

MEETING SUMMARY

TDR/PDR Multi-Stakeholder Work Group

Wednesday June 7, 2017, 2:30-4:30 PM

Planning and Development Services – Annex Conference Room

Attendees – Members	Perspective	Present
Chris Behee	City of Bellingham	<input checked="" type="checkbox"/>
Michael Jones	City of Blaine	<input checked="" type="checkbox"/>
Rollin Harper	Cities of Everson, Nooksack, and Sumas	<input type="checkbox"/>
Jori Burnett	City of Ferndale	<input type="checkbox"/>
Dave Timmer	City of Lynden	<input checked="" type="checkbox"/>
Bill Henshaw	Building Industry	<input checked="" type="checkbox"/>
Betty Sanchez	Realtors	<input checked="" type="checkbox"/>
Myrle Foster	Rural Property Owner	<input type="checkbox"/>
Ralph Black	TDR User	<input type="checkbox"/>
Phil Thompson	Economist	<input checked="" type="checkbox"/>
Steve Powers	Affordable Housing	<input checked="" type="checkbox"/>
Brad Rader	Agriculture	<input checked="" type="checkbox"/>
Karlee Deatherage	Environmental	<input checked="" type="checkbox"/>
Rud Browne	Council Member	<input checked="" type="checkbox"/>

Attendees – Alternates/Representatives	Perspective	Present
None		<input type="checkbox"/>
		<input type="checkbox"/>
		<input type="checkbox"/>

Quorum Present	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
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Attendees - Staff	Present	Attendees - Staff	Present
Matt Aamot	<input checked="" type="checkbox"/>	Mark Personius	<input checked="" type="checkbox"/>
Chris Elder	<input checked="" type="checkbox"/>		<input type="checkbox"/>

Attendees – Guests	Organization (if applicable)	Present
Michael Murphy (via conference call)	King County – TDR Program Manager	<input checked="" type="checkbox"/>
Royce Buckingham	Whatcom County Prosecuting Attorney's Office	<input checked="" type="checkbox"/>
		<input type="checkbox"/>
		<input type="checkbox"/>
		<input type="checkbox"/>
		<input type="checkbox"/>

Meeting is called to order a little after 2:30 pm.

Approval of May 3 Meeting Summary

The May 3 meeting summary was approved without changes.

Presentation by Michael Murphy, King County TDR Program Manager

Michael Murphy, King County TDR Program Manager, gave a presentation via conference call.

Main elements of creating a workable TDR program

Michael Murphy indicated that three keys to a workable TDR program are supply, demand, and simplicity/efficiency.

Supply – A county needs to identify lands with unused development potential and have the political will to record conservation easements to restrict future development potential. For farms, a single development right could remain so the farmer has a place to live. The TDR program is totally voluntary.

Demand – A key component to a successful TDR program is demand at the receiving site. Receiving sites need to be places that developers want to build higher or utilize other incentives for the TDR program to function properly.

Simplicity/Efficiency – If the TDR program is too complicated, people are less likely to participate. The jurisdiction needs to set expectations for landowners relating to the process, timelines, etc. Developers need certainty that they will actually be able to use TDRs at receiving sites. Developers aren't likely to use the TDR program if there is uncertainty about their ability to use TDRs, the process is too complicated, or the process is too time-consuming. The jurisdiction needs adequate staff capacity to administer the TDR program in an efficient manner.

Identifying sending areas

King County followed GMA principles by designating sending areas in rural and resource lands, which are to have limited development. In King County, forestry zoning allows one house/80 acres (or per legal lot of record). The County grants 1 TDR per development right (1:1 ratio) in forestry zones. The County allows one house/35 acres (or per legal lot of record) in one of their agriculture zones. King County awards TDRs in the agriculture zone at a higher rate to incentivize agricultural property owners to sell their development rights. The County grants one TDR per five acres of undeveloped land in the agriculture zone. A 35 acre parcel in the "A-35" zone (Agriculture, one dwelling unit per 35 acres), can sell seven TDRs. Therefore, there is a larger incentive to transfer TDRs from these agricultural areas.

The King County TDR bank buys development rights. The value of these development rights are set by appraisals. In the private TDR market, the receiving land owner buys TDRs. These are private market transactions, and the price is negotiated between the parties.

The County has a Conservation Futures Tax advisory group, which makes recommendations relating to County land preservation priorities. Additionally, some cities have identified certain areas from which they will accept TDRs.

Identifying receiving areas

Urban Growth Area – The King County Code allows unincorporated urban zoning districts to accept TDRs, providing up to a 150% increase in zoned density. For example:

- R-4 zone (Residential four dwelling units per acre) – The density can be increased from four dwellings/acre to six dwellings/acre.
- R-6 zone - The density can be increased from six dwellings/acre to nine dwellings/acre.
- R-8 zone - The density can be increased from eight dwellings/acre to 12 dwellings/acre.

The County uses a ratio of 1 TDR from a sending area to get 2 additional units in a receiving area. The receiving land owner needs to buy 2 TDRs to get four additional dwelling units. Most of these transactions are for urban short plats.

Rural Areas – In rural areas of King County, a land owner can increase the size of an accessory dwelling unit from 1,000 to 1,500 square feet by purchasing a TDR.

How to ensure that exchangeable development rights have economic value

- *Did King County perform a Market Study?*
- *How were TDR Credit Exchange ratios determined?*
- *How were interlocal agreements developed and what incentives did King County provide to the cities that encouraged participation?*

King County hired a consultant to perform a market study to recommend exchange ratios. This involves estimating the value of a development right on a rural parcel and what it's worth to a developer in an urban area.

Developing interlocal agreements with cities, to make the TDR program work for them, is central to the process of creating a workable TDR program. The main way King County did this was by providing money to the cities participating in the TDR program.

Maintaining quality of life by preserving rural and resource lands resonates with cities, but providing cash payments is what really provides an incentive for cities to participate in the TDR program. There are extra costs for cities associated with accepting extra densities. Therefore, King County provides amenity funds to cities. This may take several forms. For example:

- Lump Sum – King County provided Bellevue with a lump sum up front, when they signed the interlocal agreement to participate in the TDR program. They used the money to purchase open space, but it could be used for street lights, sidewalks, parks, etc.
- Portion of TDR Sale Money – King County provides Sammamish with 25% of the revenue from TDR sales by the TDR bank.
- Tax Revenue Sharing – King County shares property tax money with Seattle through the Landscape Conservation and Local Infrastructure Program (LCLIP), which is applicable to King, Pierce, and Snohomish Counties.

Identify political, financial, and regulatory barriers to effective TDR and PDR programs

Political Barriers – Michael Murphy indicated that getting cities to say “yes” to the TDR program and accept higher densities to protect areas outside the city which may be valuable to them, such as farms and forests, is a potential political barrier. Counties should recognize that cities may want to protect property in the city – and that a county could offer to administer the conservation program for the city.

Financial Barriers – Jurisdictions could use Conservation Futures tax to provide seed money for a TDR bank (i.e. loaning money to the TDR bank).

Regulatory Barriers – Jurisdiction would need to get zoning updated to accommodate increased density associated with TDRs. If a jurisdiction leaves developers guessing on how they can use TDRs, they won’t buy them.

Rud asked how a county, that doesn’t have the development demand that Seattle experiences, provides developer incentives. Michael Murphy indicated that a jurisdiction may need to offer a variety of incentives – anything that creates value for a developer. We need to consider more than just increased residential densities. The Puget Sound Regional Council issued a report on various ways that TDRs can be used. In Seattle, where demand is very strong, TDRs are most often used in the downtown to increase building height. Outside of this there are a few short plats that have used TDRs to increase density. But we should think broadly about options available, such as

increased square footage, reduced parking, or other incentives that a developer would like to use.

Staff asked about TDR program use by small cities in King County. Michael Murphy indicated that the smallest city that has a TDR program is Normandy Park (there is an interlocal agreement, but no TDR transfers have occurred). The smallest city in which TDR transfers have occurred is Sammamish or Issaquah.

Steve asked if the County would provide amenity funds to cities that participate in the TDR program. Michael Jones said that amenity funds would make the TDR program more attractive to cities.

Steve and Rud both liked the idea of reducing buffers on low quality wetlands if TDRs are purchased. Michael Jones said the State Department of Ecology would have to be on board. He also likes the idea but thinks it would be very difficult to implement.

Michael Jones indicated that, if one of the incentives is reduced parking in cities when TDRs are purchased, it may be difficult to convince city leaders to accept parking problems to reduce rural development.

Open session to take public comment

There were no public comments.

Royce Buckingham, Whatcom County Prosecuting Attorney's Office – RCW 82.02.020

Staff indicated that the cities of Blaine and Ferndale submitted letters in 2016 to the County Council regarding Policy 2A-14. These cities indicated that requiring TDRs for UGA expansions would essentially be a tax. Staff asked the Prosecuting Attorney's Office to review this issue.

Royce Buckingham from the Whatcom County Prosecuting Attorney's Office discussed RCW 82.02.020, relating to the state preempting certain tax fields, with the Work Group. RCW 82.02.020 states in part:

. . . no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land. . .

This section does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of a proposed development, subdivision, or plat. . .

Royce said the question is, would it constitute a fee or charge to require TDRs for urban growth area (UGA) expansions? He said yes, it would be a fee or charge to require TDRs for a UGA expansion, which is a re-classification of land. Therefore, under the statute, a jurisdiction can't require TDRs for UGA expansions.

Royce indicated that there is an exception for "voluntary agreements." However, land re-classifications such as UGA expansions are not covered by the exception and such re-classifications do not create a direct, identifiable impact. The direct impact would occur later, if and when the land is developed.

In summary, it's his opinion that the County can't require TDRs for UGA expansions under RCW 82.02.020.

Whatcom County's Current TDR & PDR Programs – Preliminary draft discussion paper

The Work Group suggested several changes to the preliminary draft discussion paper at the last meeting. Staff presented proposed language. Phil asked why 30% of the Conservation Futures tax went to PDRs compared to 70% for Parks and other conservation projects. Chris Elder said more PDR transactions were made in the first five years of the program. Since then, PDR purchases have slowed. Council decides how to allocate the Conservation Futures tax money.

The Work Group gave preliminary approval to this discussion paper, which will eventually be incorporated into the Work Group's report. It was recognized that the Work Group may make changes to the paper at any time prior to issuance of their final report.

Potential development rights in existing TDR sending and receiving areas - Birch Bay

Staff reviewed potential development rights in the Birch Bay sending and receiving areas. Within the Birch Bay UGA, the receiving area can accommodate about 1,858 development rights from sending areas. In the Birch Bay area, there are an estimated 703 development rights in the sending area supply (at a 3:1 ratio, this could provide over 2,100 development rights to receiving areas).

Whatcom County's Current TDR Sending and Receiving Areas - Preliminary draft discussion paper

Staff presented a discussion draft paper relating to current TDR sending and receiving areas, based upon the information presented at the May and June meetings. The Work Group gave preliminary approval to this discussion paper, which will eventually be incorporated into the Work Group's report.

Barriers to Effective TDR and PDR Programs

We started a discussion on barriers to effective TDR programs. Staff indicated that the City of Bellingham hired a consultant to complete a study entitled *Bellingham Annexation Areas Transfer of Development Rights Program Feasibility Analysis* (2009). Staff showed a quote from this study on the screen, relating to subdivisions in the Bellingham UGA between 1999 and 2008, which stated:

... The number of actual lots for plats in the Urban Mixed Use zones represented only 43% of the maximum number of lots allowed. Builders are not taking advantage of the potential density available to them outright, without even considering the potential for transferring additional development rights. . . (p. 4).

Dave indicated that developers in Lynden still are not building to the density allowed by zoning. Bill indicated that since 1980, developers have not built to the density allowed in Bellingham. Steve asked about using TDRs for multi-family units. Chris Behee said PDRs could be used in Bellingham for multi-family development in urban villages.

Next Meeting

July 5, 2017.

Meeting Adjourned at 4:30 pm

Signed: _____



Ralph Black, Chairperson