From:	Jeffrey Delapena
To:	"David Toyer"; Oliver Orjiako
Cc:	Claire Lust; Alan Peters; bryan@crescentde.com; Angie Merrill; steve.stuart; Peter Condyles; Jose Alvarez; Rebecca Messinger
Subject:	RE: TDR Policy/Draft Commerce Letter Comment #4 (Comp Plan Update)
Date:	Wednesday, September 23, 2026 11:47:00 AM
Attachments:	Cities" Response to Draft Commerce Ltr Comment #4.pdf image001.png image002.png image003.png image004.png

Good day, David,

Thank you for submitting comments related to the TDR discussion at today's Council Time.

I am forwarding to additional staff, including Rebecca Messinger from the Council's office, and this will be added to the Comprehensive Plan Index of Record.

Best,

Jeff Delapena
Program Assistant
COMMUNITY PLANNING

564.397.4558

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From: David Toyer <david@toyerstrategic.com>
Sent: Wednesday, September 23, 2026 11:27 AM
To: Sue Marshall <Sue.Marshall@clark.wa.gov>; Wil Fuentes <Wil.Fuentes@clark.wa.gov>; Matt Little <Matt.Little@clark.wa.gov>; Glen Yung <Glen.Yung@clark.wa.gov>; Michelle Belkot <Michelle.Belkot@clark.wa.gov>; Oliver Orjiako <Oliver.Orjiako@clark.wa.gov>; Jeffrey Delapena <Jeffrey.Delapena@clark.wa.gov>
Cc: Claire Lust <claire.lust@ridgefieldwa.us>; Alan Peters <apeters@cityofcamas.us>; bryan@crescentde.com; Angie Merrill <amerrill@ci.lacenter.wa.us>; steve.stuart

<steve.stuart@ridgefieldwa.us>; Peter Condyles <peter@toyerstrategic.com>
Subject: TDR Policy/Draft Commerce Letter Comment #4 (Comp Plan Update)
Importance: High

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Dear Councilors and Oliver:

Attached is a letter our firm prepared on behalf of the cities of Camas, La Center, and Ridgefield to address Comment #4 (concerning TDRs) in the draft Commerce letter sent to the county. Since I see you have a TDR discussion scheduled on your agenda at 1:00 PM today, I wanted to make sure to get this TDR specific information to you as soon as possible.

Please note that separate from this letter, the cities will be sending additional responses to Commerce's other comments according to your request.

Thank you!

DAVID K. TOYER, PRESIDENT
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TOYER STRATEGIC ADVISORS, INC.
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September 23, 2026

Clark County Council and
Mr. Oliver Orjiako, Community Planning Director
1300 Franklin Street
PO Box 5000
Vancouver, WA 98666-5000

RESPONSE TO COMMERCE DRAFT LETTER – TRANSFER OF DEVELOPMENT RIGHTS (TDRs)

Dear Councilors and Director Orjiako:

Our firm has been assisting the cities of Ridgefield, Camas, and La Center in proposing and advocating for the phased adoption of a Transfer of Development Rights (TDR) program. The cities have asked our firm to provide a response to Comment #4 in the Department of Commerce's draft letter dated September 9, 2026.

Comment #4 from the Commerce letter can be broken into four parts:

- Expresses concern that Policy 1.1.24 may *potentially* be inconsistent with state statute, citing RCW 43.362.005
- References the guidance in WAC 365-196-310(5)(e)(v) that:
    - When there are designated resource lands already within a UGA a TDR program is required
    - Prior to expanding UGAs into resource lands, counties and cities must review and conclude the lands no longer meet the criteria for designation of lands of long-term commercial significance
- Recommends separating the establishment of a TDR program from the actions on UGA expansions
- Suggests reviewing Commerce guidance at their TDR topical website

Each part of Comment #4 is addressed below. Additionally, on behalf of the cities our firm is providing suggested amendments to Policy 1.1.24 that further clarify the policy's intent and reflect recent comments by Planning Commissioners and County Councilmembers.

RCW 43.362.005 DOES NOT APPLY

Policy 1.1.24 cannot be inconsistent with RCW 43.362.005, as that statute only applies to creation of a regional TDR marketplace in King, Kitsap, Pierce and Snohomish counties.[1] That said, Policy 1.1.24 reflects agreement by the county and its cities that creating a voluntary market-based TDR program is a valuable tool to help conserve productive agricultural lands of long-term commercial significance. Policy 1.1.24 does not create a final TDR program, but it recommends some program elements, such as the use of interlocal agreements (ILAs), that are used by TDR programs (including the regional program cited above).

POLICY 1.1.24 IS CONSISTENT WITH WAC 365-196-310(5)(e)(v)

The intent of Policy 1.1.24 is two-fold. First, it directs the county and cities to establish a TDR program to further local conservation goals. Second, it establishes the framework for a TDR program that allows Clark County to approve UGA expansions contingent upon participation in the eventual TDR program.

In contrast, WAC 365-196-310(5)(e)(v) does not dictate the process for creating a TDR program or what provisions a program could include. Instead, what this WAC states is that resource lands cannot be included within UGAs (*unless a jurisdiction has adopted a TDR program*), that the expansion of UGAs into resource lands should be a last option, and that before completing a UGA expansion into resource lands, the county and cities must first review and conclude the land no

[1] See RCW 43.362.005(3), RCW 43.362.010(6), RCW 43.362.020(1) and RCW 43.362.030 which establish this as a regional TDR program in the Puget Sound (King, Kitsap, Pierce & Snohomish counties).

longer meets the designation criteria for agricultural lands of long-term significance.

The adoption of Policy 1.1.24 will not designate any resource lands within UGAs (*though once Clark County establishes a TDR program it could later make that choice*). Policy 1.1.24 is a wholly separate and distinct action from those the County Council may take to de-designate resource lands and expand a UGA boundary. In sum, WAC 365-196-310(5)(e)(v) does not apply to Policy 1.1.24, nor does Policy 1.1.24 contravene any provisions in WAC 365-196-310(5)(e)(v).

As Clark County considers UGA expansions during this comprehensive plan update, the decision to adopt Policy 1.1.24 allows Clark County to establish expansion areas as TDR receiving areas. Such policy framework resembles and is consistent with other TDR policies, including Snohomish County Comprehensive Plan Land Use Policy 1.A.12, which requires that:

> *All UGA expansions that add residential land capacity shall be designated as TDR receiving areas and all development approvals in such areas shall be consistent with adopted TDR policies in this chapter.*

Policy 1.1.24 further resembles other expansion policies, including Snohomish County's countywide planning policy allowing UGA expansions to be considered based on the use of TDRs and provisions in Kitsap County Code establishing the authority to require the use of TDRs when County Commissioners approve certain UGA expansion decisions.

Snohomish County Countywide Planning Policy

DP-2(e) 8. *The expansion will result in the realization of a significant public benefit as evidenced by Transfer of Development Rights (TDR) to the expansion area from Agriculture or Forest lands designated as TDR sending areas. The expansion area shall not be a designated forest or agricultural land of long-term significance.*

Kitsap County Code

17.580.080 Transfer of Development Rights – When Required

C. Urban Growth Area Expansions. The board of county commissioners in the annual Comprehensive Plan amendment docketing resolution may require a transfer of development right or rights as part of Comprehensive Plan or subarea plan expansions of urban growth areas.

After adoption of this updated comprehensive plan, Clark County will still need to formally create its TDR program. However, the ability to require expansion areas to participate in the future TDR program reserves a quantifiable "first" market for use of TDR credits. This also more strongly commits the county to completing the work of adopting the TDR program.

THE ADOPTION OF POLICY 1.1.24 & UGA EXPANSIONS DECISIONS ARE SEPARATE

As stated above, adoption of a TDR program does not justify a specific decision on the de-designation of any parcels of land nor establish that a UGA expansion is needed. County Council decisions on de-designations, UGA expansions, and the adoption of Policy 1.1.24 concerning a TDR program will be individual, separate, and distinct actions that must stand on their own merits.

That said, adoption of Policy 1.1.24 will help Clark County (and the cities) to better protect and preserve those resource lands that meet the designation criteria as having long-term commercial significance.

COMMERCE GUIDANCE FOR TDR PROGRAMS

The guidance at Commerce's website has been reviewed and it will be informative when Clark County and its participating cities begin to develop the formal TDR program. In the meantime, the cities reiterate that Policy 1.1.24 is a first step toward creating a TDR program.

MINOR AMENDMENTS TO POLICY 1.1.24

Listening to Planning Commission deliberations and Council discussions, the cities recognize that minor changes to Policy 1.1.24 will help clarify and refine the intent. The following are suggested amendments shown first in a strikethrough/underlined format followed by a clean version.

Strikethrough/Underline Version:

1.1.24 **To support mutually agreed upon conservation goals (i.e., the preservation of agricultural lands),** Clark County and participating cities shall work cooperatively to adopt a countywide transfer of development rights (TDR) program **within eighteen (18) months of the adoption of the 2025 update to the comprehensive plan. The TDR program shall** ~~to support mutually agreed upon conservation goals (i.e., the preservation of agricultural lands) and~~ **include provisions that allow the County** to require ~~that~~ any ~~y~~ expansion of any ~~y~~ urban growth boundary **to be designated as a TDR receiving area.** ~~shall require participation in the program. When~~ **Prior to the final adoption of a TDR program, if** Clark County expands an urban growth boundary contingent upon the use of the TDR program, the county, and the participating city **whose boundary has been expanded** shall enter into an interlocal agreement that, at a minimum, includes the following provisions:

- Establishing requirements for completing expansions to the urban growth boundaries contingent upon the transfer of development rights from eligible sending areas designated by the county to the receiving areas created by the expansion.
- Setting timelines for full implementation of the transfer of development rights program and any requirements or limitations placed on the expansion area until such a time as a TDR program is implemented.
- ~~Identifying guidelines for monitoring, reporting, and reassessing market conditions.~~

Clean Version:

1.1.24 To support mutually agreed upon conservation goals (i.e., the preservation of agricultural lands), Clark County and participating cities shall work cooperatively to adopt a countywide transfer of development rights (TDR) program within eighteen (18) months of the adoption of the 2025 update to the comprehensive plan. The TDR program shall include provisions that allow the County to require an expansion of an urban growth boundary to be designated as a TDR receiving area. Prior to the final adoption of the TDR program, if Clark County expands an urban growth boundary contingent upon the use of the TDR program, the county, and the participating city whose boundary has been expanded shall enter into an interlocal agreement that, at a minimum, includes the following provisions:

- Establishing requirements for completing expansions to the urban growth boundaries contingent upon the transfer of development rights from eligible sending areas designated by the county to the receiving areas created by the expansion.
- Setting timelines for full implementation of the transfer of development rights program and any requirements or limitations placed on the expansion area until such a time as a TDR program is implemented.

CONCLUSION

I trust that the information provided herein fully addresses Comment #4 from the Draft Commerce letter. However, should you have any remaining questions, please do not hesitate to reach out to me at david@toyerstrategic.com.

Very Sincerely,



David Toyer
President