

Transfer of Development Rights: Program Analysis for the City of Tacoma



Introduction, Research Findings and Recommendations

Prepared for:

The City of Tacoma

Prepared by:

Cascade Land Conservancy

December 2008



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Executive Summary

Overview

The city of Tacoma lies in the fertile Puyallup River Valley between Puget Sound and the Mount Rainier foothills. In this magnificent natural setting, Tacoma residents cherish the quality of life afforded by a unique urban environment, a diverse economy, a thriving art community and affordable living.

The Puget Sound Region is growing rapidly, expecting to add 1.7 million additional residents by 2040. Tacoma, the third largest city in the state (population 201,700), is expecting an additional 61,000 new residents by 2022 due to the area's beautiful natural amenities and potential for continued economic growth. Within the city, recent development has begun to encroach on valuable historic sites and open space. Development in rural unincorporated areas just outside the city continues to grow at the expense of the region's agricultural lands.



In recent years, significant growth has occurred on rural and agricultural lands just outside of the cities. This development pattern has occurred at the expense of resource lands. Between 1997 and 2002, Pierce County agricultural land was developed at a rate of nearly 900 acres per year. With the expected growth coming into the area, the approximately 57,000 acres of farmland (and only 20,000 acres of prime farmland) left in Pierce County are likely to experience increased development pressure.

Open space within the city's boundaries are important to the city's character. Open space provides city residents a sense of place, recreational opportunities, a connection to the land and a retreat into natural spaces. These spaces include shorelines, distinctive steep slope and gulch areas, wetlands and streams, upland habitat areas, and in addition, a well-developed system of parks, playgrounds and recreational facilities. The draft Open Space Habitat and Recreation Plan element supports the conservation of and maintenance of the natural habitat areas which help improve public health, safety and identity.

Historic structures offer residents a cultural connection to the people who discovered the area and made Tacoma their home. Over 130 properties are listed on the Tacoma Register of Historic Places. They range from the Old City Hall, built in 1893 – the first building added to the register – to the ruins of the first Tacoma Narrows Bridge, now lying at the bottom of Puget Sound. Historic sites tie the community to its history, urban form and surroundings.

Only 20,000 acres of prime farmland are left in Pierce County and an average of 900 acres of farmland are lost per year.

Although timberlands surrounding Puyallup River Valley are outside of Tacoma, the city benefits from them in multiple ways. The Pierce County Employment Forecasts Analysis ranks wood product manufacturing as highly important for the county’s future job growth. Pierce County timberlands and timber-related products employ over 2,400 people. In the first quarter of 2003, the forestry and logging industry accounted for over \$3.9 million in worker wages while in the same quarter, wood product manufacturing accounted for \$22 million in worker wages. In 2007, wood products were Tacoma port’s ninth-most exported commodity, worth over \$210 million.

The city is currently developing three programs to make Tacoma a destination city with a vibrant economy and livable neighborhoods. Tacoma is the first Cascade Agenda Leadership city, has created a Green Tacoma Partnership program and is now investigating a transfer of development rights (TDR) program.

This report focuses on the analysis of a TDR program for the city. A TDR program in Tacoma can help the city plan for future growth while conserving lands most important to its economic future and cultural identity. A successfully crafted TDR program preserves resource-based businesses, encourages development in urban areas that are most appropriate for development, conserves valuable open space and historic structures within the city, conserves valuable resource land and ultimately saves taxpayers money.

What is Transfer of Development Rights?

Transfer of Development Rights (TDR) is a voluntary, market-based planning tool for helping implement a jurisdiction’s growth and conservation policies. TDR uses the “economic engine” of new growth to conserve lands with public benefits, such as working lands (farms and forests), ecologically significant areas and open space. It is also used by some communities for historic conservation and/or housing affordability.

Through individual transactions, development rights are transferred from privately owned farmland, forestland, and open space (known as *sending sites*) to areas where additional growth is desired (known as *receiving sites*). Landowners in sending areas receive compensation for giving up their right to develop, while developers in receiving areas pay for value-added features (e.g. additional units, additional height, reduced parking requirements, etc.) that would not otherwise be allowed. When development rights are removed from a sending site, a conservation easement is placed on it. This allows for permanent conservation of the parcel,



which is a more desirable long-term approach than using zoning regulations, which are subject to being changed.

TDR does not limit growth; rather, a TDR program links the dual benefits of growth and conservation by providing communities with a tool to redirect development into areas most appropriate for additional growth. In comprehensive plans and development regulations, communities identify areas that are suitable to send and receive development rights. The appropriate amount of additional growth allowed through TDR is set by the community.

So, why should Tacoma use TDR? Natural open spaces, historic structures, farmland and forestland are important to Tacoma's character. As a voluntary market-based tool, TDR can help preserve Tacoma's character and achieve multiple policy goals in a cost-effective manner. TDR will help ensure conservation of open space and cultural resources, continue the viability of resource-based businesses, develop growth patterns that reduce low-density sprawl and further climate change goals. It is authorized by the Washington State Growth Management Act and is supported by the city of Tacoma's Comprehensive Plan.

Recommended TDR Program Framework

Goals

CLC recommends the following TDR-program goals based on findings from outreach to stakeholders and research of the policies and vision outlined in Tacoma's Comprehensive Plan and draft Open Space Habitat and Recreation Plan:

- 1) Conserve open space, historic structures and Pierce County farmland and forests
- 2) Encourage growth within Tacoma's urban centers – Downtown and Mixed-Use Centers



These recommended TDR goals focus on furthering Tacoma's conservation and economic growth efforts. Conservation of open space, historic structures and Pierce County agricultural- and forest-land are important elements of the economy and culture of Tacoma. In the face of a growing population, TDR is an important tool for community leaders to implement the city's economic vision and ensure the future of its valuable assets.

Sending Sites

CLC researched Tacoma's comprehensive plan to determine future conservation priorities and held discussions with community stakeholders. Based on these efforts, CLC recommends conserving sites that are important to the cultural and economic identity of Tacoma, including:

- I. **Open space lands:** CLC recommends focusing on open space lands that are most important to the city. These include lands within the city or outside the city's boundary that fit the RCW definition of open space, "any land area so designated as open space by an official land use comprehensive plan adopted by any city or county." This enables the

city to identify and prioritize conservation of open space that is most important to the city, including sites identified in the draft Open Space Habitat and Recreation Plan.

2. **Historic sites:** CLC recommends newly proposed historic sites for Tacoma’s Register of Historic Places to be sending sites. This provides additional incentive for landowners to register their site. Since the Tacoma historic register is directly under the control of the city it allows for prioritized conservation of historic properties most important to Tacoma.
3. **Agricultural lands:** CLC recommends creating criteria for agricultural-land sending-site designation. A criteria-based approach allows the city to prioritize conservation of agriculture lands. Example criteria for sending sites could be lands with senior water rights, high-quality soils, lands with ARL zoning classification or lands currently in agricultural use.
4. **Forest lands:** CLC recommends creating criteria for forest-land sending-site designation. A criteria-based approach allows the city to prioritize conservation of forestland. Example criteria could include requirements such as, parcels zoned as FL, parcels that meet a minimum size, parcels that are adjacent to contiguous tracts of working forest, parcels that are used for forest land practices or parcels that are under a Class II, III or IV special forest practices permit.
5. **Green River Watershed (Tacoma’s Water Source):** CLC recommends all parcels within the Green River Watershed that contribute to Tacoma’s water source for sending-site designation.

Receiving Sites

One factor of a successful TDR program is ample market demand. To help identify potential receiving sites, CLC spoke with county and city elected officials, county and city administrators and planners, developers, members of economic development organizations, local residents and members of the environmental community, to determine the appropriate location and demand for additional development. Based on this outreach, CLC recommends the following receiving site areas:

1. **Downtown Tacoma:** Research findings show that there is market demand in downtown to use TDR. CLC recommends using TDR in the following ways:
 - a. Use TDR credits to alter the allowed commercial-to-residential FAR ratio
 - b. Include TDR credits as a “design standard” and “special feature” to increase FAR
 - c. Require TDR credits to increase beyond the FAR allowed by-right
 - d. Use TDR credits to increase height limits in the DMU, DR and WR zoning classifications
 - e. Use TDR credits to alter the parking requirements
2. **Mixed-Use Centers (MUC):** MUCs are identified as areas of more intense development than the surrounding neighborhoods. This is intended to encourage the creation and expansion of active commercial nodes with a mix of additional residential and commercial densities. Anticipated additional density and growth targeted in these

centers generates ample demand for TDR credits. CLC recommends using TDR in the following ways in MUCs:

- a. Include TDR as a “bonus feature” for developers to achieve additional height in NCX-zoned and CCX-zoned MUCs
 - b. Use TDR credits to increase height limits up to 85 feet in all NCX-zoned MUCs
 - c. Use TDR credits exclusively to increase the maximum height to 85 feet from a base height of 65 feet in the bonus height areas within all NCX zones
 - d. Allow TDR credits as a bonus feature to increase height to 70 feet from a base height of 60 feet in the height bonus areas within the CCX zones
 - e. Use TDR credits exclusively to increase the maximum height to 85 feet from a base height of 70 feet in the bonus height areas within the CCX zones
 - f. Use TDR credits to increase the height in areas not already subject to the bonus-height program
 - g. Use TDR credits to alter the parking requirements
3. **Planned Residential Districts (PRDs):** A TDR program available to new PRD projects should focus on providing additional density options. Viable options for increasing density within PRDs include:
- a. Allowing a portion of the required open space to be met through the use of TDR credits
 - b. Using TDR credits to increase PRD densities
4. **Lands Proposed for Comprehensive Plan Amendments:** CLC recommends using TDR credits for requested increases in density or level of land use intensity.

TDR Administration

With regard to how the TDR program is administered, CLC recommends the city consider the following transaction model:

Private-market transaction model with city support:

Buyers and sellers in this model, work through the traditional negotiation and transaction process, in a fashion similar to fee-simple real estate deal-making. This process would be supported by the city providing additional information. The city would track potential TDR sellers in the marketplace, as well as track the number of current credits available to buyers. The city would also serve as a resource that potential buyers and sellers could contact should they have any questions about how to participate in the TDR program. The private-market-with-support model allows the market to function freely, provides information that increases efficiency by connecting buyers and sellers, and reduces uncertainty by reporting market prices and trends. The added benefits of providing information come at a relatively low cost and, particularly once information systems are in place, with limited staff time. CLC further recommends that Tacoma engage the real estate and escrow industries to participate as private agents in the TDR transaction process.

Concluding Remarks

The intent of this document is to provide city leadership an in-depth introduction to TDR, to report the findings of CLC's research and outreach efforts and to recommend a TDR program framework and administrative model CLC believes can be successful in Tacoma. Supporting these recommendations are accompanying documents providing draft language for a TDR ordinance and an model interlocal agreement.

These recommendations and supportive documents are intended to provide the Planning Commissioners, City Council, City staff and the citizens a framework and basis for discussing TDR in a public process. The ultimate policy and associated elements of a TDR program in the city will be decided by city leadership.

Cascade Land Conservancy will continue to serve in its role as a TDR resource moving forward.



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 Development

Tacoma Neighborhood Councils

West End
 Northeast
 Eastside
 North End
 Central
 South End

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I. Introduction

About this Report

The city of Tacoma partnered with Cascade Land Conservancy (CLC) to assist the city in developing a Transfer of Development Rights (TDR) program and ordinance.

Developing a TDR program is one of three programs in the city's strategic effort in becoming a destination city with a vibrant economy and livable neighborhoods. Tacoma is a leader in this effort by simultaneously working on developing programs to advance their four strategic initiatives (see below). Tacoma is the first Cascade Agenda Leadership city – a CLC program aiding cities in improving the livability of neighborhoods by making them complete, compact, and connected. Green Tacoma Partnership is the third program the city and CLC are developing. This program is designed to pull together both public and private groups to sustain a viable healthy network of natural spaces throughout Tacoma.

The partnership to develop these programs is focused on advancing the city's four strategic initiatives:¹

1. Protect Neighborhoods
2. Protect Critical Areas
3. Increase Densities in Downtown and Neighborhood Business Districts
4. Improve Management

These initiatives show a strong commitment to increasing the quality of life for Tacoma's residents. The initiatives focus on bettering neighborhoods, protecting valuable critical areas throughout the city and promoting density to provide residents with walkable access to working and shopping districts.

Between January and August 2008, CLC staff initiated a stakeholder outreach effort to gain an understanding of the conservation needs of the city and how a TDR program could be designed to achieve the city's conservation goals. CLC staff interviewed over 40 community members with a broad spectrum of interests, including developers, environmental groups, neighborhood groups and government officials. The recommendations for a successful TDR program outlined in this report reflect the challenges and opportunities learned from this outreach effort. Along with the recommended TDR program framework, this report includes a model TDR ordinance and a model interlocal agreement².

¹ City Manager's 2007-2008 Proposed Operating Budget Fact Sheet. November 6, 2006.

² The provided interlocal agreements between Tacoma and Pierce County and Tacoma and King County outline the details for a formal agreement that authorizes the transfer of development rights across jurisdictional boundaries.

Goals of this Report:

1. Provide a better understanding of TDR programs and how a program would benefit the residents of Tacoma
2. Provide initial recommendations for developing a successful TDR program based on the findings of CLC's outreach efforts and analysis
3. Integrate TDR with Tacoma's ongoing conservation and economic development efforts (e.g. Draft Open Space Habitat and Recreation Plan, Green Ribbon Task Force, Mixed-Use Center updates and Comprehensive Plan)

A working dialogue with city leadership on the recommendations in this report will shape the course of action regarding Tacoma's future TDR program.

What is Transfer of Development Rights?

Transfer of Development Rights (TDR) is a voluntary, market-based planning tool for helping implement a jurisdiction's growth and conservation policies. TDR uses the "economic engine" of new growth to conserve lands with public benefits, such as working lands (farms and forests), ecologically significant areas and open space. It is also used by some communities for historic conservation and/or housing affordability.

Through individual transactions, development rights are transferred from privately owned farmland, forestland, and open space (known as *sending sites*) to areas where additional growth is desired (known as *receiving sites*). Landowners in sending areas receive compensation for giving up their right to develop, while developers in receiving areas pay for value-added features (e.g. additional units, additional height, reduced parking requirements, etc.) that would not otherwise be allowed. When development rights are removed from a sending site, a conservation easement³ is placed on it. This allows for permanent conservation of the parcel, which is a more desirable long-term approach than using zoning regulations, which are subject to being changed.



TDR does not limit growth; rather, a TDR program links the dual benefits of growth and conservation by providing communities with a tool to redirect development into areas most appropriate for additional growth. In comprehensive plans and development regulations, communities identify areas that are suitable to send and receive development rights. The appropriate amount of additional growth allowed through TDR is set by the community.

Three key features of TDR programs include:

1. **TDR is voluntary.** Sending-site landowners choosing not to participate in a TDR program are entitled to develop to current zoning. Likewise, receiving-site landowners choosing not to participate in a TDR program are allowed to build within the current zoning. Receiving-site landowners must purchase TDR credits when they seek to increase development density. In the most successful TDR programs across the nation, participation in TDR is the *only* way developers can achieve higher-intensity development than currently allowed by zoning.

³ See appendix C for a definition of conservation easement

2. **TDR is market-based.** TDR programs create a marketplace that allows property owners to buy and sell development rights to one another. Individual property owners may freely negotiate prices for the purchase and sale of these rights. Being a market-based mechanism, TDR provides value to both parties, thus development is encouraged while conservation is achieved. Further, TDR allows the city or county to protect land without spending limited public funds.

3. **TDR is flexible.** TDR accommodates the development and conservation goals of each community. Of the more than 180 TDR programs in the United States, the majority are oriented toward farmland and environmental conservation.⁴ Fulton et al. organized the existing national TDR programs into eight broad categories:⁵
 1. General Environmental
 2. Specific Environmental
 3. Farmland
 4. Environmental and Farmland
 5. Rural Character
 6. Historic Preservation
 7. Urban Design and Revitalization
 8. Infrastructure Capacity

Each program can also be designed to match the local real estate market; where the sending site land owner is best compensated while adding the most value to the receiving site developer.

⁴ Rick Pruetz and Erica Pruetz. 2006. *Transfer of Development Rights Turns 40*. American Planning Association, Planning and Environmental Law, Vol. 59, No. 6.

⁵ Fulton, Mazurek, Pruetz, Williamson, TDRs and Other Market-Based Mechanisms; Brookings Institution Center on Urban and Metropolitan Policy, 2004, 12.

II. TDR Basics

TDR Program Fundamentals

While no two TDR programs are exactly alike, certain features are common to most. The following provides an overview of key TDR program elements.⁶

Goal-setting

A community with a clear idea of what it wishes to accomplish in a TDR program often are most successful. Important questions that should be reflected and answered in the goals of a TDR program are: *How much development is appropriate for the community? Where should development be discouraged and where should it be encouraged?*⁷

TDR is a flexible planning tool that can and should be customized to support the planning goals of individual communities. While most TDR programs aim to protect farmland and natural areas, some include elements promoting low-income housing and historic preservation.

In designing a TDR program, it is important to identify and prioritize community goals the jurisdiction aims to achieve. Nationwide, TDR programs identifying a limited number of goals historically have been more successful; although the flexibility of TDR programs allows a jurisdiction to achieve a wide array of policy goals. Having multiple policy objectives may reduce the program's effectiveness in advancing any single objective. In establishing the goals of a TDR program, it is important to understand whether or not the goals are supported by other programs.

Sending sites

Identifying sending sites allows a community to answer the question of *where it wants to encourage conservation*. A critical early step is the identification and mapping of sending areas. In determining the size and location of sending areas, a number of factors must be considered. Among them are the number of development rights that could be transferred; the extent to which existing zoning supports land conservation; and the relative priority to conserve sites currently experiencing strong development pressure vs. those experiencing less development pressure.

Receiving sites

The key question a community must ask itself when identifying the receiving sites revolves around *where it wants to encourage development*. Receiving sites should be identified as parcels in high demand for development near existing transportation corridors and with existing infrastructure for water, sewer, and other urban amenities. Key factors that go into designating receiving sites include market demand for development rights, availability of infrastructure and services to support development and community support for increased development in the contemplated areas.

⁶ See Appendix C for a glossary of related terms.

⁷ Gottsegen, Planning for TDR, Burlington County Freeholders 1992, 80

Some jurisdictions establish sending and receiving sites within a single jurisdiction, while others establish cross-jurisdictional exchanges or a combination of within- and cross-jurisdictional exchanges through interlocal agreements. Receiving sites may be specific locations within a jurisdiction or established through a set of criteria.

Development incentives

Receiving-site developers are granted the option of additional density or other development incentives in exchange for purchasing development rights. Developers must be financially motivated to purchase development rights for increased density rather than building at existing zoning levels. While most TDR programs offer increased residential density (either single family or multi-family) as a bonus, other incentives can be offered, including:

Incentive	Example Jurisdictions
Increased floor area ratio ⁸ Flexibility on parking ratios Parkland and Open Space requirements	Redmond, WA
Additional height Additional commercial square footage Reduced limits on impervious surfaces Flexibility on setbacks	Issaquah, WA
Increased lot coverage	Miami-Dade County, FL

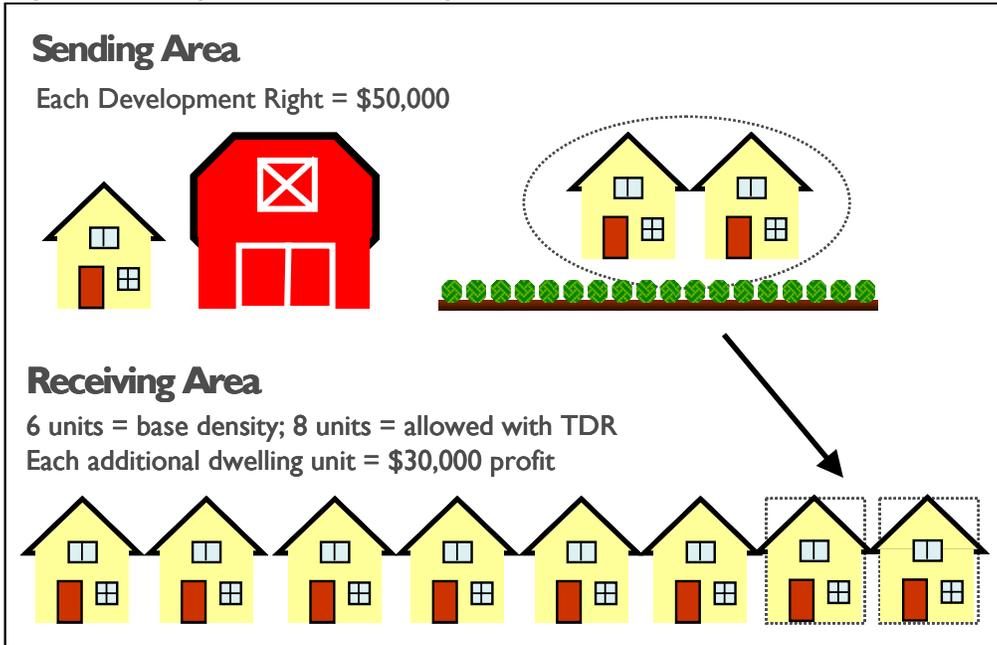
Whatever the incentive, it must be tailored to the desires of the community and provide additional value to a developer.

Allocation and exchange rates

The allocation rate is the number of development rights each sending site can potentially sell while the exchange rate is the number of added units or other credits available to a developer purchasing a development right. Calibrating these rates is important to ensure participation in the TDR program. Correct allocation and exchange rates ensure that there are adequate incentives for buyers and sellers to participate; the development rights must be affordable to developers while offering sufficient compensation to sending site landowners. An example of how exchange rates can be used to encourage program participation is illustrated in figure 1.

⁸ Floor area ratio (FAR) is the ratio of the total floor area of a building to the size of the land on which the building is located.

Figure 1: Example of TDR Exchange Rates



Situation 1: Exchange Rate = 1:1

- Developer is interested in pursuing two additional units using TDR
- Two additional units will provide \$60,000 in additional profit to developer
- Farmer has two development rights to sell at \$50,000 each
- \$100,000 cost > \$60,000 profit on additional units
- **NO DEAL at 1:1 Exchange Rate**

Situation 2: Exchange Rate = 1:2

- Developer is interested in pursuing two additional units using TDR
- Two additional units will provide \$60,000 in additional profit to developer
- Farmer has two development rights to sell at \$50,000 each
- \$50,000 cost < \$60,000 profit on additional units
- Developer nets \$10,000 profit; Farmer makes \$50,000, has another right to sell
- **DEAL at 1:2 Exchange Rate**

Allocation and exchange rates can also be used to prioritize where conservation and development will occur. For example, if a jurisdiction wants to encourage conservation of a particular area, it could assign a higher allocation rate. This would effectively increase the sending-site landowner's willingness to sell, thus making development rights from this area more affordable than other sending site areas. Or, the same effect can be created by designating higher or lower exchange rates for receiving site landowners.

Transaction mechanisms

Many programs provide technical support for TDR transactions, such as providing an information clearinghouse to help link potential buyers and sellers. Other jurisdictions have

created TDR banks to help facilitate private transactions and to act as the buyer or seller. In some cases, seed money has been provided to initiate a TDR bank and to make initial purchases of development rights. The credits are subsequently sold to developers, enabling the bank to create a revolving fund available for future TDR purchases.

Conservation easements

Once development rights have been sold from a sending site, those rights are relinquished and a conservation easement is placed on the property, thereby conserving the property in perpetuity. These easements generally are held and enforced either by the city or county, or by a non-governmental organization such as a land trust. Responsibilities for monitoring and enforcing conservation easements over time must be clearly assigned and funded.

Program administration

Smooth operation of a TDR program requires certain staffing and administrative procedures by the TDR program administration. These may include outreach to landowners and developers, facilitation of transactions, recording of conservation easements, authorizing sending and receiving site, assigning TDR credits, tracking TDR credits and coordinating TDR transactions with a jurisdiction's zoning and permitting processes. TDR programs should be regularly evaluated and updated over time.

Success Factors

Three factors stand out as key elements in successful programs. Jurisdictions have an opportunity to build on other jurisdictions' experience by focusing on these elements to make TDR an effective land use management tool.

1. Zoning Compatibility

Zoning regulations can either create or undermine landowner and developer interest in the program. Property owners in sending areas are more likely to participate if a TDR sale can provide enough financial gain to offset a need or desire to develop their property under existing zoning regulations. Developers will participate if TDR incentives offer significant financial value beyond what can be achieved under baseline zoning regulations.

Some jurisdictions have initiated TDR programs with a large-scale downzoning of lands to be conserved, using TDR as a means of compensating landowners for development restrictions and creating a strong incentive for participating in the TDR marketplace. On the receiving side, zoning that matches or exceeds market demand for development negates the value a developer might achieve through TDR. Enforcing or reducing the base zoning in TDR receiving areas is an option to reinforce this profit incentive; however, as in sending areas, downzoning is often not feasible and may conflict with city planning objectives favoring concentrated growth.

A more reasonable approach is to incorporate TDR incentive provisions into zoning regulations. For example, a jurisdiction will zone a receiving area with two maximum densities, one without TDR and one with TDR. This approach provides a process that encourages developer participation. The jurisdiction maintains control over how much growth will occur and plans for the location of additional density, while supporting regional conservation goals. However, if developers are successful in achieving rezones (increased density above what is allowed by zoning) without participation in TDR, there will be little demand to fuel the TDR marketplace and, consequently, meager progress toward conservation goals.

2. Encourage Market Studies to Fine-Tune TDR Programs

TDR programs founded on a clear understanding of the local real estate market are more likely to generate TDR transactions. Without such an assessment, the program framework likely will be out of sync with the local economic market dynamics, resulting in little interest from potential buyers and sellers. Assessing the value of development rights from both a seller's and buyer's perspective is critical to the design of desirable allocation and exchange rates, to effectively calibrate the economic equation for TDR transactions and result in an active market.

TDR market studies to support TDR program design must be tailored to local market conditions. Local jurisdictions are encouraged to review mechanisms and establish protocols for updating TDR values over time.

3. TDR Transaction Support

Many jurisdictions with successful TDR programs utilize mechanisms that help connect buyers with sellers. Public support for TDR transactions can take a variety of forms, depending on the

types of transaction mechanisms established. To facilitate TDR transactions, jurisdictions have created a TDR clearing house, TDR bank or a TDR auction.

Even when programs rely strictly on individual private transactions to accomplish TDR sales, TDR clearing houses can encourage participation by conducting outreach to eligible landowners, and developers by providing information for interested parties, and by providing technical support for transactions. TDR banks go further by eliminating the need for individual buyers and sellers to connect and by helping to smooth economic cycles that may favor TDR purchases at one time and TDR sales at another. Another alternative a jurisdiction may use is regularly scheduled auctions for TDR credits. Auctions can directly establish the market price for TDRs and quickly inform market players as to probable supply and demand.

Limiting Factors

While many TDR programs have been enacted, not all have been successful. In developing a TDR program in Tacoma, it is important to be mindful of the factors that have limited TDR program effectiveness elsewhere and to focus on those factors that have contributed to the success of certain programs. Following are some of the most significant obstacles that appear to have limited TDR implementation.

Inadequate Receiving Areas

Without adequate receiving areas, there is no market demand for development rights and a TDR program cannot succeed. A robust TDR program needs to have sufficient market participants (on both the sending and receiving sides) to generate transactions and to stabilize the market for and price of development rights. While lands to be conserved can be easy to identify, many jurisdictions have found it difficult to designate viable areas to receive the development rights. Communities often are reluctant to accept additional density without assurances of adequate infrastructure and protections for neighborhood character. The presence or lack of a consensus on appropriate locations for growth can affect significantly a jurisdiction's ability to designate adequate receiving areas—especially where the resources to be conserved lie in one jurisdiction, and the appropriate areas for development are inside a neighboring municipality.

Insufficient Demand for Development/Density

TDR is a market-based mechanism and, as such, can succeed only if there is demand for development. If developers are not interested in building to the higher densities established for receiving areas, there will be no marketplace for development rights.

While local jurisdictions do not control the market, their zoning decisions have a substantial impact on developer interest in development rights. In areas where zoning already allows development beyond what the market can support, TDR offers no value to a developer. Similarly, if rezones to higher densities can be achieved without participation in TDR, interest in TDR will be significantly undercut. Some newer programs attempt to address these issues by focusing on where and how development is occurring in both urban and rural areas. Newer programs are also tapping into developer demand for flexibility in development standards other than increased density, such as floor area ratios, impervious surfaces, and setbacks.

Lack of Infrastructure and Amenities to Support Increased Density

If the areas designated to receive development rights lack the infrastructure needed to support added growth—for example, roads, utilities, and stormwater facilities—supporting TDR-driven development becomes a challenge. If significant infrastructure upgrades are needed, the cost may be prohibitive to a developer, even with the added development density enabled through TDR. The lack of adequate infrastructure in urbanizing areas is a critical issue for growth management in general, and can be a roadblock to successful TDR implementation.

Weak Financial Equation for Buyers and/or Sellers

Neither buyers nor sellers will participate in TDR transactions unless they have a financial incentive to do so. The demand for selling and purchasing rights—and therefore TDR price—is determined in large part by the allocation and exchange rate for TDR credits. If the price is too low, few landowners in sending areas will be motivated to sell development rights. If the price is too high, developers in receiving areas will have little interest in purchasing credits, since they would not create additional profit for their projects.

In its simplest form, TDR follows a 1-to-1 exchange of TDR credits from a sending area to a receiving area. This ratio, however, rarely results in equitable values for both areas, because the right to build one house in a low-density area is generally worth more than the right to build one additional unit in a higher-density area. A more sophisticated approach involves creating an allocation/exchange rate greater than 1-to-1 for development rights, so that purchasing one TDR credit would gain a developer the right to build more than one additional unit in a receiving area.

Lack of Program Leadership and Transaction Support

A review of TDR history reveals that adopting legislation is not enough, by itself, to ensure TDR program success. Active support is needed to foster a robust marketplace for TDR transactions. Especially at the outset of a program, support is needed to overcome the natural uncertainty that property owners may feel in considering a new and unfamiliar form of real-estate transaction, and the unease that developers may feel about a new step or option in the development permitting process. Public education, program advocacy, and transaction support are key ingredients in successful programs.

Does TDR Work?

A common question people ask is: does TDR work? The answer is it depends; TDR has worked well in some communities and has been ineffective in others. As evident in the “limiting factors” discussion, there are important components that result in successful TDR programs. Analysis of the “success factors” is key to making a TDR program successful. A survey of programs across the country shows that, generally speaking, TDR has been quite successful - the top 25 programs have helped conserve over 300,000 acres, an area 10 times the size of Tacoma⁹.

From the West Coast to the East Coast, in both rural and urban areas, well planned and implemented TDR programs have helped local and regional jurisdictions accomplish a variety of land use goals. Illustrating the flexibility of the tool, the goals of the top 25 programs range from conserving farmland and forestland to protecting historic buildings. Twenty of the top 25 programs include an agricultural conservation component. Examples of successful programs in different regions of the country include the following:¹⁰

- **King County, Washington** allows receiving site densities to increase anywhere from 33% to 100% while focusing conservation on agricultural and timber lands as well as those providing critical wildlife habitat or other public benefits such as open space, regional trail connectors or urban separators.
- **New Jersey Pinelands, New Jersey** conserves specialty agriculture and environmentally sensitive land in a one million acre area by encouraging property owners to transfer development rights to growth centers.
- **Calvert County, Maryland** conserves farmland while providing flexibility for development in rural areas by allowing for rural development with the purchase of TDR credits.
- **Cambria, California**, uses TDR to conserve antiquated lots containing Cambria pine habitat. TDR credits are used to build residential units larger than the otherwise maximum allowed square footage.
- **Boulder County, Colorado** uses TDR in conjunction with an open space sales tax and purchase of development rights program to conserve land. The program has voluntary interlocal agreements with nearby cities to transfer development rights from rural to urban areas.
- **Blue Earth County, Minnesota** allows receiving site densities to increase by 300%, providing a strong incentive for developers to buy development rights from owners of farmland, forestland, natural habitat, or scenic value.

⁹ Top programs refer to number of acres conserved.

¹⁰ Unless noted otherwise, examples from: Pruetz, Rick. 2003. *Beyond Takings and Givings*. Marina Del Rey, California: Arje Press.

- **Redmond, Washington** offers developers increased height, increased parking, the elimination of a requirement to provide open space and increased surface cover allowances when they purchase development rights from farmlands and critical habitat areas.¹¹

Table 1: Top Transfer of Development Rights Programs

Program Location	Year Began	# of Acres Conserved
King County, Washington	1993	91,500
New Jersey Pinelands, New Jersey	1980	56,000
Montgomery County, Maryland	1980	51,489
Palm Beach County, Florida	1980	29,237
Calvert County, Maryland	1978	18,626
Howard County, Maryland	2003	6,647
San Luis Obispo County, California	1996	5,464
Boulder County, Colorado	1981	5,000
Blue Earth County, Minnesota	1970	4,000
Douglas County (NV), Nevada	1996	3,628
Collier County, Florida	1974	3,450
Queen Anne County, Maryland	1987	2,644
Pitkin County, Colorado	1994	2,200
Charles County, Maryland	1992	2,000
Claremont, California	1990	1,820
Pittsford, New York	2007	1,439
St. Mary's, Maryland	1990	1,000
Summit County, Colorado	1995	979
Seattle, Washington	1985	883
Lumberton Township, New Jersey	1995	850
Warwick Township, Pennsylvania	1993	652
Talbot County, Maryland	1990	580
Charlotte County, Florida	1994	572
Payette County, Idaho	1990	500
Groton, Massachusetts	1980	500
Redmond, Washington	1995	415

TDR in Context

When designed appropriately, TDR can be an effective conservation tool. It is, however, important to measure success in the appropriate context. TDR should not be expected to

¹¹ City of Redmond. Department of Planning and Community Development. "Comprehensive Planning: Transfer of Development Rights Frequently Asked Questions", <http://www.ci.redmond.wa.us/insidacityhall/planning/compplanning/transfer2.asp>, last accessed June 24, 2008.

achieve land conservation goals overnight or in isolation. It is a long-term conservation tool that performs best when partnered with a conservation plan and other conservation strategies, such as zoning or purchase of development rights, to achieve long-term land use goals. As a market-based tool, landowner participation will fluctuate depending on current economic market conditions. TDR is just one tool in the conservation toolbox and it should be utilized alongside other public land acquisition programs.

With this in mind, TDR can and should be viewed as a source of additional income for private landowners interested in conserving their land. In some cases, this may translate to landowners conserving working land, such as farms and forests that they intend to own and continue cultivating. In other cases, TDR help enable families to conserve their open space land for the enjoyment of their family and the public. For others, TDR may provide an alternative means of earning money from land they may otherwise have to develop or sell. On the receiving side, TDR provides developers flexibility and incentives to build beyond what is allowed under current zoning. In all cases, the voluntary decision to utilize TDR results in not only private, but also public benefits—conserving resource lands while accommodating growth supports economic development and helps retain quality of life.

TDR and Taxation

Removing the development potential from a property may have a number of implications for property, excise, income, and inheritance taxes. Such tax considerations are important for those considering TDR as an option.

- **Property Taxes.** Removing the development potential from land effectively reduces its “highest and best use” value to its “current use” value. For those not already enrolled in “current use” taxation, property taxes would in most cases lessen accordingly.¹²
- **Excise Taxes.** The sale of development rights is considered to be a real estate transaction, and—as is the case with other types of real estate transactions in Washington—is subject to the state real estate excise tax (REET). State REET is currently 1.28% of the sale price.¹³
- **Income Taxes.** Income from the sale of development rights is, in most cases, considered a capital gain for federal income tax purposes.¹⁴
- **Inheritance Taxes.** Federal inheritance taxes are also based on “highest and best use” values associated with land, which typically are higher for land with development potential.¹⁵ Consequently, land with its development rights removed has a lower taxable value than land with its full development potential.

The specific tax implications associated with TDR will vary on a case-by-case basis. As with all financial decisions, it is highly recommended that landowners consult a tax expert to understand the tax effects of a given transaction.

¹² Those enrolled in “current use” taxation are already taxed at resource value levels. As assessors may be unaware of a transfer of development rights when assessing a given property, the prudent landowner will either proactively bring this fact to the assessor’s attention and/or appeal a misinformed assessment.

¹³ See RCW 82.45.060

¹⁴ Based on personal correspondence with Rick Pruetz, July 9, 2008. Mr. Pruetz is widely considered to be the foremost expert on TDR in the nation.

¹⁵ Byers, Elizabeth and Karen Marchetti Ponte. 2005. *The Conservation Easement Handbook*. Washington, D.C. and San Francisco, CA: The Land Trust Alliance and The Trust for Public Land.

III. TDR in Tacoma

Why Use TDR in Tacoma?

The city of Tacoma lies in the fertile Puyallup River Valley between Puget Sound and the Mount Rainier foothills. In this magnificent natural setting, Tacoma residents cherish the quality of life afforded by a unique urban environment, a diverse economy, a thriving art community and affordable living.

The Puget Sound Region is growing rapidly, expecting to add 1.7 million additional residents by 2040. Tacoma, the third largest city in the state (population 201,700), is expecting an additional 61,000 new residents by 2022 due to the area's beautiful natural amenities and potential for continued economic growth.¹⁶ Within the city, recent development has begun to encroach on valuable historic sites and open space.¹⁷ Development in rural unincorporated areas just outside the city continues to grow at the expense of the region's agricultural lands.

A TDR program in Tacoma can help the region accommodate anticipated growth while conserving the lands making the region such a desirable place to live. TDR preserves resource-based businesses, encourages development in urban areas that are most appropriate for development, conserves valuable open space and historic structures within the city and ultimately saves taxpayers money.

Tacoma's Important Resources

In recent years, significant growth has occurred on rural and agricultural lands just outside of the cities.¹⁸ This development pattern has occurred at the expense of prime resource lands. Between 1997 and 2002, Pierce County agricultural land was developed at a rate of nearly 900 acres per year.¹⁹ With the expected growth coming into the area, the approximately 57,000 acres of farmland (and only 20,000 acres of prime farmland) left in Pierce County are likely to experience increased development pressure.²⁰

Open space and historic sites within the city's boundaries are important to the city's character. Open space provides city residents a sense of place, recreational opportunities, a connection to the land and a retreat into natural spaces. Historic structures offer residents a cultural connection to the people who discovered the area and made Tacoma their home. Over 130 properties are listed on the Tacoma Register of Historic Places. They range from the Old City Hall, built in 1893 – the first building added to the register – to the ruins of the first Tacoma

¹⁶ Forecast of Population, Households and Employment. Puget Sound Regional Council. 2006. Retrieved January 2008. <http://www.psrc.org/data/forecasts/index.htm>.

¹⁷ Todd Matthews. *History Breaker*. *Tacoma Daily Index*, 1/3/2007. Also, Peter Callaghan. *Church has us believe there was no other way*. *The News Tribune*, 12/28/2006. Also, Steve Maynard. *Final day for church could arrive by October*. *The News Tribune*, 7/8/2006.

¹⁸ Pierce County Buildable Lands Report, 2007; Table 19.

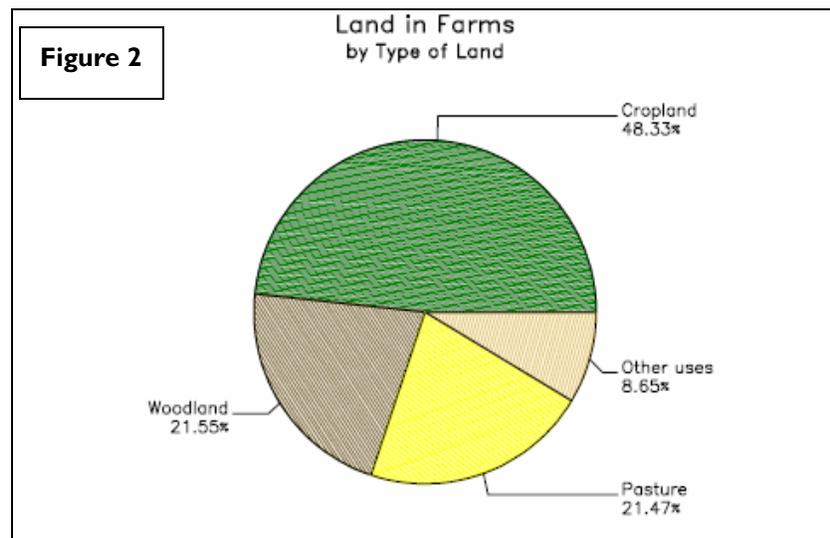
¹⁹ The Census of Agriculture. United States Department of Agriculture. 2002.

²⁰ City of Tacoma's Draft Open Space Habitat and Recreation Element. page 17.

Narrows Bridge, now lying at the bottom of Puget Sound.²¹ Historic sites tie the community to its history, urban form and surroundings.

The residents of Tacoma benefit from the fresh produce and economic vitality provided by the surrounding resource lands in Pierce County. These farms are responsible for the County's vibrant agricultural economy, worth \$94.2 million (in 2002).²² Production from these farms directly contribute to Tacoma's economy; for every \$100 spent at any one of Tacoma's farmers' markets, \$62 stays in the local economy.²³ Additionally, last year, local farms donated over 86 tons of produce to Tacoma food banks.²⁴

Despite the economic contribution of farmland to the community, farmland is being converted by development. From 1997 to 2002, land in farmland production decreased by 7 percent, from 61,689 acres to 57,224 acres and total farms in the area decreased by 142.²⁵ Figure 2 illustrates the percentage of total land dedicated to various farmland uses. Despite the loss of farms, Pierce County's farm production values grew 34 percent in the same time period, while statewide farm production values grew by only 20 percent.²⁶



Surrounding the Puyallup River Valley are the region's timberlands. Although these lands are outside of Tacoma, the city benefits from them in multiple ways. Tacoma residents cherish the beauty and natural scenery offered by forested landscape. Mount Rainier, at 14,410 feet, is an iconic reminder of the history and the stewardship responsibility bestowed upon local residents of the natural resources in the area. The Pierce County Employment Forecasts Analysis ranks wood product manufacturing as highly important for the county's future job growth. Pierce

²¹ Tacoma Register of Historic Places as of April 3, 2007.

²² USDA Census of Agriculture, <http://www.nass.usda.gov/census/census02/profiles/wa/cp53053.PDF>

²³ Sonntag, Viki PhD. *Why Local Linkages Matter, Findings from the Local Food Economy Study*. Sustainable Seattle. April, 2008

²⁴ Emergency Food Network: <http://www.efoodnet.org/statistics.htm>

²⁵ U.S. Census of Agriculture. 2002.

²⁶ American Farmland Trust. 2004. *The Suitability, Viability, Needs, and Economic Future of Pierce County Agriculture: Phase I Report* Responding to Questions Posed by Pierce County Council Resolution R2004-105s.

County timberlands and timber-related products employ over 2,400 people. In the first quarter of 2003, the forestry and logging industry accounted for over \$3.9 million in worker wages while in the same quarter, wood product manufacturing accounted for \$22 million in worker wages.²⁷ Being a major national producer of timberland products, a large percent of the timber produced in the region is exported. In 2007, wood products were the port's ninth-most exported commodity, worth over \$210 million.²⁸

As recognized by its draft Open Space Habitat and Recreation Plan element, Tacoma benefits from the open spaces scattered throughout the city. These areas include shorelines, distinctive steep slope and gulch areas, wetlands and streams, upland habitat areas, and in addition, a well-developed system of parks, playgrounds and recreational facilities.²⁹ The draft element supports the conservation of and maintenance of the natural habitat areas which help improve public health, safety and identity.³⁰ A TDR program in Tacoma will help advance the future conservation of these areas.

In addition to the direct conservation benefits to Tacoma, a well-structured TDR program encourages “smart” growth. If designed correctly, TDR programs help to redirect growth from low-density sprawling areas into more appropriate areas within the city. Establishing incentives to encourage development within the city will result in developers being more likely to build in receiving-site areas instead of the suburban fringe. Smart growth also saves money for local agencies. The public cost of sprawl was first identified in the Real Estate Research Corporation's 1974 pioneering study for the federal government. Subsequent studies have amplified the original findings.³¹ The resulting savings on the capital costs of infrastructure can be particularly significant. For example, the Brookings Institution projected national infrastructure costs during a 25-year period (2000-2025). This study concluded that \$110 billion (11.8 percent) in road-building costs and \$12.6 billion (6 percent) in water and sewer costs could be saved by adhering to more compact development patterns.³² Further, the study concluded that a compact pattern of development could save \$4 billion (3.7 percent) annually for operations and service delivery.³³ A 2005 Puget Sound Regional Council report concurred; it found low-density development is more costly in terms of capital facilities and service delivery than compact patterns of development.³⁴

²⁷ Berk and Associates. Pierce County Evaluation of Job Creation Opportunities. 2004. Phase II Report: Pierce County Economic Profile and Strategic Assessment.

²⁸ Waterborne Trade Atlas as found: <http://www.portoftacoma.com/Page.aspx?nid=86>

²⁹ City of Tacoma's Draft Open Space Habitat and Recreation Element, Page 17.

³⁰ City of Tacoma's Draft Open Space Habitat and Recreation Element, Pages 28-32.

³¹ Real Estate Research Corporation. 1974. 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.

³² Muro, Mark and Robert Puentes. 2004. Investing in a Better Future. A Review of the Fiscal and Competitive Advantages of Smarter Growth Development Patterns. Washington, D.C.: The Brookings Institution Center on Urban and Metropolitan Policy.

³³ Muro and Puentes, op. cit.

³⁴ Puget Sound Regional Council. 2005. VISION 2020 + 20 Update: Information Paper on the Cost of Sprawl. Puget Sound Regional Council, December 19, 2005.

The environmental impacts of low-density development are well documented. Compact growth patterns use up to 21 percent less acreage than sprawling development.³⁵ Large-lot development leads to more impervious surface and increased stormwater management costs. For example, per-unit runoff for development at eight units per acre is 75 percent less of that at one unit per acre.³⁶ Loss of wildlife habitat, increased flooding and other environmental impacts are also associated with low-density sprawl.

TDR also advances climate change policies. TDR was identified by Tacoma's Green Ribbon Task Force on Climate Change as a strategy to advance climate change policy goals. TDR programs effectively reduce carbon emissions because residents are located closer to work-centers, thus reducing commute distances. In addition, conserving open space, farmland and forestland, forever maintains the carbon absorbing qualities of these lands.

So, why should Tacoma use TDR? Natural open spaces, historic structures, farmland and forestland are important to Tacoma's character. As a voluntary market-based tool, TDR can help preserve Tacoma's character and achieve multiple policy goals in a cost-effective manner. TDR will help ensure conservation of open space and cultural resources, continue the viability of resource-based businesses, develop growth patterns that reduce low-density sprawl, further climate change goals and ultimately save taxpayers money. It is authorized by the Washington State Growth Management Act³⁷ and is supported by the city of Tacoma's Comprehensive Plan³⁸.

¹⁶ Burchell, Robert W., Anthony Downs, and Samuel Seskin, et al. 2002. *Costs of Sprawl 2000*. Washington, D.C.: Transit Cooperative Research Program, Transportation Research Board, National Research Council: TCRP Report 74.

¹⁷ Richards, Lynn. 2006. *Protecting Water Resources with Higher-Density Development*. U.S. Environmental Protection Agency.

³⁷ RCW 36.70A.090

³⁸ Generalized Land Use Element. City of Tacoma Comprehensive Plan. LU-GGD-12: Transfer of Development Rights Program.

Recognition of TDR at the State Level

The Legislature recognizes the importance of resource lands, open spaces and historic places to the state's economy, its people and its environment. To promote planned growth, the Growth Management Act (GMA) references TDR as an innovative land use management technique that assists counties and cities in achieving GMA's planning goals.³⁹

TDR can help Tacoma address several GMA goals.⁴⁰ Those goals advanced by CLC's recommendations for Tacoma's TDR program include:

- Goal 1: Urban Growth
- Goal 2: Reduce Sprawl
- Goal 4: Housing
- Goal 5: Economic Development
- Goal 6: Property Rights
- Goal 8: Natural Resource Industry
- Goal 9: Open Space and Recreation
- Goal 10: Environment
- Goal 12: Public Facilities and Services
- Goal 13: Historic Preservation

TDR is currently a subject of interest to the state as a method for achieving community and growth management goals. In 2007, the Legislature enacted Second Substitute House Bill 1636, directing the Department of Community, Trade & Economic Development (CTED) to develop a regional TDR program in the Central Puget Sound area (Pierce, King, Kitsap and Snohomish Counties).⁴¹

As part of its effort to support the development of this regional TDR program, CTED selected Tacoma as one of eight jurisdictions to participate as a case study in a TDR market analysis. DC&E conducted the study in early 2008, focusing on Tacoma's Downtown and Martin Luther King Way areas. Results from the study concluded that there is developer demand for TDR credits in Tacoma.⁴² As part of House Bill 1636, CTED is also tasked with producing three TDR demonstration projects; one in eastern Washington, one in southern Washington and one in central Puget Sound. The purpose for the demonstration project is to inform CTED of the local economics and to understand the local development environment of each area. The TDR demonstration project in central Puget Sound will likely be a great asset to informing the development of Tacoma's TDR program.

³⁹ RCW 36.70A.070(5b), RCW 36.70A.090

⁴⁰ RCW 36.70A.020

⁴¹ Information is available at CTED's website: <http://www.cted.wa.gov/site/1060/default.aspx>.

⁴² Memo on Receiving-Area Development Right Values. CTED TDR Regional Feasibility Study. DC&E. April 25, 2008.

TDR in Other Washington Cities and Counties

As of July 2008, Washington is host to TDR programs in 13 separate jurisdictions.⁴³ Most programs in Washington are aimed at agricultural land conservation and/or environmental protection, but some reflect other goals, such as affordable housing (Seattle), historic preservation (Seattle and Vancouver), and watershed protection (Whatcom County). Programs in King County have conserved the greatest acreages: King County itself (about 2,000 acres, plus 89,500 acres from which the county purchased development rights that are banked for future sale), Black Diamond (1,600 acres), Redmond (415 acres), and Seattle (883 acres).⁴⁴ Five of the existing six county-based programs rely on interlocal agreements, allowing density to be transferred from rural areas of the county into incorporated cities. King County, for example, has accomplished transfers through interlocal agreements with Seattle, Black Diamond, and Issaquah.

⁴³ See Appendix B

⁴⁴ Acreages as of 2007; data was provided by local planners in each jurisdiction.

IV. Recommended TDR Program Framework for the City of Tacoma

Recommended TDR Goals

CLC recommends the following TDR-program goals based on findings from outreach to stakeholders and research of the policies and vision outlined in Tacoma's Comprehensive Plan and draft Open Space Habitat and Recreation Plan:

- 1) Conserve open space, historic structures and Pierce County farmland and forests
- 2) Encourage growth within Tacoma's urban centers – Downtown and Mixed-Use Centers

As stated before, a limited number of clear goals are important to the success of a TDR program. Research performed by CLC shows that clear goals communicate, clarify and focus the conservation objectives for community leaders. Tacoma's TDR program goals should be supported by policies, community leaders, developers and residents.

These recommended TDR goals focus on furthering Tacoma's conservation and economic growth efforts. Conservation of open space, historic structures and Pierce County agricultural- and forest-land are important elements of the economy and culture of Tacoma.⁴⁵ In the face of a growing population, TDR is an important tool for community leaders to implement the city's economic vision and ensure the future of its valuable assets.⁴⁶

Affordable housing and TDR programs complement Tacoma's efforts to create a vibrant and livable city.⁴⁷ The number of affordable housing programs available to Tacoma's residents demonstrates the emphasis this goal receives from the city. Tacoma currently achieves development of affordable housing units through incentive zoning in the downtown area, the Multi-family Property Tax Exemption Program and an array of Federal and state grant and loan programs.⁴⁸ Given the existing affordable housing programs and the merits of limiting the scope of the TDR program, focusing the TDR program on conservation of farmland, forests and historic structures provides the most benefit making Tacoma a vibrant and livable city.

⁴⁵ Draft Open Space Habitat and Recreation Plan. City of Tacoma.

⁴⁶ Tacoma Comprehensive Plan. City of Tacoma Economic Development Element. December 11, 2001

⁴⁷ Affordable housing refers to housing units supplied below market-rate to individuals and families who earn incomes that are generally below area median income.

⁴⁸ Community Development Block Grant (CDBG), HOME Investment Partnership, Low Income Housing Tax Credit (LIHTC), Tax Exempt Bonds (multifamily & 501(c)(3))

Recommended Sending Sites

Sending sites are the cornerstone of TDR programs. The challenge is determining which lands should be conserved and which should be developed. CLC researched Tacoma's comprehensive plan elements to determine future conservation priorities and held discussions with community stakeholders. Based on these efforts, CLC recommends conserving sites that are important to the cultural and economic identity of Tacoma, including:

1. Open space lands
2. Historic sites
3. Agricultural lands
4. Forest lands
5. Green River Watershed

I. Open Space Lands

General open space lands within and around Tacoma contribute to the community identity through the provision of passive and active recreational space, habitat preservation, carbon sequestration and stormwater runoff reductions. The City Council's commitment to identifying lands for preservation in its draft Open Space Habitat and Recreation Plan (OSHRP) highlights the importance of open space to the community.

The primary tool currently used to protect open space lands within Tacoma and the surrounding area is low-intensity zoning. Low-intensity zoning limits the amount of development on a particular parcel to encourage other uses, in this case open-space and recreational space. Zoning does a reasonable job of protecting the lands over the short term, but is subject to change. Another tool for conservation is the Open Space ("Current Use") Taxation program. This program however, has limited viability for long-term conservation, due to the ease with which a landowner may leave the program.

Since the community clearly desires conservation of open space lands, CLC recommends designating open space land as a TDR sending site by using one of the following approaches:

1. All lands meeting the criteria for open space lands as defined in RCW 84.34.020(1)
2. Lands identified as open space in Tacoma's Open Space Habitat and Recreation Plan (OSHRP)

Option 1: Criteria-based open space

The State of Washington's Open Space Taxation program is established through RCW 84.34. While this RCW assists in the classification of lands for a specific program, its definitions of open space apply to lands not only within Tacoma but the region.⁴⁹ This allows for the conservation of all open space lands important to the city, including those just beyond the city's boundary.

⁴⁹ RCW 84.34.020(1)

Pros:

- Established methodology for classification
- Maximizes the opportunity to conserve open space land
- Maximizes the number of potential TDR participants
- Lands already within the Open Space Taxation program are eligible
- The city may establish its own criteria to prioritize open space conservation
- Addition of lands does not require amendments to OSHRP
- All lands identified in the draft OSHRP qualify as sending sites

Cons:

- May prove ineffective at conserving contiguous lands
- Public benefit criteria are tailored to County-level preservation and may require a planning effort to focus the benefits on Tacoma
- Lower quality land and/or land facing the least conversion pressure is the most likely to be conserved through an open TDR market, if criteria for priority conservation are not tailored correctly

Option 2: Lands identified in the OSHRP

Another option is restricting sending sites to those specifically identified as open spaces within Tacoma's OSHRP. This would enable the city to provide incentives for lands identified in the plan.

Pros:

- Public review process is currently established
- Limited to lands within the city's boundary – focusing the conservation scope

Cons:

- Not all lands within the OSHRP are of high conservation value
- Lands important to the city but not within the city boundary will not be conserved
- Potential difficulty in adding sending sites not identified in the OSHRP

Steep Slopes

With either open space option, many of the sites identified as valuable open space contain steep slopes or other features that greatly reduce their development potential. Steep slopes are not only more expensive on which to build, but are also susceptible to slope failure. Steep slopes are identified as critical areas in Tacoma's Critical Areas Preservation Ordinance and draft Open Space Habitat and Recreation Plan. Thus, steep slopes are subject to protections that mitigate for the impacts on such resources. Leaving geologically hazardous areas undeveloped improves public safety, as well as allowing the natural systems to perform ecosystem functions which benefit the environment⁵⁰.

A key TDR program policy consideration for lands with steep slopes is whether land with less development potential should be allotted the same number of TDR credits as land with greater

⁵⁰ Draft Open Space Habitat and Recreation Plan. City of Tacoma.

development potential. Lands containing steep slopes are typically less likely to be developed because of the additional engineering and geotechnical analysis required to build a safe structure. With the critical areas protections afforded to steep slopes, the Tacoma Municipal Code allows land owners to transfer residential development credits containing the steep slope area to another portion of the parcel.⁵¹

Option a: Require sending-site land owners with steep slopes to provide the city with a geotechnical feasibility analysis of a parcel's development potential. Subsequently, the city would assign the number of development rights associated with the property per the results of the analysis.

Pros:

- Focuses conservation to lands more threatened by development

Cons:

- This does not ensure conservation of steep slope areas. The development potential of lands with steep slopes is limited to funding and engineering and geotechnical analyses. These innovative fields develop new technologies that allow development of areas that were once not considered buildable
- The requirement to provide engineering and geotechnical analyses to determine development potential may limit conservation of steep slope areas

Option b: Allocate TDR credits for open-space based on the underlying zoning.

Pros:

- Simple approach requiring minimal administrative burden
- Simple for landowners. Landowners are allocated development right credits based on current zoning

Cons:

- Lands less threatened by development will likely be conserved first

Recommendation – Option 1: Criteria-based open space and Option b: Allocate TDR credits for open-space based on underlying zoning

The ability to identify open spaces both inside and outside the city of Tacoma's boundary allows significantly greater potential for conservation of open space that is important to the city. Some examples include critical waterfront lands outside of Tacoma in Brown's Point or Ruston, or open spaces or natural features spanning the city's boundary such as stream corridors (e.g. Swan Creek corridor, Chambers Creek corridor) and lands in the Puyallup River Valley contribute to Tacoma's economic base and livability. In addition, the RCW definition includes "any land area so designated [as open space] by an official land use comprehensive plan adopted by any city or county," thereby including those lands identified through the draft OSHRP once it is adopted into the city's comprehensive plan.⁵²

⁵¹ Tacoma Municipal Code. Title 13: Tacoma Land Use Regulatory Code. February 2007.

⁵² RCW 84.34.020

CLC recommends allocating TDR credits for open-space containing steep slopes based on the underlying zoning. No geotechnical analysis is required by the city or landowner, thus simplifying the sending site designation process. This option allows for the greatest conservation of lands containing steep slopes. Steep slopes typically are areas of high conservation value with good viewsheds, adjacent natural areas and open spaces and often containing rare vegetation and habitat.

2. Historic Sites

Tacoma identifies important historic sites in its Tacoma Register of Historic Places. The city's Landmarks Commission is dedicated to reviewing additions to the Register, as well as potential changes to already designated sites or districts. Historic sites are also designated under the Washington State Historic Register and the National Register of Historic Places. Further, many surrounding communities have created their own registries of historic places.

In addition to the historic designation and review process, the city offers property tax incentives for substantial rehabilitation of registered historic structures. The combination of a review process and financial incentives for rehabilitation of registered historic buildings provides landowners with incentives for protection for these properties.

Although there are incentives for already registered structures, there remain limited incentives for an owner to add a property to a historic register. Most properties may be nominated by a non-owner, but churches are exempt from this option. This has resulted in the high-profile demolition of historic churches throughout the region. An incentive in the form of TDR credits may be one option to provide additional financial incentive for the future conservation of historic structures. Under a TDR program, historic sites are sending sites. TDR credits are assigned to historic structures to be sold to receiving-site developers. The funds acquired from sales of TDR credits provide a financial incentive to the landowner and may also be dedicated toward rehabilitation of the structure.

Since preservation of historic sites is important to the city, CLC recommends designating historic sites as TDR sending sites by using one of the following two approaches:

1. All sites listed on all of the region's registers of historic places and sites proposed for designation on any of these registers.
2. Sites proposed for designation on Tacoma's Register of Historic Places.

Option 1: All sites designated as or proposed for historic status

Rather than restricting properties to Tacoma landmarks, this would provide opportunities for preservation throughout the region. It would also allow present and future landmarks to receive equal benefits, regardless of the date of preservation.

Pros:

- Maximizes the number of potential TDR participants
- Provides financial incentive to rehabilitate historic structures already registered
- Provides financial incentive to conserve additional historic structures.

Cons:

- Provides financial benefits to already preserved structures, with no additional public benefits
- Tacoma has little control on lands classified in other jurisdictions

Option 2: Sites proposed for the Tacoma Register of Historic Places

This option restricts sending sites to newly registered sites within Tacoma. This directly addresses a weakness of Tacoma's current program – limited incentive to add sites to the register – while ensuring the preserved value is only seen when additional public benefits are conferred. Since the Tacoma Register is directly under the control of the city it also allows for more refined control of historic properties most important to Tacoma.

Pros:

- Provides incentive solely for additional historic preservation
- Focuses on important historic preservation only within Tacoma
- The city has control over establishing the criteria for redevelopment/rehabilitation of historic sites and controls the plan for historic preservation

Cons:

- Excludes the preservation of sites beyond the city limits
- Owners of currently registered land may feel shortchanged

Recommendation – Option 2: Sites proposed for the Tacoma Register of Historic Places

This option provides incentives for historic preservation of new sites within the city limits. It maintains city control over the criteria for historic sites and authority to implement a historic preservation plan.

3. Agricultural Areas

Conserving agricultural land is a regional priority. The region surrounding Tacoma has a great deal of high-quality farmland much of which has lately been converted to commercial and residential uses. Although these lands are located in Pierce County, they are critical to Tacoma because they provide local food, provide jobs, support the economy and are cultural ties to the community's history.

The county currently has few tools to conserve the agricultural land base. Pierce County's current-use taxation program is designed to avoid taxing lands at a rate inconsistent with their current uses. Lands enrolled in the program are restricted to their current-use until they apply for removal from the program. In addition to the current use program, the county attempts to preserve agricultural land by placing lower zoning designations on these lands to protect their use over the long term. Despite these efforts, and the importance of agricultural lands to the community, these methods are currently insufficient to protect the rapidly diminishing supply of viable agricultural land.

Since these lands are important to Tacoma, CLC recommends designating agricultural land as a TDR sending site by using one of the following approaches:

1. All agriculturally zoned parcels
2. Criteria-based agricultural lands

Option 1: All agriculturally zoned parcels

One option is to offer any landowner with “Agricultural” zoning the ability to participate in the TDR program as a sending site.

Pros:

- Maximizes the opportunity to conserve agricultural land
- Maximizes the number of potential TDR participants
- Clear delineation of eligible lands is already established

Cons:

- Ineffective at conserving contiguous farmland
- Lower quality land and/or land facing the least conversion pressure is the most likely to be purchased on the open market
- Lands eligible for conservation are limited to those zoned for agriculture rather than lands used or most suitable for agricultural
- Overlooks potential existing agricultural uses that are under alternative zoning

Option 2: Criteria-based agricultural land

Another option is creating criteria for sending-site designation. Criteria for sending sites could be lands with senior water rights, high-quality soils, lands with ARL zoning classification or lands currently in agricultural use. Senior water rights are those identified as older than May 10, 1905.⁵³ Areas with “high-quality” soils are those defined as Prime Farmland or Farmland of Statewide Importance by Natural Resource Conservation Service (NRCS).⁵⁴ Other lands currently in agricultural use but not zoned for such use would likely need to demonstrate proof of agricultural use.

Pros:

- Lands with senior water rights and high-quality soils represent those most viable for long-term farming
- Allows for conservation of lands in agricultural uses
- Maximizes the opportunity to conserve contiguous areas of farmland

Cons:

- Does not follow zoning; requires the creation of a TDR sending-site overlay based on these criteria

⁵³ Washington Department of Ecology, op. cit., pg. 14.

⁵⁴ Soil data from USDA Natural Resource Conservation Service 2006 SSURGO database, accessed via the NRCS website, “Web Soil Survey”, <http://websoilsurvey.nrcs.usda.gov/app/>, last accessed January 2, 2008.

- Landowners matching these criteria generally face the greatest conversion pressure because farmland is easily buildable, which makes the TDR alternative relatively more expensive

Recommendation – Option 2: Criteria-based agricultural sending sites

A consistent theme throughout CLC's discussions with stakeholders is that the agricultural areas most important are those lands with productive soils that provide food resources to the nearby urban areas. Using these criteria to establish viable sending sites focuses conservation of agricultural lands that are most important to Tacoma.

While the creation of an overlay is an extra step that would be required under this recommendation, Pierce County has used NRCS soils data to establish its ARL zoning. Since this is already in place, it would allow the city to use the ARL designation to create the overlay. While it does not directly address the issues of agricultural use, it provides a starting point for an initial overlay. Additional properties/zones may then be added to the overlay if they demonstrate that they meet the criteria.

Obviously with this recommendation, an interlocal agreement (an example interlocal agreement is provided in appendix F) between Tacoma and Pierce County would be necessary. Pierce County's TDR program recognizes the potential for such agreements and allows for flexibility in designating County-based sending sites that are in the city's interests. If this recommendation is accepted, further investigation of these areas may be appropriate to identify areas representing the most appropriate agricultural sending sites.

4. Forest Land

Private working forests are another category of potential sending sites for the TDR program. Similar to the agricultural areas, these lands provide critical resources for local industries. Timber is a significant contributor to the local economy and the export industry. Additionally, forested lands are a large part of Tacoma's cultural history.

While working forests are currently experiencing less development pressure than farmlands, the loss of forests to residential use is becoming more prevalent. In order to protect the local identity and an important local economic industry, forest lands should be designated as sending sites for the TDR program.

With regard to working forest conservation, CLC recommends designating forestland as a TDR sending site by using one of the following approaches:

1. All forestry-zoned parcels
2. Criteria-based forest lands

Option 1: All forestry zoned parcels

One option is to offer any landowner with "Forest Land" zoning the ability to participate in the TDR program as a sending site. Unincorporated Pierce County uses the Forest Land (FL)

zoning classification to designate forestlands. It could also include any future forestry-based zoning designation.

Pros:

- Maximizes the opportunity to conserve working forest land
- Clear delineation of eligible lands already established

Cons:

- Ineffective at conserving contiguous land
- Lower quality land and/or land facing the least conversion pressure is the most likely to be purchased on the open market
- Lands eligible for conservation are subject to the politics of zoning rather than suitability of long-term forestry
- Overlooks potential existing forestry uses under alternative zoning

Option 2: Criteria-based forestland

All forestland would be eligible to participate in the TDR program, provided each parcel meets certain criteria. The criteria could include requirements such as, parcels zoned as FL, parcels that meet a minimum size, parcels that are adjacent to contiguous tracts of working forest, parcels that are used for forest land practices or parcels that are under a Class II, III or IV special forest practices permit. These criteria merit further investigation.

Pros:

- Focuses on lands most viable for long-term forestry
- Focuses on forestlands experiencing the greatest development pressure
- Maximizes the opportunity to conserve contiguous forestlands
- Maximizes the number of potential TDR participants

Cons:

- Does not follow zoning; requires the creation of a TDR sending-site overlay based on these criteria

Recommendation – Option 2: Criteria-based forestland sending sites

This option presents the greatest conservation potential. Lands zoned for forest use as well as those important to the support of forestry are eligible to be sending sites. While the designation of an overlay is an extra step that would be required under this recommendation, Pierce County has established the FL designation for active forestlands. With this classification already in place, it would allow the city to use the FL designation as a starting point for the overlay. Additional properties/zones may then be added to the overlay as they are identified as appropriate sites.

This recommendation requires an interlocal agreement (an example interlocal agreement is provided in appendix F) between Tacoma and Pierce County. Pierce County's TDR program recognizes the potential for such agreements and allows for flexibility in designating county-based sending sites that are in the city's interests. If this recommendation is accepted, further

investigation of these areas may be appropriate in the future to identify those areas representing the most appropriate forestland sending sites.

5. Green River Watershed (Tacoma's water supply)

The Green River, located in southeast King County, begins in the Cascade Mountains near Stampede Pass and serves as Tacoma Water's primary water supply. The Green River is the water source for the city of Tacoma, city of Kent, the Covington Water District and the Lakehaven Utility District. For more than 90 years, Tacoma Water has managed the 147,394 acre Green River watershed. This forested land serves as a collecting point for melting snow and seasonal rainfall. Tacoma's water source does not require filtering but is currently treated with chlorine, fluoride, caustic soda and ozone. Tacoma Water also operates a wellfield along the North Fork of the Green River within the watershed. The North Fork wells are used to meet Tacoma's needs, only when the water in the river is too turbid or in the event of other unusual or unacceptable water quality in the Green River.

To protect Tacoma's water supply, the city owns the land adjacent to the river, totaling 10 percent of the entire watershed. The city also established agreements, outlined in the Green River Watershed Management Plan, with other landowners to limit activities that may have an adverse effect on water quality.⁵⁵

Maintaining the quality of water provided by the Green River watershed is important to Tacoma. Because of the high quality of water in the watershed, the city is able to meet health regulations without the need for expensive and complex water filtration systems. The city actively manages activities in the watershed through their Habitat Conservation Plan, Green River Watershed Management Plan and multiple cooperative agreements with other land owners. Currently, the majority of the land use in the watershed is actively managed timber.

TDR is another tool the city can use to help protect its water source. The nearby Cedar River Watershed was purchased outright by the city of Seattle to protect its water supply and prevent the future need to install a water filtration system. TDR can be used in a similar manner to protect Tacoma's water source and prevent the need for a filtration system without the expensive strategy of purchasing the land.

Recommendation for Green River Watershed

CLC recommends all parcels within the Green River Watershed that contribute to Tacoma's water source for sending-site designation. The watershed is located in King County and would require an interlocal agreement between the county and Tacoma.

⁵⁵ *Green River Watershed Management Plan*. Volume II 2006 Comprehensive Water System Plan Update. Tacoma Public Utilities. 2006.

Recommended Receiving Sites

While identifying areas for desired conservation is important, a TDR program cannot operate without a market for development credits. Identifying and assessing receiving areas is critical to TDR program development. To help identify potential receiving sites, CLC spoke with county and city elected officials, county and city administrators and planners, developers, members of economic development organizations, local residents and members of the environmental community, to determine the appropriate location and demand for additional development. Based on these outreach efforts, the following were identified as potentially appropriate receiving sites:

1. Downtown Tacoma
2. Mixed-Use Centers (MUC)
3. Planned Residential Districts (PRDs)
4. Lands Proposed for Comprehensive Plan Amendments

I. Downtown Tacoma

Background

The city of Tacoma revised its downtown area in the late 1990s. The result of this process was the creation of Chapter 13.06A of the Tacoma Municipal Code (TMC) which identifies downtown as a primary recipient of both people and jobs over the long term.

With the expected growth in the region and Tacoma's plan for significant future growth, a prime opportunity in the downtown area exists for a TDR program. Developer demand and the city's desire for additional development can both be served by TDR. With this opportunity, CLC evaluated the regulatory framework to identify options for a TDR program.

As observed in Table I, the non-residential and residential floor area ratios (FAR) within a development are calculated separately and may be combined for the entire development. Neither portion of the development may exceed the combined FAR of the district.

Table I: Development Standards – TMC 13.06A.060

District	By Right FAR		w/ Design Stds		w/ Special Features		Height	Parking per 1000sf	
	Non-Res	Res	Non-Res	Res	Non-Res	Res		Min.	Max.
DCC	3	3	6	6	12	12	400'	2.4	3.6
DMU	2	3	4	5	6	7	100'	2.4	3.6
DR	1	2	2	4	4	6	90'	1.2	3.6
WR	3	4	4	5	6	7	100'	1.2	3.6

Other relevant notes for the downtown area development standards:

- The Downtown Commercial Core (DCC) zone has a minimum FAR of 1.0
- No parking is required for the first 3,000 sf of a building
- Maximum parking ratios may be exceeded if it is parking provided to the public

Findings

Currently, developers in the downtown area are only building slightly beyond the by-right FAR. Developers are not currently maximizing the FAR potential in their buildings because several of the maximum heights in downtown are set at heights where developers cannot optimize revenues. No developer mentioned the need to incorporate “special features” to achieve additional FAR. According to developers, the following are the reasons why heights are not being maximized in the downtown area:

- Fire codes
- The additional costs associated with the transition from mid-rise (approximately 35 to 85 feet) to high-rise (above 85 feet) building codes
- Current market economics
- Marginal returns on taller buildings due to higher per-square-foot construction costs
- The required commercial-to-residential ratio

Developers noted that heights limits in the DMU, DR, and Warehouse Residential (WR) zones restrict their development potential because of the substantial increase in building costs associated with high-rise buildings. Heights in the DMU, DR and WR zones are set just above the transition from mid-rise to high-rise building codes. Developers expressed interest in building above maximum heights in DMU, DR, and WR zones if the heights were better matched with construction cost points. With these findings, the demand for TDR credits in the downtown area hinge on both value-added benefits and the ability to build above maximum FAR or height.

Recommendations for TDR in Downtown Tacoma

Due to the market constraints, this list focuses on incentives that could be traded for TDR credits. Here are several potential opportunities:

- Use TDR credits to alter the allowed commercial-to-residential FAR ratio
- Include TDR credits as a “design standard” and “special feature” to increase FAR
- Require TDR credits to increase beyond the FAR allowed by-right
- Use TDR credits to increase height limits in the DMU, DR and WR zoning classifications
- Use TDR credits to alter the parking requirements

2. Mixed-Use Centers

Background

Tacoma has designated 18 mixed use centers (MUC) around the city. MUCs are identified as areas of more intense development than the surrounding neighborhoods. This is intended to encourage the creation and expansion of active commercial nodes with a mix of additional residential and commercial densities. With the centers targeted for additional density and growth, they are a natural fit as a receiving area for the TDR program.

The city of Tacoma has recognized the potential for additional growth within its mixed-use centers and has undertaken an aggressive program of reviews and updates. The currently proposed updates include changes in zoning designations, minimum densities, allowed uses, height limits and parking standards. The most critical of these to a TDR program are the height limits and parking standards.

The base-height limits in most of the MUCs have remained essentially unchanged but to encourage additional growth, the city has proposed a system of bonus features in exchange for additional height. The bonus features improve the pedestrian environment, encourage transit oriented development, increase sustainability, or improve the quality of life. Under each of these general categories are more specific improvements, such as artistic building lighting, substantial residential floor area, or low-impact development stormwater management.

Currently, the use of TDRs is included within the list of bonus features that could be used to obtain additional height. While it is certainly progress to have TDRs mentioned as an option for height increases, it is important to recognize two critical issues:

1. *Limited application* The height bonuses are only available in two zoning districts – Neighborhood Commercial Mixed-Use District (NCX) and Community Commercial Mixed-Use District (CCX). Furthermore, the bonuses are only available within “200 feet of the centerline of the core portions of the designated pedestrian streets.” This severely limits the opportunities to allow height increases and thus the use of the bonus features. Further, the establishment of the 200 foot bonus area potentially splits parcels into two different heights, thus limiting a landowner’s potential for utilizing the height bonus.
2. *Menu competition.* When used in a menu format offering various options, developers are likely to choose the option that is most economically viable and easiest to add to their project. Thus, when TDRs are compared with artistic building lighting, it will be difficult to design a TDR program that will be financially competitive.

Similar to the height-limit adjustments, the city’s proposed changes to the parking standards within the MUCs do not adjust the underlying standards. Instead, they rely on a menu approach to reducing the required parking rather than identifying menu options that encourage the use of alternative transportation or utilizing existing parking. While the changes to the parking standards do not impact a traditional TDR program, it could be possible to use TDR credits to reduce the required parking in a project. By reducing the parking requirement via other means, it limits the opportunity for conservation via a TDR program. However, to increase demand for using TDR, the city could consider altering the other bonus features to make TDR more financially competitive and integrate a TDR option into the proposed parking-reduction menu.

During community meetings, no opposition was voiced in respect to the parking credit program. There was however, support for reducing or eliminating the parking requirement in some areas.

Mixed-Use Centers Update Findings

While a TDR program may be tied to the height bonus framework, it will be important to establish a proper transfer ratio to make TDR credits a cost effective option.

The parking credit program provides opportunity for encouraging the use of TDR. Structured parking is expensive; TDR can provide value to developers seeking to reduce their parking requirements.

Development Background

Recent development has mostly been concentrated in city-designated Community Centers and Urban Centers. In conversations with developers, there appears to be a desire to go beyond the currently allowed height limits. While the proposed height limit bonuses are a welcome option, they do not fulfill the demand for additional capacity. From the developer perspective, a 45- or even 65-foot height limit is a potential financial barrier to development.

Currently, the cost of construction increases substantially at specific height thresholds associated with building code requirements. Therefore, developments are more financially feasible when they can maximize heights within a building code height threshold.

The first of these thresholds occurs when transitioning from a three-story building to a four-story building. At that point, additional fire protection measures are required. Typically, this means development can reach about 35-feet before taking on these additional costs. Since the cost of construction jumps for the fourth story, four-story buildings are financially less appealing.

A second and more important threshold is a change in required construction type that occurs as buildings transition from mid-rise to high-rise. If any floor plate of a building is situated 75-feet or more above ground level, the construction type changes and significantly increases the per-square-foot cost of construction. Maximizing a mid-rise building translates to a rooftop height of around 85-feet. There is substantial value provided to developers to allow them to maximize the mid-rise construction type.

In addition to the height limit, another constraining factor is the parking requirement. Currently, the city requires one stall for every residence and 2.5 stalls for every 1,000 square feet of commercial floor area. This substantially increases the cost of construction. Developers also noted the difficulty of providing parking on small sites. Due to limited widths, access and total construction costs, providing parking in an efficient manner is often not financially feasible on smaller parcels. These developers would likely welcome any opportunity to reduce their parking requirements.

Development Findings

While there is limited current development within the mixed-use centers, there is a growing demand for urban levels of development. Structuring a TDR program to capitalize on this demand will be critical to the success of a TDR program. The best opportunities for a TDR program appear to be via reduced parking and/or additional height or density in all of the MUC receiving areas.

Recommendations for TDR in Mixed-Use Centers

The TDR program must provide developers with value-based incentives. Using TDR to provide flexibility or additional development in existing zoning provides a valuable incentive for developers to build at increased intensities. Based on CLC's analysis, the following TDR framework recommendations would provide developers added value:

- Include TDR as a “bonus feature” for developers to achieve additional height in NCX-zoned and CCX-zoned MUCs
- Use TDR credits to increase height limits up to 85 feet in all NCX-zoned MUCs
- Use TDR credits to increase the maximum height to 85 feet from a base height of 65 feet in the bonus height areas within all NCX zones
- Allow TDR credits as a bonus feature to increase height to 70 feet from a base height of 60 feet in the height bonus areas within the CCX zones
- Use TDR credits exclusively to increase the maximum height to 85 feet from a base height of 70 feet in the bonus height areas within the CCX zones
- Use TDR credits to increase the height in areas not already subject to the bonus-height program
- Use TDR credits to alter the parking requirements

3. Planned Residential Districts

Background

Planned Residential Districts (PRDs) are an option for developers to create unique projects that meet the intent of but are not required to strictly adhere to the standard residential development regulations. As defined in the Tacoma Municipal Code:

“The PRD Planned Residential Development District is intended to: provide for greater flexibility in large scale residential developments; promote a more desirable living environment than would be possible through the strict regulations of conventional zoning districts; encourage developers to use a more creative approach in land development; provide a means for reducing the improvements required in development through better design and land planning; conserve natural features; and facilitate more desirable, aesthetic, and efficient use of open space” (13.06.140.A).

A TDR program in Tacoma should be focused on providing additional development flexibility to receiving sites regardless of whether the flexibility is based on density, setbacks or other regulations. Since a PRD classification is attempting to achieve these same goals, it is appropriate to connect them.

The city placed a moratorium on PRDs in January 2007 to review the consistency of regulations with longer term planning goals as identified in the Comprehensive Plan. Following this review, the City Council enacted updated PRD regulations in July 2007. While these updated regulations included additional information on amendments to existing PRDs, they also clarified language regarding open space identification and preservation. The updated regulations include:

“A minimum of one-third of the gross site area of the PRD District shall be provided as common open space.... Common open space includes -- but is not limited to -- woodlands, open fields, streams, wetlands, other water bodies, habitat areas, steep slope areas, landscaped areas, parks, beaches, gardens, courtyards, or recreation areas.” (13.06.140.F.6)

Many sending sites considered as part of a TDR program could be similar to the sites identified under the PRD as required open space. Taking advantage of this open space requirement may allow TDR to help consolidate development where appropriate.

In addition, the flexibility available through a PRD gives the opportunity to create higher density development with additional amenities. Creating a clear density transfer provision within a TDR program could allow for denser development within a newly created PRD.

Recommendations for TDR in New PRDs

A TDR program available to new PRD projects should focus on providing additional density options. Viable options for increasing density within PRDs include:

- Allowing a portion of the required open space to be met through the use of TDR credits
- Using TDR credits to increase PRD densities

4. Lands Proposed for Comprehensive Plan Amendments

Background

Developers occasionally seek additional density by applying for amendments to the city’s Comprehensive Plan and Shoreline Master Program. Tacoma’s municipal code designates Land Use Intensity, which is a designation for all property that indicates the future development influence based on factors such as size, scale, bulk, nuisance level, density, activity level, amount of open space, and traffic generation. Intensities are classified as high, medium, and low, and are depicted on the Generalized Land Use Plan map. Many applications to increase density also result in increases in Land Use Intensity.

Recommendation for Lands Proposed for Comprehensive Plan Amendments

CLC recommends using TDR credits for each requested increase in density or land use intensity.

V. TDR Administration

Introduction to Administration

Buying or selling development rights is at least as significant to buyers and sellers as a standard real estate transaction. It is also potentially more complex. For sellers, their open space land, a farm or large parcel of forestland may represent their most sizable asset. TDR offers an important opportunity, but one requiring careful scrutiny of both legal and financial ramifications. For developers, the purchase of development rights is an added layer in the development process and may involve financing separate from property and development costs.

Given the importance of this decision, it is equally important to construct TDR administrative rules and processes that address and properly support the needs of the landowners and developers while meeting the goals of the city.

The following provides an overview of TDR administrative transaction process models and considerations, including CLC recommendations. Specific recommendations are based on CLC's experience analyzing and working with jurisdictions.

Transfer Models

A variety of mechanisms exist to facilitate TDR transactions, ranging from buyer-seller direct sales to complex TDR banks. The following are suggested as key goals to guide TDR transaction mechanisms:

- To the extent possible, simplify TDR transactions and reduce uncertainty for buyers and sellers
- Support cross-jurisdictional exchanges where appropriate
- Provide incentives for private-market participation in TDR, such as engaging local realtors in TDR marketing and sales

Based on conversations with staff and our past experience, CLC considered three transaction models:

1. Private transactions model
2. Private market model with city support
3. TDR bank model

Option 1: Private transactions model

Known as “deals in the field,” private transactions are the core of traditional TDR programs. Under this model, a willing seller arranges to sell development rights to a willing buyer interested in building a project incorporating the TDR bonus level. Development approval is contingent upon the developer completing a TDR transaction and demonstrating that a conservation easement has been placed on the sending site.

Private TDR transactions can be structured in much the same way as transactions in any property interest, such as mineral rights. Few limitations on private TDR transactions are unique to TDR; in fact, buyers and sellers engaged in private transactions have demonstrated creativity in completing TDR programs around the country. One example of creative deal-making occurs when a buyer and seller enter into a joint venture or partnership as an alternative to a cash transaction. In this arrangement, the seller negotiates a stake in the proceeds from a TDR development project, assuming some share of the development risk as well as a share in the profits. Such arrangements are rare.

Examples of programs using the private-transactions model include:

Montgomery County, MD, is one of the most successful TDR programs in the country. Its program has conserved more than 50,000 acres of farmland and forestland, while providing minimal support to buyers and sellers. The success of this program may be partly attributed to the county’s substantial downzoning of sending areas, coupled with the required purchase of TDR credits in receiving areas.

Thurston County, WA, started a TDR program in 1996 to conserve its agricultural lands. To date, the program has not had any developers use credits in receiving areas. The lack of completed transactions may be attributed to a number of factors, including

- applicants in sending sites must hire a contractor to complete a survey of their property before being issued development rights
- the transfer rate is set at 1:1, which has not proven financially attractive to developers
- demand has not been high in the receiving areas to build above current zoning

In **Pitkin County, CO**, the TDR program has been described by the Director of Planning as “a totally free-market-driven approach.”⁵⁶ Pitkin County offers only a spreadsheet with certificate numbers, with no contact information or pricing. Under this model, the County has successfully conserved 5,000 acres. Some of this success may be attributed to its population. The county includes the affluent town of Aspen, where it is desirable to protect back-country acreage in exchange for the ability to build large vacation or ranch homes.

Pros and cons of the private transactions model include:

Pros:

- Private transactions between a willing buyer and seller are the simplest form of TDR
- Such transactions may allow for more creativity in deal-making than is possible under more complex models, such as banks
- Governments do not have to financially support the transaction process

Cons:

- The absence of information can be a significant hindrance to interested buyers and sellers
- Connecting buyers and sellers can be difficult
- Timing can be a problem; buyers are not always ready to buy when sellers are ready to sell and vice versa
- Many programs operating under this model have not been successful in creating a TDR marketplace

Option 2: Private-market model with City support

A second option is based on the private-market nature of the private-transactions model, but incorporates a degree of governmental support to address the problems such programs can experience due to a lack of information.

As in the private-transactions model, buyers and sellers work through the traditional negotiation and transaction process, in a fashion similar to fee-simple real estate deal-making. This process would be supported by the city providing additional information. The city would track potential TDR sellers in the marketplace, as well as track the number of current credits available to buyers. The city would also serve as a resource that potential buyers and sellers could contact should they have any questions about how to participate in the TDR program.

⁵⁶ According to the Pitkin County Community Planning Director, personal correspondence with CLC staff, January 3, 2008.

Examples of programs using the private-market with government-support model include

Collier County, FL, has a successful TDR program that maintains a “central lands registry.” This information, which is easily accessible on the county-run website, includes searchable lists of both buyers and sellers. The program also maintains information on lands conserved and recent sale prices, as well as sets minimum prices for TDR credits. Collier County, which does not purchase or sell development rights itself, has conserved more than 2,300 acres under this TDR model.

Redmond, WA, uses a website to provide information about the TDR marketplace. While the city does not actually buy and sell development rights, it does organize and promote a transparent marketplace. To promote the program, Redmond communicates with landowners in sending areas and lets them know how they may participate. The website also provides real-time viewing of recent transactions, including market participants, credits purchased, prices paid and total acres conserved. Redmond’s program has successfully preserved 415 acres of farmland and environmentally sensitive areas, by offering receiving-site incentives. Those incentives included the ability to exceed parking limits by up to 30 percent.

Pierce County, WA, has instituted a promising buyer-seller approach. In addition to providing information that connects buyers and sellers, the County operates as one member of a three-party escrow transaction process. Under this system, the county places TDR credits into escrow and works with the sending-site landowner to place a conservation easement into escrow as well. The conservation easement is not recorded until the receiving-site purchaser of the development rights places acquisition funds into escrow. This approach allows two private parties to negotiate the terms of the transaction, while reducing risk to the seller by holding off the placement of an easement on the property until the transaction is finalized in escrow.

Pros and cons of the private market with governmental support model include:

Pros:

- Reduces uncertainty and supports participation by providing information that connects buyers and sellers
- Eliminates the need for buyers to search out willing sellers, reducing uncertainty and streamlining the process
- Such transactions may allow for more creativity in deal making than is possible under more complex models, such as TDR banks

Cons:

- Represents some costs to the city in terms of resources and staff time

Option 3: TDR bank model

TDR banks vary across jurisdictions, but they generally serve at least two functions.

1. Provide information that makes the marketplace more efficient
2. Act as a buyer or a seller in strategic transactions that help accomplish the goals of the TDR program

The latter function differentiates TDR banks from an information clearinghouse, and it is the primary reason for creating a TDR bank.

There may be many reasons a jurisdiction wants to actively participate in the buying and selling of TDR credits. For example, a TDR bank may be used to purchase development rights on high-priority parcels that the private market might not conserve before they are developed. These development rights are held in the bank and later sold to private developers. Alternatively, a TDR bank can help to even out economic cycles, serving as a TDR buyer when market conditions are weak and as a seller during periods of high demand.

In certain circumstances, a TDR bank can ease barriers to development, by selling to larger projects that may require more development rights. This can ease the process of negotiating with multiple sellers to aggregate the needed development rights. Finally, TDR banks can function as a “buyer of last resort” in the event of low participation in a TDR program.

In most examples, a local jurisdiction or regional government is responsible for administering its TDR bank. Some communities have contracted with private non-profit organizations to operate TDR banks. This minimizes government involvement in the process, which can encourage participation.

Examples of programs using a TDR bank model include:

In **King County, WA**, a TDR bank was established with \$1.5 million of Conservation Futures tax revenues. The bank purchased development rights on more than 90,000 acres of working forest. Private transactions have conserved approximately 2,000 additional acres. The King County TDR bank focuses on spurring private-market transactions. Two TDR bank sales have occurred since November 2006. The first was a sale of 31 rural development rights, valued at \$930,000, supporting development of a residential complex in downtown Seattle. A second transaction, also in Seattle, resulted in the sale of 18 credits from the TDR bank, generating \$396,000 that will be used to acquire additional development rights from resource lands in King County.

Palm Beach County, FL, used a \$100-million open space bond to capitalize its TDR bank. Development rights purchased from more than 43,000 acres of land are now available for sale for future development within the County. Once sold, sales of these rights will be used to retire debt on the original bond. Instead of connecting buyers and sellers, this method allowed Palm Beach County to conserve important tracts of land and stock the bank with development rights for future sale.

In **Cambria, CA**, a private, non-profit organization has taken on the role of TDR bank. The TDR bank started with a \$275,000 grant from the California Coastal Commission (CCC). Through the purchase and donations of lots, the bank has been able to double

this initial seed money and use it as a revolving fund. The CCC has sold more than 85,000 square feet of credits and retired more than 200 antiquated lots under this model.

Pros and cons of the TDR bank model include:

Pros:

- Reduces uncertainty and supports participation by serving as a central repository for information and TDR credit transfers
- Allows for strategic conservation of high-priority areas
- Can streamline the transfer process, particularly for large developments where TDR buyers would otherwise have to broker deals with multiple sellers
- Initial seed money can serve as a revolving fund to generate more conservation
- Revenues generated from bank sales can fund the TDR administrator role

Cons:

- Potentially high administrative and staffing costs
- Generally requires seed money for initial funding

Recommendation – Option 2: Private-market model with City support

The city of Tacoma has expressed an interest in minimizing the government's role in the transfer of development credits. Considering the costs of funding and administering a TDR bank, that model is an unattractive option for the city. Furthermore, the uncertainty associated with limited availability of information and the associated challenges for buyers and sellers makes an unsupported, wholly private transaction model similarly unattractive.

The private-market-with-support model allows the market to function freely, provides information that increases efficiency by connecting buyers and sellers, and reduces uncertainty by reporting market prices and trends. The added benefits of providing information come at a relatively low cost and, particularly once information systems are in place, with limited staff time.

CLC further recommends that Tacoma engage the real estate and escrow industries to participate as private agents in the TDR transaction process. Agents can be effective conveyors of information to the community. Montgomery County, Md., which has conserved more than 50,000 acres of working land, has developed a number of independent agents who specialize in the sale of development rights and act as brokers between potential sellers and buyers. Likewise, escrow companies can reduce risk for buyers and sellers in the finalization of TDR transactions. Using escrow in a manner akin to the Pierce County program merits further investigation as the TDR program takes shape.

VI. Next Steps

TDR Program Development Moving Forward

This document is intended to provide city leadership with an in-depth introduction to TDR, to report the findings of CLC's initial research and outreach efforts to-date, and to provide initial recommendations concerning TDR program framework and administration.

This document does not provide finalized TDR program recommendations; rather, it provides an analysis of program elements and CLC's recommendations for the city to pursue. Ultimately, the elements of a finalized program will be directed by city leadership.

To facilitate a finalized program, CLC recommends consultation with city representatives to discuss the findings and conclusions of this report, to address any questions, and to determine the preferred course of action. The main outcome includes determining the program framework and administrative elements that require further development.

Since a portion of the enclosed recommendations relate to the MUC update process already under way, some recommendations may need to be addressed promptly. If the city wishes to integrate a portion of the TDR program into the MUC update, CLC is prepared to take immediate action on:

- Identifying the appropriate height bonus per TDR credit
- Drafting language for the MUC update to allow additional height bonuses through the TDR program
- Investigating the relative merits of TDR credits to achieve additional height versus alternative options
- Evaluating the willingness to pay for TDR credits in exchange for altered parking requirements

Once city leaders have provided feedback and direction, CLC will aid city staff in refining and finalizing the TDR program design. To aid in this effort, a draft ordinance based on the recommendations in this report is included in appendix E. Once policy decisions are made on the TDR framework, CLC will help the city analyze the appropriate allocation of TDR credits amongst sending sites and the appropriate TDR exchange rate.

To facilitate designing a successful TDR program, administrators of several existing programs all recommend TDR demonstration projects.⁵⁷ TDR demonstration projects build confidence in the program, demonstrate the transaction process, illustrate demand for TDR, and aid in designing the program prior to adopting a full TDR program. The city would need to authorize TDR demonstration projects that resemble the actual TDR program with the requirement of reporting back to the city on key findings.

⁵⁷ King County, WA; Redmond, WA; San Luis Obispo, CA; and Cambria, CA.

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Appendix A: What is the Cascade Land Conservancy?

Cascade Land Conservancy (CLC) is Washington's largest independent land conservation and stewardship organization. During the past decade, CLC has led the conservation of more than 150,000 acres across Central Washington, the Central Puget Sound region and the Olympic Peninsula. CLC is uniquely positioned in the conservation community, known for its far-reaching programs and ability to partner with diverse groups. CLC's work is closely tied to communities, including active volunteer leadership groups in Clark, King, Kittitas, Mason, Pierce and Snohomish counties.

CLC recently completed a Transfer of Development Rights (TDR) ordinance for Pierce County. Being leading experts on TDR programs and ordinances in the state counties and cities are now approaching CLC as the regional leader in TDR programs. CLC currently has four TDR contracts with communities around the state. Based on its experience developing Transfer of Development Rights programs in King and Pierce County, as well as its recent work for the state's Department of Community, Trade, and Economic Development, CLC is uniquely positioned to assist the city of Tacoma in addressing its conservation goals.

To learn more about CLC and its work developing and implementing TDR programs, visit www.cascadeland.org.

Appendix B: TDR Programs in Washington

Jurisdiction	Year	Objective	Acres Preserved in Sending Areas	Number of Projects in Receiving Areas	Current Interlocal agreements	TDR Bank	Comments
Bainbridge Island	1996	Agricultural lands	0	0	No	No (under consideration in 2008)	Underwent review in 2006 and will continue to be adjusted with information from an open space plan and consideration of TDR bank in 2008.
Black Diamond	2003	Open space protection (wetlands, freshwater bodies, wildlife corridors, greenways, viewpoints, etc.)	1,600	N/A	No	Yes	A complex program that expanded UGA and placed conservation easements on 1,600 acres of forestlands outside of city boundaries.
Clallam County	1998	Agricultural lands, critical areas, low-density open space	0	N/A	Yes (Sequim and Port Angeles)	No	They have yet to complete a transaction.
Issaquah	2005	Critical areas	10	1 (1 additional TDR is held by Issaquah)	Yes (King County)	No	Interlocal agreement with King County allows 75 development rights to be transferred from Issaquah Creek watershed.

Jurisdiction	Year	Objective	Acres Preserved in Sending Areas	Number of Projects in Receiving Areas	Current Interlocal agreements	TDR Bank	Comments
King County	1993	Rural resources and public benefit lands	91,500 (89,500 conserved through the purchase of development rights banked for future use)	301 transactions	Yes (Issaquah)	Yes	Had an interlocal agreement with Seattle that has expired. The county is working to create additional interlocal agreements.
Pierce County	2008	Agricultural lands and open space	0	0	No	No	All upzones in unincorporated Pierce County will require development rights.
Redmond	1995	Agricultural lands and critical areas (Northern Sammamish Valley)	415.55	13 projects using 559.35 development rights	No	No	TDR credit allows additional square footage or reduction in parking or open space requirements. Average TDR price is \$24,000 as of 2007.
Seattle	1985	Affordable housing, historic conservation, and open space protection	883 acres of rural land conserved (3 projects) and 833 units of low-income housing	4 projects completed using rural credits and 40 transactions for affordable housing, landmarks, and performing arts.	Yes (King County)	Yes	TDR receiving in the Denny triangle is no longer offered under current zoning.

Jurisdiction	Year	Objective	Acres Preserved in Sending Areas	Number of Projects in Receiving Areas	Current Interlocal agreements	TDR Bank	Comments
Snohomish County	2004	Farmland, resource lands, and open space	72	14 development rights were purchased by the county on a 72-acre parcel for later sale when the market is more established.	Yes (Arlington)	No (some funds may be available to purchase and transfer/hold rights)	Pilot project with the city of Arlington. Receiving area is unincorporated Snohomish County—potential for future annexation into Arlington.
Thurston County	1996	Agricultural lands	0	0	Yes (Lacey, Olympia, Tumwater)	No, but development rights can be held by intermediates	County has been reviewing program to see what adjustments need to be made to create a market for development rights.
Vancouver	N/A	Historic conservation	N/A	N/A	N/A	N/A	Unable to confirm successful transfers.
Whatcom County	1999	Lake Whatcom and Birch Bay watersheds	N/A	52 development rights transferred	Yes (Bellingham)	N/A	No current updates on program due to staffing changes in Whatcom county.

Appendix C: TDR Glossary

Allocation rate

An allocation rate is the number of development rights allocated per sending site; i.e., the number of rights that can potentially be sold from the site. The allocation rate 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.

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.

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.

Development bonus

A development bonus is a zoning-code provision allowing more intensive development in exchange for provision of specific public benefits, such as neighborhood amenities, affordable housing or purchase of development rights. Development bonuses often allow increased building height or density, but can also include flexibility in use restrictions or other development standards.

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. Restrictions on a property's development rights are usually recorded in a conservation easement.

Exchange rate

The exchange rate is the relationship between the number of development rights allocated to a sending site (typically a specified number of single-family dwelling units) and the amount of development bonus available on a receiving site (which may be extra single-family units, multi-family units, commercial square footage and/or flexibility in development standards). The term encompasses both simple transfers of dwelling units from one site to another and more complex conversions of development credits; it is therefore used in place of the term "transfer ratio" (see below).

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 an unincorporated county into an incorporated 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

Receiving areas are those sites eligible for development bonuses through the purchase of development rights. The TDR program designates receiving areas, specifies the type and amount of bonus available on these sites, and details the process for approval of projects using the TDR bonus.

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.

Transfer ratio

This term is used in many TDR programs to describe the numerical relationship between the amount of development potential forgone on sending sites, and the amount of additional development allowed on receiving sites. A one to-one ratio means that the sending sites forgo the same number of houses per acre as are allowed on receiving sites. It implies a simple transfer of dwelling units from one area to another.

TDR bank

A TDR bank is 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.

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.

Appendix D: List of Acronyms

CCX	Community Commercial Mixed-Use District
CLC	Cascade Land Conservancy
DCC	Downtown Commercial Core
DMU	Downtown Mixed-use District
DR	Downtown Residential
FAR	Floor Area Ratio
FL	Forest Land
MUC	Mixed-Use Centers
NCX	Neighborhood Commercial Mixed-use District
NRCS	Natural Resource Conservation Service
OSHRP	Open Space Habitat and Recreation Plan
PDR	Planned Residential Districts or Purchase of Development Rights
RCW	Revised Code of Washington
TDR	Transfer of Development Rights
TMC	Tacoma Municipal Code
WR	Warehouse/Residential District

Appendix E: TDR Ordinance

TMC 13.XX.100 Transfer of Development Rights Program

- .110 Purpose
- .120 Sending Areas
- .130 Receiving Areas
- .140 Calculation of Available TDR Credits from Sending Areas
- .150 Use of TDR Credits in Receiving Areas
- .200 Sending Area Procedures
- .210 Partial Sale of use of TDR Credits
- .300 Receiving Areas Procedures

[Definitions - A review of TMC definitions is necessary.]

13.XX.110 Purpose

- A. Tacoma's Transfer of Development Rights (TDR) program is designed to provide a public benefit by permanently protecting valuable community assets such as open spaces, farmlands, forestlands, and historic resources. The TDR program achieves this by allowing land owners to voluntarily transfer the development rights on land needing protection ("sending areas") to land more suitable for urban development ("receiving areas") in exchange for the permanent preservation of the sending site's community resource.
- B. The TDR provisions are intended to supplement land use regulations, resource protection efforts and open space acquisition programs and to encourage increased residential development density or increased commercial square footage, where it can best be accommodated with the least impacts on the natural environment and public services by:
 - 1. Providing an effective and predictable incentive process for property owners of open space, resource and historic properties to preserve lands with a public benefit as described in this section; and
 - 2. Providing an efficient and streamlined administrative review system to ensure that transfers of development rights are evaluated in a timely way and balanced with other City goals and policies, and are adjusted to the specific conditions of each receiving site.

13.XX.120 Sending Areas

- A. The following properties, or portions thereof, may qualify as sending area properties, and therefore be eligible to transfer TDR credits:

[Note: this section requires a policy decision. The Tacoma City Council may add, remove, or modify the sending sites listed below]

1. *Open Spaces*
 - a. *Open space as identified within the City's Open Space Habitat and Recreation Plan.*
 - b. *Additional open spaces identified by the City Council as valuable community assets outside of the City limits.*
 2. *Farmlands*
 - a. *Land zoned by Pierce County as Agricultural Resource Lands (ARL).*
 - b. *Additional agricultural land identified by the City Council as valuable community assets outside of the City limits.*
 3. *Forestlands*
 - a. *Land zoned by Pierce County as Forest Lands (FL).*
 - b. *Additional forestland identified by the City Council as valuable community assets outside of the City limits.*
 4. *Historic Resources*
 - a. *Sites newly proposed and accepted for addition to the Tacoma Register of Historic Places*
 5. *Green River Watershed*
 - a. *All parcels located in the Green River watershed that contribute to Tacoma's water source]*
- B. To be eligible for the TDR program, sending areas shall meet the definition of sending areas in TMC 13.XX.120.A and have intact development potential. A sending area is deemed to have intact development potential if:
1. The sending area is wholly or partially undeveloped; and
 2. The sending area does not have any part of the property designated by the Comprehensive Plan as a future or existing public right-of-way; and
 3. The area proposed for preservation must be:
 - a. Of sufficient area to create at least one TDR credit based on 13.XX.130.C; and
 - b. Contiguous, except for division by public rights-of-way; and
 - c. Multiple non-contiguous areas may apply independently as sending sites, provided each area independently qualifies under 13.XX.120; and
 4. The sending area's development rights or development capacity shall not have been completely exhausted through any of the following:
 - a. Agriculture, recreation, or open space easements; or
 - b. Preservation of environmentally sensitive areas and their buffers through means including, but not limited to, an open space easement or native growth easement; or
 - c. Alteration by a preservation easement, or through any agreement by any governmental agency or nonprofit organization; or
 - d. For historic landmarks or historic landmark districts, the significant features shall not have been previously preserved in whole and in perpetuity by a façade, easement, a preservation easement, or through any agreement by any governmental agency or nonprofit organization other than this TDR program.

- C. Sending Areas Eligibility Map.
The following map gives general guidance in identifying eligible sending areas.

INSERT SENDING AREA MAP.

13.XX.130 Receiving Areas

- A. Properties eligible to use TDR credits transferred from sending areas shall be properties that qualify as the following:

[Note: This section requires a policy decision. The Tacoma City Council may add, remove or modify the receiving areas below.]

1. All Downtown Districts identified in TMC 13.06A.040;
2. All Mixed-Use Center Districts identified in TMC 13.06.300;
3. Lands proposed for Planned Residential Development Districts (PRD Districts) pursuant to TMC 13.06.140; or
4. Lands proposed for comprehensive plan amendments pursuant to TMC 13.02.045.

]

- B. Receiving Area Eligibility Map
The following map gives general guidance in identifying eligible receiving areas. Some eligible areas are based on a proposed application type and are not limited directly by the zoning designation. As such, these possible areas are not known, and therefore, not mapped.

INSERT RECEIVING AREA MAP

13.XX.140 Calculation of Available TDR Credits From Sending Areas

- A. The number of TDR credits that a sending area is eligible to sell under this program shall be based on the sending site's base density. The base densities to be used for this purpose can be found under 13.XX.140.C.
- B. The number of TDR credits from a sending area located outside the City of Tacoma shall be determined pursuant to an interlocal TDR agreement with the relevant jurisdiction. Upon reaching an agreement to the number of available TDR credits with another jurisdiction, those credits should be entered into the table found under 13.XX.140.C.
- C. The following table assigns development rights multipliers for eligible sending areas:
[Note: This section requires a policy decision. The Tacoma City Council may modify the table below. Adding TDR credits per acre will encourage the sale of credits from the associated sending area, while reducing TDR credits per acre will discourage the sale of credits from the associated sending area. The table below roughly correlates to the maximum densities within the listed zones.]

<i>Sending Area</i>	<i>TDR Credits per Acre</i>
<i>TMC Zoned R-1, R-2, R-2SRD, HMR-SRD</i>	<i>TBD</i>
<i>TMC Zoned R-3, R-4-L</i>	<i>TBD</i>
<i>TMC Zoned R-4, R-5</i>	<i>TBD</i>
<i>TMC Zoned T, C-1, NCX</i>	<i>TBD</i>
<i>TMC Zoned C-2</i>	<i>TBD</i>
<i>TMC Zoned CCX, RCX, CIX, M-1</i>	<i>TBD</i>
<i>TMC Zoned HM, UCX, UCX-TD, M-2, PMI, DMU, DR, WR</i>	<i>TBD</i>
<i>TMC Zoned DCC</i>	<i>TBD</i>
<i>Pierce County Zoned FL</i>	<i>TBD</i>
<i>Pierce County Zoned ARL</i>	<i>TBD</i>

- D. If the zoning designation of a sending site is not listed in the table above, the Land Use Administrator shall determine the sending area's available credits by using the maximum density of the zone in which the sending area is located.
- E. For the purposes of calculating the amount of land a sending site may transfer TDR credits from, the following rules shall apply:
1. Sending sites that constitute an entire tax parcel(s), the acreage identified in the Pierce County Assessor-Treasurer's records may be used;
 2. Sending sites that are not identifiable as parcels, or where an applicant chooses not to use the Assessor-Treasurer's records, an applicant must supply a survey prepared and certified by a licensed land surveyor;
 3. Sending sites that are divided by a zoning boundary shall have the available credits calculated separately for each zoning classification;
 4. Any portion of the sending area used for development or reserved for future development shall be subtracted from the area used to calculate available TDR credits;
 5. Development rights for agricultural- or forest-land based properties shall not count development directly related to the resource industry as developed land for the purposes of calculating the number of development rights available;
 6. Development rights for historic properties shall not count the eligible historic resources as developed land for the purposes of calculating the number of development rights available. If multiple structures are on the property, only those eligible for historic classification shall be considered undeveloped.
 7. Credits will only be issued in whole numbers. If land proposed for preservation would create a fractional number of credits, the actual credits issued will be rounded down to the nearest whole number if the credits amount to less than a half a credit and the actual credits issued will be rounded up to the nearest whole number if the credits amount to a half a credit or more.

13.XX.150 Use of TDR Credits in Receiving Areas

- A. Each TDR credit may be used for a benefit subject to the maximum benefit limitations of this section. The benefit shall not be realized until the project meets all relevant local, state and federal regulations.

[Note: This section requires a policy decision. The Tacoma City Council may modify the table below. Increasing the benefit per TDR credit will provide an incentive for developers to use the TDR program. However, increasing the benefit will reduce the amount of conservation generated through the TDR program. Additionally, this chart should be finalized after the completion of an economic analysis and a review by developer stakeholders.]

For each TDR credit, the associated benefit is:	Maximum Benefit Limitation	Available Receiving Sites
TBD	TBD	Mixed Use Center Zones Downtown Zones
TBD	TBD	Downtown Zones
TBD	TBD	Mixed Use Center Zones Downtown Zones
TBD	TBD	Downtown Zones
TBD	TBD	Planned Residential District
TBD	TBD	Planned Residential District Mixed Use Centers
TBD	TBD	Any area undergoing a Comprehensive Plan Designation Change

- B. TDR Credits may only be used in whole numbers within a proposal even if the benefit allowed for one credit is not maximized.
- C. TDR Credits may be utilized for a variety of benefits on any given proposal provided no individual benefit type exceeds the corresponding maximum.]

13.XX.200 Sending Area Procedures

- A. In exchange for granting a deed restriction or a conservation easement on the sending area property, eligible sending area landowners shall receive the corresponding TDR credit(s) as authorized under TMC 13.XX.140. The TDR credits may be held by the sending site landowner, exercised in an eligible receiving site, or sold to a third party.
- B. Sending Areas Located Inside the City of Tacoma
 - I. For a sending area owner to receive TDR credits, the sending area property owner must file an application with the City of Tacoma for issuance of TDR credits. The Land Use Administrator shall set forth the submittal requirements necessary for application. It is the applicant’s responsibility for preparing a complete application.

2. Following application, the Administrator will verify ownership and qualification of the property for the program and will calculate the quantity of development rights based upon the eligible land and zoning classification of the site at the time that the certificate is requested.
3. Following approval of the property as an eligible sending site, the Land Use Administrator shall issue a TDR certificate letter of intent agreeing to issue a TDR certificate for a given number of TDR credits in exchange for a conservation or preservation easement on the sending site. The letter of intent will be valid for X years from the date of issuance.
4. Prior to, or concurrent with, the time that the sending area property owner exercises his/her right to obtain TDR certificates, the following shall be approved by the Land Use Administrator and the City Attorney, and the owner shall execute and record with the Tacoma Auditor:
 - a. A conservation easement for open space or resource lands; or
 - b. A preservation easement for a historic resource.
5. The easement or deed restriction shall place the following restrictions on the property:
 - a. Open space properties shall be restricted to open space and recreation; or
 - b. Renewable resource properties shall be restricted to the identified resource based use; or
 - c. Historic resources shall be restricted by a preservation easement that protects the significant features of the structure or site; or
 - d. A combination of the above that accurately reflects the public benefits of preservation of the site.
6. The Land Use Administrator will issue the owner TDR certificates with an assigned certificate number stating the quantity of TDR credits for the sending site property.
7. Determinations made by the Land Use Administrator on sending site certifications can be appealed to the hearing examiner pursuant to TMC 13.05.050.

C. Sending areas located outside the City of Tacoma

1. All TDR credits transferred from sending areas located outside the City of Tacoma shall be transferred into the City of Tacoma pursuant to the terms of an interlocal TDR agreement with the relevant jurisdiction.

13.XX.210 Sale or Division of TDR Certificates

- A. The TDR certificate owner can sell all, none, or part of his/her granted TDR credits.
- B. If the sale of TDR credits constitutes only a portion of those rights granted within a single TDR certificate, the certificate owner must apply to the City of Tacoma to divide a TDR certificate. The division of a TDR certificate:
 1. Is an administrative action designed simply to appropriately track TDR credits currently granted; and
 2. Shall cancel the certificate proposed for division; and

3. Issue a new TDR certificate with new certificate numbers and reflect the new number of TDR credits associated with each certificate.
- C. In the case of a sale or transfer of a TDR certificate, the person acquiring the TDR credits must notify The City of Tacoma within ten business days of the sale or transfer. Upon notification, the City of Tacoma will issue a new TDR certificate identifying the new owner of the TDR credits. The new owner's notification must include:
1. The originally-issued TDR certificate showing the TDR credits; and
 2. Written evidence of a transaction containing signatures of all parties, such as a bill of sale or contract of sale.
- 13.XX.300 Transfer of Development Right - Receiving Area Procedures
- A. In exchange for utilizing TDR credits, a receiving area shall receive any of the additional development rights identified in 13.XX.150 so long as all new development rights do not exceed either the number of credits transferred or the maximums identified in 13.XX.150.
- B. To obtain the additional benefits, a receiving site land owner must file an application with the City of Tacoma. The application must include:
1. A copy of the TDR certificate(s) for all proposed TDR credits; and
 2. The number of TDR credits proposed for use; and
 3. Proof of ownership or a contract to buy TDR credits from the current owner(s) of the TDR credits identified for the proposed use; and
 4. A complete application for development or comprehensive plan amendment.
- C. The use of TDR credits is non-discretionary and by right. A TDR application in itself shall not be required to undergo additional review beyond what would be required of the application were the TDR credits not being utilized. Therefore:
1. The authority to approve or deny an application utilizing TDR credits shall continue to reside with the governing entity that would otherwise approve or deny the application were the TDR credits not being utilized; and
 2. The appeals process associated with an application utilizing TDR credits shall follow the appeals process otherwise used for the application were TDR credits not being used; and
 3. An application to utilize TDR credits must still meet all relevant requirements of the Tacoma Municipal Code except those specifically allowed through the use of the TDR credits. The use of TDR credits shall not be construed to alter requirements of other local, state or federal regulations. Any application must also meet these other relevant requirements.
- D. Prior to, or concurrent with, the use of TDR credits on a valid receiving site, the TDR credits must be under the ownership of the applicant through a valid TDR certificate. Upon the exercise of these rights, they will be assigned to the receiving site through the recording of a Certificate of Transfer with the Pierce County Auditor's office. This certificate will establish the use for which the TDR credits were utilized. The recording

number of the Certificate of Transfer will be documented with the City of Tacoma and associated with the TDR certificate.

- E. Once TDR credits are utilized on a receiving site, the City of Tacoma's zoning map shall be updated to reflect the receiving site TDR overlay. If the zoning designation changes in the future, the City shall maintain the TDR overlay to clearly indicate where additional development rights were used.

Appendix F: Model TDR Interlocal Agreement

The following model interlocal agreement is an example of how an interlocal TDR agreement between Tacoma and another jurisdiction is structured.

TDR AGREEMENT IMPLEMENTING A TRANSFER OF DEVELOPMENT RIGHTS PROGRAM BETWEEN PIERCE COUNTY AND THE CITY OF TACOMA

This agreement is hereby entered into by Pierce County, herein after referred to as the "County," and the City of Tacoma, herein referred to as the "City."

Recitals

[The recitals below provide a point of reference. However, additional recitals should be added to state the purpose and reasons for the County and City to enter into a TDR agreement.]

WHEREAS, the Washington State Growth Management Act (GMA), RCW 36.70A, directs development to urban areas, discourages the conversion of rural and resource areas into sprawling low-density development, and encourages the conservation of forest lands and agricultural lands; and

WHEREAS, the County has developed a Transfer of Development Rights (TDR) program which, subject to the adoption of a TDR agreement, authorizes cities to receive development rights transferred from unincorporated open space, agricultural- and forest-land; and

WHEREAS, the City recognizes the conservation of open space, agricultural- and forest-lands as an important public benefit; and

WHEREAS, the City and the County share an interest in creating an effective, cooperative development rights transfer system to achieve the goals of the GMA, the Countywide Planning Policies, the City and County Comprehensive Plans, and the City's Green Ribbon Climate Action Task Force;

TDR AGREEMENT

NOW THEREFORE, in consideration of the foregoing circumstances, the County and the City herein agree:

I. Purpose

The County and the City agree to implement a program (hereafter the "Program") for the transfer of development rights from privately owned *[insert areas that the City is*

motivated to conserve in the unincorporated county] as identified in Exhibit A, attached hereto and incorporated into this agreement.

II. RESPONSIBILITIES AND POWER OF THE CITY OF TACOMA

- A.
- B.
- C.

III. RESPONSIBILITIES AND POWER OF PIERCE COUNTY

- A.
- B.
- C.

IV. EVALUATION AND MONITORING

V. DURATION

VI. INDEMNIFICATION

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