private transactions as the core of the program, but incorporates brokers to facilitate TDR transactions. The concept of a TDR brokerage is the same as that for traditional real estate. A TDR broker acts as agent of the seller or buyer of development rights. For a fee, the broker markets available development rights to potential buyers, helps negotiate sales agreements, and arranges an escrow process to facilitate transactions.

Advantages

- Brokers link compatible buyers and sellers to enable transactions.
- Brokers can provide professional support and expertise to buyers and sellers to help them navigate the transaction process.
- The mechanism is funded by transactions.

Disadvantages

- Increased cost of participation may deter potential buyers or sellers.
- Land protected through private brokers may not reflect the conservation priorities of the managing agency.

Example: Montgomery County, MD

Montgomery County has helped overcome the problem of incomplete information by actively engaging the real-estate agent community in the TDR market. Inquiries from developers and private parties seeking development credits are forwarded to several independent agents who specialize in the sale of development rights and act as brokers between potential sellers and buyers. This brings the program more solidly into the free market and facilitates transactions in the same way real estate agents operate in the housing market. Incorporating the pool of agents also ensures that a body of knowledge and experience will likely be involved in every transaction, reducing actual and perceived risk.

TDR Bank

A TDR bank is an entity designed to buy, sell, and hold development rights. It can be managed by a government agency or by a private firm. The government may provide an initial amount of funding (seed money) to finance development right purchases. The bank purchases development rights from individual landowners and in turn sells them to developers. Proceeds from development rights sales are reinvested in the bank to finance future purchases, creating a revolving fund.

The process of creating a TDR bank is the same regardless of whether it operates in the public or private domain:

1. Identify the administrator of the bank, including which department, agency, or firm will be responsible for and staff the bank. Or, whether the bank will be run by a nonprofit.
2. Adopt an implementing ordinance to establish the bank, articulate the purpose of the bank and specify how it will serve the goals of the TDR program.
3. Determine how the bank will be funded (if public funds are used, the city or county must comply with legal regulations on the public use of funds).
4. Create guidelines for the purchase and sale of rights, including escrow, conservation easements, payments, and other elements of transactions.
5. Establish a methodology for valuing development rights that will be purchased or sold through the bank. If the bank uses public funds from a state or local government the price must be based on the fair market value using an appraisal.

Advantages

- Banks can focus on property with a high priority for conservation that might not be addressed by the private market.
- A bank simplifies transactions for buyers and sellers by eliminating the need to find trading partners and negotiate individual deals.
- Banks can intervene in the marketplace to steer activity. They can stabilize the marketplace by standardizing price structures, absorbing excess development right supply, and accommodating fluctuations in demand.
- Banks can make sales occur in a timely fashion for buyers and sellers, who may not be ready to act at the same moment.
- Banks can be integrated with an existing purchase of development rights (PDR) program, expanding the resources available for conservation.
- Banks can facilitate larger TDR projects by selling large numbers of rights to a developer who would otherwise have to undertake multiple negotiations and transactions to support an individual project.

Disadvantages

- Administrative costs can be high. Costs may be prohibitive for smaller communities with limited staff and budget constraints.
- Banks might face skepticism or suspicion in communities that are leery of government involvement in private property issues.
- Banks require up-front capitalization and assume an element of risk that would otherwise be shouldered by the private market.
- Banks setting the price of development rights through acquisitions could have a negative impact on the private market by inflating the price.

Examples
Public bank: King County (WA), private bank: Cambria (CA)

Case Study: King County TDR Bank

As the use of TDR expands in Washington, jurisdictions adopting or revising TDR programs may determine that creating a bank is appropriate for their market. Having successfully completed a number of transactions, the King County TDR bank might serve as an example for how other jurisdictions structure their own. King County's TDR bank was established in 1999 as a mechanism to facilitate a specific transaction that was impractical to conduct entirely in the private market. This exchange of development rights was the first interjurisdictional TDR project for the region, the timing constraints of which created the need for a county TDR bank. In this particular case, the developer was not able to purchase TDR credits from the sending site at the time the landowners wanted to sell them.

As a solution to this timing problem, the King County Council appropriated $1.5 million in capital to establish the King County TDR bank. Using Conservation Futures tax dollars, the appropriation enabled the county to purchase 56 development rights from the sending site to hold for future sale to developers who had identified projects in downtown Seattle. A majority of these rights were re-sold in 2001. The capital from the sale was subsequently used to purchase additional development rights in 2009.

The King County bank was structured to purchase development rights strategically, targeting properties with the highest public benefit and eliminating the timing constraints which can hinder the market. In addition to handling TDR transactions, the King County bank acts as a central database for potential buyers and sellers of development rights in the private market. This database provides a forum for buyers and sellers of development rights to connect. King County's bank includes $500,000 in "amenity funds" set aside to provide urban infrastructure improvements in neighborhoods which accept additional density through TDR, such as parks and open space, streetscape and transit-related improvements, and cultural facilities.

Administration of the King County TDR Bank has been part of the program's success without being burdensome. The TDR bank is managed by the county's TDR program administrator, who spends about 25% of his time on these duties. While the bank's transactions are an executive decision, they are overseen by a Board of Directors from various county departments. Administrative and programmatic expenses represent approximately 10% of the bank's costs, the remaining 90% is directed towards conservation.

Through county code, the bank's buying and selling decisions are constrained to prices that do not exceed Fair Market Value (FMV) for purchase and are not below FMV for sale of development rights. While flexibility in pricing outside of FMV would allow the bank to more effectively take advantage of willing landowner prices, the restrictions are necessary for handling public funds.

Density Fee

A density fee, also known as an in-lieu fee, may be used to achieve land conservation as an alternative to other incentive mechanisms like TDR. Developers pay a fee to the sponsoring public agency to build to a higher density or intensity than baseline zoning allows, or take advantage of other incentives set forth by the program, like building to greater heights than otherwise allowed. Funds collected are used by the jurisdiction to fund PDR in high priority conservation areas. Density fees can be set to a specific dollar amount per additional unit of incentive.

While a density fee is not actually a transaction mechanism, it has many similarities to a conventional TDR transaction. The chief difference between a density fee and a traditional TDR transaction is whom the developer pays - in this instance payment is made directly to the government instead of a landowner. Framing this approach requires tact: to reduce the potential negative reception to this mechanism by developers, the government should emphasize the gains achieved.

Density Fee Programs

For a more detailed analysis and discussion of this subject, please refer to the Cascade Land Conservancy's paper:

Alternative Transfer of Development Rights (TDR) Transaction Mechanisms

Advantages

- This alternative is simple to administer and has a short transaction time for the developer.
- A fee provides certainty for developers.
- This approach allows the managing agency to make purchases that target high priority areas for conservation.
- A fee can be coordinated with a PDR program, leveraging public resources for additional purchases of development rights.

Disadvantages

- A density fee may be perceived as "selling zoning."
- If a program allows both private market transactions and a conservation fee option, coordination between the two could be difficult.
- There is a time lag between when the fee is charged and when the funds are expended for conservation.

Examples of Density Fees

As of March 2008, the **Livermore, California** TDC program is in its early stages of implementation. It has adopted an in-lieu fee ($21,591.61 per development credit) and has collected about $1.5 million in fees. Livermore has not, however, started purchasing easements in the North Livermore area, so empirical evidence of the program's performance is incomplete. Since the collection of in-lieu fees is tied to housing development, the revenue generated from fees has been affected by the housing market downturn. Livermore will be implementing the program when additional fees have been collected, or have developers conveying easements they have purchased to the city. Livermore also anticipates using the in-lieu fees in coordination with other mitigation and conservation programs as those opportunities arise.

(Frost, Susan, Livermore Principal Planner, email to author March 21, 2008)

Berthoud, Colorado, uses a density transfer fee instead of a traditional TDR program because it is easily administered. This fee is $3,000 per dwelling unit in single-family and $1,500 per unit in multi-family projects. These funds are used to purchase development rights on parcels that protect water resources, agricultural lands and community buffers. Berthoud does not consider this an impact fee because the charge is assessed only upon the developer requesting higher density within the town. The current total of Berthoud's density transfer fee fund is $229,014. The town allocates 6% of the fee to cover administrative costs of the program.

(Fulton, Bill; Mazurek, Jan; Pruetz, Rick; Williamson, Chris; *TDRS and Other Market-Based Land Mechanisms: How They Work and their Role in Shaping Metropolitan Growth;* Brookings Institution, 2004)
http://www.brookings.edu/~/media/Files/rc/reports/2004/06metropolitanpolicy_fulton/20040629_fulton.pdf

Administration

A broader policy decision that jurisdictions designing TDR programs will want to consider in light of funding, transaction mechanism choice, and conservation goals is the scope of the program's administration. In essence, are the resources available to the jurisdiction adequate to effectively administer the program? To help jurisdictions answer this question, this section profiles three examples of government involvement and describes what preparations must be in place for the successful administration of TDR programs. The levels of government involvement discussed are low, medium, and high.

City of Everett: low government involvement in TDR program administration.

Both the scope of and level of government involvement in Everett's Reasonable Use Exception program are small. Under this program, a landowner can sell development rights from a property that has environmentally sensitive areas that limit full economic use. Approval for participation in the program is administrative, so the time, cost, and risk to developers are minimized. Transactions typically involve small numbers of rights, demand for rights has remained modest, and the extent of the program is entirely within the city. Administration of the program requires a fraction of one staff member's time.

City of Redmond: medium government involvement in TDR program administration.

Redmond's TDR program is an example of a moderate level of government involvement working effectively to achieve modest but clearly defined conservation policy objectives. The program's administration is managed by one member of the city's planning staff. Redmond has conserved over 400 acres and satisfied the program's original conservation goals to such an extent that sending site eligibility is being expanded. Redmond's TDR program offers public support in the form of a user-friendly website, ample information, registries of interested participants, and maps.

King County: high government involvement in TDR program administration.

King County, Washington, has the highest level of government involvement of any TDR program in the state. The program employs two staff, manages a TDR bank, and since inception has conserved over 137,500 acres of land. The program administrators take an active approach to conservation, marketing the program to cities and seeking out transactions with landowners and developers in addition to reviewing applications to the program. The success of the program in terms of acres conserved is a reflection of the combination of King County's policy objectives, appropriate transaction mechanisms, and energetic administration.

Comprehensive plan and development regulations

Jurisdictions wishing to implement a TDR program will need to add policies to their comprehensive land use plan to articulate the role of the program in meeting plan policies and goals. Development regulations that govern the program will have to be adopted. Typical topics addressed in the plan policies include conservation goals, rural land use and development, economic development, transportation, concurrency requirements, and infrastructure, to name a few. Development regulations would address specific elements such as how development rights are calculated in sending areas, what bonuses may be awarded in receiving areas, and how the transfer process works.

Certifying development rights and issuing certificates

There are a variety of ways in which managing agencies can structure the process for certification and issuance of TDR credits. The exact sequence of events can vary between jurisdictions, but one general outline of the process involves the following steps:

1. Application. The managing agency makes available information and forms for program application. Eligible landowners may apply for certification and issuance of TDR credits, or certificates.
2. The managing agency evaluates the application and recognizes the landowner's intent to conserve the proposed land.
3. The managing agency calculates how many credits the property is eligible to be issued. Existing encumbrances shall be taken into account in the calculation.
4. The landowner places a conservation easement upon the property.
5. The managing agency records the easement and issues credits or certificates.
6. The landowner markets the credits and may sell them.

The main variations on this sequence involve the timing of the sale of TDR credits. For example, in the programs in Snohomish, King, and Pierce Counties, landowners must first record conservation easements on their properties before receiving TDR certificates to sell. Landowners can choose to place easements on their properties and then market their credits. Alternatively, landowners can try to line up a buyer for their credits in advance and complete the process of recording the easement, receiving TDR certificates, and selling those certificates in close succession.

Process overview: landowner perspective

The process for obtaining TDR certificates is as follows:

1. A landowner must obtain, complete, and submit a sending site application and, if required, any associated fee to the managing agency.

2. Following an application for TDR certificates by the sending site owner, the managing agency will issue a TDR certificate letter of intent. This letter recognizes the landowner's willingness to sever development potential from his or her property and sell it as TDR credits. The letter should contain a determination of the number of TDR credits calculated for the sending site and an agreement by the agency to issue a corresponding number of TDR certificates in exchange for proof of a sending site conservation easement granted to the county or city administering the program. The easement will be enforced through the land use regulatory process.

The sending site owner may use the TDR certificate letter of intent to market sending site development rights to potential purchasers, but the letter of intent should have no value and should not be transferred or used to obtain increased development rights within receiving areas.

3. As provided by the TDR certificate letter of intent, the agency should issue serially numbered TDR certificates to the sending site owner upon acceptance of a TDR conservation easement. The agency should retain the TDR certificates until such time as a conservation easement restricts the sending site. The agency should establish some period of time from the date the conservation easement is offered by the sending site owner to conduct, at its discretion, a review of the sending site permit file and/or a site inspection.

Tracking development right use

The program administrator will need to establish a method to track the movement of development rights. This is not only important for measuring program activity and the marketplace, but also for preventing the same rights from being sold multiple times. Maintaining a database with seller and buyer information is a common practice, and an effective way to track the application for, issuance of, and use of development rights is to assign them serial numbers.

Deed restriction

After development rights have been transferred, a TDR conservation easement restricting the deed and documenting the transaction should be recorded by the jurisdiction. Notice will also be placed on the title of the sending parcel. The jurisdiction should establish and maintain an internal tracking system that identifies certified transfers. Options for such a system include:
(1) Placing a checkbox on building permit applications asking property owners if their land is encumbered by a conservation easement, and
(2) Placing a checkbox on property tax assessment records that assessors can mark if an easement has been placed on a parcel.

Conservation easements[23]

A conservation easement is a legal agreement between a landowner and a government agency that permanently limits uses of the land in order to protect its non-development values. It allows the landowner to continue to own and use the land, to sell it, and pass it on to heirs. A conservation easement is placed on a sending site at the time development rights are sold from the property. The conservation easement typically prohibits any further development of the property, but should allow resource-based uses, such as farming and forestry, to continue.

Characteristics and elements of this document may include:

- Written in easily understood language
- Defines "development"
- Details monitoring requirements and processes
- Outlines transferability

Written in easily understood language
The conservation easement should be written in plain language to the extent allowed by legal requirements. It is important to clearly communicate what is and is not affected by the conservation easement, and to reduce the likely wariness of some potential TDR participants.

Defines "development"
The intent of transferring development rights from rural or resource lands is to conserve open space, habitat, agricultural ,or forestry values. This generally translates to a restriction on the construction of houses and commercial buildings, and incompatible uses would be addressed in zoning laws per GMA requirements.

Details monitoring requirements and processes
Monitoring for TDR conservation easements, given their limitations, should be largely restricted to making certain the landowner is abiding by the terms of the easement—namely, that the landowner is not developing the property. The holder of the easement may occasionally need to access the property to conduct its monitoring. In such cases, the easement should clearly

[23] Ibid.

state the easement holder must give sufficient notice and should not interfere with the landowner's use of the property.

Web based tools

With the increasingly widespread use of the Internet as a tool for the government to communicate with citizens, it is recommended that agencies publish program information online. Given the broad geographical distribution of participants in a TDR program, maximizing the accessibility of information and communication via the Internet will serve to improve knowledge of and participation in the program. Any jurisdiction implementing a TDR program should aim to include as many of these resources as possible on the agency's website.

Applications & forms

At minimum, the paperwork for program participation should be available to download. At best, participants would be able to complete and submit applications and forms electronically. (See sidebar for examples.)

Sending and receiving site databases

A key resource for prospective program participants is information about who is in the market, what rights are for sale, and what the current demand is for rights. Knowing that willing buyers and sellers exist will affect participation, and helping them to connect is a valuable service that will facilitate marketplace activity.

Examples of Web-based Tools for TDR Programs

Applications & forms
Examples of applications for TDR program participation may be found at the following locations:

- City of Redmond application
- King County application

Records of past sales
Redmond's TDR program website offers a database of transaction history:

- City of Redmond TDR transaction database

Electronic TDR Credit Exchanges
Tool to connect buyers and sellers

- King County TDR Exchange

Maps/GIS
Examples of online mapping tools:

- Clark County Basic Property Map
- Lewis County Property Assessment and Tax System Map

Records of past sales

Transparency is integral to a healthy marketplace, and by making records of past sales public the managing agency will help inform negotiations between buyers and sellers. The information can be collected as part of the recording process, and should include at minimum the date of the sale, the number of rights purchased, and the price paid per right. This information can also help the administrators make changes to the program.

Frequently Asked Questions

A TDR program can appear complicated to the newcomer, so having a section of the website dedicated to answering basic questions about eligibility, participation, transactions, procedures, and so forth can help people unfamiliar with TDR understand and navigate the process.

Maps/Geographic Information System

An increasingly common feature on the websites of planning departments is a Geographic Information System (GIS) mapping tool. (See sidebar for examples.) Users can perform basic spatial analyses and create their own maps through a simple interface. Adapting this type of tool to incorporate geospatial information about a TDR program would create a powerful utility for prospective participants. In cases where the sending and receiving areas are map designated, the extents of these areas could be viewed in conjunction with other landscape features. This could provide useful decision-making information for marketplace players and could quickly help determine landowner eligibility.

Marketing the program

Activity in a TDR program will be limited if potential participants are not aware of its existence, its benefits, or their eligibility. The program administration should include funding for marketing and a marketing plan. The extent of this component should reflect the goals of program and the level of involvement in which the jurisdiction is prepared to engage (see section on Administration).

One goal of TDR programs should be to encourage a high volume of transactions. Many factors influence participation, and marketing is one which can change public interest in a relatively short period of time. The most basic component of promoting a program should be spreading awareness of its existence. Ways to reach a broad audience include articles in daily newspapers, community and industry newsletters, and Internet-based media such as blogs, discussion forums, and online news sources. Following this, potential participants need to be

Case Studies: Effectively Marketing TDR Programs in Washington

The **City of Redmond**, which has a modestly sized TDR program, succeeded in boosting participation through the simple approach of mailing informational packets to eligible landowners.

King County's TDR administrator has taken a proactive and personal approach to program outreach. In addition to welcoming unsolicited applications, the administrator seeks out owners of land that the county has prioritized for conservation and initiates discussions about land use options. He also has met with city governments to encourage them to adopt interlocal agreements allowing density transfers from unincorporated county land into cities. Not all programs will be able to devote this much time or energy to promoting TDR, but these examples illustrate how marketing can yield desirable results.

informed of their eligibility. Finally, if a local government deems it appropriate, a representative might conduct outreach with individual groups, landowners, or developers to encourage participation.

There are few limits to the creativity an agency may use to promote its TDR program, and if outreach efforts have been thorough, some approaches may suggest themselves over others. It is important, however, that the agency be attuned to landowner attitudes toward government involvement in property related matters or neighborhood attitudes towards growth. A poorly planned marketing effort could have a counterproductive effect.

Program evaluation and updates

A feedback mechanism is an essential component of any public program. A TDR program should include a way to measure its progress against the stated policy objectives and a means to modify the design to better meet its goals. Regularly scheduled program evaluations should be established along with a set of criteria measuring effectiveness. The CTED Policy Advisory Committee report recommends a biannual reporting cycle. Information to consider in evaluation might include

- Number of transactions completed by different mechanisms,
- Area of different land types conserved,
- Changes in transactions and area conserved compared to previous periods,
- Spatial distribution of land conserved,
- Relative conservation values of land conserved,
- Annual amount of land conversion before and after TDR program implementation,
- Development right price fluctuations,
- Costs of program administration,
- Characterization of community composition and population growth in receiving areas,
- Reduction of carbon footprint,
- Qualitative feedback on user experience and agency role in transaction,
- Number of additional units (or other development commodities) added to the receiving area.

The TDR ordinance may include language defining the frequency of program reviews and provisions for updates based on review findings.

Definitions

Appraisal
An appraisal is an unbiased and systematic process of estimating the value of a property, whether it is market value, insurable value or other defined value of a specific parcel or property.

By-right permitting
Project applications for permits that use transferable development rights would be subject to administrative review. Administrative review allows a local planning official to approve a project without noticed public hearings.

Conservation easement
A conservation easement is a legal agreement between a landowner and a land trust or government agency that permanently limits uses of the land in order to protect its non-development values. It allows the landowner to continue to own and use the land, to sell it, or to pass it on to heirs. A conservation easement is placed on a sending site at the time development rights are sold from the property. The conservation easement typically prohibits any further development of the property but allows resource uses, such as farming and forestry, to continue. Other uses for conservation easements include land management or stewardship by land trusts.

Conversion commodities
Commodities, other than increased residential density, that a jurisdiction can offer to developers with the purchase of TDR credits. Examples of conversion commodities include additional building height, changes to parking requirements, flexibility in setbacks, impervious surface requirements, and commercial floor area.

Development rights
Land is thought of as real property, and ownership extends to all aspects of the land, including minerals below the ground surface, air above and all other resources located on the land. Owners of real property also own development rights, which allow development of that land in accordance with local land-use regulations. Development rights can be bought, sold, donated or otherwise transferred as TDR credits. Restrictions on a property's development rights are usually recorded in a conservation easement.

Interlocal agreement
An interlocal agreement is a legal contract between two or more local jurisdictions (cities and counties) that specifies the conditions under which development credits may be transferred (typically from a county into a city). Interlocal agreements must be endorsed by the legislative bodies of both jurisdictions.

Purchase of development rights
Purchase of development rights (PDR) refers to the removal of development potential from a parcel. The development rights are purchased and retired, and a conservation easement is placed on the parcel. PDR programs are generally used to protect resource and farmlands.

Receiving areas
Lands within and designated by a city or town in which transferable development rights may be used.

Receiving area ratio
The number or character of development rights that are assigned to a development right for use in a receiving area. Development rights in a receiving area may be used at the discretion of the receiving area jurisdiction, including but not limited to additional residential density, additional building height, additional commercial floor area, or to meet regulatory requirements.

Sending areas
Sending areas are designated areas where landowners may sell their development rights in exchange for placing conservation easements on their property. Sending areas are typically agricultural lands, forest areas or open space.

Sending area ratio
The number of development rights that a sending area landowner can sell per acre. This ratio may be greater than, less than or equal to the amount of development allowed by zoning, depending on the goals of the TDR program and the need for incentives.

This describes the numerical relationship between the amount of development potential forgone on sending sites, and the amount of additional development allowed on receiving sites. A 1:1 ratio means that the sending sites forgo the same number of houses per acre as are allowed on receiving sites, while a 2:1 ration means that for every TDR credit purchased a developer can build an additional 2 units on a receiving site.

Transferable development right
A right to develop one or more residential units in a sending area that can be sold and transferred for use consistent with a receiving ratio adopted for development in a designated receiving area.

Transfer of development rights
Methods for protecting land from development by voluntarily removing the development rights from a sending area and transferring them to a receiving area for the purpose of increasing development density or intensity in the receiving area.

TDR bank
An entity operated by a local jurisdiction, regional government or private nonprofit organization for the purpose of buying, selling and holding development rights and/or facilitating private TDR transactions. By providing a single point of contact, a TDR bank can streamline the process for buyers and sellers of development rights.

TDR credit
This is the tradable good representing development rights. Credits are purchased and sold, either in the open market or through a bank. For landowners, credits are assigned based on the number of development rights on their property. For developers, credits may be redeemed to gain development bonuses, such as additional units or building height.

Transaction types
A TDR program can offer one or more transaction types, which are the various mechanisms available for buying and selling development rights. The simplest transaction type is a private transaction between the owner of a sending site and the developer of a receiving site, executed at the time a TDR development project is proposed. Other options include buying and selling development rights to/from a TDR bank or a private investment corporation, or participating in a conservation credit or purchase of development rights program run by the local city or county.

Sample Documents

1. Sample ordinances
    a. Pierce County
    b. City of Redmond
    c. City of Issaquah
    d. King County
2. Sample interlocal agreements
    a. Issaquah

Additional Resources

1. CTED Growth Management Services web site
2. Cascade Land Conservancy contact information
   Skip Swenson, Director, TDR Policy Director
   skips@cascadeland.org
   (206) 905-6935
   615 2nd Avenue, Suite 600, Seattle WA 98104
   Cascade Land Conservancy web site
3. References – Cascade Land Conservancy white papers
    a. *Transfer of Development Rights (TDR) in Washington State: Overview, Benefits, and Challenges*
    b. *Alternative Transfer of Development Rights (TDR) Transaction Mechanisms*
    c. *Capital Funding for Infrastructure and Other Amenities in Cities: Incentives for Participating in a Transfer of Development Rights Program*
    d. *Analysis of the Impact of Transfer of Development Rights Programs on Affordable Housing*
4. DC&E Market Analysis for Regional Transfer of Development Rights in Puget Sound
5. Creating a Regional Transfer of Development Rights Program for Central Puget Sound

Appendix A: Inventory of TDR programs in Washington State

Jurisdiction	Year	Objective	Contact
Bainbridge Island	1996	Agricultural lands	Planning and Community Development pcd@ci.bainbridge-isl.wa.us General Website: http://www.ci.bainbridge-isl.wa.us/ Website for Department for TDR: http://www.ci.bainbridge-isl.wa.us/planning_community_development.aspx Department Administering TDR: Planning and Community Development (PCD) Physical Address: 280 Madison Ave. N. Bainbridge Island, WA 98110 Phone Number: (206) 842-2552
Black Diamond	2003	Open space protection (wetlands, freshwater bodies, wildlife corridors, greenways, viewpoints, etc.)	Natural Resources Department General questions overall can go to: info@ci.blackdiamond.wa.us Community Planning and Development: permitcenter@ci.blackdiamond.wa.us General Website: http://www.ci.blackdiamond.wa.us/ Website for Department for TDR: http://www.ci.blackdiamond.wa.us/Depts/NaturalResources/naturalresources.html Department Administering TDR: Natural Resources Department Physical Address: 24301 Roberts Drive Black Diamond WA 98010 Phone Number: 360.886.2560 ext. 220

Clallam County	1998	Agricultural lands, critical areas, low-density open space	Clallam County Community Development, Planning Dept. dcdplan@co.clallam.wa.us General Website: http://www.clallam.net/ Website for Department for TDR: http://www.clallam.net/Departments/html/dept_dcd.htm Department Administering TDR: Department of Community Development, Planning Department Physical Address: 223 East Fourth Street Port Angeles, WA 98362 Phone Numbers: Administration 360-417-2321 Building Division 360-417-2318 Code Enforcement 360-417-2337 Planning 360-417-2420
Everett	1991	Historic preservation	Planning and Community Development planning@ci.everett.wa.us General Website: http://www.everettwa.org/ TDR Department Website: http://www.everettwa.org/default.aspx?ID=52 Department Administering TDR Program: Planning and Community Development Physical Address: Public Services Counter 3200 Cedar Street, 2nd Floor Everett, WA 98201 Phone Numbers: 425-257-8731
Island County (Revoked)	1984	Agricultural lands	Island County Department of Planning and Community Development http://www.islandcounty.net/planning/staffdir.htm General Website: http://www.islandcounty.net/ TDR Department Website: http://www.islandcounty.net/planning/ Department Administering TDR Program: Planning and Community Development

			Physical Address: Island County Courthouse Annex 1 NE 6th Street Coupeville, WA 98239 Phone Numbers: 360.679.7339
Issaquah	2005	Critical areas	webmail-planning@ci.issaquah.wa.us General Website: http://www.ci.issaquah.wa.us/ TDR Department Website: http://www.ci.issaquah.wa.us/SectionIndex.asp?SectionID=13 Department Administering TDR Program: Planning Department Physical Address: 1775 12th Ave NW Issaquah, WA 98027 Phone Number: 425-837-3080
King County	1993	Rural resources and public benefit lands	General Website: http://www.kingcounty.gov/ TDR Department Website: http://www.kingcounty.gov/environment/stewardship/sustainable-building/transfer-development-rights.aspx Department Administering TDR Program: Transfer of Development Rights Department Physical Address: King County TDR Program 201 S Jackson St, Suite 600 Seattle, WA 98104 Phone Number: 206-263-0435

Mt. Vernon	1999	Agricultural, wetlands, riparian, parks	General Website: http://www.ci.mount-vernon.wa.us/ TDR Department Website: http://www.ci.mount-vernon.wa.us/page.asp_Q_navigationid_E_145 Department Administering TDR Program: Community and Economic Development Department Physical Address: 910 Cleveland Avenue Floor 1 Mount Vernon WA, 98273 Phone Number: 360-336-6214
Pierce County	2008	Agricultural lands and open space	pcpals@co.pierce.wa.us General Website: http://www.co.pierce.wa.us/PC/ TDR Department Website: http://www.co.pierce.wa.us/pc/services/home/property/pals/palsmain.htm Department Administering TDR Program: Planning and Land Services Physical Address: Annex (Public Services Building) 2401 S. 35th St Tacoma, WA 98409 Phone Number: 253-798-7210
Redmond	1995	Agricultural lands and critical areas (Northern Sammamish Valley)	compplan@redmond.gov General Website: www.redmond.gov TDR Department Website: http://www.redmond.gov/insidecityhall/planning/planning.asp http://www.redmond.gov/insidecityhall/planning/compplanning/transfer.asp Department Administering TDR Program: Planning and Community Development Phone Number: 425-556-2440

Seattle	1985	Affordable housing, historic preservation, and open space protection	General Website: http://www.seattle.gov/ TDR Department Website: http://www.seattle.gov/housing/incentives/TDRbonus.htm http://www.seattle.gov/html/CITIZEN/departments.htm#dpd Department Administering TDR Program: Office of Housing Department of Planning and Development Physical Address: 700 5th Ave, Suite 2000 Seattle, WA Phone Number: (206) 684-8880
Snohomish County	2004	Farmland, resource lands, and open space	planning.div@co.snohomish.wa.us General Website: http://www1.co.snohomish.wa.us/ TDR Department Website: http://www1.co.snohomish.wa.us/Departments/PDS/default.htm Department Administering TDR Program: Long Range Planning Division, Planning & Development Services Physical Address: 3000 Rockefeller Avenue Everett, WA 98201 Phone Number: (425) 388-3311
Thurston County	1996	Agricultural lands	permit@co.thurston.wa.us General Website: http://www.co.thurston.wa.us/index.asp TDR Department Website: http://www.co.thurston.wa.us/permitting/ Department Administering TDR Program: Development and Planning Services Physical Address: Thurston County Courthouse Building 1, Second Floor 2000 Lakeridge Dr. SW

			Olympia, Washington 98502 Phone Number: (360) 786-5490
Vancouver	N/A	Historic preservation	General Website: http://www.cityofvancouver.us/Default.asp TDR Department Website: http://www.cityofvancouver.us/departments.asp?deptID=10423 Department Administering TDR Program: Community Planning Physical Address: Community Planning Office 1610 C Street, Suite 203 Vancouver, Washington Phone Number: (360) 487-7950
Whatcom County	1999	Lake Whatcom and Birch Bay watersheds	pds@co.whatcom.wa.us General Website: http://www.co.whatcom.wa.us/ TDR Department Website: http://www.co.whatcom.wa.us/pds/index.jsp Department Administering TDR Program: Planning and Development Physical Address: 5280 Northwest Drive Bellingham, Washington 98226 Phone Number: (360) 676-6907

Appendix B: Checklist of TDR Ordinance Elements

This appendix presents a sample of elements local jurisdictions should consider including in a TDR ordinance. Because goals of different communities vary so widely, it is impractical to propose a single model ordinance that is appropriate to every situation. The structure presented here identifies some of the most basic components of an ordinance and can be adapted or augmented to address the goals of a particular jurisdiction. Here each element is identified as being a policy decision or a technical decision with references back to the relevant section in the guide.

Component	Decision Type
Purpose	Policy
Definitions	Technical
Sending Areas	Policy
Calculation of Available TDR Credits from Sending Areas	Policy
Sending Area Procedures	Technical
Receiving Areas	Policy
Use of TDR Credits in Receiving Areas	Policy
Receiving Area Procedures	Technical

Purpose
This section identifies the need for the program and its overarching goals (see Why Washington Communities Would Consider a TDR Program and Goals and Requirements of the Growth Management Act).

Definitions
All terms used in the ordinance should be defined. The definitions used in SSHB 1172 (Implementation of a regional transfer of development rights program) are a good reference (see Definitions).

Sending Areas
This section designates sending areas, determines how they are established and modified, and should include a map if relevant (see Establishing Sending Areas).

Calculation of Available TDR Credits from Sending Areas
This section identifies how eligible sending area properties are allocated TDR credits and should clearly explain the methodology involved (see Defining Development Right Allocations – Sending Area Ratios).

Sending Area Procedures
The process by which landowners apply to the TDR program to receive TDR certificates should be described in detail (see Administration).

Receiving Areas
This section designates receiving areas, determines how they are established and modified, and should refer to a map if relevant (see Establishing Receiving Areas).

Use of TDR Credits in Receiving Areas
This section identifies what uses TDR credits can be converted into within receiving areas, establishing a receiving area ratio and restrictions to the use of credits (see Receiving Area Ratio and Conversion Commodities).

Receiving Area Procedures
The process by which developers apply to the TDR program to use TDR certificates in receiving area projects should be described in detail (see Administration).

Other Elements
Further components a jurisdiction may choose to include in a TDR ordinance include:

- Performance measures- a schedule and methodology for evaluating the effectiveness of the program and updating it (see Program evaluation and updates).
- Interlocal agreement- reference to either an agreement between a county and city regarding the transfer of development rights or an administrative rule created by CTED pursuant to SHB 1172.
- State enabling legislation- to give the local ordinance context it is helpful to refer to the state legislation that allows for the implementation of TDR, for example RCW 43.362 and RCW 36.70A.090, Comprehensive plans—Innovative techniques, which states, "A comprehensive plan should provide for innovative land use management techniques, including, but not limited to, density bonuses, cluster housing, planned unit developments, and the transfer of development rights" (see Goals and Requirements of the Growth Management Act).