

Feasibility of a Transfer of Development Rights Program



The fourth in a series of four white papers prepared by Whatcom County Planning and Development Services for the Washington State, Office of Farmland Preservation, as part of a Technical Assistance Grant

Intermediate Outcome 4:

Examine the following question: Are there opportunities to merge the current PDR program with a banking mechanism that allows for transfers of development rights? Explore the feasibility of broadening the PDR program into a TDR program by identifying potential receiving areas and examining the market for the buying and selling of development rights.

Deliverable:

A report outlining the feasibility of a TDR program, with supporting GIS maps.

Introduction

A Transfer of Development Rights (TDR) program has been discussed and attempted in Whatcom County during the past 20 years. A formal density transfer procedure was first codified in 1998. It has had some use in the Lake Whatcom Watershed as a limited number of development rights have been transferred out of that area. Most development rights removed from the watershed were purchased, however, and not dependent on a transfer process. A consultant is developing a report for the City of Bellingham in regard to TDR and PDR programs. The report is scheduled for completion in early 2009.

There is renewed interest in the feasibility of implementing a TDR program in Whatcom County to address development rights on farmland, and as one tool for managing growth. The stated goal of the county's current comprehensive plan is to maintain a viable agricultural industry in Whatcom County by keeping an agricultural base of at least 100,000 acres. As stated in the comprehensive plan this land base is needed to sustain agriculture's supporting infrastructure of supplies, equipment, services, and expertise. For commercial agriculture to be successful it is also necessary to maintain large contiguous parcels to efficiently produce and process commercial agricultural products. Currently, the county is reviewing and updating its Urban Growth Areas (UGAs) – due by the end of June 2009; and updating the county's comprehensive 20-year plan – due by 2011. The second process is referred to as *Whatcom 2031*.

Purchase of Development Rights

Whatcom County has a Purchase of Development Rights program to permanently retire development rights from agricultural land. Through the first five years of the PDR program, 84 development rights were purchased and 641 acres protected at a cost of \$4.1 million. It is estimated that it will cost over \$450,000,000 to purchase the remaining development rights in the agricultural zone (AG) and in the rural land study area.¹ The rural land study area is a portion of the county's total rural area that has important agricultural lands that are currently zoned as five and ten acre lots. The conclusion of the Rural Land Study was that these lands should receive additional protection to sustain their agricultural viability.

Due to a number of factors, including the relatively slow progress and high expense associated with purchasing development rights through the PDR program, there has been increased interest in developing alternatives that can link retirement of densities in critical agricultural areas (as the PDR program does), with density increases in more urban areas using a market-based approach. The hope is that bringing the private development market to the table can increase the impact of existing agricultural preservation efforts.

Transfer of Development Rights (TDR)

As depicted in Figure 1 (see page 4), there are about 4,000 possible development rights existing in the Agricultural zone and in the Rural Land Study Areas (2,132 in the AG zone and 1,766 in the Rural Study Areas).² Data from a 1996 draft study brings the potential total to nearly 35,000 developable parcels in all the unincorporated areas of Whatcom County.³ A more recent GIS analysis⁴ estimated a total of over 26,000 potential buildable lots.

Removing development potential from agricultural lands and rural lands could help protect Whatcom County's agricultural base, prevent additional low-density residential development (sprawl), reduce pressure on non-urban infrastructure, protect water and land resources, and decrease conflict between agricultural and residential uses.

A TDR program has the potential advantage of not requiring as much public expenditure to implement as does a Purchase of Development Rights (PDR) program. The TDR program works on the concept of providing added value to developers who purchase the rights to increase density over what would otherwise be allowed based on the underlying zoning and codes. The developers pay to remove the density from the sending areas

¹ Whatcom County Agricultural Advisory Committee and Planning and Development Services; *Whatcom County Rural Land Study: A Collaborative Report Identifying Rural Areas of Agricultural Significance*; 2007.

² Whatcom County GIS Department. May, 2008.

³ EarthTech. *The Transfer of Development Rights and Regulatory Incentives for Rural Development in Whatcom County*. Submitted October 1996 to the Whatcom County Planning and Development Services Department. Data being updated 11/2008.

⁴ Whatcom County GIS Department, Jan. 14, 2009; analysis omits some potential building lots that are not shown on parcel maps.

through marketplace transactions. There is usually an allocation rate involved to make the process profitable for the developers and the landowners. An allocation rate of 1:3 would require the developer to purchase one development right from a sending area landowner to receive three additional development rights in the receiving area. The Whatcom County Code specifies that three dwelling units will be provided as density bonuses for each development right purchased for certain rezone requests (WCC 20.89.050, See Endnote I). The allocation rate can vary from county to county and within a county. Market studies are often conducted to establish the feasibility of a TDR program and to establish possible allocation rates prior to implementation.

Conceptual example of a Transfer of Development Rights (TDR) purchase and use:

A farmer has two development rights worth \$50,000 each in a sending area.

A developer has 5 acres that can be developed at 4 units per acre for a total of 20 dwelling units on the 5 acre parcel.

For this example the TDR program allows a bonus density of up to 2 dwelling units per acre in this receiving area.

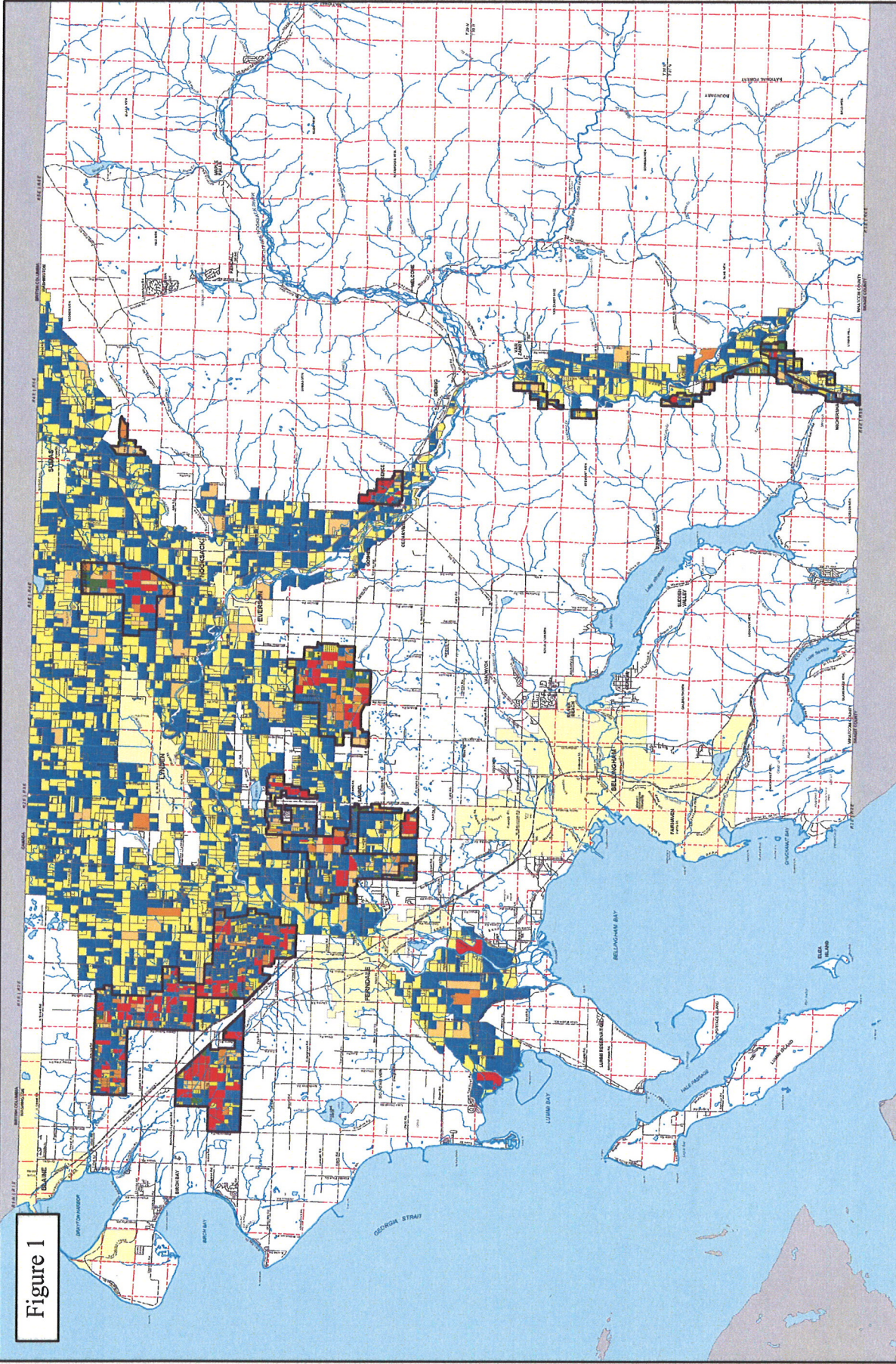
If the developer can purchase additional development rights (in this case at a cost of \$50,000 each) from the farmer, he or she would be allowed to develop at up to 6 units per acre (4 by current zoning + 2 bonus), or 30 units total on the 5 acres, or a total of 10 additional dwelling units on the 5 acre parcel.

At an allocation ratio of 5:1, the developer would need to purchase 2 development rights (at a total cost of \$100,000) in order to have density bonuses for the 10 additional dwelling units.

This would equate to \$10,000 per density bonus.

If the developer can realize a greater profit using the density bonuses (including the \$10,000 cost of the density bonuses, plus the transaction costs), he or she might be interested in purchasing development rights to obtain the desired density bonuses. If this transaction is not profitable, it will not happen. If the transaction process is difficult, uncertain, or time consuming, it is not likely to happen.

Figure 1



Whatcom County
 Potential Development Rights Per Parcel
 -Ag. Zone and Rural Study Areas

- Rural Study Areas
- Fully Built Out
- One Potential Additional DU
- Two Potential Additional DU
- Three Potential Additional DU
- Four or Greater Potential Additional DU
- Lummi Trust Lands
- Public/Utilities/PDR

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Current Framework

Whatcom County Code

The Whatcom County Code contains provisions for density transfers (WCC 20.89)¹ and addresses sending areas, receiving areas, density transfer certificates, and the establishment of a development rights bank with an oversight committee (20.89.080). The development rights bank may:

1. Purchase or sell development rights;
2. Hold TDRs for any length of time;
3. Accept in lieu payments for transfer of development rights; and
4. Accept donations of development rights.

While the density transfer procedures have been used in Whatcom County to a limited extent (as discussed below), many of the provisions in the code – such as the development rights bank and oversight committee – are not currently in existence.

Sending Areas

Sending areas can be established through amendments to the county's zoning map or by the county council.⁵ Development rights in the agricultural zone and in the Rural Land Study areas are obvious choices to target as sending areas to protect the long-term viability of agriculture. A competing high priority sending area in Whatcom County that has received a great deal of attention is the Lake Whatcom Watershed. The development rights that have been transferred in Whatcom County have all been transferred out of the Lake Whatcom Watershed. The county code states that only development rights from the Lake Whatcom Watershed can be transferred to the Bellingham subarea (Bellingham and its surrounding Urban Growth Area).

If the TDR program were to be expanded to include agricultural lands as sending areas, code and comprehensive plan (map) amendments would need to be initiated by staff and implemented by the planning commission and county council.

Receiving Areas

Receiving areas can be established by amendments to the county's zoning map, by the county council, and through agreements with the cities within the county.⁶ In the public participation processes recently conducted by Whatcom Farm Friends⁷ and by the

⁵ WCC 20.89.040 (See Endnote I)

⁶ WCC 20.89.050 (See Endnote I)

⁷ Whatcom Farm Friends; Public Input Plan Report; Dec. 31, 2008; page 43.

Whatcom County Planning and Development Services department, there was a strong consensus to place future residential development (density) in the existing cities and their UGAs. Additional density, however, can be difficult to place in existing cities and neighborhoods due to concerns about the possible effects of increased density. Development and redevelopment of areas within cities or their Urban Growth Areas (UGAs) offer opportunities to accept additional density, with proper planning and preparation.

Current Whatcom County receiving areas are only in URMX zoning districts. Developers can voluntarily opt for a greater density in these zones by utilizing TDRs. The largest URMX zoning area lies in the Bellingham UGA, but in June of 2004, Bellingham initiated a policy that refuses water and sewer hookups to developments within the UGA until after annexation. Without water and sewer availability, land development is limited to a minimum lot size of five acres. When land in the Bellingham UGA is annexed, it is no longer within the county URMX zone, and therefore no longer is a receiving area for TDRs from unincorporated areas. Under current policy, Whatcom County has few to no realistic receiving areas for the TDR program.

Establishing a Market

To transfer development rights between a sending area and a receiving area through a marketplace transaction, the transaction must make sense to the seller in the sending area and to the buyer who wants to place additional density in the receiving area. In addition, the receiving area must be in a position to accept the additional density with necessary infrastructure, appropriate amenities, and political support. There are a variety of factors that can complicate the establishment of an effective TDR market.

If a developer must continually fight neighborhood battles for the ability to place additional density into an area, the likelihood of TDR program success is very low, even if infrastructure and amenities are in place. In addition, if there are alternatives to purchasing additional development rights that make better financial sense to a developer, it is unlikely that development rights will be a part of that developer's plans.

Urban areas have many priorities, and often density bonuses are used as a mechanism to provide incentives for developers to contribute community amenities of many kinds. A variety of issues may be listed as opportunities for density bonuses in designated areas: watershed protection, affordable housing, design criteria, childcare facilities, and open space may all warrant the granting of density bonuses. Depending on program design, agricultural preservation may be forced to compete with these other community priorities.

In areas where growth is occurring below already allowed densities or where development can occur without having to obtain additional densities, it is not possible to support a market-based TDR program.

Locally-Based Research

Since at least 1995, staff has been actively researching the relevancy of TDRs to Whatcom County. EarthTech, a planning consulting firm out of Seattle, was contracted to develop recommendations for regulatory incentives to preserve rural areas of Whatcom County, including the use of a TDR program. Lot development potential and development costs were analyzed for certain unincorporated areas of the county, and then for Urban Growth Areas in the county, with corresponding estimated TDR values established for the Bellingham, Ferndale, Birch Bay, and Lynden UGAs. One conclusion of the report was that the sending potential of development rights far outweighed the receiving potential, such that the TDR program “is not likely to provide enough TDR value per right to totally satisfy the development value expectations of all property owners within the potential sending areas.”⁸

Rick Pruetz was also contracted to assist Whatcom County with TDR program development. His work focused on developing preliminary TDR program components based on market value estimates. In his draft report, various allocation ratios were recommended based on parcel size and location.⁹

In addition to these contracts, a number of formal and informal meetings have taken place with elected leaders, staff, and spokespeople from nearby counties to learn and discuss different approaches to this issue. For example, representatives from Snohomish County came to speak at a special council meeting in March 2007 at which TDRs were discussed. Since introduction of the TDR concept, leaders have increasingly heard the degree to which inter-jurisdictional coordination can enhance the development of a TDR program, but little substantive action has been taken in this regard.

Regional Context

On December 2nd, 2008 Whatcom County’s Planning and Development Services department held a “Density Workshop.” County and city planning staff attended as well as the planning director for Bellingham, the planning consultant for the small cities of Everson, Nooksack, and Sumas, the chair of the county planning commission, PDR Oversight Committee members, Agricultural Advisory Committee members, and representatives from Whatcom Farm Friends, Sustainable Connections, and Futurewise Whatcom. Heather Ballash from the WA Department of Community Trade and Economic Development provided information on the regional transfer of development rights study conducted for the southern Puget Sound region; Jeremy Eckert and Skip Swensen from Cascade Land Conservancy provided technical information on Transfer of Development Rights (TDR) programs; and Allison Aurand, who previously worked for

⁸ EarthTech. *The Transfer of Development Rights and Regulatory Incentives for Rural Development in Whatcom County*. Submitted October 1996.

⁹ Pruetz, Rick. *Preliminary Whatcom County TDR Program Components Based on TDR Market Value Estimates*. Draft submitted June 2003.

Skagit County and is currently on Whatcom County's Purchase of Development Rights Oversight Committee, provided information on how Skagit County's code adopted in 2004 is protecting farmland and preventing sprawl. County staff and Whatcom Farm Friends provided an overview of input from the public participation processes, and David Stalheim, Director, Department of Planning and Development Services, gave an overview of the county's planning processes and how development potential might be incorporated into those processes. A general discussion followed the presentations, which provided a deeper understanding of TDRs and other density-based growth management approaches, as well as a better perspective on the county's issues within the regional context.

Density Transfer Credits

Density Transfer Credits (DTCs) are similar to a Transfer of Development Rights program. Under a DTC program, developers place funding (in lieu of purchasing transferrable development rights) into a Development Rights Bank in return for density bonuses or other benefits. These other benefits can include such things as increased Floor Area Ratios (FAR), additional height on a building, reduced parking, expedited permitting, and others. The Development Rights Bank then uses those funds to capitalize a Purchase of Development Rights program to purchase development rights from priority properties. Funding neighborhood amenities in receiving areas, supporting low-cost housing and similar activities are also possible under a DTC program. The legislative authority in Whatcom County Code 20.89.080 establishes a Development Rights Bank with the authority to set in lieu of fees and to purchase development rights from sending areas. The DTC process is being actively researched by Burlington, Washington¹¹ to preserve farmland, reduce sprawl, and to improve city amenities (economic analysis report due out in February 2009).

Analysis

County staff conducted preliminary test analyses on two different new approaches to receiving area designation (see Tables A and B).

One approach looked at rezoning Rural 10 Acre areas¹⁰ to Rural 5 Acre zoning, contingent on a TDR transaction (Table A). This approach could create receiving potential of 779 additional development rights, based on current build-out. If the allocation ratio of 3:1 (as currently exists in code¹¹) were used, that receiving potential could translate into a sending potential of nearly 260 development rights. An allocation ratio of 5:1 – which some argue is more economically realistic – would yield a sending potential of about 155 development rights. In this example, the increased density in these

¹⁰ Encompassing all R10A areas EXCEPT those lying within Rural Land Study designated areas due to the presence of significant agricultural land.

¹¹ WCC 20.89.050 (See Endnote I)

receiving areas would occur in rural areas dependent on wells and septic systems for their service needs.

TABLE A. Development Rights moved into Rural 10 acre zoned areas OUTSIDE Rural Study Areas/PDR Target Areas; increasing density to R5A.

	At existing R10A zoning (#DRs)	At theoretical R5A zoning (#DRs)
Gross build-out	1,613	2,392
Existing DRs	697	697
Available DRs	916	1,695
¹² Development Rights transferred at 1:1		779
¹² Development Rights transferred at 3:1		260
¹² Development Rights transferred at 5:1		155

Another approach looked at tying future expansion of UGA areas to a mandatory TDR program (Table B). One hypothetical area outside a city was reviewed that increased density from agricultural (40 acre) zoning to urban scale (10,000 square foot minimum lot size) zoning, yielding a potential for 2,551 additional ‘received’ development rights. If the 3:1 allocation ratio was used here, this would translate into a sending potential of about 850 development rights. An allocation ratio of 5:1 would yield a sending potential of about 510 development rights. For this example, the increased density in the receiving area would occur with theoretical availability of urban water and sewer services.

TABLE B. Development Rights moved into extended UGA area outside Small City, increasing density to urban scale (RS-100 or 10,000 SF min lot) from AG zoning.

	At existing AG zoning (#DRs)	At theoretical RS-100 zoning (#DRs)
Gross build-out	43	2,594
Existing DRs	28	28
Available DRs	15	2,566
¹² Development Rights transferred at 1:1		2,551
¹² Development Rights transferred at 3:1		850
¹² Development Rights transferred at 5:1		510

¹² Ratios are theoretical. If 1 DR = \$50,000, a ratio of 1:1 would require \$50,000 outlay for each right to build an additional home. A ratio of 3:1 would require \$16,667 outlay for each right to build an additional home. A ratio of 5:1 would require \$10,000 outlay for each right to build an additional home.

Summary

The success of a TDR program is generally measured through both a programmatic and political lens. The following are keys to TDR success:

Programmatic success

- Enough demand (receiving sites)
- Transactions that positively reflect economic realities for both buyer and seller
- Simple for administrators and participants

Political success

- Workable for all stakeholders (cities, counties, developers, property owners, etc.)
- Clear and consistent messaging
- Grassroots support¹³

Feasibility of a Transfer of Development Rights Program in Whatcom County

Considering Whatcom County's programmatic and political environment (including the current codes, adopted plans, political and growth management priorities, and available development potential as it exists today) the feasibility of a successful TDR program is low. The areas in and around Whatcom County's cities are developing at levels below what is already allowed by zoning and code and there are as many 26,000 to 35,000 potential developable lots in the unincorporated areas of the county that do not require a transfer of development rights to be built upon.

The large number of potential development rights also makes it difficult to support the sale of development rights. An allocation ratio of only 3:1 for 26,000 possible development rights results in the need for receiving areas that can accommodate at least 78,000 development rights (at 5:1 this is 130,000). Even if only a fraction of the existing development rights are considered in this equation, these numbers are far above what could be purchased by developers. Under these circumstances, it is hard to develop and sustain a market that supports the transfer of development rights.

Some jurisdictions have tied any rezoning or increase in UGA boundaries to required TDR participation. While this could be a path for Whatcom County, preliminary GIS analysis of current Urban Growth Areas throughout Whatcom County indicates that many of the UGAs are already large enough to accommodate growth through 2031.

The analysis to-date on the feasibility of a TDR program indicates that a TDR program in Whatcom County could function as one of many tools in the toolbox for tackling the problems associated with residential encroachment on agricultural lands, but it will by no

¹³ These keys to TDR success are adopted from a Cascade Land Conservancy handout given during a Whatcom County Joint Agricultural Committees retreat held November 1, 2008.

means be a panacea for solving these problems. The sheer numbers of development rights available in the unincorporated areas of the county, combined with the land area already designated for urban growth in coming years, leads to the conclusion that the impact of a TDR program in the short to mid-range future will likely be small. Other approaches such as those discussed in the third policy paper in this series,¹⁴ have a much higher likelihood of success in shifting development out of resource lands. If significant steps are not taken in the short to mid-range future that focus on reducing the encroachment of residential development on agricultural lands of significance, Whatcom County will be even less likely to maintain the stated minimum threshold of 100,000 acres of protected farmland.

Next Steps

Taking steps in the near-term to tie all rezoning approvals (based on voluntary applications) in both urban and unincorporated areas to a mandatory acceptance of development rights transfers could help over the long-term with shifting development out of the rural areas. Other similar approaches taken in conjunction with the cities that tie increased development to transfers of density out of the rural and resource land areas could likewise help establish clear expectations for where development is appropriate and encouraged. A TDR program or related density transfer program could play a key role in this manner over time.

In addition, Whatcom County should continue to look for every opportunity and evaluate all potential tools available to protect farmland, protect water and land resources, and prevent sprawl. The county should continue to follow what is happening in other jurisdictions in Washington and across the country and to take advantage of the lessons learned to make good, sustainable choices in our programs.

Acknowledgements

This report was developed by Whatcom County Planning and Development Services staff, under a grant from the Washington State Office of Farmland Protection (Conservation Commission). It is based on research conducted by Dean Martin (Senior Planner), with the benefit of review from Samya Lutz (Planner).

¹⁴ *Summary of Impediments and Opportunities Related to Agricultural Planning in Whatcom County*, prepared by Whatcom County PDS for the WA Office of Farmland Preservation, January 2009.

End Notes

I WHATCOM COUNTY CODE 20.89

DENSITY TRANSFER PROCEDURE

Sections:

- 20.89.010 Purpose.
- 20.89.020 Definitions.
- 20.89.030 General requirements.
- 20.89.040 Sending areas.
- 20.89.050 Receiving areas.
- 20.89.060 Procedures and requirements for certification and approval of transfer of development rights.
- 20.89.070 Exemptions from fees and other requirements.
- 20.89.080 Development rights bank.
- 20.89.090 Long plats.

20.89.010 Purpose.

The purpose of this chapter is to establish procedures for the transfer of development rights from one property to another. Where the applicable Comprehensive Plan policies and an appropriate overlay zone, or zoning map designation, provide the option for transfer of development rights (TDRs), the rights shall be transferred consistent with the requirements of this chapter, and the requirements of the sending areas and receiving areas as defined in this chapter and identified on the official Whatcom County zoning map.

The transfer of development rights from one property to another is allowed in order to provide flexibility and better use of land and building techniques; to help preserve critical areas, watersheds, and open space; to provide more equalization of property values between various zones than would normally be the case; and to work toward achieving county-wide land use planning goals, the objectives of subarea plans and of this title, and implementation of the goals, policies, and action plans of the Whatcom County Comprehensive Plan. (Ord. 2004-044 § 1; Ord. 2004-007 § 1, 2004; Ord. 2001-001 § 1, 2001; Ord. 99-087, 1999; Ord. 98-083 Exh. A § 60, 1998).

20.89.020 Definitions.

.021 “Development rights” means the residential building rights permitted to a lot, parcel or area of land based on the gross density, established pursuant to the official Whatcom County zoning map and this title, and measured in maximum dwelling units per developable acre. Where land is impacted by critical areas, as defined in WCC Title 16, development potential shall be demonstrated by the owner with consideration given to opportunities for cluster development.

.022 “Sending areas and parcels” means undeveloped or partially developed areas, designated on the official Whatcom County zoning map, or by further action of the county council. A sending parcel or site is one that is located within a designated sending area.

.023 “Receiving areas and parcels” means areas that are designated on the official Whatcom County zoning map, by further action of the county council, or are designated on official city zoning maps, which are eligible for higher density residential development through the transfer of development rights. A receiving parcel or site is one that is located within a designated receiving area. In the event that an area or parcel may be located within a designated receiving area and a designated sending area, that area or parcel shall not be eligible to receive TDRs and may only be eligible to sell/transfer TDRs.

.024 “Transfer units” means the additional number of dwelling units allowed on a receiving parcel, through the use of transfer of development rights.

.025 “In lieu payments” for purchase, sale or transfer of development rights means payment of funds to the development rights bank in lieu of the transfer of development rights from a sending area. The amount for in lieu payments shall be determined by the development rights bank oversight committee. (Ord. 2004-044 § 1; Ord. 2004-007 § 1, 2004; Ord. 2001-001 § 1, 2001; Ord. 2000-005 § 3, 2000; Ord. 99-087, 1999; Ord. 98-083 Exh. A §§ 61, 62, 1998).

20.89.030 General requirements.

.031 Development Rights. The residential development rights shall be considered as interests in real property.

.032 Transfer of Development Rights Permitted. The number of dwelling units certified to be built upon a sending parcel may be transferred and built upon a receiving parcel unless encumbered in a manner that prohibits or limits residential development. In approving a transfer of development rights pursuant to this chapter, the appropriate

End Notes (continued)

decision-making body must find that such a transfer is consistent with the Comprehensive Plan designation and zoning regulations of the receiving parcel. Such a transfer of development rights shall only be permitted to occur under the above circumstances, and according to the procedures, set out in this chapter.

.033 Transfer of Units. In any transfer of units, the sending parcel(s) may transfer all or a portion of its development rights to a receiving parcel or parcels, or sell its development rights to an individual, intermediate buyer, development rights bank, or entity. The transfer of development rights is prohibited if the development right is encumbered in a manner that prohibits or limits residential development.

.034 In Lieu Payments. Payments may be accepted by the development rights bank in lieu of the transfer of development rights from a sending area. In lieu payments shall be utilized by the development rights bank for purchase, sale or transfer of development rights. The development rights bank oversight committee shall establish procedures for the acceptance and utilization of in lieu payments. (Ord. 2004-044 § 1; Ord. 2004-007 § 1, 2004; Ord. 2001-001 § 1, 2001; Ord. 99-087, 1999; Ord. 98-083 Exh. A § 63, 1998).

20.89.040 Sending areas.

.041 Designation of Sending Areas. In addition to those areas which qualify as sending areas according to the official Whatcom County zoning map, the county council may approve additional sending areas. Such additional areas may be approved only through the process established for amendments to the official Whatcom County zoning map and pursuant to the procedures and requirements in Chapter 20.90 WCC, Amendments.

.042 Urban Residential (UR) and Rural Residential (RR) Sending Areas. For purposes of determining available TDRs only, parcels located within a designated sending area that are zoned UR, and which do not currently have public water and sewer service, shall be certified TDRs based upon the official zone density for a parcel with public water and sewer, regardless of whether public water and sewer service is currently available to the subject parcels. Sending parcels that are zoned RR, which currently have neither public water or sewer, shall be certified TDRs based upon the official zone density for an RR parcel that does have public water or sewer available. (Ord. 2004-044 § 1, 2004; Ord. 2004-007 § 1, 2004; Ord. 2001-001 § 1, 2001; Ord. 99-087, 1999).

20.89.050 Receiving areas.

.051 Designation of Receiving Areas. In addition to those areas which qualify as receiving areas according to the official Whatcom County zoning map, the county council may approve additional areas as receiving areas.

- (1) Designated Receiving Areas. Such additional areas may be approved through the process established for amendments to the official Whatcom County zoning map and pursuant to the procedures and requirements in Chapter 20.90 WCC, Amendments.
- (2) Rezones.
 - (a) Rezone requests for an area or parcel located within a designated urban growth area, that have been submitted pursuant to Chapter 20.90 WCC, shall be required to transfer development from a designated TDR sending area to obtain the requested density as a condition of approval. In order to obtain the requested density, one development right shall be transferred for every three additional dwelling units obtained through rezones within a designated urban growth area. The county council may modify this requirement if a development agreement has been entered into that specifies the elements of development within the rezone area. The development agreement should include, but not be limited to, affordable housing, density, allowed uses, bulk and setback standards, open space, parks, landscaping, buffers, critical areas, transportation and circulation, streetscapes, design standards and mitigation measures.
 - (b) Exceptions from requiring TDRs: rezones initiated by a government agency, rezone correction of map errors, establishing one zoning district on a property with two or more zoning districts, zoning revisions that are intended to make a nonconforming use a conforming use or rezones where the public interest is served.
 - (c) Rezones initiated by the county, cities or other agencies shall be subject to review by county and city planning staff, and the appropriate administrative bodies, to determine whether the subject site is appropriate for designation as a TDR receiving area.
- (3) Expansion of Urban Growth Areas and Associated Rezones. Comprehensive Plan amendment requests, submitted pursuant to Chapter 20.10 WCC, Comprehensive Plan Amendments, that propose the expansion of an urban growth area boundary shall be required to transfer development rights from a designated TDR sending area.

End Notes (continued)

- (a) In order to obtain the requested urban growth area expansion, one development right shall be transferred for every five acres included into UGA. The county council may modify this requirement if a development agreement has been entered into that specifies the elements of development in the expanded UGA. The development agreement should include, but not be limited to, affordable housing, density, allowed uses, bulk and setback standards, open space, parks, landscaping, buffers, critical areas, transportation and circulation, streetscapes, design standards and mitigation measures.
 - (b) Exceptions from requiring TDRs: urban growth area expansion initiated by a government agency, correction of map errors, properties that are urban in character, or expansions where the public interest is served.
 - (c) Urban growth area expansions initiated by the county, cities or other agencies shall be subject to review by county and city planning staff, and the appropriate administrative bodies, to determine whether the subject site is appropriate for designation as a TDR receiving area.
- (4) Cities. In cooperation with Whatcom County, cities may designate additional TDR receiving areas within their jurisdictional boundaries for the purposes of receiving transferred densities pursuant to this chapter. Under the above provisions, the designation of additional TDR receiving areas shall be based upon findings that the area/site is appropriate for higher residential densities, is not limited by significant critical areas, and neighboring areas would not be significantly adversely impacted. If such areas are determined to be appropriate for designation as TDR receiving areas/sites, prior to development, parcel owners shall be required to purchase TDRs to attain the maximum gross density requested under the proposed zoning. The purchase of TDRs shall not be required until such time that the requirements of WCC 20.89.060 have been met.
- (5) Water Resource Protection Overlay District. Development rights may be transferred within the Water Resource Protection Overlay District for an increase in impervious surface pursuant to Chapter 20.71 WCC.

.052 Receiving Area Eligibility.

- (1) Bellingham Subarea Receiving Areas. Only development rights from the Lake Whatcom sending area may be transferred to receiving areas within the Bellingham subarea.
- (2) Birch Bay Subarea Receiving Areas. Development rights from any sending area may be transferred to receiving areas within the Birch Bay subarea. (Ord. 2005-002 § 1, 2005; Ord. 2004-044 § 1, 2004; Ord. 2004-007 § 1, 2004; Ord. 2001-001 § 1, 2001; Ord. 99-087, 1999).

20.89.060 Procedures and requirements for certification and approval of transfer of development rights.

.061 Certification for Future Sale or Transfer. A TDR that is not associated with a pending development application and that is not proposed for transfer to another parcel at the time of application may be certified administratively by the Whatcom County planning and development services department. Upon satisfactory application for certification of TDRs for future sale or transfer, the number of TDRs on a sending area parcel shall be certified through the issuance of serially numbered individual certificates for each TDR verified for that parcel. The issuance of TDR certificates shall be recorded in the chain of title for the subject property. All certified TDRs and the value of such rights shall be deemed to be appurtenant to the sending area parcel until such rights are transferred by a recorded deed of transfer and a deed restriction is recorded.

.062 Intermediate Transfer. Certified TDRs may be approved administratively for transfer to another individual, intermediate buyer, development rights bank, or entity who may hold them for a period of time before the TDRs are transferred to a receiving area parcel. Under this provision, however, no certified TDR may be transferred to a receiving parcel and/or used in association with a development project without prior approval under the procedures established in this title for a transfer of development rights permit, and the appropriate WCC Title 21 subdivision regulations, as applicable. An intermediate transfer shall not be approved until the following has been accomplished:

- (1) Execution and recording of an instrument legally sufficient in both form and content (using a form provided by the county) to effect such development right transfer. Said instrument shall include at minimum a legal description of the sending parcel(s) and the serial numbers of the certified TDRs being transferred.
- (2) Recording of a deed restriction as specified by the county, on all of the sending parcels from which development rights are obtained. A copy of the recorded deed restriction shall be submitted to the planning and development services department who shall certify that all of the transferred development rights on each sending parcel are removed.
- (3) The deed restriction shall be approved as to form by the prosecuting attorney. The document shall notify all owners and successors that the transfer and its concomitant restrictions shall run with the land and be binding

End Notes (continued)

upon all future owners. For all sending parcels, the deed restriction shall be sufficient to retire all transferred development rights upon the sending parcel in perpetuity.

.063 Initiation. An application for transfer of development rights to a receiving area parcel shall be initiated as follows:

- (1) The process of transferring development rights shall be initiated by submittal of an application for a transfer of development rights permit (TDR permit) by the owner of the receiving parcel to the Whatcom County planning and development services department.
- (2) An application for a TDR permit shall only be accepted for filing concurrently with an application for the associated development project pursuant to the requirements of the Whatcom County Code.
- (3) The planning and development services department shall submit the TDR permit application to the appropriate decision-making body for discretionary approval concurrently with the proposed development project according to the procedures prescribed in the Whatcom County Code.

.064 Submittal Requirements. All requirements for a TDR certification, intermediate transfer or permit shall include the following:

- (1) A map showing the location and boundaries of the receiving parcel and sending parcel as applicable;
- (2) The acreage of the receiving parcel and sending parcel as applicable;
- (3) The zoning and current allowable gross density of the receiving and sending parcels as applicable;
- (4) A lot of record confirmation application;
- (5) Written and notarized consent to the transfer from all registered owners and lien holders of record of all property subject to the transfer of development rights;
- (6) A title report no more than 30 days old;
- (7) A calculation of the number of units available to be transferred from the sending parcel and the total number of dwelling units requested to be transferred to the receiving parcel as applicable. Any fraction of a unit of 0.50 or greater shall be considered as a whole unit;
- (8) Except for purposes of certification or transfer under WCC 20.89.061, all other submittal requirements for an application for the associated development project pursuant to the requirements of the Whatcom County Code; and
- (9) The planning and development services department may require the submission of other data, information, or drawings as deemed necessary to accomplish the purposes of this chapter.

.065 Approval Process and Criteria.

- (1) The procedures for approval of a TDR permit shall be the same as for approval of the associated development project pursuant to the requirements of the Whatcom County Code, except as exempted under WCC 20.89.061. The appropriate decision-making body may approve a TDR permit only upon making the following findings:
 - (a) The purposes and requirements of this chapter have been met; and
 - (b) The transfer will result in the permanent preservation of open space land; and
 - (c) The development rights have not been encumbered in a manner that prohibits or limits residential development.
- (2) Approval of an application for a TDR permit is discretionary. The hearing examiner, county council, or planning and development services department may approve, deny, or conditionally approve such a permit, and may impose such conditions as it deems appropriate to accomplish the goals of this chapter and to mitigate any adverse impacts of such an application.

.066 Requirements for Final Approval. Approval of a TDR permit shall not be finalized until such times as the following have been accomplished:

- (1) Final approval of the concurrent development project according to the provisions of the Whatcom County Code, except as exempted under WCC 20.89.061.
- (2) Execution and recording of an instrument legally sufficient in both form and content (using a form provided by the county) to effect such development right transfer. Said instrument shall include at minimum a legal description of both the sending parcel(s) and receiving parcel(s), and the serial numbers of the certified TDRs being transferred.

End Notes (continued)

- (3) Recording of a deed restriction as specified by the county, on all of the sending parcels from which development rights are obtained. A copy of the recorded deed restriction shall be submitted to the planning and development services department who shall certify that all of the transferred development rights on each sending parcel are removed.
- (4) The deed restriction shall be approved as to form by the prosecuting attorney. The document shall notify all owners and successors that the transfer and its concomitant restrictions shall run with the land and be binding upon all future owners. For all sending parcels, the deed restriction shall be sufficient to retire all transferred development rights upon the sending parcel in perpetuity. (Ord. 2004-044 § 1; Ord. 2004-007 § 1, 2004; Ord. 2001-001 § 1, 2001; Ord. 99-087, 1999).

20.89.070 Exemptions from fees and other requirements.

.071 A development project which relies upon a transfer of development rights shall comply with all other applicable requirements of the Whatcom County Code for such a project. However, in order to encourage the use of the transfer of development rights program, projects containing approved transfer units may be exempted from certain fees and requirements normally imposed by the county. Such exemption may be appropriate because there is a clear public benefit to be gained through the program in the preservation of valuable environmental and/or open space resources. In addition, exemptions from certain county fees will prevent a duplication of requirements for owners of receiving parcels who are providing open space and/or water quality protection through the purchase of transferable development rights. Any such exemptions shall only be granted pursuant to the procedures set out in this section.

.072 Upon application for a TDR permit, the applicant shall be granted a 25 percent reduction for all lot review fees required pursuant to the Whatcom County uniform fee schedule, excluding recording fees administered by the Whatcom County auditor's office.

.073 In conjunction with the TDR permit, an applicant may also be granted the following reductions/increases: (1) a 30 percent reduction, or total exemption, from the minimum landscaping requirements, as applicable; and (2) a 15 percent increase in total allowable lot coverage, upon showing that such a reduction/increase will not adversely impact project residents, adjacent residents, or the character of the adjacent neighborhood. Any such reduction/increase is discretionary and shall be approved by the appropriate decision-making body in conjunction with its review of the TDR permit and project application. (Ord. 2004-044 § 1; Ord. 2004-007 § 1, 2004; Ord. 2001-001 § 1, 2001; Ord. 99-087, 1999).

20.89.080 Development rights bank.

.081 Whatcom County may create a development rights (DR) bank to facilitate the exchange of development rights. Establishment of a DR bank does not preclude private party transactions.

- (1) The DR bank may purchase or sell development rights.
- (2) The DR bank may hold TDRs for any length of time.
- (3) The DR bank may accept in lieu payments for transfer of development rights.
- (4) The DR bank may accept donations of development rights.

.082 A DR bank oversight committee shall be established. The committee shall consist of five members and shall be appointed by the county executive and confirmed by the county council. Each member shall be a resident of Whatcom County and shall represent relevant areas of expertise. The terms of office for the DR bank members shall be four years and be staggered.

- (1) The DR bank oversight committee shall establish procedural and substantive rules to govern its powers, duties and functions subject to approval by the county council. The county council may adopt the rules by resolution.

.083 The DR bank oversight committee shall be empowered to make recommendations regarding:

- (1) The purchase, sale of DRs and receive or hold DRs.
- (2) In lieu payments for transfer of development rights if no development rights are available.
- (3) The application for, and acceptance of, grants for the DR bank's authorized purpose.
- (4) The donation of funds or development rights.
- (5) Negotiations, a competitive bid process or any other method considered fair and equitable by the oversight committee subject to the approval of county council. The county council may adopt the method by resolution.
- (6) Determining the price of development rights purchased from or sold to the DR bank and the amount of in lieu payments to the DR bank. (Ord. 2004-044 § 1; Ord. 2004-007 § 1, 2004).

20.89.090 Long plats.

End Notes (continued)

The following development standards may be modified by the hearing examiner when TDRs are utilized to increase density:

- (1) The minimum lot size, lot width and yard requirements of the underlying zone district may be modified provided the project utilizes transferable development rights.
- (2) Building Spacing and Setbacks. The spacing between main buildings shall be at least equivalent to the spacing which would be required between buildings similarly developed on separate parcels conforming to the underlying zone district's setback requirements. This spacing and setback requirement may be reduced when transferable development rights are utilized and when it is demonstrated that:
 - (a) Compensating design and/or structural measures are used to ensure the protection of the users' and inhabitants' (of the development) health, safety and welfare, and compatible with the surrounding neighborhood, including but not necessarily limited to visual and acoustical privacy, structural separations and requirements to meet fire codes and adequate light and air; and
 - (b) Any perimeter treatment required by WCC 20.85.104 is met.
- (3) Maximum Coverage. Building coverage and development coverage of individual parcels may exceed the percentage permitted by the underlying zone if transferable development rights are utilized to increase density; provided, that the overall coverage of the project as a whole does not exceed the percentage permitted by the underlying zone or applicable overlay district.
- (4) Lot Width. Where the design is such that adequate light, air and privacy can be provided, especially for living spaces and bedrooms, a narrower lot width may be permitted.
- (5) Circulation and access provisions shall be appropriate to the scale of the project and to anticipated traffic characteristics, and consistent with the requirements of Whatcom County road standards unless a reduced standard is approved by the county road engineer and transferable development rights are utilized to increase density.
- (6) Driveways and circulation roadways shall be designed to minimize traffic and congestion within the project and where consistent with the standards to minimize the amount of paving.
- (7) Parking shall be provided as required in Chapter 20.80 WCC. However, where it can be demonstrated by the applicant that due to nonconflicting hours of operation, design of the circulation and parking plan, or any other factor reasonably related to the need for parking, the total parking requirement can be reduced. The hearing examiner may do so provided legal notice of the application specifies that such reduction has been requested. (Ord. 2004-044 § 1, 2004).

II BURLINGTON HERITAGE CREDIT PROGRAM

Overview of the Concept

The Burlington Heritage Credit Program is intended to create a new tool to help the community achieve two important goals:

- To revitalize Downtown Burlington as an attractive place to live, shop, work, and gather; and
- To protect nearby farmland to preserve the community's agricultural heritage and provide open space nearby the city.

The connection between these goals is the strongly held belief that Burlington's character and livability are directly related to, and dependent upon, the preservation of the working landscapes and natural resources of the Skagit Valley. In combination with a new zoning plan for the Downtown, the Heritage Credit Program will contribute to the realization of these goals by providing a mechanism to channel a portion of the profits that will be generated by Downtown revitalization into the protection of nearby farms. By protecting farmlands, Burlington will in turn contain sprawl, protect the scenic resources and agricultural activity that are a key part of the city's heritage, and reinforce the quality of life its citizens treasure.

Description of the Proposal

The Heritage Credit Program is designed to work in concert with the new Downtown Plan, which is currently being created under the auspices of Burlington's city government. Building upon the results of community workshops led by

End Notes (continued)

the University of Washington School of Architecture, the Plan will create opportunities for new types of pedestrian-friendly development in the downtown area which will add significantly to the housing supply and the vitality of downtown businesses. It is anticipated that, in the aggregate, the new plan will create the potential for developers to achieve significantly higher densities than under the existing code.

The Heritage Credit Program would provide a way for developers to “earn” that added density for their projects by contributing to the preservation of nearby farms. In return for added density, developers would purchase density transfer credits --- called “Heritage Credits”--- from the City. The proceeds from the sale of those credits would be earmarked by the City for farmland preservation in specific areas identified by the City Council as priorities for protection.

As envisioned, the new Downtown Plan will provide a “base” level of development which can be achieved without participating in the Heritage Credit Program, and a “bonus” density that can be achieved by purchasing Heritage Credits. For example, many of the participants in the University of Washington’s community workshops envisioned development along Fairhaven that incorporates housing above retail shops. If the City Council concurs in that vision, the Downtown Plan and zoning code may be structured to allow one floor of housing above retail as a “base”, and an additional floor (or floors) of housing as a “bonus” with the purchase of Heritage Credits.

The concepts that emerged from the community workshops also included cottage housing, townhouse development and live-work housing in the areas adjoining the Fairhaven business district. Each of these housing types could be encouraged in the Downtown Plan at specific locations, with greater densities earned through the Heritage Credit Program. Design guidelines, developed as part of the Downtown Plan, will assure that the additional densities are accommodated in a manner that enhances the quality of life in the community.

Developers will have two incentives to purchase the Heritage Credits:

- In the near term, they will be able to achieve higher densities, and greater profits, by participating in the Program.
- In the longer term, the value of their developments will be enhanced by the added vitality of downtown and by the certainty that the beauty and character of nearby farmlands will be protected.

The price of the Heritage Credits will be established by the Burlington City Council in the context of developing the new Downtown Plan. In setting the price, the Planning Department is reaching out to real estate experts, builders and other stakeholders to assure the price reflects the realities of the marketplace. If the price of the credits is set too high, no one will buy them. If they are set too low, the public will lose precious resources to protect farmland. The Council may choose to adjust the price on an annual basis to reflect conditions in the marketplace with the goal of creating as much public benefit as possible while still providing effective financial incentives to participate.

Strategy for Farmland Preservation

As downtown revitalization occurs the sale of Heritage Credits will generate revenue, which will be dedicated to preserving farmland on the periphery of the City. The most efficient way to protect that farmland is to purchase development rights from the property so that it remains in agricultural use in perpetuity. This mechanism sustains the community’s agricultural heritage not only through land preservation, but through compensating farmers for their development rights in a manner that enables them to recapitalize their operations. Fortunately, a highly-respected purchase of development rights (PDR) program, the Farmland Legacy Program, has already established a solid track record in Skagit County, preserving more than 4,000 acres of Skagit Valley farmland through the PDR mechanism. If agreement can be reached with Skagit County, City will contract with the Farmland Legacy Program to purchase development rights from the properties it wishes to protect. This would provide the Legacy Program with additional financial resources, simplify the process of engaging property owners, and minimize Burlington’s costs for administering the Heritage Credit Program.

Comparison With Traditional TDR Programs

The proposed Burlington Heritage Credit Program is a streamlined version of the “Transfer of Development Rights” (“TDR”) programs that have been created in more than one hundred local jurisdictions across America in the past two decades. The concept of the Heritage Credit Program, like virtually all TDR programs, is straightforward: it is a tool to move development away from areas the community wishes to protect to areas in which the community wants to encourage new development. The Heritage Credit Program shares the following characteristics with most successful TDR programs:

End Notes (continued)

- The Program would provide financial compensation to property owners for development rights purchased in the area to be preserved as farmland.
- The Program will be voluntary. Owners of farmland parcels in the areas nearby Burlington will be encouraged to sell their development rights through the Program, but they will not be compelled to do so. By the same token, developers will be encouraged to purchase Heritage Credits to earn higher densities for their developments, but they may choose instead to develop properties at the lower base densities allowed by the new Downtown Plan without participating in the Program.
- The Program will be an integral part of the City's zoning code. The new Downtown Plan will spell out the number of credits that must be acquired in order to achieve specific density bonuses within each area of the Downtown.

The proposed Heritage Credit Program will differ from traditional TDR programs in the following ways:

- The Heritage Credit Program will be much less complex than most TDR programs. Traditional TDR programs often require developers to negotiate deals with landowners to obtain development rights before they can receive the bonus. Developers in Burlington will be able to earn the density bonus by purchasing credits directly from the City at a set price.
- The Heritage Credit Program will allow greater flexibility in the timing of purchases of both credits and development rights. Most TDR programs which do not require developers to negotiate with property owners for development rights have established "TDR banks" as a mechanism for brokering the movement of development rights between property owners and developers. By contrast, the Heritage Credit Program does not require a TDR bank, and enables developers to make timely decisions in response to market conditions.
- The Heritage Credit Program will be easier and far less costly to administer than most TDR programs. If agreement can be reached with Skagit County, Burlington could contract with the Farmland Legacy Program to purchase development rights from landowners in the areas the city identifies as its priorities, and use the proceeds from the sale of Heritage Credits solely for that purpose. This would have the dual benefit of providing more resources to the Farmland Legacy Program, and greatly reducing the City's administrative burden to operate the Program.

BURLINGTON TDR PROJECT CHARACTERISTICS OF SUCCESSFUL TDR PROGRAMS

1. THE PUBLIC RECOGNIZES THE VALUE OF THE COMMUNITY ASSET REPRESENTED BY THE SENDING AREAS (E.G., SKAGIT FARMLAND)
2. THE PUBLIC SUPPORTS THE TYPE, DENSITY AND LOCATION OF DEVELOPMENT GENERATED BY THE PROGRAM
3. THE ZONING CODE REFLECTS THESE VALUES AND INCLUDES INCENTIVES TO USE TDR
4. SENDING SITE OWNERS ARE MOTIVATED TO SELL THEIR DEVELOPMENT RIGHTS
5. RECEIVING SITE DEVELOPERS ARE MOTIVATED TO BUY TDR
6. TDR APPROVALS ARE FAST, EASY, AND CERTAIN
7. DESIGN GUIDELINES ARE IN PLACE TO ENSURE QUALITY DEVELOPMENT AND CONTINUED PUBLIC SUPPORT
8. A TDR BANK AND/OR REVOLVING FUND IS USED TO ENSURE THAT THERE IS A WILLING PURCHASER FOR THOSE WHO WISH TO SELL DEVELOPMENT RIGHTS, AND A READY SUPPLY FOR THOSE WHO WISH TO PURCHASE THEM
9. ADEQUATE STAFF AND RESOURCES ARE AVAILABLE TO IMPLEMENT THE PROGRAM
10. MECHANISMS ARE IN PLACE TO MONITOR THE PROGRAM AND REVISE IT AS NEEDED TO ENSURE SUCCESS

End Notes (continued)

**BURLINGTON TDR PROJECT
PROJECT OVERVIEW**

COMMUNITY VISION

- Preserve Skagit farmland and farming.
- Strengthen downtown Burlington as a great place to live, work, shop and relax.

PROJECT GOALS

- Determine if a transfer of Development Rights (TDR) program can be a useful tool to help the community achieve its vision.

ROLE OF THE STEERING COMMITTEE

- Provide expertise and advise.
- Identify issues and opportunities.
- Test ideas.
- Make recommendations to elected officials.