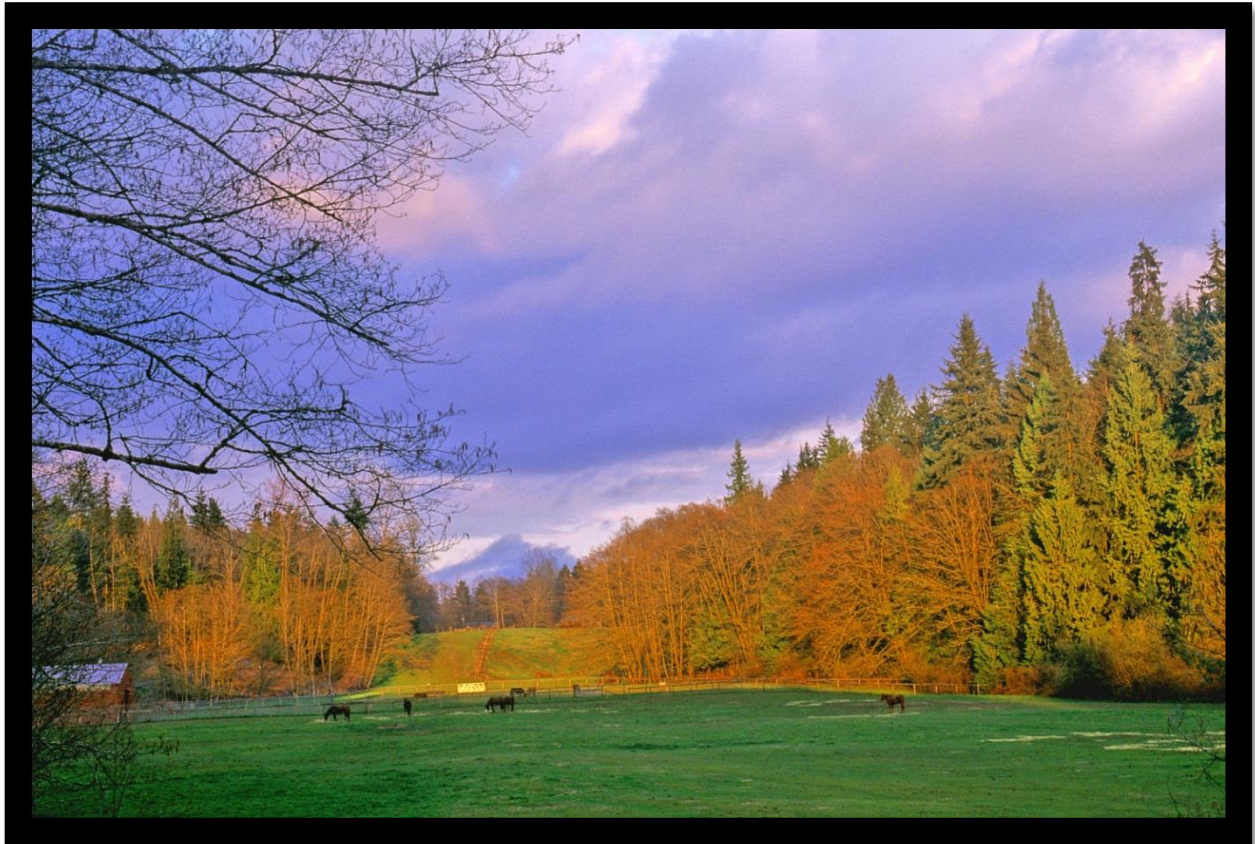


Snohomish County

Purchase of Development Rights

Transfer of Development Rights



Strategic Opportunities for Conservation and Growth Management

Research Findings and Program Recommendations

Prepared for:

Snohomish County Council

Prepared by:

Cascade Land Conservancy

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Executive Summary

Snohomish County contracted Cascade Land Conservancy (CLC) in January 2010 to assess and provide recommendations for revising its purchase of development rights (PDR) and transfer of development rights (TDR) programs.

Between March and December 2010, CLC undertook an initial stakeholder outreach effort to gain an understanding of what conservation goals exist in the community, what challenges and opportunities face the existing PDR and TDR programs in Snohomish County, and what elements and framework may be successful in this context. CLC staff spoke to over 100 community members as part of its outreach process, representing a wide variety of interests.

In January of 2011 CLC submitted a draft report on PDR program recommendations and in March of 2011 a combined draft report encompassing both PDR and TDR programs followed. One objective was to identify ways in which the county's PDR and TDR programs could not only be made more effective individually, but how they could better work together.

In addition to the outreach and analysis that it undertook, CLC worked with a consultant, Community Attributes International, to conduct an economic analysis of important factors influencing the market for TDR in Snohomish County. The complete findings of this study are included as an appendix.

This report is divided into two broad sections focusing on PDR and TDR program elements, respectively. Supplemental materials include information about TDR programs in Washington State, public revenue scenarios, maps, a description of TDR pilot project efforts, the economic analysis, and draft TDR ordinance language. This summary provides an overview of the main recommendations for each program detailed in the report.

Purchase of Development Rights Program Recommendations Summary

CLC proposes Snohomish County pursue some or all of the following opportunities for improving its PDR program:

1) Administration

- Pursue funding opportunities for program expansion through an Office of Farmland Protection technical assistance grant.
- Expand the responsibilities of program administration to promote participation, including outreach, education, marketing, and financial management.
- Coordinate landowner outreach around state and federal funding agency schedules.
- Pursue Certified Entity status with NRCS to streamline federal funding process.

- Establish a PDR price formula to inform landowner decisions, as well as to reduce costs associated with applicant withdrawals, by setting accurate expectations of conservation easement values.
- Establish consistency in the appraisal process by identifying and retaining a corps of appraisers who can consistently meet state Recreation and Conservation Office (RCO) and federal Natural Resources Conservation Service (NRCS) requirements.

2) Funding

- Continue to pursue state and federal funding opportunities.
- Consider allocating a higher proportion of the Conservation Futures Tax (CFT) revenue to the PDR program.
- Consider allocating non-levy revenue to the PDR program.
- Allocate proceeds from Urban Centers density fee to the PDR program.
- Consider issuing a general obligation bond to purchase development rights.

3) Program area

- Expand the PDR eligibility area to include all designated agricultural land, but prioritize acquisitions using the following categorization (in order):
 1. Designated agricultural land outside the floodway zoned Ag-10
 2. Designated agricultural land in the floodway zoned Ag-10
 3. Designated agricultural land outside the floodway with other zoning

Corresponding to the general recommendations above, Cascade Land Conservancy proposes three program scenarios relating to various levels of commitment the County may pursue.

1. Low commitment
2. Moderate commitment
3. High commitment

See the scenarios matrix on the following pages and refer to Appendix F, Map of Proposed PDR Program Conservation Priorities.

Commitment Level	Program Area Size	Conservation Priorities	Funding level	County Involvement
Low	<ul style="list-style-type: none"> Retain current eligibility area, Tualco Valley, approximately 4,700 acres. 	<ul style="list-style-type: none"> Prioritize land outside of the floodway zoned Ag-10 which is most vulnerable to development conversion. This includes land identified as floodway fringe. (See map, App. F) 	<ul style="list-style-type: none"> Allocate Conservation Futures Tax (CFT) revenues as matching funds for grants subject to the recommendations of the CFT Advisory Board. Apply for matching grants from the RCO and NRCS. Access future Urban Centers density fees for agricultural conservation. Allocate non-levy revenue sources identified in this report (see Appendix D). 	<ul style="list-style-type: none"> Expand the responsibilities of program administration to promote participation through increased marketing, outreach, and education, including coordinating landowner outreach around state and federal funding agency schedules. Pursue Certified Entity status with NRCS to streamline funding process. Establish a PDR price formula to inform landowner decisions, as well as to reduce costs associated with applicant withdrawals, by setting accurate expectations of values. Establish consistency in the appraisal process by identifying and retaining a corps of appraisers who can consistently meet RCO and NRCS requirements. Pursue funding opportunities for program expansion through a technical assistance grant.

Commitment Level	Program Area Size	Conservation Priorities	Funding level	County Involvement
Moderate	<ul style="list-style-type: none"> Expand the eligibility area to include all designated agricultural land. 	<ul style="list-style-type: none"> Highest: Land outside the floodway zoned Ag-10, may include floodway fringe and density fringe <i>(~ 17,500 acres)</i> Lower: Land in floodway zoned Ag-10, may include density fringe <i>(~41,000 acres)</i> Lowest: Designated agricultural land with other zoning (e.g. R-5) <i>(~4,000 acres)</i> 	<ul style="list-style-type: none"> Allocate more CFT revenue to PDR. Apply for matching grants from the RCO and NRCS. Access future Urban Centers density fees for agricultural conservation. Allocate non-levy revenue sources identified in the PDR report. 	<p>Same as Low Commitment option, plus:</p> <ul style="list-style-type: none"> Selectively use Conservation Futures revenue to purchase development rights of strategic importance, hold these rights for possible future sale through TDR program. Increase county budget allocation for ongoing administration and implementation of expanded PDR program.

Commitment Level	Program Area Size	Conservation Priorities	Funding level	County Involvement
High	<ul style="list-style-type: none"> Expand the eligibility area to include all designated agricultural land. 	<ul style="list-style-type: none"> Highest: Land outside the floodway zoned Ag-10, may include floodway fringe and density fringe <i>(~ 17,500 acres)</i> Lower: Land in floodway zoned Ag-10, may include density fringe <i>(~41,000 acres)</i> Lowest: Agricultural Land with other zoning (e.g. R-5) 	<ul style="list-style-type: none"> Allocate more CFT revenue to PDR. Apply for matching grants from the RCO and NRCS. Access future Urban Centers density fees for agricultural conservation. Allocate non-levy revenue sources identified in the PDR report. Issue a general obligation bond in 2017. 	<p>Same as Moderate Commitment option, plus:</p> <ul style="list-style-type: none"> Implement a reverse PDR auction to expand capacity for completing transactions.

Please refer to Appendix F, Map of Proposed PDR Program Conservation Priorities

Transfer of Development Rights Program Recommendations Summary

CLC proposes Snohomish County pursue some or all of the following opportunities for improving its TDR program:

I) Program Area

Based on research and input from the community and county leadership, CLC recommends the TDR program area be expanded to include:

Sending Areas

CLC recommends a market-based approach to determining how conservation goals should be achieved by allowing the market to determine which resource lands should be conserved and which may be appropriate for development. To ensure the program focuses on conserving resource lands, CLC identifies the following criteria to establish sending areas:

- **Farmlands.** CLC recommends including designated agricultural land as shown on the Future Land Use Map. These include those identified as Riverway Commercial, Upland Commercial, and Local Commercial. Approximately 58,600 acres of land meet these criteria.
- **Forestlands.** CLC recommends including designated forestland as shown on the Future Land Use Map. These include Commercial Forest, Commercial Forest-Forest Transition Area, and Local Forest. Approximately 119,700 acres of land meet these criteria.
- **Other lands in farm or forest use.** CLC recommends including lands which are not designated agriculture or forest lands but are in use for those purposes. These lands are typically zoned R-5 and encompass approximately 36,000 acres. To ensure consistency with the goals of the program, these properties should qualify for current use taxation as open space agriculture or open space timber (RCW 84.34) and have a forest management plan.
- **Other lands of conservation value.** The existing TDR program allows the County Council to designate by motion lands of significant conservation value that may have uses other than agriculture or timber. CLC recommends retaining this approach to designating sending areas as it retains flexibility and allows for protection of properties that are important to the county beyond those used for resource production.

Receiving Areas

The success of a TDR program depends largely on demand. A TDR program must address growth in the unique context of Snohomish County to be successful. CLC adhered to this important understanding in recommending receiving areas.

- **Cities.** Demand for additional density in cities is limited in current market conditions; however, these are the natural receiving areas for future growth. Snohomish County currently has two city-based receiving areas and additional cities are either exploring or designing TDR programs. The county should encourage cities to pursue TDR policies that protect county sending areas.
- **Urban Centers.** Snohomish County designated all Urban Centers as TDR receiving areas in 2010. CLC recommends certain revisions to the Urban Centers code to better align it with a county-wide TDR program and promote the desired development patterns in these areas. Specifically, these include:
 - Revise exchange rates based on market analysis.
 - Revise bonus density thresholds.
 - Consider revisions to parking requirements to the extent there is flexibility in current regulations.
- **Urban Growth Areas.** Demand for additional density in UGAs is also presently limited. These areas, however, represent opportunities to link growth to conservation when market conditions improve. CLC recommends the county connect TDR to future UGA expansions by requiring a portion of density increases to be gained through the purchase of TDR credits.
- **Rural Areas.** Rural areas have been attractive locations for growth in Snohomish County. Developers have expressed interest in continuing to build in rural areas. CLC recommends utilizing the market demand and developer value incentive associated with rural density increases by adding TDR to the approval process for such density increases as rezones, comp plan amendments, and rural clusters.

2) TDR Program Administration

With regard to how Snohomish County administers its TDR program, CLC recommends the county consider the following:

Transaction Model

Private Market Transactions with County Support. Snohomish County should continue to allow private buyers and sellers to negotiate and complete TDR deals in an open marketplace because of the simplicity and flexibility of this approach. CLC recommends that the county support this marketplace by providing information and by helping to connect buyers and sellers. The county currently allows this type of transaction and CLC supports maintaining this approach while augmenting its support role.

TDR Bank

No bank needed at present. An appropriate model in the future would be a private bank with public oversight. The current activity level in the Snohomish County TDR marketplace does not justify the creation of a TDR bank at present. Feedback from stakeholders showed a preference for private management of a potential future TDR bank. Compared to other alternatives, a private bank would be the most cost-effective for the county and having public involvement would ensure that bank activities are consistent with county conservation goals.

Streamlining Administration

Implement changes to improve efficiency. The current TDR process is complex and lengthy and this can deter potential participants. Ways in which the county can improve administrative efficiency include standardizing elements of the conservation easement to reduce the complexity of negotiations with landowners and making the terms of the conservation easement clear to potential applicants up front.

The following table summarizes the TDR program recommendations and illustrates differences with the existing program framework.

Program Element	Current Program	Recommendations	Comments
Sending areas	<ul style="list-style-type: none"> • Stillaguamish Valley • Sending sites designated by Council motion 	<ul style="list-style-type: none"> • All designated agricultural lands (includes existing Stillaguamish Valley sending area) • All designated forest lands • Rural lands in farm or forest use that <ul style="list-style-type: none"> • Qualify for open space agriculture • Qualify for open space timber and have a forest management plan 	<ul style="list-style-type: none"> • Expands eligibility • Complements PDR program area recommendations • Formalizes sending areas already identified as desirable for conservation in comprehensive plan, existing TDR code, and state law
Sending area development right calculation	<ul style="list-style-type: none"> • Net buildable site area • Based on total number of buildable residences • Adjustments for existing residences, retained development rights, and existing easements 	<ul style="list-style-type: none"> • Gross site area • Based on total number of lots and zoning • Adjustments for existing residences, retained development rights, and existing easements 	<ul style="list-style-type: none"> • Observes property rights • Minimum area consistent with highest zoning for resource lands established by county
Receiving areas	<ul style="list-style-type: none"> • Cities • Urban Centers 	<ul style="list-style-type: none"> • Cities • Urban Centers <ul style="list-style-type: none"> • Revise exchange rate • Revise bonus threshold • Consider parking revisions 	<ul style="list-style-type: none"> • Exchange rate higher for farm rights than for forest rights • TDR connected to growth opportunities and demand for new development

Program Element	Current Program	Recommendations	Comments
<p>Program administration</p>	<ul style="list-style-type: none"> • Private buyer-seller transactions with county support • County holds credits acquired in public purchase • Easement restricts multiple uses 	<ul style="list-style-type: none"> • Private buyer-seller transactions with increased county role in promoting program, providing market and program information • No TDR bank needed at present, if future need arises a private bank with public oversight would be preferred model • No change to easement, review easement language based on program use 	<ul style="list-style-type: none"> • Goal of increased marketing is to increase program awareness and participation • Improved market and program information availability increases transparency • Present level of program activity does not justify creation of bank

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Part I of II: Purchase of Development Rights

I. Introduction to PDR

What is PDR?

Purchase of development rights (PDR) is a growth management and conservation program in which a landowner may sell the development potential from his or her property to an entity through voluntary transactions. PDR can be used to achieve a variety of conservation goals; however, for purposes of this report PDR is focused strictly on conserving agricultural lands.

Once the sale of development rights is finalized and the landowner realizes his or her financial return, a conservation easement and deed restriction are placed on the property's title to reflect the permanent removal of its development potential. Following the sale of development rights the landowner retains ownership of the property and may continue to use it for agriculture. The terms of the easement and deed restriction prohibit certain uses such as conversion for development or uses that are incompatible with resource production. Landowners are made aware of any such terms, which in some cases are negotiable, prior to the sale of development rights.

The goal of a PDR program is to permanently conserve resource lands from development or non-resource uses. Such programs provide landowners with a real estate option that allows them to realize a financial return on the property while keeping ownership and maintaining production. The entity purchasing the development potential is usually a public agency. Depending on the program, the purchased development rights are either extinguished or held for resale through a transfer of development rights (TDR) program.

Differences between PDR and TDR

PDR and TDR programs are similar in purpose but have important differences. Both share the goal of permanent conservation of resource lands through voluntary transactions in which landowners sell the development potential from their properties. These programs advance this goal through different, but complementary approaches. Differences between the two include funding sources, how the development rights are used after purchase, and how conservation is targeted.

Funding sources

PDR transactions are generally publicly financed. Funding sources may include grants from state or federal agencies, local tax revenue, or bonds. In contrast, TDR transactions are generally market-based or include a mix of privately and publicly financed exchanges.

Use of development rights

In a PDR program, development rights may be extinguished from resource lands. Alternatively, the value of those rights may be returned by keeping them available for resale to a private developer through a TDR bank. In a TDR program, development rights are moved from resource lands (also known as “sending areas”) to areas more appropriate for growth (also known as “receiving areas”) where infrastructure and services can accommodate additional development. If a PDR program allows resale of publicly purchased development rights, a developer may buy development rights from the public agency holding them as an alternative to conducting a private transaction with a landowner.

Targeting conservation

PDR and TDR programs share the goal of conserving resource lands, but exactly which lands the programs focus on may vary. Due to the market-based nature of a TDR program, a jurisdiction cannot know which properties will ultimately be conserved—it depends on the coming together of private parties. The resulting pattern of TDR conservation will reflect some of a jurisdiction’s priorities generally, but may not conserve specific, top-priority lands. PDR programs, however, can be more strategically targeted and can focus on buying development rights from high value lands that otherwise might be passed over in the private market.

The chief differences between PDR and TDR programs are summarized in Table I.

Table I: Summary of differences between PDR and TDR programs

	PDR	TDR
Funding source	Public	Private
Use of development rights	Extinguished or re-sold	Transferred to areas appropriate for growth
Conservation outcome	Strategic, high value lands	Determined by market

It is important to consider that purchase of development rights is only one program in a range of land use and conservation tools available to a jurisdiction. By itself PDR cannot achieve all of Snohomish County's conservation goals but it can be effective when used in conjunction with other tools, such as:

- Transfer of development rights
- Zoning and other development regulations
- Current use taxation
- Agricultural designation

Existing Snohomish County PDR Program

The current PDR program in Snohomish County has origins in numerous studies. The county has explored the use of PDR as a means to conserve agricultural land for over twenty years. The Department of Planning and Community Development partnered with the Agricultural Advisory Board to produce a May, 1989 report giving preliminary analysis and recommendations for a PDR program in the county¹. Further studies included a 1997 report on the feasibility of PDR and TDR programs² and, more recently, a 2007 Planning and Development Services report on farmland conservation³ and the Sustainable Agriculture Economic Development Action Team report in 2009⁴. Many of the challenges and opportunities of conserving resource lands using PDR identified in these earlier reports still exist.

Snohomish County's PDR program was adopted in 2004. A council motion authorized the County Executive to implement a PDR program to protect designated agricultural lands outside of TDR sending areas. An amendment to the conservation futures taxation code (SCC 4.14) allowed for the use of Conservation Futures Tax (CFT) funds for purchasing conservation easements through a purchase of development rights program. Amendments to the General Policy Plan passed in 2005 provided a policy basis for a PDR program:

¹ *Purchase of Development Rights (PDR) as a Means of Preserving Farmlands in Snohomish County*, Snohomish County Department of Planning and Community Development, Planning Division, and Snohomish County Agricultural Advisory Board, May 1989

² *Feasibility Assessment of TDR and/or PDR Programs to Conserve Resource Lands in Snohomish County, Washington*, prepared for Snohomish County by Redman/Johnston Associates, Ltd., November 1997.

³ *Transfer of Development Rights for Farmland Conservation, Model Policy and Regulatory Strategy for Snohomish County*, Snohomish County Planning and Development Services, Long Range Planning Division, June 2007.

⁴ *A Community Vision for Sustainable Agriculture in Snohomish County*, SAEDAT, prepared for the Snohomish County Agricultural Sustainability Project by Nyhus Communications, LLC; MAKERS Architecture & Urban Design; and Community Attributes International, July 2009.

Goal LU 14

Conserve important natural resource lands through the use of complementary Transfer of Development Rights (TDR) and Purchase of Development Rights (PDR) programs.

Objective LU 14.B

Develop and implement a Purchase of Development Rights (PDR) program utilizing available funding sources for the purpose of permanently preserving natural resource lands.

LU Policies

14.B.1

A PDR program may, at the option of the county, be used for the purpose of permanently preserving natural resource lands.

14.B.2

The PDR program shall be coordinated with, and be designed to complement, the TDR program.

14.B.3

Agricultural and forest lands as defined in RCW 36.70A.170 shall be eligible for conservation through the PDR program. Other lands having high natural resource, environmental, or open space values may also be determined eligible for conservation.

14.B.4

An application process, application forms and review criteria shall be developed and utilized to consider landowner proposals to sell developments rights.

14.B.5

A public outreach and education process, focusing on sending area landowners, shall be implemented to inform potential program participants and to encourage participation in the PDR program.

14.B.6

Sources of funding for any PDR program shall be identified. The use of county Conservation Futures fund monies, grant, and local bond revenues should be considered. Where appropriate, applications for grant monies should be prepared and submitted.

14.B.7

The effectiveness of the PDR program shall be evaluated and adjustments made to the program as determined appropriate:

1. Indicators or measures of program success shall be developed;
2. The level of development rights sales shall be monitored; and
3. Based on an assessment of the measures of program success, changes to the PDR program shall be considered and implemented, when appropriate.

The county established the Tualco Valley as the eligibility area for the PDR program. This area, comprising approximately 4,700 acres, extends from south of the city of Monroe to the King County border. This area was chosen for a number of reasons. The county desired to protect a dynamic area in the agricultural community where landowners were using innovative approaches to farming and diversifying business operations. The wide range of crops grown in the valley made it attractive for conservation, and the Natural Resources Conservation Service, a federal agency providing funding for development right purchases, values contiguity in a program area when awarding grants for projects. Additionally, the threat of development on certain properties within the valley increased the urgency for creating the program area. At present, only landowners within this valley may participate in the PDR program.

To date the Snohomish County PDR program has completed two transactions resulting in the conservation of 84 acres. The details of these purchases are summarized in Table 2.

Table 2: Prior PDR Transactions⁵

# Dev. Rights Purchased	Acres Conserved	Purchase Price	Date
6	30	\$542,850	2005
3	54	\$465,430	2008

Snohomish County has also pursued negotiations to purchase development rights from a number of other landowners in the Tualco Valley. In some cases these negotiations were unsuccessful due to the appraised value of the development rights (or easement) being lower than the landowners were willing to accept.

⁵ Data from Snohomish County.

II. Findings and Analysis

Snohomish County has established the priority of protecting resource land through policy, code, and numerous initiatives designed to promote the economic development of the agricultural sector. The PDR program is one approach within a broader effort to conserve farmland and its success in advancing this goal is measurable. In its current form the PDR program has resulted in a number of favorable outcomes. These include the creation of a designated area in which conservation efforts are focused, the completion of two purchases of development rights, and the continued interest of eligible landowners to participate who have not already done so. These positive results are also noteworthy for having been accomplished with small amounts of county staff resources and funding. This success illuminates new opportunities for the county to achieve greater amounts of conservation through the PDR program.

Cascade Land Conservancy evaluated three general areas of the Snohomish County PDR program:

- Administration
- Geographical extent
- Funding sources

Administration

Overview

Previous studies on the feasibility of PDR in Snohomish County have largely focused on the strategic goals of conservation, funding sources, and prioritizing land for conservation. Through outreach efforts and analysis of the program's operational structure, Cascade Land Conservancy finds that numerous opportunities exist to enhance the conservation outcomes of the PDR program by adapting its administration. CLC has also explored ways in which to streamline the program's administrative elements and identify external funding resources to expand its operational abilities. This section's findings and recommendations focus on:

- Current program administration structure
- Potential expansions to program administration
- Coordinating landowner outreach around state and federal funding agency schedules
- Federal agency staffing consistency
- Achievement of Certified Entity status
- Adopting a PDR price formula
- Establishing consistency in the appraisal process
- Funding opportunities

Current program administration structure

At present the county devotes a relatively small amount of resources to the administration of the PDR program. The county staff resources allocated to the program are summarized in Table 3.

Table 3: Snohomish County staff involved in PDR program administration

County Staff	Responsibilities
PDR Program Administrator	Contacts landowners, pursues funding matches, orders appraisals, liaison with state and federal agencies.
Director of PDS	Makes recommendations concerning the use of conservation futures funds for PDR, oversight of proposals to purchase conservation easements.
Conservation Futures Fund Manager	Tracks and manages Conservation Futures Tax revenue and expenditures.
Conservation Futures Advisory Board	Makes recommendations to county council on the allocation of Conservation Futures Tax funds for specific projects.
Conservation Futures Technical Advisory Committee	Reviews and comments on specific projects for proposed use of Conservation Futures funds.

The majority of the program work is carried out by the Program Administrator. This title is not a full position in the county, but rather the responsibilities are a fraction of one position currently located in the Surface Water Division of the Public Works Department. The staff member in this position estimates that fewer than 100 hours (0.03 FTE) are devoted to PDR program administration annually. The other staff positions listed in Table 3 play mainly an advisory role, with the exception of the Director of Planning and Development Services.

Staff resources in other PDR programs

Cascade Land Conservancy surveyed a number of Washington PDR programs to assess the level of staff resources committed to program administration. This only focused on operational responsibilities and did not include staff contributing in an advisory capacity.

- Skagit County devotes one full time staff member to manage its PDR program. This includes monitoring and attending board meetings.
- Whatcom County estimates its commitment to PDR program administration is between 1/3 and 1/2 of one full time staff member. The county contracts monitoring of conservation easements to Whatcom Land Trust.
- King County's PDR program is integrated with its TDR program. King County employs two full time staff to administer both programs. The county monitors easements.
- Pierce County's PDR program administration is shared with the TDR program. Two staff members are responsible for both. The county monitors easements.

Potential Expansions to Program Administration

The amount of resources currently dedicated to the administration of the PDR program limits the time and effort that staff can invest in pursuing conservation projects. Given the complexity of the PDR process and the objective of conserving over 4,000 acres of land under the current program structure, it will be difficult for the county to achieve this goal with existing resources. Expanding the resources available to the PDR program will increase the capacity of the program to pursue transactions and diversify the program's efforts to improve participation. This course of action supports GPP Land Use Policy 14.B.5:

A public outreach and education process, focusing on sending area landowners, shall be implemented to inform potential program participants and to encourage participation in the PDR program.

Examples of expanded responsibilities include:

- Marketing
- Education
- Outreach
- Greater administrative role
- Financial management
- Monitoring and enforcement

Marketing

Advertising the benefits of the PDR program to its target audience can be an effective way to increase participation. For example, the City of Redmond mailed an informational flyer to landowners to generate more interest in its TDR program. This effort resulted in a number of new applications to the program.

Education

The PDR program is complex by nature and many members of the agricultural community have an incomplete or inaccurate understanding of how it works, how it benefits them, and what restrictions it places on their land. Expanding efforts to educate prospective participants about PDR will result in increased familiarity with the program and will help inform landowners' decisions to participate. Educational initiatives may include more detailed informational resources on the county's website and presentations at agricultural events such as the Focus on Farming annual conference.

Outreach

Developing relationships with members of the agricultural community is essential to the success of the PDR program. The county could expand its outreach efforts to prospective participants through presentations on the program to agricultural groups (such as the Agricultural Advisory Board, Farm Bureau, and Snohomish County Growers' Alliance) and by attending farmers' markets. This could be a role played by the offices of Snohomish County's Agricultural Coordinator and Economic Development. Another opportunity for outreach is to target landowners who apply for permits to build on or subdivide their land, as those landowners are already interested in exercising their real estate options.

Greater administrative role

As interest in the PDR program among landowners increases, so will the administrative burden on the county to manage additional applications. The county should plan for additional staff time required to pursue a growing number of transactions.

Financial management

If the amount of funding available to purchase development rights increases, the county will have a greater role in financial management. This will involve increased input from the advisory groups that help guide the PDR program and may possibly require a greater role by the Program Administrator in budgeting and tracking the financial aspects of the program.

Monitoring and enforcement

As more landowners participate in the PDR program, the county will face a growing need to monitor and enforce the terms of the conservation easements placed on properties. This will involve a physical inspection of enrolled properties to ensure compliance, tracking of property restrictions within the county permitting system to prevent the issuance of building permits on conserved land, and legal resources to enforce violations of easements.

Coordinate outreach around RCO & NRCS funding cycles

Snohomish County has been strategic in pursuing funding from state and federal agencies for development right acquisition. This approach is cost effective but it does introduce a number of complications into the transaction process. One of these is timing. The RCO funding cycle is biannual. The NRCS funding cycle is annual. Each of these programs has defined application periods during which Snohomish County may submit proposals for funding. The county can be strategic in its outreach efforts to landowners by planning for the project application deadlines and contacting prospective landowners far enough in advance to complete applications within the defined timeframe.

Staffing consistency

In the past there has been turnover in the position of program liaison at the NRCS. These staffing changes have caused disruptions in the continuity of the federal agency's administration of its funding programs. While this matter is beyond the control of Snohomish County, it has affected the county's efforts to pursue PDR transactions. NRCS has filled the funding coordinator position and the prospect for long-term stability in this role has improved.

Achieve NRCS Certified Entity status

The NRCS Farm and Ranch Land Protection Program (FRPP, detailed in Inventory of Matching Funds section) will award a special status to applicants that demonstrate adherence to a set of criteria established by NRCS. This status, called Certified Entity, will confer preferential treatment to applicants by streamlining the appraisal and deed review process. The chief benefit to gaining this status will be a decrease in the time required to complete a PDR transaction and reduced administrative burden both for the county and for NRCS.

In order to attain Certified Entity status, applicants must meet a set of criteria which will include closing PDR transactions within an eighteen month timeframe⁶. At the time of this report's publication the NRCS has not finalized the criteria for achieving this status. Cascade Land Conservancy recommends that Snohomish County pursues Certified Entity status once NRCS completes the standards.

Establish a PDR price formula

One issue influencing landowner participation in the PDR program is uncertainty surrounding financial expectations (see Public Opinion on PDR Program and Financing section). In the absence of sufficient comparable transactions, landowners are hesitant to participate without having an idea of what their development rights are worth. As the Snohomish County PDR program currently stands, the valuation of development rights is not determined until the property is appraised- after the landowner has already elected to participate.

One way to address the issue of uncertainty in development right valuation is to establish a price formula. This is a tool used to approximate development right value based on a property's characteristics. This formula does not replace the appraisal process, by which final determination of development right value is still determined. The objective of using a price formula is to give landowners an estimation of value to inform their decisions to participate. Implementing such a tool will increase the administrative efficiency of the PDR program and reduce operational costs.

As unsuccessful negotiations under the current PDR program have demonstrated, a landowner can apply to the PDR program, the county orders an appraisal, and subsequently the landowner might withdraw if the appraised value of the development rights does not meet his or her expectations. This process takes time and costs the county money.



Alternatively, using a price formula, Snohomish County can gather information from a prospective landowner and estimate the value of the development rights. Recognizing that the estimate is not a guarantee of appraised value, the landowner can weigh the decision to proceed with a PDR application. Given the wide range of appraised values for development rights within the Tualco Valley program area, this service could improve retention of interested landowners and save resources that might otherwise be expended on landowners who withdraw from the program.

Skagit County has implemented a PDR price formula (see calculation sheet, Appendix B) and Whatcom County's PDR program is considering establishing one with the assistance of

⁶ Conversation with West Area Program Liaison NRCS, October 28, 2010

an appraiser. The accuracy of Skagit County's price formula is high, usually within 5% of the appraised value⁷.

Consistency in appraisal process

One administrative challenge in completing a PDR transaction is the appraisal. Historically this step of the process has been a source of inconsistency in the Snohomish County program. The Public Works Department has worked with a number of individuals whose appraisals were rejected by the NRCS and RCO, who found the research to be inadequate. More recently the county hired another appraiser whose work has been accepted by the NRCS. Snohomish County has expressed an interest in retaining this particular appraiser for future PDR projects but this individual may not be available over the long term⁸.

Cascade Land Conservancy has identified frustration among landowners with the time, complexity, and uncertainty of the PDR program transaction process (see Public Opinion on PDR Program and Financing section). One area of opportunity that would both reduce the time and cost of program administration and address landowner frustrations would be to identify and retain a corps of appraisers who can consistently deliver work that satisfies the requirements of the state and federal funding agencies. Relying on one appraiser introduces risk and the potential for delay if that individual is not available when needed. Having access to a number of appraisers familiar with the NRCS and RCO requirements will improve the predictability of the process and reduce the time needed to complete transactions. This will also improve the county's prospects for gaining Certified Entity status with the NRCS, further streamlining the transaction process.

Funding opportunities

The Washington State Office of Farmland Preservation (OFP) has awarded two rounds of grant funding (2008, 2010) to counties with the goal of creating new farmland protection programs or improving existing programs at the local level. One example advancing PDR from the 2008 grant cycle was Whatcom County, which used the funding to enhance its PDR program created in 2001. A total amount of \$200,000 was awarded to eight counties in 2008. Snohomish County has been a recipient of one of these grants in the past and should consider applying to this program again if the opportunity exists.

Grants may be used to develop or update a county agricultural strategic plan. Plans must consider how to identify priorities for farmland preservation in their communities, including preservation through the FRPP grant program. This may be accomplished by some or all of the following:

⁷ Conversation with Kendra Smith, Skagit Co. Natural Resource Lands Policy Coordinator, October 19, 2010.

⁸ Conversation with Beth Liddell, Snohomish County Public Works Department, November 2, 2010.

- Developing a local process for identifying high priority farms to conserve.
- Identifying a list of high priority farms to conserve.
- Developing priorities for types of farmland to be preserved.
- Developing a farmland preservation strategy addressing the range of tools available to landowners who want to preserve their farmland⁹.

Activities funded by this grant to Whatcom County included an assessment of the county's PDR program, including GIS analysis to measure program accomplishments against stated conservation goals; conducting public outreach for the program; and assessing the feasibility of a transfer of development rights program. A report summarizing the county's findings is located on the Whatcom County website¹⁰.

The Office of Farmland Preservation has indicated that the agency intends to request continued funding from the Recreation and Conservation Office (RCO) at the level of \$200,000 per fiscal year to sustain these programmatic grants to counties.

An overview of the grant program¹¹ and a copy of the final report to the RCO on the outcomes of the 2008 county assistance grants are available at the Office of Farmland Preservation website¹².

Provided that the RCO continues to fund this assistance program, Cascade Land Conservancy recommends that Snohomish County apply for a grant of the maximum allowed amount (\$25,000) to expand the implementation of its PDR program when the next round of grants are announced. If funded, the next grant cycle would commence in early 2012.

Administrative Recommendations

In summary of the discussion above, Cascade Land Conservancy recommends that Snohomish County:

- Consider expansions to the responsibilities of program administration to promote participation.
- Coordinate landowner outreach around state and federal funding agency schedules.
- Pursue Certified Entity status with NRCS to streamline federal funding.

⁹ Office of Farmland Preservation website, <http://ofp.scc.wa.gov/wp-content/uploads/2010/04/RCO-OFP-TA-Grant-Announcement.pdf>

¹⁰ Whatcom County PDR assessment, <http://www.whatcomcounty.us/pds/planning/pdf/purchase-development-rights-assessment20090202.pdf>

¹¹ Office of Farmland Preservation grants website, <http://ofp.scc.wa.gov/index.php/preservation-grants>

¹² Office of Farmland Preservation county assistance grants report, <http://ofp.scc.wa.gov/wp-content/uploads/2009/02/final-report-to-rco-2008-grants.pdf>

- Establish a PDR price formula to inform landowner decisions to participate and to save time and money on applicant withdrawals.
- Establish consistency in the appraisal process by identifying and retaining a corps of appraisers who can meet RCO and NRCS requirements.
- Pursue funding opportunities for program expansion through a technical assistance grant.

Geographical Extent

Introduction

The geographical extent of the PDR program area has a direct influence on the conservation of resource land in Snohomish County. Two issues related to the program's geographical extent are policy questions: How much land and what kind of land should the county seek to conserve? This section includes a range of proposals to answer these questions.

Prior analytical frameworks focusing on geographical reach are still relevant in the present land use context of Snohomish County. The county's 1989 PDR report addresses the question of program extent by weighing the considerations of cost effectiveness (the county should target land with inexpensive development rights to conserve the largest possible area) and strategic importance (the county should conserve land of the highest agricultural value)¹³. Both are valid approaches to setting conservation goals - and thereby determining the program's geographical extent - and are policy decisions to be made by the county's leadership.

Program Area Options

The analysis and range of options presented for the county's consideration includes:

- Maintaining the current program area
- Expanding the program area
- Identifying and prioritizing lands for conservation within an expanded program area

¹³ *Purchase of Development Rights (PDR) as a Means of Preserving Farmlands in Snohomish County*, Snohomish County Department of Planning and Community Development, Planning Division, and Snohomish County Agricultural Advisory Board, May 1989

Maintain current PDR program eligibility area

The current geographical extent of the PDR eligibility area is the Tualco Valley, extending south of the city of Monroe to the King County border. This area covers approximately 4,700 acres and represents about 7.5% of all designated agricultural land in Snohomish County. This area was initially chosen for the PDR program for several reasons. The use of innovative approaches to farming and diversification of agriculture-related business operations by landowners makes this area unique in the county. Farms in this valley produce a wide range of agricultural products. The Natural Resources Conservation Service, a federal agency providing funding for development right purchases, values contiguity in a program area when awarding grants for projects. Additionally, development pressure on certain properties within the last ten years highlighted the importance of creating alternative real estate options for landowners. At present, only landowners within this valley may participate in the PDR program.

Advantages of maintaining the existing PDR eligibility area include:

Measured success

The PDR program has achieved modest success in conserving land within the existing program area. Landowners have sold development rights from two properties totaling 84 acres and a small number of other landowners have applied to the program.

Contiguity

The Tualco Valley is a clearly delineated, contiguous area. Contiguity in program area is a consideration in how the NRCS awards funding to conservation projects.

Agricultural value

The Tualco Valley contains land that is well suited to high value crops and can support a wide range of agricultural products and activities.

Farm infrastructure

The presence of a growing network of infrastructure to support agriculture is a key characteristic of the existing program area. One example of this is the Qualco digester, an operation to which other farms are connected through product demand and input supply.

Disadvantages of maintaining existing PDR eligibility area include:

Limits to participation

The voluntary nature of the PDR program means that not all eligible landowners might choose to participate. Some landowners applied to the program and subsequently withdrew without completing a transaction. Other landowners have

been invited to apply and have chosen not to do so. The extent of the program area limits the potential number of participants. Once all landowners have been contacted and those willing have participated, the county must wait for uncommitted landowners to apply. Program activity will reach a standstill until landowner interest changes.

Another effect of having too few eligible participants is increased price sensitivity. For example, the two successful PDR transactions created high expectations of prices for future transactions. The per-right prices of the two completed transactions were \$90,500 and \$155,000 respectively. The county has identified at least one instance where a landowner applied to the program and, having received an appraisal value for less than what had already been paid, withdrew his application.

Limits to conservation

As discussed, the current program is restricted to the Tualco Valley. The localized nature of the current eligibility area limits the county's ability to conserve designated agricultural land on a broader scale.

Floodway restrictions

The majority of the land within the PDR program eligibility area is located within the floodway. Such land is already protected from development. Restrictions against development in the floodway are defined in SCC 30.65.230. This regulation is reflected in the appraised value of conservation easements. For example, the appraised value of a conservation easement on land located within the floodway was more than three times lower than that of a nearby property in the eligibility area located outside the floodway.

Because the threat of non-agricultural development on land in the floodway is greatly restricted, it has fewer of the conversion pressures facing lands outside of the floodway; agricultural land outside the floodway—much of which is outside the existing PDR program area—is arguably at greater risk of conversion and may reflect a higher priority for PDR conservation efforts. Being in the floodway, however, is not a guarantee of protection. During interviews CLC learned of instances where creative engineering solutions have been used to enable residential development in areas with such restrictions.

Expansion of eligibility area

Through outreach to landowners Cascade Land Conservancy identified a widely-held desire within the agricultural community for the county to increase the size of the PDR program eligibility area (see Public Opinion on PDR Program and Financing section). The choice to expand the geographical extent of the eligibility area is a policy decision. The following discussion of advantages and disadvantages will help to inform this decision.

Advantages of expanding eligibility area include:

Increases number of potential participants and program activity

As identified in the analysis of the existing eligibility area, limitations include the relatively small number of potential participants and high price sensitivity. The county can address both of these issues by opening the program to a greater number of landowners. Cascade Land Conservancy has identified a number of landowners outside of the current eligibility area who expressed willingness to sell their development rights to the county if they could. While some of these landowners' properties may meet the county's criteria for designation as TDR sending areas (under SCC 30.35B), the demand for their development rights on the private market may not match the supply.

The county can also address the issue of program inactivity through expanding the eligibility area. As more landowners become eligible to participate, the number of landowners who choose to apply will increase. As the county closes more transactions it generates program activity with successful outcomes, which may in turn prompt more applications. Landowners who have been indecisive about applying will see the gains realized by participating landowners and may choose to apply.

Increasing the number of potential participants and overall participation may also reduce price sensitivity. Based on anecdotal information, CLC asserts the two PDR sales in the Tualco Valley have skewed price expectations in the market, particularly amongst landowners with land of lower appraised value than the prior sales. Expanding eligibility to other areas is likely to reduce the price sensitivity currently associated with the program.

Increases potential amount of conservation

The total land area the current PDR program could possibly conserve is about 4,700 acres or approximately 7.5% of designated agricultural land in Snohomish County, assuming 100% participation. This leaves about 21,000 acres of designated agricultural land outside the floodway and TDR sending area potentially exposed to development pressure. Expanding the eligibility area to include more of this land will give those landowners another real estate option, keeping those farms in agricultural production.

Advances the goals of the Sustainable Lands Strategy

Snohomish County commissioned the Sustainable Lands Strategy (SLS) to identify specific areas that would be suited to habitat and hydrologic restoration projects and to propose strategies to offset the effects of restricting other uses of those lands. At the time of this report's completion, the SLS has completed Phase I of its process, agreeing on a framework for further decisions advancing both farm protection and habitat restoration. One proposal emerging from Phase I was to use

the PDR program as a means to conserve farmland as an offset for restoration projects. The group's recommendation was to set a goal of conserving 2,000 acres of agricultural land through PDR and TDR.

At present the area in the Tualco Valley whose owners have expressed willingness to participate in the program falls short of the target set by the Sustainable Lands Strategy. The county could facilitate the achievement of this conservation target by expanding the PDR eligibility area.

Disadvantages of expanding eligibility area include:

May result in a fragmented pattern of conservation

Prior PDR analyses have examined the distribution of conserved land in Snohomish County¹⁴. Findings of these studies, still relevant today, include the idea that a "critical mass" of farmland is necessary to sustain the agricultural economy of the county. One potential drawback of expanding the eligibility area is a resulting fragmentation of the farming landscape as some properties are permanently conserved and others are developed. If incompatible uses increase across the landscape, the critical mass of farmland will be eroded.

One possible outcome is the retention of conserved islands of farmland surrounded by development. The owners of conserved lands may find that their land is no longer viable for agriculture and difficult to sell with its permanent development restrictions. Other conservation programs have faced this question as well. Kittitas County, for example, adopted a "change of circumstances" provision in its TDR easements allowing landowners to restore development rights to their land if they can demonstrate adverse impacts to resource use by surrounding land use changes.

Increased administrative burden

Expanding the eligibility area should increase PDR program activity. Processing more applications will increase the administrative burden to program staff. As more transactions close, the county will also be responsible for monitoring and enforcing easements on a greater number of properties that are more geographically dispersed. Conducting outreach to more landowners across a larger area will require increased staff resources.

¹⁴ *Purchase of Development Rights (PDR) as a Means of Preserving Farmlands in Snohomish County*, Snohomish County Department of Planning and Community Development, Planning Division, and Snohomish County Agricultural Advisory Board, May 1989, *Feasibility Assessment of TDR and/or PDR Programs to Conserve Resource Lands in Snohomish County, Washington*, prepared for Snohomish County by Redman/Johnston Associates, Ltd., November 1997.

Identifying and prioritizing lands for conservation within an expanded program area

If Snohomish County chooses to expand the PDR program eligibility area, the county must decide which lands to include and how to prioritize their conservation. The ability of the county to increase the amount of conservation will be partly determined by the staff and financial resources available. These issues are addressed in the following section, Funding Requirements and Opportunities.

Cascade Land Conservancy identified a number of factors to inform the decisions of how much land to include and how to prioritize it. These include:

- Development pressure
- Agricultural value
- Cost effectiveness
- Existing protections
- Compatibility with TDR
- Habitat restoration

Development pressure

As the population of the central Puget Sound region continues to climb, growth pressure on the county's buildable lands will increase. Puget Sound Regional Council projects that Snohomish County's population will grow by 446,000 residents by 2040, including an increase of 46,000 residents in rural areas¹⁵. Some developers active in the county have expressed a continued interest in rural residential development into the future. Recognizing this potential change to the rural landscape, Cascade Land Conservancy proposes that development pressure should be an important factor in determining the geographical extent of the PDR program area. Areas subject to growth pressure include designated agricultural lands: the Stilliguamish Valley, the Snohomish Valley, upland agricultural areas, and areas proximal to major transportation corridors.

Agricultural value

In many cases, the areas facing high development pressure are also those lands of highest agricultural value. The fertile valleys of the Stilliguamish and Snohomish Rivers contain many of the larger commercial farms in the county that are responsible for a large proportion of the county's agricultural output¹⁶. The designated agricultural areas form the heart of the county's farming land base and

¹⁵ Puget Sound Regional Council VISION 2040, Part II: Regional Growth Strategy, available at http://www.psrc.org/assets/1737/Part_II_Regional_Growth_Strategy.pdf

¹⁶ *A Community Vision for Sustainable Agriculture in Snohomish County*, SAEDAT, prepared for the Snohomish County Agricultural Sustainability Project by Nyhus Communications, LLC; MAKERS Architecture & Urban Design; and Community Attributes International, July 2009.

feedback from the agricultural community has emphasized the need to expand the PDR program area to include all designated agricultural land (see Public Opinion on PDR Program and Financing section).

Cost effectiveness

As currently structured, the Snohomish County PDR program has sought to maximize the cost effectiveness of the limited financial resources at its disposal. Using matching funding sources from state and federal agencies has been one way the county has achieved conservation at a minimal cost to the county. Targeting land that is zoned for lower density will also advance this goal. Designated agricultural land has a range of underlying zonings, and focusing conservation efforts on those properties at the lowest-density zoning will result in greater area conserved per development right purchased. Land zoned at lower density is often also land of high agricultural value.

Existing protections

Snohomish County currently has a range of regulations in place that are intended to limit the type and intensity of uses on agricultural land. Two of these include the Density Fringe classification and restrictions on residential development in the floodway. The existing regulatory regime is a factor to consider in determining the geographic extent of the PDR program eligibility area.

Density Fringe is a classification that covers most agricultural land in the Snohomish River valley west of Monroe and in the Stilliguamish Valley west of I-5. It is intended to limit the type of development that occurs on agricultural land. It specifies that new development must be directly related to agricultural activity, such as barns, storage facilities, and farm houses. While in theory this classification should serve to restrict residential development on agricultural land, in practice this is not always the case. Through outreach to landowners CLC has gathered anecdotal evidence of individuals who have circumvented the intent of this land use restriction and pursued non-farm residential development on properties within the Density Fringe. If this regulation does not serve as an effective deterrent to residential conversion of agricultural land, expanding the PDR eligibility area to include the Density Fringe will give landowners in these areas an additional real estate option.

Floodway development restrictions do provide a high level of protection to agricultural land. Section 30.65.230 of the Snohomish County Code explicitly prohibits residential development on land within the floodway. Other practical deterrents also exist to limit residential floodway development, such as the availability of flood insurance. The effectiveness of these measures may restrict residential development; however, they do not limit conversion to other non-agricultural uses, over which some in the farming community have voiced concern. Furthermore, regulations may change over time, affecting the risk of development.

Compatibility with TDR

Snohomish County GPP policy LU 14.B.2 states “The PDR program shall be coordinated with, and be designed to complement, the TDR program.” A consideration of these programs’ strengths in concert will help inform the appropriate geographical extent of each. As discussed in this report’s introduction, these two programs share similar goals but pursue different approaches to achieve them.

The PDR program, being publicly funded, can strategically target lands with high public benefits and under high development pressure for conservation. The TDR program, harnessing the private market, can be effective in conserving resource lands that extend beyond the focus of the PDR program, such as forest land and non-designated farm land, as well as designated agricultural land. One way to maximize the effectiveness of both programs is for each to target conservation of lands best suited to the tool and identify areas in which use of both may be increase opportunities for landowners to participate.

Habitat restoration

Cascade Land Conservancy identified a broad variety of opinions among stakeholders on how the PDR program should address the issue of habitat restoration. These ranged from “not at all” to “the program should be coordinated with restoration efforts.” Cascade Land Conservancy is sensitive to the subject of restoration in Snohomish County and recognizes that it is a topic whose breadth and depth exceed the scope of this PDR study. These two approaches to conservation are related; restoration and farmland protection should be considered in the context of one another.

The Sustainable Lands Strategy (SLS) has also explored PDR as a means to advance its goal of a “Net gain in agricultural, tribal, cultural, and ecological productivity through a framework that drives harmonized, sustainable land & resource decisions¹⁷.” The work of this group includes identifying ways that habitat restoration and farmland protection can both be advanced. Cascade Land Conservancy has been involved in the SLS process and has endeavored to propose recommendations for the PDR program that are consistent with the findings and recommendations being developed by the Sustainable Lands Strategy group. The SLS process is ongoing at the completion of this report and Cascade Land Conservancy suggests that the findings of the SLS should guide the county’s prioritization of restoration in the PDR program framework.

¹⁷ Sustainable Lands Strategy Summary of Goals and Objectives, July 19, 2010
http://www.co.snohomish.wa.us/documents/County_Services/FocusOnFarming/SustainLands/goals0710.pdf

Land Prioritization Recommendations

Whether Snohomish County is able and willing to expand the program depends on available resource and other county objectives. Accordingly, CLC provides recommendations for different levels of program commitment in the section of this report exploring PDR eligibility area expansion scenarios.

In consideration of the preceding factors, Cascade Land Conservancy proposes the following criteria by which Snohomish County may prioritize land for conservation in a revised PDR program:

1. Development pressure
2. Existing protections
3. Agricultural value
4. Cost effectiveness

Development pressure

Land subject to development pressure is at greatest risk of eroding the critical mass of the land base needed to sustain Snohomish County's agricultural economy. Because of their desirability for development these lands are appropriate targets for the strategic conservation a PDR program can accomplish. Land at risk of development is also a high priority for conservation by the state and federal funding agencies.

Existing protections

Does land in the eligibility area have existing forms of protection? Land in the floodway, for instance, has certain regulatory restrictions to development. While such land could receive a lower prioritization for project selection it should not be excluded. Conservation of land in the floodway would create other public benefits and the cost of conserving it will reflect its limited development potential. Furthermore, interviews with some landowners have shown that it is possible to develop floodway land in certain instances.

Agricultural value

The county may choose to place higher conservation priorities on certain kinds of agricultural land. Such criteria are already in place and are reflected in the scoring systems for the RCO and NRCS funding mechanisms, and properties can be ranked according to soil type, presence of farm infrastructure, and type of agricultural activity.

Cost effectiveness

In both PDR and TDR programs, the price paid per development right reflects the value of a property's development potential. For a given area, land zoned at a higher density will have more development potential than land zoned at a lower density. Consequently, all else being equal, land with higher density zoning will cost more to conserve than land with lower density zoning. The Snohomish County agricultural designation encompasses lands zoned both Ag-10 (one residential unit per ten acres) and R-5 (one residential unit per five acres). For a given amount of money the county will be able to conserve more designated agricultural land that is zoned Ag-10 than it will R-5.

Funding Sources

Snohomish County has a number of sources from which to fund its PDR program. These include:

- Matching grants from state and federal agencies
- Conservation Futures tax revenue
- Non-levy revenue
- Development fees
- Bonds

The county may use these funding sources in different combinations to achieve varying levels of conservation. In this section Cascade Land Conservancy analyzes how these funding sources are interrelated and what options the county might pursue to increase the amount of funding available for the PDR program.

Current sources

Historically the Snohomish County PDR program has pursued three types of funding: Conservation Futures Tax revenue, state grants, and federal grants. The county typically uses Conservation Futures Tax revenue to leverage matching funds from the state Recreation and Conservation Office (RCO) and federal Natural Resources Conservation Service (NRCS) requirements programs.

Advantages

Combining grant funding programs is the most cost effective option for the county. Using Conservation Futures to leverage other funding sources extends the county's purchasing power.

Disadvantages

The timing, uncertainty of funding availability, and competition for state and federal funds by many applicants limits the amount of conservation that this approach can achieve. Furthermore, both the RCO and NRCS programs require that development rights be extinguished from conserved properties. This condition constrains the county's flexibility in how the purchased rights may be used, specifically that the rights must be extinguished and may not be transferred or re-sold..

Conservation Futures allocation for PDR

At present Snohomish County funds a range of programs with revenue from its Conservation Futures tax. Examples of expenditures include parks funding, grants to cities, and grants to private entities for conservation projects. One possible way to expand funding for the PDR program would be to increase its allocation of Conservation Futures revenue. Historical and projected Conservation Futures Tax revenue are shown in Appendix C. Revenue collected has generally increased over time and this trend is projected to continue.

The use of Conservation Futures funds is decided by the Snohomish County Council upon recommendation by the Conservation Futures Advisory Board. This board includes members of different branches of county government and citizens. Increasing the levy rate of the tax is not an option; the county already collects this revenue at the maximum allowable rate of 5.25%¹⁸.

Advantages

Allocating a higher portion of Conservation Futures revenue for PDR will increase the funding available to the program for matching state and federal funding sources. It will also demonstrate a financial commitment on the part of the county to farmland conservation. This would not be an unprecedented decision in Washington: Skagit County allocates 100% of its Conservation Futures revenue to its farmland conservation program.

¹⁸ Conversation with Conservation Futures manager, September 30, 2010

Disadvantages

A re-allocation of Conservation Futures revenue would introduce opportunity costs, adversely affecting those programs whose share of funding would decrease.

Non-levy revenues

Snohomish County also collects non-levy revenues that could potentially be allocated to the PDR program. Detailed in Appendix C, these include investment interest, lease-holding tax, timber revenues, and miscellaneous funds.

Advantages

These funds provide a predictable income stream to the county.

Disadvantages

The value of these funding sources is not very large; in 2009 the combined revenue collected from these sources totaled about \$250,000. With the exception of dedicated revenues, directing these funds to the PDR program could adversely affect other programs.

Development fees

In May, 2010 Snohomish County Council voted to adopt updates to the county's Urban Centers Code (30.34A SCC). This code update included density bonus provisions under which developers may gain density beyond base zoning for projects in Urban Centers by pursuing one or more actions such as purchasing TDR credits, paying a development fee, or including certain features in the building design. The development fee, set at \$21 per square foot of bonus floor area, is paid to the county and may be used to fund public purchases of development rights.

Advantages

This funding source is dedicated solely for PDR and has no competing interests. It is paid by private developers and is not a tax.

Disadvantages

The development fee is an unpredictable source of funding. Revenue generated by this fee depends on demand for development beyond base density in the Urban Centers and relies on developers selecting this option from a range of choices for achieving additional density. The cost of the fee may be higher than one or more other options and consequently passed over in favor of a less expensive choice.

Bonds

Snohomish County is currently repaying a \$24 million, 20-year bond issued in 1997. The debt on this bond is being serviced by Conservation Futures tax revenue. The county may

choose to issue new debt when this bond expires in 2017. Prior studies have examined the use of bonds as a funding mechanism for the PDR program¹⁹. Bonds may be issued by County Council decision (councilmanic) or by popular vote (general obligation). For the purposes of funding the PDR program, Cascade Land Conservancy suggests the county explore public opinion around a general obligation bond. This debt service on this type of bond would not come at the expense of other county programs and public support for a general obligation bond would substantiate the value of conserving the county's farmland.

Cascade Land Conservancy evaluated Snohomish County's bonding capacity. A detailed table showing a range of revenues and property tax costs is shown in Appendix E. Table 4 highlights a selection of values from this appendix.

Table 4: Selection of bond revenue and cost scenarios²⁰

Bond Value (millions)	Duration (years)	Interest Rate	Average cost to \$150K home	Average cost to \$250K home	Average cost to \$350K home
\$30	20	4.5%	\$3.39	\$5.66	\$7.92
\$75	20	4.5%	\$8.49	\$14.15	\$19.80
\$30	20	5%	\$3.54	\$5.91	\$8.27
\$75	20	5%	\$8.86	\$14.76	\$20.67
\$30	30	4.5%	\$2.71	\$4.52	\$6.33
\$75	30	4.5%	\$6.78	\$11.30	\$15.81

Advantages

Funding the PDR program through bonds has several important advantages. The county can raise substantially more money for the program than is possible through any other funding source identified. This funding source would be highly predictable and the county would have sole discretion over the use of the funds. By generating its own funding, the county would not be subject to the conditions imposed by the

¹⁹ *Purchase of Development Rights (PDR) as a Means of Preserving Farmlands in Snohomish County*, Snohomish County Department of Planning and Community Development, Planning Division, and Snohomish County Agricultural Advisory Board, May 1989

²⁰ Scenarios use 2009 Snohomish County assessor data.

RCO and NRCS on how purchased development rights must be used. Independently funding the PDR program would allow the county to purchase development rights, bank them, and make them available for resale through the TDR program. The combination of the potential scale of conservation and flexibility in pursuing it would give the county powerful tools to achieve extensive farmland conservation through the PDR program.

Disadvantages

Issuing new debt is risky and in the case of general obligation bonds it must be approved by a majority of voters. It is difficult to predict what public opinion will be on this subject but the county can attempt to measure it through a survey.

Funding Recommendations

Whether Snohomish County is able and willing to expand its PDR funding depends greatly on available resource and other county objectives. Accordingly, CLC provides funding recommendations for different commitment levels detailed in the section exploring PDR eligibility area expansion scenarios.

It is important to note that the origin of program funding sources makes a substantial difference in how much flexibility Snohomish County has in shaping the conservation outcomes of the PDR program. The easement requirements of state and federal grant programs include restrictions that both limit the owner's uses of the land and the way in which the county must treat the purchased development potential. If Snohomish County funded purchases through a bond it would have considerably greater latitude in defining the terms of the program's easement. As discussed in the preceding analysis of bonding, not only would the county have the option to retain ownership of purchased development rights for resale, but it would be able to tailor easement language to match its conservation goals and address landowner concerns. The content of the easement is an important detail to the agricultural community. The section titled "Public Opinion on PDR Program and Financing" includes a discussion of how landowners perceive the easement requirements stipulated by the state and federal grant programs. Cascade Land Conservancy recommends that Snohomish County weigh the conditions attached to different funding sources as one factor in how to finance acquisitions.

Another issue related to funding sources is the question of "what is public money buying through the PDR program?" The answer depends on what physical properties constrain the land being protected and the source of the funding. Land that is in the floodway, for example, has limited development potential. In this situation, the PDR program is buying a conservation easement. Conservation easements used through the state (RCO) and federal (NRCS) grant programs include terms restricting non-agricultural use. In this situation, public money is buying the guarantee that a particular property will be permanently protected as farmland. One area of criticism that CLC has heard from landowners about

this approach is that it is an inefficient use of public money to protect land that can't otherwise be developed. Other stakeholders have responded that there is substantial public benefit to placing conservation easements on land with limited development potential because development is not the only conversion possibility facing agricultural land.

Land with development potential presents a different situation. A property in the floodway fringe, for example, might have development potential. If Snohomish County uses its own funding source (bonding, e.g.), it can remove the development potential from the property through a conservation easement and purchase development rights to resell. In this situation, public money is



accomplishing two things: it is permanently protecting farmland and it is creating the opportunity to recoup its investment on the transfer of development rights market. The distinction between this scenario and a transfer of development rights program is two-fold. First, the development rights are purchased using public money. Second, the purchase price is established through an appraisal; it is not open to negotiation the way it would be in a TDR transaction.

While the existing PDR program approaches acquisitions in the context of purchasing conservation easements that restrict non-agricultural uses, expansions to the scale of the program would also involve a broader perspective on how the county uses PDR. For example, although some agricultural land already has development restrictions, anecdotal evidence suggests that enterprising landowners who wish to pursue residential development on such land have found ways to do so. Development regulations may not provide ironclad protection, nor are they necessarily permanent. Furthermore, expanding the PDR eligibility area and allocating county financing for the program would give the county more options, such as that of selling publicly purchased rights and revolving the investment.

III. Possible PDR Eligibility Area Expansion Scenarios

Snohomish County has a range of potential options for moving ahead with its PDR program. In the following pages, Cascade Land Conservancy highlights three possible PDR program expansion scenarios for the county's consideration. Each scenario reflects different program area sizes, conservation priorities, funding sources, and amounts of county involvement. These scenarios are:

1. Low commitment
2. Moderate commitment
3. High commitment

1. Low Commitment

Program area size:

- Retain current eligibility area, Tualco Valley, approximately 4,700 acres.

Conservation priorities:

- Prioritize Ag-10 land outside of the floodway which is most vulnerable to development conversion. This includes land identified as floodway fringe. Land in the floodway would be a second priority.

Funding level:

- Allocate Conservation Futures revenues as matching funds for grants subject to the recommendations of the CFT Advisory Board.
- Apply for matching grants from the RCO and NRCS.
- Use Urban Centers density fee proceeds.
- Allocate non-levy revenue sources identified in Appendix D for PDR program.

Amount of county involvement:

- Expand the responsibilities of program administration to promote participation through increased marketing, outreach, and education, including coordinating landowner outreach around state and federal funding agency schedules.
- Pursue Certified Entity status with NRCS to streamline funding process.
- Establish a PDR price formula to inform landowner decisions to participate and to save time and money on applicant withdrawals.
- Establish consistency in the appraisal process by identifying and retaining a corps of appraisers who can meet RCO and NRCS requirements.

- Pursue funding opportunities for program expansion through a technical assistance grant.

2. Moderate Commitment

Program area size:

- Expand eligibility area to include all designated agricultural land.

Conservation priorities:

- Highest: Agricultural land outside floodway zoned Ag-10 (approximately 21,000 acres). This includes land identified as Floodway Fringe and upland Ag-10.
- Lower: Agricultural land in floodway zoned Ag-10 (approximately 41,000 acres). This includes land identified as Density Fringe and floodway.
- Lowest: Designated agricultural land with other zoning (approximately 4,000 acres). This includes land identified as Upland Commercial and Local Commercial farmland.

Please refer to Appendix F, Map of Proposed PDR Program Conservation Priorities for a visual reference.

Funding level:

- Allocate increased amount of CFT revenue.
- Apply for matching grants from the RCO and NRCS.
- Use Urban Centers density fee proceeds.
- Allocate non-levy revenue sources identified in Appendix D for PDR program.

Amount of county involvement:

Same as Low Commitment option, plus:

- Selectively use Conservation Futures revenue to purchase development rights of strategic importance, hold these rights for possible future sale through TDR program.
- Increase county budget allocation for ongoing administration and implementation of expanded PDR program.

3. High Commitment

Program area size:

- Expand eligibility area to include all designated agricultural land.

Conservation priorities:

- Highest: Agricultural land outside floodway zoned Ag-10 (approximately 21,000 acres). This includes land identified as Floodway Fringe and upland Ag-10.
- Lower: Agricultural land in floodway zoned Ag-10 (approximately 41,000 acres). This includes land identified as Density Fringe and floodway.
- Lowest: Designated agricultural land with other zoning (approximately 4,000 acres). This includes land identified as Upland Commercial and Local Commercial farmland.

Please refer to Appendix F, Map of Proposed PDR Program Conservation Priorities for a visual reference.

Funding level:

- Allocate increased amount of CFT revenue.
- Apply for matching grants from the RCO and NRCS.
- Use Urban Centers density fee proceeds.
- Allocate non-levy revenue sources identified in Appendix D for PDR program.
- Issue general obligation bond in 2017.

Amount of county involvement:

Same as Medium Commitment option, plus:

- Implement PDR reverse auction to expand capacity for completing transactions.

This High Commitment scenario merits further examination, as it proposes a new element for the PDR program: a PDR Reverse Auction. Already familiar to the agricultural community as a means for selling commodities, a reverse auction would address a number of limitations facing the current PDR program. These include the speed at which purchases are completed and the volume of participation. A reverse auction for development rights would be structured as follows:

- Following a period of outreach and marketing, Snohomish County announces an application window for landowners willing to sell their development rights through the PDR program. Auctions may be held in cycles, such as once every two years, and will have a spending limit determined by the county for each cycle.

- Landowners submit bids to the county for the purchase price they are willing to accept for their development rights. Submitting a bid would obligate the landowner to accept the proposed price contingent upon appraisal.
- Landowners may choose to submit all or some of their development rights for purchase.
- Snohomish County ranks the applications according to price and how properties meet conservation priorities.
- The county conducts appraisals to verify the value of development rights on properties in order of increasing bid value on a per-right basis. Price paid cannot exceed appraised values.
- The county closes the purchase of development rights as with any other PDR transaction.
- As funding allows, purchased rights are held in a TDR bank.
- Snohomish County works through the list of bids, purchasing development rights until either of the following happens:
 - The county expends all funding committed to that auction cycle.
 - The county closes on purchases from all applicants whose bids are at or below appraised value.
- Any funds not spent on development rights during an auction cycle may be allocated to future auctions.

Advantages

The PDR reverse auction would create a number of benefits for the county, including:

- Using a market mechanism already familiar to landowners.
- Creating of a predictable and recurring purchase process that demonstrates the county's commitment to farmland conservation into the future.
- Expanding the amount of high priority land conserved by the PDR program.
- Increasing the capacity of the PDR program to complete purchases.
- Decreasing the length of the PDR transaction process.
- Introducing a competitive process into the PDR program.
- Allowing for the future resale of purchased development rights through a TDR bank.

Disadvantages

Challenges to successfully designing and implementing a reverse PDR auction include:

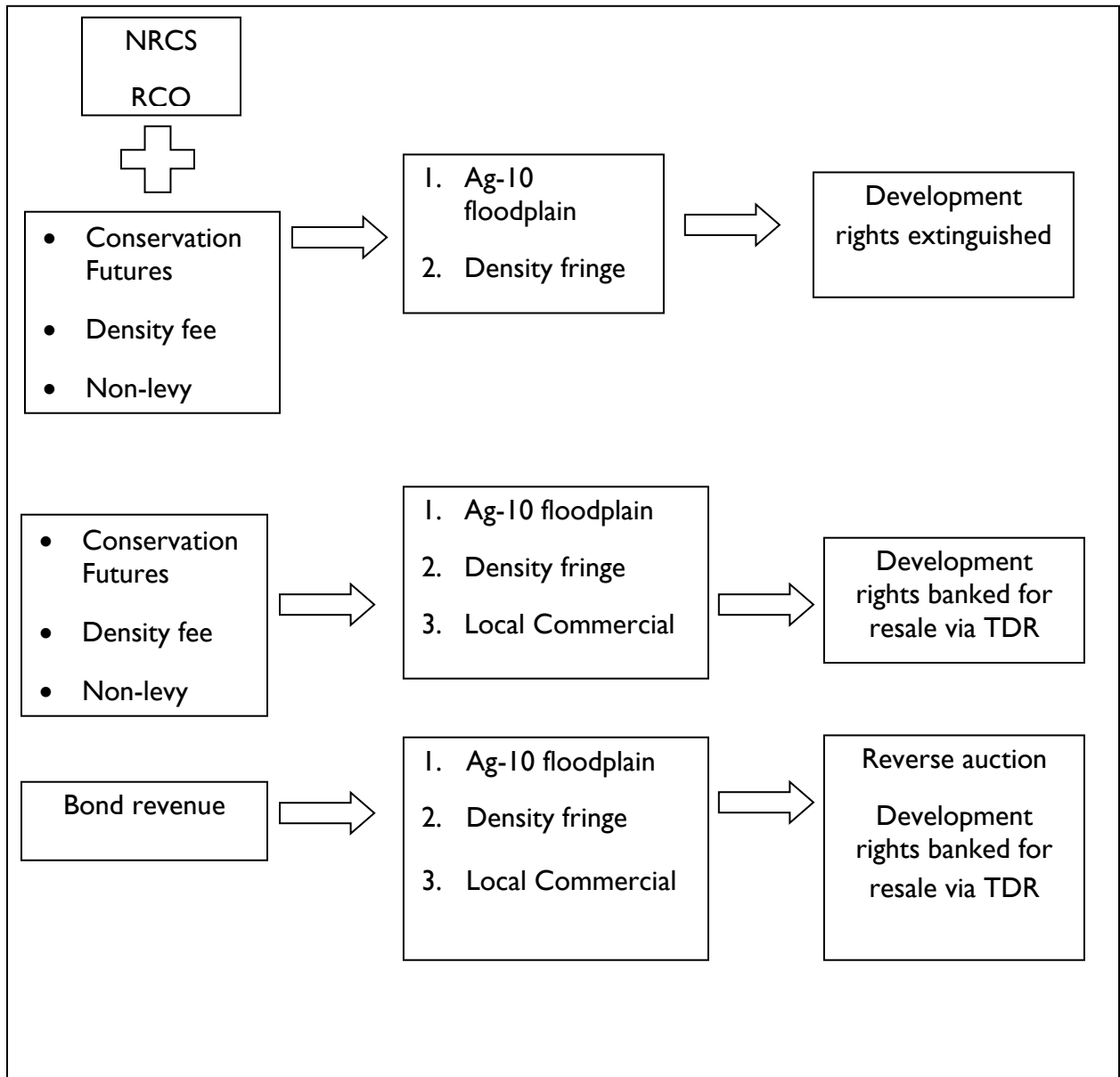
- Administrative complexity, including conducting a potentially large number of appraisals.
- Landowners whose bids are not accepted may dispute the appraisal.
- Uncertainty in landowner participation.

- Landowners without development potential, such as those in the floodway, would be ineligible to participate.

Support for the idea of a PDR reverse auction was high among landowners CLC interviewed. If implemented, the reverse auction would be one way in which landowners could participate in the PDR program. The traditional avenue of applying to the program would remain an option. This would be attractive to landowners whose timing interests may not coincide with the auction.

Holding purchased development rights in a bank is an approach used by other PDR programs, notably King County's. This allows the county to sell the rights in the future on the private market, revolving the funding spent on the rights and making that money available for future purchases. An analysis of TDR bank options is included in the second half of this report.

Figure 1: Reverse Auction Concept Flowchart



IV. Public Opinion on PDR Program and Financing

Updates to the PDR program will be most effective if they address the needs of the program's constituents. Cascade Land Conservancy interviewed a number of landowners in Snohomish County to learn about perceptions of the current PDR program and to gather input for improvements. These stakeholders encompassed a broad geographical area, were engaged in a wide range of agricultural activities, and owned properties of varying sizes. Cascade Land Conservancy also approached individuals and groups representative of the broader agricultural community. To gain a diversity of feedback, CLC conducted interviews with landowners both inside and outside of the program eligibility area as well as other stakeholder groups whose interests may be affected by changes to the PDR program. Those individuals and organizations CLC interviewed are listed in the acknowledgements.

Over the course of these conversations a few themes emerged. Generally speaking, issues raised by landowners included the extent of the program area, skepticism of the county's commitment to farmland conservation, frustrations with elements of the PDR program process, and uncertainty about financial expectations. Tribal input is also essential to consider as the tribes in Snohomish County have a prominent role in a range of conservation efforts and have interests that may be affected by county land use policy.

Program area

A near unanimous view expressed by members of the agricultural community with whom CLC met was that the county should expand the PDR program eligibility area. Most landowners thought that all designated agricultural land should be included; some were of the opinion that only land zoned Ag-10 should be included, and most agreed that land under conversion pressure with viable development potential is important to protect. Many landowners stated that if the PDR program was to be county-wide the eligibility area should reflect a wider geography. While CLC noted a broad consensus among the agricultural community supporting the idea of a PDR program area expansion, there was no clear agreement on the details of how this might work. CLC heard support for a variety of approaches, including prioritizing all land equally, prioritizing land according to different criteria (including those recommended in this report), and phasing program area expansion.



Skepticism of county

Several landowners expressed the opinion that the county does not thoroughly understand the issues affecting landowners, specifically that county officials and agencies do not appreciate the complexities of owning and operating a farm. Furthermore, some landowners are doubtful that the PDR program is accomplishing its conservation goals. All wanted to see an increased use of the program. Additionally, there was skepticism among some landowners that the county was exerting sustained efforts to make the program a success. These individuals cited a lack of communication from the county about how the program was being pursued and how this affected landowner interests.

Frustration with PDR program elements

Landowners identified a number of specific elements of the PDR program process which caused them frustration, either as current or prospective participants. Most prominent among these was the duration of the purchase process. A common opinion was that timing is an important factor influencing participation. If landowners could expect payment within six or eight months of applying then they would be willing to participate. The demonstrated timeframe of prior transactions, however, took up to two years to close. This length of time discourages those potential participants who want payment sooner.

The complexity of the PDR process is another source of frustration. The degree to which landowners understand the details of the PDR program varies widely, but several individuals expressed the view that the complexity of the process was a deterrent to participation. Some landowners also voiced concerns about the complexity and constraints of the federal easements that would be placed on their properties. Understanding of these restrictions is also varied. Finally, many landowners whose property was located outside the PDR program area were frustrated that they could not participate. These individuals were among those who supported the idea of expanding the eligibility area.

Uncertainty about financial expectations

The limited number of completed transactions has contributed to uncertainty about whether potential landowners will choose to participate and how much of a financial return they can expect for selling their development rights or a conservation easement. The precedents established by prior transactions have influenced these expectations. Specifically, the prices paid for development rights in the first two transactions led other landowners to believe that they would receive similar values for their rights. As the subsequent unsuccessful negotiations with interested landowners have demonstrated, there is a minimum price that participants are willing to accept and the appraisals have not

reflected these expectations. Some landowners question the appraisal process and are doubtful that the subjective nature of determining the value of development rights and conservation easements will deliver consistent and predictable financial returns.

Looking to the longer term, some landowners expressed the opinion that expanding the PDR eligibility area will create the benefit of giving more landowners the opportunity to participate. Even if landowners are not currently prepared to sell their development rights, there is value to knowing that the option exists in the future. Furthermore, several landowners believe that adding more land to eligibility area will have the effect of making development within the eligibility area less desirable, even if this is only a perception.

Another issue landowners identified is the uncertainty of funding availability for purchasing their rights. The amount of money allocated to matching grant programs may fluctuate over time, affecting funding opportunities for the PDR program. Because of the way the county has structured the financing of prior purchases, there is a perception among some landowners that the county is not deeply committed to large scale conservation of agricultural land. This was also expressed as the idea that if the county is serious about conserving farms then it should generate the funding to do so. Finally, as a means to address the unpredictability of price expectations, landowners expressed uniform support for the concept of a reverse auction, which is addressed in the Findings and Recommendations section.

Tribal interests

Issues raised by tribal representatives reflect a desire to balance opportunities for both agriculture and habitat restoration. Tribes have worked in conjunction with the farming community on conservation projects in the past and seek to continue this relationship. One concern is that lands conserved through the PDR program may limit tribes' ability to pursue restoration efforts. A proposal addressing this concern is to seek greater coordination between two state agencies involved in farmland conservation and habitat restoration, the RCO and the Salmon Recovery Fund. CLC's interviews and anecdotal evidence from other discussions suggests tribes often support the idea of conserving upland resource land; however, conservation efforts must be considered in light of other priorities, such as habitat. This group of issues is being explored in greater depth by the Sustainable Lands Strategy and changes to the PDR program should be evaluated in light of this body's findings.

V. Inventory of Matching Funds Available

There are two primary sources of matching funds available to Snohomish County for use in the PDR program. These are:

1. Washington State Recreation and Conservation Office's (RCO) Washington Wildlife Recreation Program Farmland Preservation Grant program, and
2. Natural Resources Conservation Service's (NRCS) Farm and Ranch Lands Protection Program (FRPP).

Snohomish County has successfully used these programs in the past to fund PDR transactions and should continue to leverage these sources in future purchases. An overview of the opportunities presented by each program follows.

RCO Farmland Preservation Grant

This grant provides funding to local governments and nonprofit nature conservancy organizations to purchase development rights from farms in order to preserve those lands from future development²¹. Local entities apply for a grant to purchase development rights from a parcel based on the appraised value of the easement²². On average, \$6 million is available to fund the program biannually²³. While there is no minimum or maximum grant amount, WWRP funds may not exceed 50% of the project's total costs; the applicant must provide the remainder and this may include in-kind matches and funding from other grant sources. Grants are not paid in advance but as reimbursement for project expenses. There is no limit to the number of applications any single entity may submit in one funding cycle. Due to the constraints of the program, however, each project is considered individually so there is no option of aggregating applications.

NRCS Farm and Ranch Land Protection Program

The Farm and Ranch Land Protection Program (FRPP) provides matching funds to help purchase development rights to keep productive farm and ranchland in agricultural uses.

²¹ Washington State Recreation and Conservation Office, Farmland Preservation Grants, available at <http://www.rco.wa.gov/grants/farmland.shtml>

²² Washington State Recreation and Conservation Office, *Manual 10f*, available at http://www.rco.wa.gov/documents/manuals&forms/Manual_10f.pdf

²³ Washington State Recreation and Conservation Office, Farmland Preservation Grants, available at <http://www.rco.wa.gov/grants/farmland.shtml>

Working through existing programs, USDA partners with State, tribal, or local governments and non-governmental organizations to acquire conservation easements or other interests in land from landowners. To qualify, farmland must: be part of a pending offer from a State, tribe, or local farmland protection program; be privately owned; have a conservation plan for highly erodible land; be large enough to sustain agricultural production; be accessible to markets for what the land produces; have adequate infrastructure and agricultural support services; and have surrounding parcels of land that can support long-term agricultural production²⁴.

The funding cycle of the FRPP is different from the RCO program. The FRPP has an open application window in January during which Snohomish County may submit proposals for projects to be funded. The NRCS evaluates the proposals over the following month, and then recommends which projects should be funded. Following this step the agency allocates funding for those projects winning approval. Later in the year more funding may become available subject to how many projects were funded in other states. It is possible that two opportunities for funding will be available in a given year.

The amount of funding available to Washington through this program varies from one year to the next. In 2009 and 2010 approximately \$6 million was available in each year, however in prior years the program had between \$1 million and \$2 million to disburse. One factor influencing the amount of funding available to state offices of the NRCS (and thereby to Snohomish County) is the presence of other programs that also fund farmland protection. NRCS is more likely to allocate higher dollar amounts to program areas with a strong local commitment to protecting agricultural land. In this way, the RCO program and Snohomish County's own Conservation Futures fund can serve to attract greater federal agency funding.

Other funding sources

Washington Department of Natural Resources Forest Legacy Program

The Forest Legacy Program is a federal grant program to protect forestlands from conversion to non-forest uses. In Washington State, the program is guided by the U.S. Forest Service and carried out through the state Department of Natural Resources (DNR). Through the program, federal grants pay for conservation easements and other mechanisms that prevent development. The Forest Legacy Program provides for both traditional forest uses and the protection of water, cultural resources, fish and wildlife²⁵.

²⁴ Natural Resources Conservation Service, Farm and Ranch Lands Protection Program
<http://www.nrcs.usda.gov/programs/frpp/>

²⁵ USDA Forest Service, Forest Legacy Program, <http://www.fs.fed.us/spf/coop/programs/loa/flp.shtml>

The conservation priorities articulated in the existing PDR program and the General Policy Plan emphasize the protection of agricultural land. Recognizing these policy priorities, the General Policy Plan does specify that other lands may be targeted for conservation through the PDR program:

LU Policy 14.B.3

Agricultural and forest lands as defined in RCW 36.70A.170 shall be eligible for conservation through the PDR program. Other lands having high natural resource, environmental, or open space values may also be determined eligible for conservation.

Should the county decide in the future to allocate additional resources to conserving forest land through the PDR program it should consider the Forest Legacy Program as a funding source to leverage federal money.

Part II of II: Transfer of Development Rights

I. Introduction

What is TDR?

Transfer of development rights (TDR) is a market-based 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, or open space. It may also be used to further a community's goals for historic conservation or housing affordability.

Through individual transactions, development rights are transferred from privately owned farmland, forestland, and natural areas (known as *sending sites*) to areas that can accommodate additional growth (known as *receiving sites*). Landowners in sending areas receive compensation for giving up their right to develop, while developers in receiving areas pay for the right to develop at greater densities than would otherwise be allowed by zoning. When development rights are removed from a sending site, a conservation easement is placed on it, allowing for permanent protection of the parcel (unlike zoning regulations, which can be changed).



Source: King County

TDR does not limit growth; rather, it allows communities to plan more effectively by directing that growth into areas most appropriate for it. In their comprehensive plans and development regulations, communities can identify which areas are suitable to receive development rights and how much additional development is appropriate.

Three key features of TDR programs include:

- **TDR is voluntary.** If landowners in sending areas choose not to participate, they are entitled to develop as permitted by current zoning. Likewise, in receiving areas, developers not participating in TDR are allowed to build to current zoning. Developers wishing to build above current zoning may do so by purchasing TDR credits.
- **TDR is market-based.** TDR creates 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. Development thus pays to conserve resource lands and open space.

- **TDR is flexible.** TDR can be designed to accommodate the needs of each community. Of the more than 200 TDR programs in the United States, the majority are oriented toward farmland and environmental conservation²⁶. The goals of each program reflect the conservation and development objectives of the jurisdiction.

How Does TDR Work?

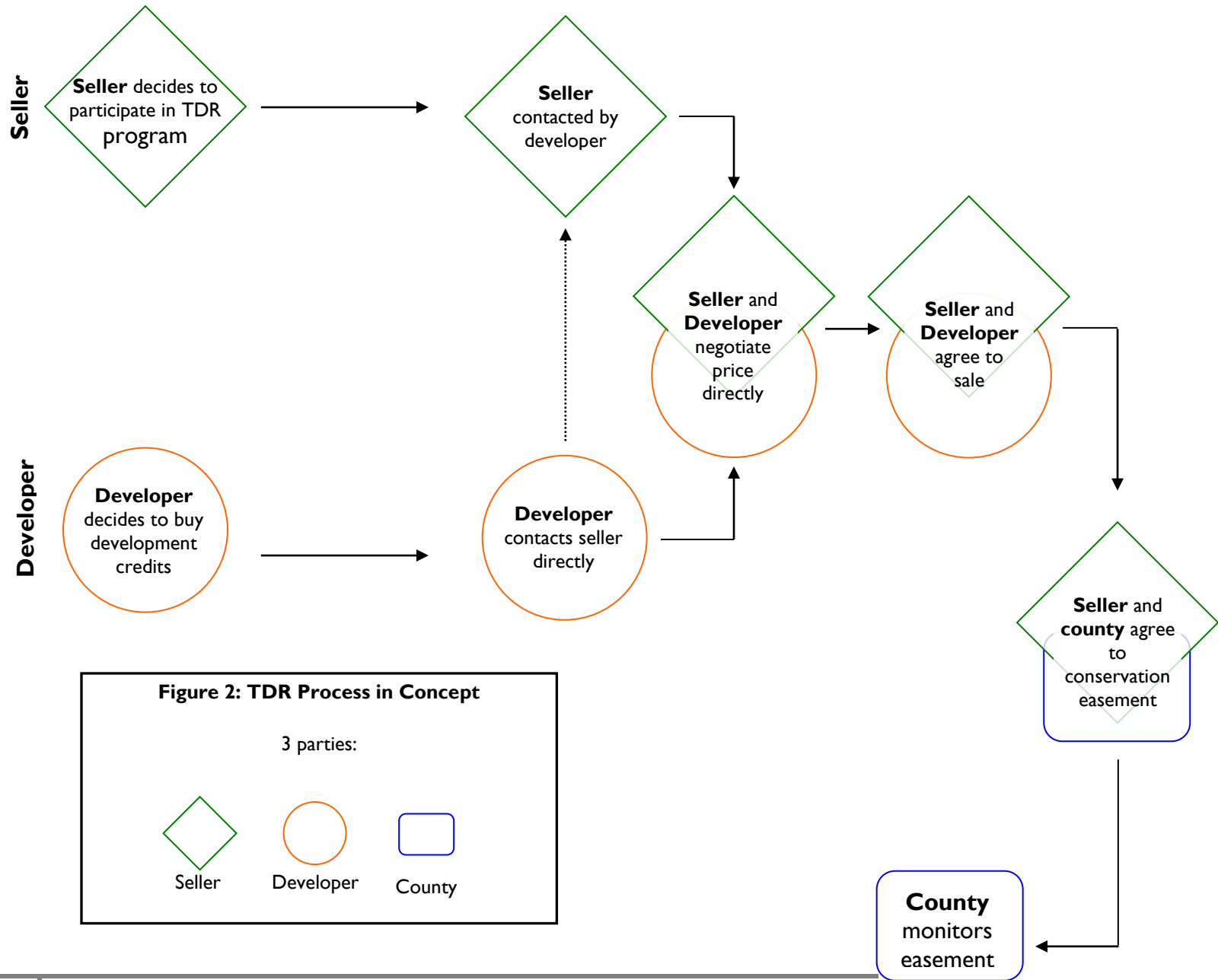
Once a TDR program is in place, the process for completing a transaction may involve two main players—a landowner and a developer. Conceptually, a TDR deal between these two takes the following steps, which are also illustrated in Figure 2 below.

1. A property owner voluntarily decides to sell development rights from a parcel. The number of development rights for sale, or the number of units the landowner has a right to build (but has not executed) under zoning can be considered in terms of TDR credits. For this example, zoning would allow the landowner to build one house on the parcel.
2. A developer decides to pursue a project requiring one TDR credit. The developer contacts the landowner to negotiate a price for the TDR credit available for sale.
3. The landowner and developer negotiate. The transaction moves forward if both parties agree on a price.
4. The landowner places a conservation easement on the property and the county grants the landowner a certificate representing the development right.
5. The landowner and developer close the sale.
6. The developer turns the certificate in to the county and is able to move forward with the receiving site project.
7. A government agency, nonprofit organization, or quasi-governmental organization, such as a conservation district, occasionally monitors the sending site to ensure no homes have been built on the sending site.

A notable aspect of the TDR process is the flexibility available to landowners and developers in whether and how they participate in the program. Because TDR is voluntary, property owners can choose to sell all, some, or none of their development rights now or anytime in the future. Sellers choosing to sell their development rights can likewise choose to sell them in a one-time deal or over a series of individual deals. Similarly, a developer choosing to purchase development rights can buy a single TDR credit from one seller or multiple credits from one or more sellers. Negotiations between a seller and developer

²⁶ Cascade Land Conservancy national TDR program database, updated March 2011

determine whether the transaction takes place—without a favorable, agreed upon price, either party can choose not to participate in a deal.



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. TDR works when it is well planned in the context of a community's land use policies and goals. A survey of programs across the country shows that, generally speaking, TDR has been quite successful; the top 20 programs have helped to conserve more than 391,000 acres²⁷. Programs in Washington alone have protected over 146,000 acres of farm and forest land.

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. Reflecting the flexibility of the tool, the top 25 programs focus on a range of issues, from conserving farmland 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:²⁸

- **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.
- **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 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.
- **Redmond, Washington** offers developers increased height, the elimination of a requirement to provide open space, and increased surface cover allowances when they purchase development rights from farmlands and critical habitat areas²⁹.

Table I: Top Transfer of Development Rights Programs³⁰

²⁷ "Top" programs refers to number of acres conserved, Cascade Land Conservancy national TDR program database, updated March 2011

²⁸ Unless noted otherwise, examples from: Pruetz, Rick. 2003. *Beyond Takings and Givings*. Marina Del Rey, California: Arje Press.

²⁹ City of Redmond. Department of Planning and Community Development. "Comprehensive Planning: Transfer of Development Rights Frequently Asked Questions", <http://www.redmond.gov/cms/One.aspx?portalId=169&pageId=3372>, last accessed March 14, 2010.

Program Location	Year Began	Acres Conserved
King County, Washington	1993	141,400
New Jersey Pinelands, New Jersey	1980	58,005
Montgomery County, Maryland	1980	52,052
Palm Beach County, Florida	1980	29,237
Calvert County, Maryland	1978	24,723
Howard County, Maryland	1994	19,362
Sarasota County, Florida	2004	8,199
Queen Anne County, Maryland	1987	8,032
Blue Earth County, Minnesota	1970	6,000
San Luis Obispo County, California	1996	5,464
Boulder County, Colorado	1981	5,000
Adams County, Colorado	2003	4,000
Payette County, Idaho	1982	4,000
Douglas County, Nevada	1996	3,727
Collier County, Florida	1974	3,612
Marion County, Florida	2005	3,580
Charles County, Maryland	1992	3,330
Rice County, Minnesota	2004	3,252
Chesterfield Township, New Jersey	1975	2,231
Pitkin County, Colorado	1994	5,840

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 achieve land conservation goals overnight or in isolation. It is a long-term conservation solution that performs best when coupled with other tools, such as zoning or purchase of development rights (PDR), to achieve long-term land use goals. As a market-based tool, it will experience fluctuations in participation depending on prevailing market conditions. As a voluntary tool, TDR also cannot guarantee conservation of specific sites or substitute for 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 work with or without TDR. For others, TDR may provide an alternative means of earning money from land they may otherwise have chosen to develop or sell. On the receiving side, TDR provides

³⁰ Cascade Land Conservancy national TDR program database, updated March 2011

developers flexibility and incentives to build beyond zoning allowances. In all cases, the voluntary, private 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 landowners not enrolled in “current use” taxation, property taxes would in most cases lessen accordingly when removing development potential³¹.
- **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 price³².
- **Income Taxes.** Income from the sale of development rights is, in most cases, considered a capital gain for federal income tax purposes³³.
- **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 potential³⁴. Consequently, land with its development rights removed has a lower taxable value than land with its full development potential.

³¹ 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.

³² See RCW 82.45.060.

³³ Based on personal correspondence with Rick Preutz, July 9, 2008.

³⁴ 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.

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.

II. TDR Basics

TDR Fundamentals

While no two TDR programs are exactly alike, certain features are common to most programs. The following provides an overview of key TDR program elements³⁵.

A. Goals. TDR is a flexible planning tool that can and should be customized to support the planning goals of each individual community. Clear community goals with public support are essential to a successful TDR program.

B. Sending areas. A critical step in designing a TDR program is the identification and mapping of sending areas from which development rights can be sold. In determining the size and location of sending areas, a number of factors must be considered: the community's conservation goals, the number of development rights that could be transferred, the availability of receiving areas to accept the rights, the extent to which existing zoning supports land conservation, and the relative priority of conserving sites currently experiencing strong development pressure vs. those experiencing less development pressure.

C. Receiving areas. Designating viable receiving areas is one of the most critical and challenging aspects of TDR program development. Key factors in the designation include market demand for development, availability of infrastructure and services to support development, and community support for or opposition to increased development. While some programs establish both sending and receiving areas within a single jurisdiction, others have established cross-jurisdictional exchanges through interlocal agreements.

Snohomish County uses both approaches. Receiving areas may be designated by identifying specific geographies or established by criteria. Likewise, receiving areas may be designated through an initial planning process or added through incremental designations over time.

D. Development bonuses. Within receiving areas, developers can build beyond zoning allowances or receive other benefits in exchange for purchasing development rights. While most TDR programs offer increased residential density (either single family or multi-family) as a bonus, other incentives can be offered, such as increased floor area (e.g. Redmond, WA), added



³⁵ See Appendix TDR-F for a glossary of related terms.

height (e.g. Sammamish, WA), increased lot coverage (e.g. Miami-Dade County, FL), or reduced limits on impervious surfaces (e.g. Issaquah, WA).

E. Allocation and exchange rates. Two elements directly affect the price of development rights: the allocation rate (or number of development rights each sending site can potentially sell) and the exchange rate (the number of added units or other credits available to a developer who purchases a development rights). These rates need to be calibrated to make sure there are incentives for both buyers and sellers to participate. In some jurisdictions, allocation of development rights to sending areas is based on how many units would be allowed under current zoning; other programs allocate additional development rights (e.g., 2-5 times what zoning would allow) to provide further financial incentive for landowners to participate in the program. Snohomish County TDR code currently specifies two separate allocation rates for different sending areas and one exchange rate for its receiving areas.

F. Transaction mechanisms. Many programs offer some form of public 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 of last resort. In some cases, seed money has been provided to initiate a TDR bank and to make initial purchases of development rights; in such cases, the credits may be subsequently sold to developers, enabling the bank to create a revolving fund available for future TDR purchases.

G. 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. These easements are generally held and enforced either by the city or county sponsoring the program 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.

H. Program administration. Staffing and administrative procedures are needed for successful operation of a TDR program. These include outreach to landowners and developers, facilitation of transactions, recording of conservation easements, tracking of development rights, and coordination of TDR transactions with a jurisdiction's zoning and permitting processes. TDR programs should also be regularly evaluated and updated over time.

Limiting Factors

While many TDR programs have been enacted, not all have been successful. In considering changes to Snohomish County's program, it is important to be mindful of the factors that have limited TDR program effectiveness in the county and elsewhere as well as to identify 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.

A. 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 are often reluctant to accept additional density without assurances of adequate infrastructure and protections for neighborhood character; there is familiarity with the status quo while the changes that growth brings are unknown. The presence or lack of a consensus on appropriate locations for growth can significantly affect 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.

Historically receiving area demand has been an obstacle to the success of Snohomish County's TDR program. Prior to the designation of the county's Urban Centers as receiving areas in 2010, the only receiving area was in Arlington, in which no development was occurring.

B. Insufficient demand for development/density. TDR is a market-based mechanism and, as such, can succeed only if there is demand for development. If demand does not exceed the base zoning established for receiving areas, the marketplace for development rights will be limited. As detailed in the economic analysis supplement to this report (Appendix I), projects in the county's Urban Centers have historically been built to densities lower than those that would involve the use of TDR.

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 density, such as floor area ratios, impervious surfaces, and parking requirements.

C. 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.

D. 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 equivalent 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 exchange rate greater than 1-to-1 for development rights, so that purchasing one TDR credit would provide a developer the right to build more than one additional unit in a receiving area. As detailed in the accompanying economic analysis (see Appendix I), more sophisticated exchange rates are applicable to Snohomish County, including different bonus values for credits purchased from different land types (farm vs. forest).

E. 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.

Success Factors

In reviewing the national experience with TDR to-date, three factors stand out as key elements in highly successful programs. Snohomish County has an opportunity to build on other jurisdictions' experience by focusing on these elements to make TDR a more effective land management tool than it has to date.

A. Ensure Zoning Compatibility

The underlying zoning and development regulations in sending and receiving areas may be the most potent factor in the success of a TDR program. 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. This issue is explored in greater detail in the section focusing on Urban Centers.

Some jurisdictions have initiated TDR programs with a large-scale downzoning of resource-based 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 profit 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 planning objectives.

A more reasonable approach is to incorporate TDR provisions into zoning regulations. This type of approach could be applied to urban situations, such as UGA expansions, or rural scenarios. Any rezone approved by a jurisdiction, whether through a comprehensive plan update or through individual requests for zoning reclassification could be subject to a TDR requirement. This approach provides a process which incentivizes developer participation. The jurisdiction allows additional density, while a portion of the increased value created by the increase in development potential supports conservation goals. If, on the other hand, developers are successful in achieving rezones without TDR, this will reduce demand in the TDR marketplace.



B. Support Market Studies to Fine-Tune TDR Programs

TDR programs founded on a clear understanding of the local real-estate market are far more likely to generate TDR transactions. Without such an assessment, TDR values may not generate 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 workable allocation and exchange rates, to effectively calibrate the economic equation for TDR transactions, and to thereby generate an active market.

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.

C. Facilitate TDR Transactions

Many jurisdictions with successful TDR programs have recognized the need to help buyers and sellers connect. In some cases, these jurisdictions have created a bank to facilitate transactions. Public support for TDR transactions can take a variety of forms, depending on the types of transaction mechanisms established. Even when programs rely strictly on individual private transactions (rather than a bank) to accomplish TDR sales, the sponsoring agency 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 acting as a buyer and a seller, and by helping to even out economic cycles that may favor TDR purchases at one time and TDR sales at another.

III. TDR in Snohomish County

Why use TDR in Snohomish County?

Spanning from the crest of the Cascade Range to Puget Sound, Snohomish County is home to a diversity of landscapes, industries, and communities. Resource industries include agriculture in the lush farmlands in the river valleys of the Stillaguamish and Snohomish Rivers, timber in the forested foothills of the Cascades, and small farms in the rural areas.

Between 2000 and 2009, Snohomish County's total population has increased by 14.6%³⁶. With housing values lower than those in nearby King County, and the possibility of a short work commute into Everett or other cities, the net migration rate is high. In 2009, just over half of the new growth that did occur was in unincorporated areas³⁷. The number of single-family houses in unincorporated Snohomish County increased by 6,225 from 2000-2010, a 7.8% increase³⁸.

Rural development decreases the working land base. According to the USDA Census of Agriculture, in 2007 there were 8,225 fewer acres of land in farms in Snohomish County than in 2002, and 2,440 fewer acres of woodland³⁹. The Washington State Office of Financial Management projects that the County's population could grow by nearly 100% between 2000 and 2030, from 606,024 to 1,109,202⁴⁰. This growth will likely increase development pressure on resource lands.

Transfer of development rights is a market-based tool that can help the county relieve these pressures by connecting conservation with economic and population growth. Making this connection will help to accommodate the growing population in a way that minimizes conversion pressures on the land base and supports a strong economy. TDR is encouraged by the Washington State Growth Management Act and is supported by both the Snohomish County comprehensive plan and the Countywide Planning Policies.

Snohomish County is home to approximately 1,584 farms, covering more than 75,000 acres⁴¹. Farming and other agricultural operations contribute \$125 million annually to Snohomish County's economy. Agriculture consists largely of two sectors. Greenhouse and nursery

³⁶ US Census Bureau, Snohomish County

³⁷ Office of Financial Management - Forecasting Division / June 30, 2010, Housing Change by Structure Type by County, 2000-2010 www.ofm.wa.gov/pop/april1/hseries/huchange.xls

³⁸ Ibid.

³⁹ USDA 2007 Census of Agriculture, Updated December 2009

http://www.agcensus.usda.gov/Publications/2007/Full_Report/Volume_1,_Chapter_2_County_Level/Washington/st53_2_008_008.pdf

⁴⁰ Washington State Office of Financial Management Forecasting | October 2007

Projections of the Total Resident Population for Growth Management

www.ofm.wa.gov/pop/gma/gmhigh.xls

⁴¹ *A Community Vision for Sustainable Agriculture in Snohomish County*, Snohomish Agriculture Economic Development Action Team, July 2009

businesses have annual sales of \$47 million, the state's 2nd largest annual sales total. Dairy products account for \$37 million in annual sales, the state's 6th largest sales total.

Of the approximately 1,348,458 total acres of land within Snohomish County, almost 663,000 acres of forest land are within the National Forest under federal jurisdiction and another 254,577 acres of forest land are within county jurisdiction.

Both industrial and family operations continue to grow timber across the county. Over 18 million board feet of timber were harvested in Snohomish County on private forestland in 2009, from which the county received \$212,801 in harvest-generated tax revenues⁴². Private working forests also provide access to trails, supporting the growing recreation-based economy, which is increasingly important to the county. For instance, Pilchuck Tree Farm is accessed by members of several horse clubs, mountain-biking clubs and hiking clubs. Upland forests create other important public benefits, such as salmon habitat, carbon sequestration, and flood control.

Snohomish County's resource lands are a vital provider of revenue, jobs, and public benefits. They also offer less obvious benefits for the county's economy by limiting the areas to which the county must supply governmental services, such as police and fire protection. When resource lands are converted to development, local government must expand its service area. In other words, keeping resource lands as resource lands is good for the county's economy and good for the county's taxpayers.

A voluntary, market-based TDR program will provide tools for Snohomish County to keep local businesses and working lands intact by fairly compensating landowners for their lands' development potential. This program can also play a role in supporting Snohomish County's economy, minimizing its governmental expenditures associated with growth, and protecting its environment and quality of life.

History of TDR in Snohomish County

The evolution of TDR in Snohomish County has been a process of incremental program changes. The county's comprehensive plan provides a thorough discussion of the program's origins but an overview here will provide context for understanding the current challenges facing the program.

In 2004 the county adopted a TDR pilot program, established in 30.35A SCC. This program designated a sending area of approximately 3,300 acres in the Stillaguamish Valley to the immediate north of the City of Arlington. A corresponding receiving area was created in the Brekhush Beach neighborhood, located in Arlington's UGA, which the city subsequently annexed. Other features of the pilot program included a requirement that development in the

⁴² Washington State Department of Revenue
http://dor.wa.gov/content/FindTaxesAndRates/OtherTaxes/Timber/forst_stat.aspx

receiving area use TDR; a means to assign development rights to sending area properties; and a receiving area exchange rate.

For the purpose of demonstrating how the program would work, the county used Conservation Futures funds to purchase development rights from a landowner in the sending area. The county spent approximately \$2.1 million to acquire 49 development rights from 74 acres of farmland. This purchase averaged nearly \$43,000 per development right. Subsequently the county sought to sell a portion of these rights through a public auction. Developers considered the offering price of \$50,000 each to be too high and to date none of the development rights from this transaction have been sold.

In 2009 Snohomish County expanded the TDR program in an effort to make it a broader, countywide tool. The new code chapter, 30.35B SCC, created a new, additional process for designating sending areas. Landowners whose properties met a set of criteria could request that their properties be designated as sending areas by county council motion. This chapter opened up the program to a wider range of potential participants but it did not identify specific receiving areas for the new sending areas. Another difference between this chapter and 30.35A is that the county assigned development rights to sending areas based on zoning, whereas the Arlington pilot assigned development rights as a multiple of zoning. Cascade Land Conservancy utilized this program expansion to purchase development rights from a 65-acre forested property in 2009. The price per development right in this transaction was approximately \$29,400.

The third major change to the TDR program came in 2010. As part of updating the Urban Centers code (30.34A SCC) the county chose to include a TDR element. All Urban Centers were designated as TDR receiving areas. Zoning regulations were established that set minimum, maximum, bonus, and super bonus zoning limits. If developers wished to build above maximum base zoning they could do so by choosing from a table of incentives (including TDR) to gain additional density. Other features of this code update included the creation of a density fee that developers could pay in lieu of incorporating bonus features into the project. While the Urban Centers code created new receiving areas it did not specify sending areas.



The resulting legal framework for TDR in Snohomish County is fragmented and challenging to interpret. Three separate code chapters identify two categories of sending areas and two processes of designating them, two kinds of receiving areas, and two ways that development rights are assigned to sending areas. While each successive change to TDR policy in the county has been made with the intention of expanding opportunities to use the program, the result has been a confusing regulatory landscape. One objective of CLC's work is to identify ways in

which the different policy elements may be unified to create a comprehensive, integrated approach to making TDR work in Snohomish County.

Recognition of TDR at the State Level

The state legislature recognizes the importance of rural lands and rural character to the state's economy, its people, and its environment. To promote planned growth, the GMA identifies TDR as an innovative land use management technique that assists counties and cities in achieving GMA's planning goals⁴³. TDR can help Snohomish County address several GMA goals. Those advanced by CLC's recommendations for the county's TDR program include:

- Goal 1: Urban Growth
- Goal 2: 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

In 2009 the state created a regional transfer of development rights marketplace (43.362 RCW) whose geography includes Snohomish, King, Pierce, and Kitsap Counties. This legislation seeks to expand the use of TDR across the region and focuses on the conservation of resource lands of long-term commercial significance.

In 2011 the state legislature passed the Landscape Conservation and Local Infrastructure Program bill (ESSB 5253, not yet codified at the time of this report). This legislation creates new tools for cities to finance infrastructure improvements as an incentive to accept development rights. As with the regional TDR marketplace, the conservation target is farms and forests of long-term commercial significance and requires the participating counties (Snohomish, King, and Pierce) to designate such lands as sending areas.

⁴³ See RCW 36.70A.070(5b), RCW 36.70A.090

TDR in Other Washington Cities and Counties

As of March 2011, Washington is host to TDR programs in 18 separate jurisdictions⁴⁴. 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 141,000 acres), Black Diamond (1,600 acres), Redmond (415 acres), and Seattle (883 acres)⁴⁵. 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, and has additional such agreements with Bellevue and Sammamish.



⁴⁴ See Appendix G

⁴⁵ Acreages as of 2010; data were provided by local planners in each jurisdiction.

IV. Snohomish County TDR Program Framework

TDR Goals

Agriculture and timber production are important elements of both the economy and the identity of Snohomish County. In the face of a growing population, both the community and county leadership want to ensure farming and timber are viable occupations in the future. Many factors affect the viability of agriculture and timber production, but the foremost consideration is the availability of land for such uses.

The primary goal of Snohomish County's TDR program as specified in the comprehensive plan is provide resource landowners the opportunity to realize the development value of their lands while retaining the right to use the land in ways that won't impair its natural resource functions. Related to this goal, the TDR program promotes development in areas appropriate for growth. The areas most appropriate for growth under this program are determined by the county, cities and the market.

Snohomish County's TDR program also has a special role in the framework of a broader regional TDR marketplace. The county is part of the regional TDR marketplace that was created by state legislation in 2009 (43.362 RCW). Snohomish County's TDR program goals, as articulated in its comprehensive plan and existing TDR code, include the protection of agricultural lands as a conservation priority and forest lands as another type of sending area. The plan also states that additional lands may be added as sending areas in the future.

An effective TDR program will assist Snohomish County's efforts to conserve agricultural and forest resource lands while accommodating future growth in a responsible manner. Success for the program is a situation in which future growth is responsibly planned, property rights are protected, and rural landowners are fairly compensated for keeping their land viable for production.

Existing Sending Areas

The desire to conserve important lands is the cornerstone of many TDR programs. One challenge in creating a policy is determining which lands are to be eligible for conservation.

Existing county regulations define two categories of sending areas. The first, established in 30.35A SCC (2004), created the Stillaguamish Valley sending area. This area, approximately 3,300 acres in size on the northern edge of the City of Arlington, consists of productive farms in Ag-10 zoning. This sending area reflects county priorities of protecting high value farm land at risk of development conversion.

The Stillaguamish Valley sending area is narrowly defined in its geography. Its area constitutes approximately 6% of the county's designated agricultural lands. While the goal of promoting

contiguity in conservation patterns is important at a certain level, the scale of this sending area introduces some limitations. First, the number of landowners within the sending area may not be large enough to support a broader TDR market. In other words, if a buyer is unable to agree upon a price with one of the few potential sellers, the buyer does not have a large pool with which to do business. The scarcity of sellers could create a cartel effect. Second, under chapter 30.35A SCC, landowners outside of this area who wanted to participate in TDR did not have the option to do so.

The second category is those sending areas designated by council motion. As an addition to the TDR program in 2009 (30.35B SCC), Snohomish County created a process by which landowners whose properties met certain criteria could apply to have their land designated as a sending site by council motion. This new process opened up eligibility to a wider range of potential participants who were previously unable to qualify as sending areas. One limitation of this expansion, however, is that it introduced additional processes that landowners have to complete in order to have their properties designated as sending areas.

In summary, the existing sending area designations in Snohomish County's TDR program are a combination of a small, but clearly defined, agricultural valley and a criteria-based process that could include a potentially wide range of sending area land types and locations. It is from this starting point which Cascade Land Conservancy based its assessment of the current program framework and alternatives that follow.

Proposed Sending Areas

As established in the county's comprehensive plan and existing TDR code, conservation priorities in Snohomish County target the protection of farm and forest land. The passage of ESSB 5253 introduces new requirements for the three counties the Landscape Conservation and Local Infrastructure Program encompasses. Under this law, Snohomish, King, and Pierce counties "must designate all agricultural and forest land of long-term commercial significance within its jurisdiction as sending areas for conservation under the eligible county's program for transfer of development rights⁴⁶." While existing county code allows for the designation of these lands by Council motion, it does not explicitly or systematically designate all such lands as TDR sending areas. The lands that CLC recommends Snohomish County designate as sending areas reflect the county's conservation priorities, advance the intent of the existing TDR code, and are consistent with the state requirements. These recommendations are also reflected in the attached draft TDR program ordinance language, Appendix L.

A. Agricultural Areas

⁴⁶ ESSB 5253, Part III, Section 301, Sending Areas

Conserving agricultural land is a priority for the TDR program; county leadership and the community both want farming to remain viable in the future. CLC has identified three potential approaches for addressing agricultural sending sites:

- Broad approach: All designated agricultural land and non-designated land in agricultural use
- Narrow approach: Specific, valley agricultural land
- Combined approach

Option 1: All designated agricultural land and non-designated land in agricultural use (Broad approach)

One option is to offer any landowners with “Agricultural” designation the ability to participate in the TDR program as a sending site. “Agricultural” designation at the time of this writing includes Riverway Commercial, Local Commercial, and Upland Commercial on the county’s Future Land Use Map. It could also include any future agriculturally based designation. Zoning in these areas is primarily Ag-10 with R-5 zoning in Local Commercial and Upland Commercial designations.

This option overlaps with CLC’s recommendation to expand the county’s purchase of development rights (PDR) program eligibility area to include all designated agricultural land. This would increase landowners’ options to earn financial returns for protecting their properties. They would be able to either sell their development rights on the private market using TDR or apply to sell a conservation easement to the county through the PDR program. Feedback from farmers has been supportive of a broader range of opportunities to gain from voluntarily protecting their land.



Another important reason to include all designated agricultural land of long-term commercial significance in a sending area is to be consistent with state legislation. Under the Landscape Conservation Local Infrastructure Program bill (ESSB 5253, passed in May, 2011 but not codified at the time of this report) the state specifies that the county must designate such lands as sending areas in its TDR program. The benefits of doing so include facilitating conservation of these lands through development right transfers into cities that participate in LCLIP.

In addition to designated agricultural land, land that is outside of these designated areas being used for farming presents an opportunity for conservation. Members of the agricultural community have expressed an interest in protecting these lands for a variety of reasons. The non-designated lands in farming use are usually located in areas outside the floodplain and have R-5 zoning, both of which features make them more attractive for development. Furthermore, these lands represent areas in which agriculture can expand. The 2009 report “A Community Vision for Sustainable Agriculture in Snohomish County” finds that the number of small farms in the county is increasing. In order to demonstrate agricultural use and to qualify as a TDR

sending site, such land should qualify for (although not necessarily be enrolled in) current use taxation for open space agriculture.

Pros:

- Expands the opportunity to conserve agricultural land.
- Supports the goals of the Sustainable Lands Strategy.
- Is consistent with county comprehensive plan policies and state legislation.
- Increases the number of potential TDR participants.
- Is the most equitable approach to establishing agricultural sending sites.

Cons:

- Lower quality land and/or land facing the least conversion pressure is the most likely to be purchased first in an open market due to relatively lower land values.

Option 2: Specific, valley agricultural land (Narrow approach)

A second option is maintaining the Stillaguamish Valley sending area as it currently stands.

Pros:

- The county has a willing partner in the City of Arlington to protect this sending area.
- Focuses on farmlands that the county has identified as facing development pressure.

Cons:

- Prioritizes conservation of agriculture in a specific locality that does not address the broader, countywide conservation goals.
- The relatively small size of this sending area may create high sensitivity to prices of TDR credits.
- (Related) Potential for low TDR program participation given the limited number of potential market participants.

Option 3: Combined approach

A third option is a variation of the first two combined: all designated agricultural land and land in agricultural use is eligible, but additional incentives are provided to a specific area in the form of an increased allocation of development rights.

Pros:

- Captures the benefits of both approaches.
- Addresses two important issues with the narrow approach by (1) providing options for different types of agriculture and (2) attempting to address the relatively high costs for development potential for Stillaguamish Valley land.

Cons:

- The existing TDR program assigns a subjective determinant of value.
- Does not follow zoning.
- Having separate sending area regulations increases programmatic complexity.

Recommendation: Combined approach, with considerations

Although arguments can be made to follow a narrower approach to determining which agricultural areas should be targeted for conservation, three overriding concerns made this a less attractive option:

1. **Inequality:** this approach prioritizes a small area to the exclusion of a large number of other landowners with property of similar conservation value.
2. Potential for limited participation.
3. The goal of strategically targeting specific lands is better served by the county's purchase of development rights program.

Cascade Land Conservancy recognizes that Snohomish County has invested a substantial effort into the creation and use of the Stillaguamish Valley sending area. In CLC's view it is important for the county to retain the program elements designed to protect this area, especially in light of Arlington's goal of expanding its receiving area capacity. At the same time, the ad hoc nature of designating sending sites by council motion does not provide the important program characteristics of certainty and consistency.

Therefore, a combined approach of keeping the Stillaguamish Valley sending area and its program details intact (30.35A SCC) and expanding a countywide designation of sending areas to include both designated agricultural lands and non-designated lands in agricultural use will increase opportunities for landowner participation in a way that is consistent with county goals and policies. Furthermore, this recommendation also advances the county objective of having TDR and PDR programs that are complementary.

Recommended criteria

Sending sites must be consistent with policy goals. Snohomish County's comprehensive plan policies indicate that certain types of resource lands (designated agricultural and forest) are desirable for long-term conservation policy.

This conclusion informs CLC's recommended agricultural sending-site criteria:

- Site is designated agricultural land (Riverway Commercial, Local Commercial, Upland Commercial)
- Site is not designated agricultural land, but is in agricultural use and qualifies for current use taxation for open space agriculture.

Agricultural lands meeting these criteria represent approximately 58,000 acres of designated agricultural land and 14,000 acres of non-designated land. The map in Appendix H illustrates the spatial extent of agricultural lands in the county.

Allocation rates

One sending area policy decision is how to determine the number of development rights assigned to a sending property. The county currently has two different ways of accomplishing this. In the Stillaguamish Valley sending area (30.35A SCC), landowners are assigned development rights based on a 4:1 allocation rate. That is to say, for every home that could be built on the property allowed by zoning, the landowner receives four TDR credits to sell. In a simple example, a 40-acre farm in A-10 zoning consisting of four ten-acre parcels could be developed with four homes but would be allocated 16 TDR credits to sell (four for each undeveloped parcel).

For all other sending areas in the county, as defined in 30.35B SCC, landowners are assigned one TDR credit for every home they can build under current zoning. This is a 1:1 allocation rate. A farm identical to the one in the previous example would receive four TDR credits to sell (one for each undeveloped parcel).

From an administrative standpoint, running a program that has two separate allocation rates presents challenges. Landowners may be confused as to why one area receives more development rights per parcel than another. Different allocation rates may affect development right prices in the two types of sending areas. Furthermore, different allocation rates will affect the relationship between sending area supply of development rights and receiving area capacity to absorb them.

Despite these difficulties, CLC recommends that Snohomish County maintains two different allocation rates in the following way:

- For the existing Stillaguamish Valley pilot sending area development rights shall be allocated at a 4:1 rate for transfers to the Arlington receiving area(s). This represents no change from the existing code. For transfers to other receiving areas, Stillaguamish Valley properties are allocated development rights based on zoning, or in other words, a 1:1 allocation rate.
- For the general, county-wide TDR program, agricultural land is allocated development rights based on zoning (1:1 allocation rate).

This dual-rate structure retains the special arrangement that Snohomish County has established with Arlington while expanding Stillaguamish Valley landowners' options for selling development rights to buyers in other receiving areas on the same terms as landowners in the rest of the county.

Downzones

Previous reports focusing on TDR in Snohomish County have recommended agricultural land downzones. During the outreach process CLC learned that some farmers also support this idea. TDR programs in other areas have used this approach. Montgomery County, Maryland, is one such example. In this situation, Montgomery County downzoned the farmland in its sending area but compensated landowners by allocating development rights based on the previous, higher zoning. One factor contributing to the success of this program is that the county simultaneously required the use of TDR in its receiving areas, thereby creating demand for development rights.

Downzoning changes property values and property rights. While prior research and a small number of landowners support this concept, the durability of the effects of downzoning is uncertain since zoning may change over time. Accordingly, given the impact on property rights, CLC does not recommend downzoning sending areas.

Substandard lots

Previous reports on TDR in the county have also recommended the exclusion of substandard lots (parcels smaller than the minimum size designated by zoning) from the TDR program. Current code recognizes these lots by assigning them one TDR credit. The question of whether or not to assign development rights to substandard lots is a policy decision that may be influenced by the following factors:

- Many substandard lots can be developed under current zoning, so they have development potential and could arguably be assigned development rights.
- The county has inventoried approximately 778 lots in lot status, of which the county estimates that 75% are substandard⁴⁷.
- By assigning development rights the county could reduce the rate of farmland protection because smaller lots would be treated the same as larger ones.
- Some county planning staff suggest that substandard lots are potentially exposed to elevated development pressure because they are subject to boundary line adjustments which could improve the developability of a lot.
- Granting development rights to substandard lots could create an artificial market where rights from such lots are preferred by buyers for their lower prices.
- Development of agricultural land is an important concern, and a desire to aggregate continuous protected areas should be weighed in light of the desire to protect agricultural areas efficiently.
- Farms below ten acres in size represent 34% of the number of farms in Snohomish County (534)⁴⁸.

Boundary line adjustments

⁴⁷ Estimates provided by Snohomish County Department of Planning and Development Services

⁴⁸ *A Community Vision for Sustainable Agriculture in Snohomish County*, Snohomish Agriculture Economic Development Action Team, July 2009

If substandard lots are eligible to be assigned TDR credits, then landowners can make boundary line adjustments to create additional lots and therefore inflate the value of their development potential. Snohomish County planning staff have identified boundary line adjustments as a loophole that could have an adverse effect on the TDR program by artificially increasing the supply of development rights.

Recommendation: allocate development rights to substandard lots in conjunction with setting a minimum area requirement for sending sites

Landowners can use substandard lots as collateral for loans and in many cases can build on them. Recognizing this property right, CLC recommends that the county allocate development rights to substandard lots. Allowing unfettered use of substandard lots in the TDR program, however, may not always be consistent with the goal of protecting meaningful land area. By setting a minimum property area for program participation the county can encourage the sale of development rights from larger aggregations of parcels and larger single substandard lots. CLC recommends a minimum size corresponding to the highest density in designated agricultural areas, 5 acres. The county has identified this zoning as viable for agriculture and timber. Landowners would be allocated one TDR credit for each lot, but would need to enroll a minimum of 5 acres in the TDR program. This provision would increase the incentive for aggregation of lots while also expanding eligibility to landowners with larger substandard lots.

B. Forests

The second category of potential sending sites for the TDR program is private working forests. Private working forest lands are most easily considered in two categories: (1) designated forests (Commercial Forest, Commercial Forest-Forest Transition, and Local Forest), and (2) lands not designated, but in use, as forest.

With regard to forest conservation, CLC found support for two potential approaches for incorporating private working forest sending sites:

- All designated forest land
- Combination of both designated and non-designated forest land

Option 1: All designated forest land

One option for forest sending sites is to focus exclusively on designated forest lands of long-term commercial significance. This category of land may currently be eligible for sending area designation by Council motion under 30.35B SCC.

Pros:

- Would align Snohomish County TDR policy with state TDR policy by designating forest land of long term commercial significance.
- Would facilitate landowner participation by formalizing the sending area designation of lands that currently need Council approval for designation.

Cons:

- Designated forest lands may face lower development pressure than rural, non-designated forest lands.
- Commercial forest landowners have expressed interest in participating in TDR at a scale (infrequent sales of large numbers of credits) that may not reflect the timing and demand for receiving area projects.
- Would exclude smaller, nonindustrial forest lands whose properties may be subject to higher development pressure.

Option 2: Combination of both designated and non-designated forest land

A second option for forest sending sites is to offer all forest landowners the ability to participate in the TDR program as a sending site. This includes both lands in forest designation on the county's Future Land Use Map and those in other areas that are being used for timber production. It could also include any future forestry based designation. The concept for this approach is that all forest land, both designated and not, would be eligible to participate in the TDR program, provided the parcel meets certain criteria.

Pros:

- Would align Snohomish County TDR policy with state TDR policy by designating forest land of long term commercial significance.
- Increases the number of potential TDR participants.
- Is the most equitable approach to establishing forest sending sites.

Cons:

- Potential for nonindustrial forestland owners with higher development right values to be at a disadvantage in a TDR marketplace.

Recommendation: All designated forest and land in forest use

Numerous stakeholders have expressed an interest in having a TDR program that is simple to use, easily understood, and equitable, while still addressing the county's stated policy goals. While lands identified in this recommendation would most likely be eligible for sending area designation by council motion under 30.35B SCC, formally designating forestlands as sending areas would eliminate an inefficient process for both applicants and the county and would allow faster transactions. As with the



recommendation for agricultural lands, designating all forest lands as sending areas increases the opportunity for program participation which is important to promoting marketplace activity.

Recommended criteria

CLC recommends the following sending site criteria:

- Site is designated forest as shown on the Future Land Use Map.
- Site is not designated forest, but in use for timber, qualifies for current use taxation as open space timber 84.34 RCW, and has a forest management plan.

Forestlands meeting these criteria represent approximately 119,700 acres⁴⁹. The map in Appendix H illustrates the spatial extent of forestlands in the county.

C. Other lands

When Snohomish County added chapter 30.35B SCC to its existing TDR code, it included language that gave the county flexibility to use TDR as a means to protect other lands of conservation value that were not narrowly defined. These include wetlands, habitat, open space, or natural resource lands. The County Council has discretion to designate sending areas that may have significant conservation values in addition to those areas explicitly identified as sending areas.

Pros:

- Retains county flexibility
- Approval by council is a transparent, public process

Cons:

- Potential for politicization of sending area designations

⁴⁹ Cascade Land Conservancy. 2011. Based on Snohomish County data. Analysis excludes land already developed and land already protected.

Recommendation: Retain County Council discretion to designate other lands as sending areas by motion

Cascade Land Conservancy recognizes that there may be lands which the county wants to conserve that have not been anticipated in the code. Maintaining flexibility for the County Council to designate such lands as TDR sending areas would allow for opportunistic use of the tool to conserve land that has significant value. The vote required to pass a motion would ensure a majority of support for the designation among the County Council and the process would allow for public comment on the decision.

Receiving Areas

While identifying areas for desired conservation is important, a TDR program cannot operate without a market for development rights. Identifying and assessing receiving areas is therefore a critical element of TDR program development.

To help evaluate existing receiving areas and to gather input on potential new ones, CLC spoke with county and city leaders, county and city administrators and planners, developers, members of economic development organizations, and environmental and community groups. Based on these outreach efforts, the following were identified as appropriate receiving sites:

- Cities
- Urban Centers
- Urban Growth Areas (UGAs)
- Rural areas
- Other potential receiving areas

As discussed in detail below, some of these potential receiving sites are currently viable; others are not viable options presently, but may be in the future. One other important change that Cascade Land Conservancy recommends across all county receiving areas is a differential exchange rate. Recognizing that the county's conservation priorities emphasize agricultural land and that there is generally a difference in value between farm and forest land, these exchange rates are structured to give a greater bonus for agricultural development rights than for forest development rights. The economic analysis in Appendix I includes a thorough discussion of how development right values were estimated and how those values were incorporated into the recommended exchange rates.

A. Cities

With existing infrastructure and community services in place, cities are conceptually the ideal receiving areas for new growth into a region. In reality, however, the particular nature of growth and the economic and political circumstances of a given city are important determinants of whether the city is willing to accommodate additional growth and, importantly, whether participation in a TDR program fits into its larger planning and policy goals. From the county's perspective, working with incorporated cities adds a layer of complexity, as in some cases it may negotiate interlocal agreements with each participating city. Alternatively, cities may adopt an administrative rule (WAC 365-198) that provides terms and conditions for a city to accept county development rights in lieu of an interlocal agreement⁵⁰.

CLC's general assessment is that opportunities to steer growth into Snohomish County cities are currently limited but have promising potential to expand in the future. Following is a countywide assessment based on discussions with cities:

Arlington

Arlington's program has not resulted in any projects using TDR in its receiving area, but changes are in store for the city. The city was a recipient of a 2010 grant to conduct subarea planning that would lead to the creation of a second TDR receiving area in the city.

Key Opportunities:

- Size, scope, and location of new receiving area could capture future growth demands.
- Potential for TDR in commercial developments.

Key Challenges:

- Integrating the new receiving area into the existing program framework.
- In a pilot purchase in the Stillaguamish Valley sending area, Snohomish County paid a price for development rights that set a precedent for values that have been higher than developers are willing to pay.

⁵⁰ Washington State Department of Commerce website, Interlocal Terms and Conditions Rulemaking <http://www.commerce.wa.gov/site/1338/default.aspx>

Snohomish

Snohomish adopted its Pilchuck District subarea plan in March, 2011. This plan creates a receiving area and increases opportunities for different types of development. The city also received a planning grant and is conducting work to plan for water infrastructure upgrades.



Key Opportunities:

- TDR is the exclusive means to gain bonus density.
- The city will accept county development rights.

Key Challenges:

- Certain programmatic elements, such as an exchange rate, have not yet been established.
- Development in this area has stagnated over the past several years.

Mountlake Terrace

Mountlake Terrace, also a recipient of a planning grant, is exploring ways to include TDR as part of a town center plan.

Key Opportunities:

- The city is exploring TDR as a component of broader plans for city growth.
- Mountlake Terrace could be an example for combining TDR with transit-oriented development.

Key Challenges:

- Planning work is in very early stages, it may be some time until a TDR program is operational.

Everett

As the largest city in the county, Everett is a regional growth center. The city is using grant funding to explore the economic viability of TDR in certain areas of the city.

Key Opportunity:

- The city's openness to considering alternative receiving areas is promising.
- Potential exists for enhancing some of the city's commercial and transit corridors through TDR.

Key Challenges:

- Current zoning downtown, where demand potential may be greatest, has no height limits. Therefore the city is examining other neighborhoods as potential TDR receiving areas.
- Prior studies have suggested that TDR would not be effective in Everett.

Other cities

The county comprehensive plan states that as part of the interlocal agreement negotiation process, the county should pursue the retention of receiving area status for Urban Centers when cities annex them. This policy could effectively create new city-based receiving areas following annexations of Urban Centers. Additionally, the Landscape Conservation and Local Infrastructure Program creates financial incentives for cities that agree to accept development rights from resource lands of long-term commercial significance. Cities with a combined population and employment of 22,500 are eligible to participate in this program. This new tool may increase interest in TDR among eligible cities in Snohomish County.

Recommendation: Promote cities as receiving areas

CLC strongly recommends the county identify cities as receiving sites in the TDR ordinance, regardless of the current demand for added density. All of the cities with whom CLC spoke expressed an interest in learning more about the program once it takes shape. If for no other reason, inclusion of these areas for growth ensures the opportunity to use TDR when the market is more amenable to increased development.

The extent to which density would be transferred to cities would be determined through one of two ways:

1. Negotiations between each individual city and county and formalized in interlocal agreements.
2. Adoption by rule as described earlier.

B. Urban Centers

In 2010 Snohomish County passed updates to the Urban Centers Code. These changes included designation of these centers as county TDR receiving areas. Located in the southwest corner of the county, Urban Centers have zoning and development regulations designed to encourage the use of TDR. Many of these areas are located on or near major transportation corridors and are served by transit.

Snohomish County amended its Urban Centers Code (SCC 30.34A) in May of 2010 to include a broader range of development regulations that better reflected the county's goals for growth patterns in these areas. These changes represented important advancements in the county's body of TDR policy. First, all Urban Centers were designated as TDR receiving areas. Prior to this, the only receiving area in the county was part of the Arlington pilot program. Second, TDR was included in the list of incentives from which developers could choose to gain bonus density. TDR was also an option in the second tier of choices that would allow even higher density, known as a super bonus. Third, the code included an alternative for developers who wanted to gain additional density but did not want to negotiate a TDR transaction. This alternative, a density fee, would be used as a funding mechanism for the county's purchase of development rights (PDR) program.

Recommendation: Consider revising FAR thresholds

The economic analysis conducted for this report shows that the demand for density in current and past development projects is below the maximum allowed by right. One way the county could increase opportunities to use TDR would be to revise the floor area ratio (FAR) thresholds to more closely reflect the demand for growth in Urban Centers.

Recommendation: Revise exchange rate

Analysis of Urban Center market factors including the estimated cost of development rights and developer willingness to pay suggests that the current exchange rate of 2,000 square feet of bonus space does not provide sufficient incentive for developers to use TDR. Findings from the economic analysis show that more appropriate exchange rates for Urban Centers are 5,800 square feet for a forest development right and 9,500 square feet for an agricultural development right. Please refer to Appendix I for the complete economic analysis and discussion of Urban Center exchange rates.

Recommendation: Consider reduction of parking requirements through TDR

The economic analysis identified that the current Urban Centers requirement for structured parking will make some developments at the bonus level financially unrealistic and all developments at the super bonus level unrealistic. The added expense that structured parking creates would discourage higher intensity projects that might otherwise use TDR. One opportunity to promote use of TDR would be to allow developers the option to purchase development rights as a way of reducing parking requirements. This could be appropriate in areas of Urban Centers in close proximity to transit. This approach should be considered to the extent that flexibility is available in light of other planning goals.

Special consideration

Snohomish County's Unified Development Code defines FAR calculation based on gross site acreage (30.91F.445 SCC). This reduces the likelihood that developers will use TDR in future projects.

C. Urban Growth Areas (UGAs)

By design, UGAs are the natural, future extension of cities and for this reason present an opportunity for the county's TDR efforts. Although growth trends in Snohomish County suggest potential for TDR-driven growth in UGAs is limited presently, this will change in the future as county growth continues and market forces bring more people to the urban areas. The designation of UGAs as receiving areas is consistent with the Snohomish County Comprehensive Plan Land Use Policy I.A.1, which specifies that a portion of the UGA population forecast may be reserved for TDR receiving areas. At the time of this report, Snohomish County is considering changes to its Countywide Planning Policies that may affect the ways TDR is used in urban growth areas. Future changes to the receiving area role of UGAs in the TDR program may also involve revisions to Countywide Planning Policies.

Recommendation: Connect UGA expansions to TDR

UGA expansions create value through density increases. Both cities and developers are interested in the ability to build at higher densities in these areas—cities for long-term planning purposes and developers for the profit incentive of building more units on a given amount of land. TDR works best when connected to growth and expansions to UGAs are one opportunity to make this connection.

This approach provides several additional benefits:

- Provides a greater incentive to direct growth to UGAs
- Potentially provides opportunities for lower-cost housing
- Creates a public benefit of conservation

Exchange rates proposed for UGA expansions are 3 residential units per agricultural development right and 2 residential units per forest development right. See Appendix I for the economic analysis of UGA expansions.

D. Rural areas

Rezoning

Rural rezones contribute to land conversion in two ways: (1) they promote low-density development, and (2) in some cases, they promote incompatible land uses, such as residential development adjacent to farm or forest operations, which increases the attractiveness of converting adjacent lands.

Rural cluster bonus

Snohomish County's rural cluster bonus provision (30.41C SCC) allows landowners to subdivide and develop properties in certain zoning types in such a way that increases open space and allows for concentration of development on a smaller land area. In exchange for clustering the development on the site, landowners gain up to a 35% bonus in the number of units they may build. While strictly speaking this provision does not constitute a rezone (the

underlying zoning does not change), it does create a situation in which more units may be built on a property than would otherwise be allowed under current zoning.

For example, the owner of a 60-acre property divided into twelve lots of five acres each (in R-5 zoning) could build twelve units by right. The resulting land use pattern would be uniform density across the entire property. By clustering, however, the owner could build sixteen units on smaller lots and at least 45% of the property would remain open space. These additional four units would increase the development value of the property.

Tying TDR to this increase in value is an opportunity for Snohomish County to create a link between demand for higher intensity rural development and conservation. As the accompanying economic analysis demonstrates, the profitability of rural cluster development is very high. The increase in value is high enough that even at an exchange rate of 1:1 (for each bonus unit built the developer buys one TDR credit) a prototypical development remains profitable. Prior to the recent market



downturn, use of the rural cluster provision was common. As shown in the 2007 Snohomish County Buildable Lands Report, over 1,200 lots were included in applications for rural clusters in 2007. While not all of these applications led to completed projects, it demonstrates the popularity of the provision. In interviews with developers, CLC learned that there will likely be continued demand for this type of development in the future. Because TDR works most effectively when connected to growth, using the tool in rural clusters presents an opportunity to create a public conservation benefit from future development in a way that remains financially viable for developers.

Recommendation: Include TDR as an element of rural density increases

Rezoning and other rural density increases generate economic benefits for landowners and developers by granting additional land value beyond what established zoning affords, as well as a cost to taxpayers by requiring an expansion of infrastructure and governmental services. Regardless of one's views, an important fact for this program is that rural density increases result from a market demand for rural housing.

CLC recommends utilizing the market demand and developer value incentive for rezoning by linking their approvals to the purchase of TDR credits. Creating this linkage directly ties the demand for rural land conversion to rural land conservation. Another important feature of this recommendation is that it respects private property rights in achieving resource land conservation; landowners are able to develop their property to the extent that is their right under zoning. If they voluntarily choose to pursue a zoning change or density increase,

however, there would now be a cost associated with the added land value and development opportunities. Exchange rates proposed for rural density increases are detailed in the economic analysis (Appendix I).

E. Other potential receiving areas

Snohomish County planning staff have suggested an additional opportunity for creating new receiving areas. Land zoned “MR” in the southwest county municipal urban growth area (MUGA) is currently zoned for 22 residential units per acre and allows some commercial use but could potentially have residential capacity in the range of 60 to 90 units per acre. Land with this zoning is dispersed through the MUGA but on aggregate represents a substantial area. Several of these MR zones are located near major transit centers, arterials, or highways, increasing the attractiveness of designating them as new receiving areas.

Recommendation: consider designating MR zoned land as TDR receiving areas in the future

While current regulations do not make the MR zone attractive for TDR, a situation where these areas might be upzoned would represent a significant opportunity for including TDR as a means for gaining density increases. CLC recommends that if the county considers upzoning the MR zone that these lands be designated as TDR receiving areas. Snohomish County should also consider designating other urban areas to the extent that they are appropriate for growth and represent an opportunity to advance county growth goals.

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, and is potentially more complex. For sellers, a farm or large parcel of forestland may represent their most sizable asset. TDR offers an important opportunity to realize some of the value of that asset, 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 county.

The following sections provide an overview of TDR administrative models and considerations, including CLC recommendations. Specifically discussed are alternatives regarding:

- Transfer models
- A typical TDR deal
- Calculating sending site TDR credits
- Development Right Certificates
- Transfer process
- Deed restrictions
- Conservation easements
- Interlocal agreements

Alternatives discussed are based on input from county leadership and the county's Department of Planning and Development Services, outreach with the community, and experience analyzing and working with other jurisdictions.

Review of Administration

Snohomish County's existing administrative model, which has been used in one of the two purchases of TDR credits (Hidden Valley), is that of simple buyer and seller with limited public support. The other purchase of TDR credits was made by the county with public funds as a pilot transaction. Cascade Land Conservancy was involved in the Hidden Valley transaction and had the opportunity to work through the application and transfer process.

Under the existing administrative model the county's role consists of processing the sending site application, awarding TDR certificates, negotiating easement terms, and recording the easement. This is considered limited public support because the county's role in marketing the

program, providing marketplace information, connecting buyers and sellers, and facilitating the transaction is small. Based on an examination of administrative models used in other programs and stakeholder feedback in Snohomish County, CLC recommends some changes to the county's program administration that are intended to encourage and facilitate marketplace activity. These recommendations are discussed in the following sections.

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 consider when assessing and designing 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 and escrow services in TDR marketing and sales.

Outreach revealed support for different models for transferring development rights. From these discussions, CLC narrowed consideration to three options:

- Private transactions model
- Private market model with county support
- TDR bank model

Option I: Private transactions model

This model is the basis of the existing Snohomish County TDR program. Also 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 TDR. Development approval is contingent upon the developer purchasing TDR credits from a seller who has county-issued certificates.

Private TDR transactions can be structured in much the same way as transactions in any property interest, such as mineral rights or timber rights. In other words, 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 the exception versus the rule, but the opportunity exists.

Examples of programs using the private transactions model include:

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

Thurston County, Washington, 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: (1) applicants in sending sites must hire a contractor to complete a survey of their property before being issued development rights, (2) the transfer rate is set at 1-to-1, which has not proven attractive to developers, and (3) demand has not been high in the receiving areas to build above current zoning.

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.
- County governments do not have to financially support the transaction process.

Cons:

- The absence of market information can be a 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 been unsuccessful in creating a TDR marketplace.

Option 2: Private market model with county support

A second option is based on the private-market nature of the private transactions model, but incorporates a degree of county support to address the challenges created by 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. However, this process would be supported by the county, which would serve as an information repository. In this role, the county would track potential TDR credit sellers in the marketplace, as well as track the number of current credits available to buyers. The county would also serve as a technical resource potential buyers and sellers could contact should they have any questions about the TDR program and how to participate.

Examples of programs using the private market with county support model include:

Collier County, Florida, has a successful TDR program that maintains a “central lands registry.” This information, which is easily accessible on 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, Washington, 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 up-to-date viewing of recent transactions, including market participants, credits purchased, prices paid, and total acres conserved.

Pierce County, Washington, has instituted an untried, but 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 TDR credits and an associated 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 delaying placement of an easement on the property until the transaction is finalized in escrow.

Pros and cons of the private market with county 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 independently, 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 banks.

Cons:

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

Option 3: TDR bank model

TDR banks vary across jurisdictions, but they generally serve at least three functions: (1) provide information that makes the marketplace more efficient, (2) act as a buyer or a seller in strategic transactions to advance the goals of the TDR program, and (3) even out market fluctuations. The latter function differentiates banks from an information clearinghouse and is a unique role a bank may play in the marketplace.

There may be many reasons a jurisdiction wants to actively participate in the buying and selling of TDR credits. For example, a bank may be used to purchase development rights on high-priority parcels that the private market might not conserve. These development rights are held in the bank and later sold to private developers. Alternatively, a 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. When larger projects requiring numerous development rights creates a complex transaction—particularly if acquiring the needed rights involves multiple sellers for the buyer to acquire the necessary supply of development rights—a TDR bank can function as a single seller, increasing efficiency. Furthermore, banks can make purchases in market downturns when both TDR credit prices and demand are low.

In most examples, a local jurisdiction or regional government is responsible for administering its TDR bank. Some communities, however, have contracted with private nonprofit organizations to operate their banks. This minimizes government involvement in the process, which in some communities can encourage participation. Banks are typically funded by the jurisdiction, but may also accept private donations.

Examples of programs using a TDR bank model include:

In King County, Washington, a TDR bank was established with \$1.5 million of Conservation Futures tax revenues. The bank has 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 bank sales have occurred since November 2006. The first was a sale of 31 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, Florida, 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, California, a private nonprofit has taken on the role of TDR bank. The bank started with a \$275,000 grant from the California Coastal Commission. 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 nonprofit 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 purchases.
- 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.

Cons:

- Increased administrative complexity and staffing costs.
- Generally requires seed money for initial funding, which may necessitate new taxes or bonds.

To explore alternative bank designs for Snohomish County, Cascade Land Conservancy interviewed administrators of 16 TDR programs from around the country whose programs

include a bank. Research also included a review of literature on TDR banks and outreach to stakeholders who would potentially use a bank in Snohomish County.

Alternative Bank Designs

Through outreach to stakeholders, discussions with county staff, and experience gained through designing TDR programs elsewhere in the state, Cascade Land Conservancy identified four options for TDR bank models appropriate for the county to consider adopting as part of a long-term conservation strategy in the event that the county determines a bank to be an appropriate mechanism to add to the program. These options include:

1. No bank
2. Public bank
3. Private bank
4. Semi-private bank

No bank

Since adopting its initial TDR code, Snohomish County's program has not included a bank. The transactional model identified in existing program code, that of direct private buyer-seller trades, does not require a bank to function effectively. The two purchases of TDR credits to date have been completed without a bank and it is likely that buyers and sellers could complete future transactions without the need for one.

Pros

- The absence of a bank should not hinder the ability of buyers and sellers to complete TDR transactions within the scale of the private marketplace.
- The burden of administrative responsibility for the county will be lower without a bank and accordingly the costs of operating the program will be lower.

Cons

- Because a bank can act as a marketplace player, it can participate in transactions that are beyond the scale of the private market to handle. When there is an imbalance in TDR credit supply and demand a bank can intervene in the market to help correct such imbalances. Without a bank no mechanism will exist to exert this kind of corrective influence.

Public bank

A public TDR bank would be funded and operated by Snohomish County government. Given its existing responsibilities in administering the TDR program it is appropriate that the Department of Planning and Development Services would operate a county bank.

The two current examples of public TDR banks in Washington are those in King and Pierce Counties. King County's bank has been instrumental in the completion of infrequent, but large scale transactions. In one example, using seed money from the county's Conservation Futures revenue the bank purchased development rights from the Snoqualmie Tree Farm, protecting approximately 90,000 acres of commercial forestland. Administrator Darren Greve suggests that a bank can play an active role in a marketplace focused on interjurisdictional transfers⁵¹. As the number of cities with TDR programs in Snohomish County increases, this could create conditions favoring the participation of a bank in the market. Because King County's bank plays an active role in the local marketplace the administrative resources required to manage the program are higher. King County currently dedicates 1.5 FTE to program administration. Pierce County's bank is managed as part of the broader TDR program, currently managed by 1.0 FTE.

To fund bank acquisitions the county may choose to allocate Conservation Futures funds or a portion of money raised through the type of general obligation bond issue discussed in the PDR portion of this report.

County staff anticipate that they would be capable of managing a bank with existing resources, but only if the bank's role was limited to being a repository which buyers and sellers could approach for development right transactions. If the bank's role was more active and involved marketing, seeking out transactions with landowners and developers, and engaging cities, the burden of responsibility would be higher and the county might need to recruit additional staff to perform these expanded duties.

Pros

- Existing employees who already understand the TDR process and the county's regulatory regime are capable of managing a passive bank.
- Program administration is integrated because bank and TDR administrators are the same entity.
- Access to grants targeted to public agencies.
- Acquisition of TDR credits will reflect county conservation goals.

⁵¹ Interview with author, February 2010

Cons

- County staff suggest they not have capacity to devote as much time to full range of bank administration tasks, depending on the role of the bank.
- Administrative costs would increase to reflect additional responsibilities of bank operation as an expansion of the TDR program.
- Capitalization and on-going funding determined by public process.

Private bank

A private bank would be entirely owned and operated by a private entity, administered independently of county direction. This could be operated either through a contract with the county or as an independent private enterprise. Although such a design has not yet been used in Washington, private banks have been successful in other parts of the country. In San Luis Obispo County, California, a private TDR bank has been a valuable tool for advancing local conservation goals.

Feedback from members of the farming, forestry, and development communities in Snohomish County has consistently indicated a strong preference for a private TDR bank. Landowners have expressed skepticism that a publicly-run bank would be as closely attuned to their interests as a private bank would be. Many landowners and developers interviewed expressed a preference for working with a private entity if they were to pursue a transaction through a bank.

Pros

- A private bank will have the incentive to pursue marketing, outreach and education.
- Non-profits often have experience in public outreach and may have experience with constituencies that would use a bank.
- A private bank may have access to alternative funding sources such as philanthropy or investment.
- Private banks will have the incentive to continue and increase program participation. This will help create a sustainable market with stable prices.

Cons

- The county will relinquish control of bank operations and conservation outcomes may not necessarily reflect county conservation priorities.
- If the TDR marketplace is not sufficiently active to justify a bank it may cease operation.

Semi-private bank

A semi-private bank would be administered by a private entity with an element of public oversight. The operations and transactions would be managed privately but with guidance or input from the county. This could take the form of a collaborative partnership between county staff and the private bank or through guidelines established in the bank's charter. A hybrid structure would combine the expertise, efficiency, and motivation of a private bank with a degree of accountability to a public body. The goal would be to balance the county's input over the strategic direction of the bank's activities while maintaining a division of labor where the bank's work is performed in the private sector. If the county pursued this option, it would need to establish a method for selecting a private entity to operate the bank. One possible approach would be to solicit applications through a competitive bidding process.

Pros

- Public input can guide bank's actions towards accomplishing county conservation goals.
- Public oversight could justify public investment in acquisitions.
- A private operator would have incentive to continue and increase program participation. This will help create a sustainable market, with stabilized prices.

Cons

- Finding a balance between the degree to which the county becomes involved in the bank's management and the flexibility delegated to the private operator may be challenging.
- Could require new enabling legislation, increasing time needed before bank is fully operational.

Bank integration with PDR program

The Snohomish County comprehensive plan specifies that its PDR and TDR programs should work together. Cascade Land Conservancy agrees with this objective. One way that the effectiveness of a PDR program can be increased in concert with a TDR program is through a bank. Under the current PDR program, in which the county leverages state and federal funding sources to purchase conservation easements on farms, conditions of the grant programs (NRCS, RCO) require that development potential from participating properties be extinguished. If the county chooses to expand its own funding for PDR acquisitions (such as through increased Conservation Futures Tax allocation or a bond) and subsequently purchases development potential without matching funding, it will have more flexibility in how that development potential is treated. Development rights purchased solely with county funds could be held by the bank for future sale to a private buyer. As publicly acquired rights are monetized the proceeds from sales are revolved back into the bank and may be used for future acquisitions.

King County's program is one example of the integration of PDR and TDR through a bank. In what has become the largest single transaction of its kind to date, King County purchased the

development rights from the Snoqualmie Tree Farm using Conservation Futures funds and transferred those rights to its bank. The purchase protected about 90,000 acres of forest land.

One potential risk of trying to sell development rights acquired through PDR through a bank is that of relative price. Because the goal of the PDR program is to target lands with high conservation value this can also mean that development rights from such properties are expensive compared with what other rights might be available on the TDR market. If the price difference between rights available in a bank and those on the private market is large, buyers will probably look to the private market for a seller. This could result in a situation where the bank gradually builds an inventory of development rights that are not competitively priced. This issue could be mitigated, however, by the transaction costs, increased time, and increased complexity of buying rights on the private market.

For example, if a developer wants to add bonus density to a receiving area project using TDR, he may choose to buy development rights on the private market. This would involve identifying a seller, negotiating a price, and closing a transaction. This process takes time and is uncertain, as price negotiations between buyer and seller may take longer than expected or the parties may not reach an agreement. The timing issue adds complexity and uncertainty to the developer's project, two things that developers have identified as being undesirable. Therefore, if a developer wishes to minimize complexity and uncertainty he may be willing to pay a price premium for a swift and predictable transaction. Developers who need rights in short order may prefer to purchase more expensive rights from a bank if the tradeoff is speed.

Recommendation: Private market model with county support, no bank at this time.

Both Snohomish County leadership and members of the community have expressed sensitivity around the government's role in the transfer of TDR credit process. Coupled with the costs and complexity of funding and administering a bank, the TDR bank model presents some drawbacks. On the other hand, the uncertainty associated with limited availability of information and the associated challenges for buyers and sellers makes an unsupported, wholly private transaction model likewise unattractive.

The private market with county support model allows the market to function freely, while providing information that increases efficiency by connecting buyers and sellers. It also 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.

Cascade Land Conservancy does not recommend Snohomish County pursue a TDR bank at this time. As discussed earlier, most transactions could likely be conducted within the private marketplace and the county does not require a bank to sell the rights it owns nor to acquire additional development rights. In the future, however, market conditions or program changes could make a bank a valuable component of the county's TDR program. One situation in which a bank could have an effective role is if the volume of transactions in the market increases and

buyers seek a way to buy development rights that is faster than the private market allows. Another situation in which a bank would be useful is if the county expanded its PDR program as described in the “High Commitment” option (see section entitled “Possible PDR Program Area Expansion Scenarios”) and bought development rights with county funds. These rights would be eligible for transfer and could be resold.

Overview of the transfer process under this model

The recommended process for completing a transaction under this framework involves two main players – a landowner and a developer – and support from the county. The transaction would generally take place through the following steps.

1. A property owner voluntarily decides to sell development rights.
2. The seller communicates an interest in selling development rights to the county TDR program administrator.
3. The county calculates the number of TDR credits available for sale on the property, issues a TDR certificate letter of intent to the seller, and adds the seller’s name to a publicly available list of property owners interested in selling TDR credits. The seller may also choose to actively market his or her credits to potential buyers.
4. A developer decides to pursue a project requiring TDR credits. The developer contacts the county to express interest and may review the list of property owners with TDR credits for sale.
5. After reviewing the list, the developer contacts the seller and the two parties negotiate the sale directly. The transaction moves forward if both parties agree on a price.
6. Before finalizing the deal, the seller works with the county to agree upon a conservation easement for the sending site.
7. The landowner accepts a conservation easement on the property and the county records the easement.
8. The county issues TDR certificates to the landowner, who may then transfer them to the seller upon closing of the sale.
9. The county monitors and enforces the easement to ensure compliance.

While not included in this framework, real estate companies could potentially serve a role in this process. As with standard real estate transactions, sellers could list development rights with agents who, in turn, could market these rights to potential buyers. A vibrant TDR marketplace is likely required before the benefits of using real estate professionals are realized.

Calculating Sending Site TDR credits

Based on the recommended criteria for sending sites discussed in the “Sending Areas” section, the number of residential development rights a sending site is eligible to sell would be determined by a calculation. In summary, this calculation awards one credit for each lot but stipulates a minimum area for participation that is consistent with the highest zoning the county recognizes for resource use. The calculation also makes adjustments to account for portions of the sending site already used for residential development or reserved for future residential development.

Recommendations for calculating sending site credits

Fractions

Any fractions of development rights that result from this calculation should not be included in the final determination of total development rights available for sale. In other words, fractions should be rounded down when calculating development rights.

Determining sending site area

For purposes of calculating the number of development rights a sending site may sell, the area of a sending site shall be determined as follows:

- If the sending site is an entire lot, the acreage should be determined by:
 1. County Assessor records; or
 2. A survey funded by the applicant that has been prepared and stamped by a surveyor licensed in the State of Washington (for situations where the sending site includes partial lots).
- If the sending site consists of multiple lots, the acreage in sum shall be determined through the means outlined in (1) above.

Zoning changes

The determination of the number of residential development rights a sending site has available should be valid for transfer purposes only, should be documented in a TDR certificate(s), and, once calculated, should be considered a final determination. In other words, once TDR certificates are issued, the quantity should not to be revised due to subsequent changes to the sending site’s zoning.

Existing conservation easements

No TDR credits may be allowed from land with a conservation easement already in place.

Existing and future residences

Development rights are not issued for lots on which a residence exists. If a landowner desires to build homes on undeveloped lots in the future then development rights shall not be issued for those lots.

Differences between existing and proposed calculations

The current countywide program (30.35B SCC) calculates the number of development rights a sending area is eligible to transfer based on the number of residences that could be allowed under the zoning and development regulations that apply to the sending site. Adjustments are made for existing dwellings, retained development rights, and existing easements. One main difference in the method proposed by CLC is to base the development right calculation on gross site area as opposed to net buildable area. The number of rights allocated to a sending area would be the greater of the number of lots on the site or the base zoning applied to the gross site area. The adjustments for existing and future dwellings, as well as existing easements, would remain. Please refer to Appendix L for draft ordinance language.

Transfer Process

For development projects requiring or otherwise involving TDR credits, applications may be submitted without the purchase of TDR credits; however, no associated development permits will be issued by the county until the TDR credit requirement is satisfied.

TDR credits may be acquired by:

- Purchasing TDR credits from certified sending sites.
- Transferring TDR credits from certified sending sites owned by a receiving site owner.
- Purchasing previously acquired, unexecuted TDR credits from another buyer.

County-City transfers

A TDR transaction transferring TDR credits from unincorporated Snohomish County to a city will be reviewed and transferred using the city's development application review process. The transfer shall be subject to an interlocal agreement between Snohomish County and the city if one exists. Alternatively, if adopted by the city, the administrative rule (WAC 365-198) shall provide terms and conditions for a city to accept development rights in lieu of an interlocal agreement.

Deed Restrictions

After development rights have been transferred, a TDR conservation easement restricting the deed and documenting the transaction shall be recorded by the county. Notice will also be placed on the title of the sending parcel. The county has established an internal tracking system that identifies certified transfers. Through this process, county staff will be able to track if an encumbered property is subject to an application for a use that is inconsistent with the easement.

Conservation Easements

A conservation easement is a legal agreement between a landowner and a nonprofit land trust, quasi-governmental agency (e.g. a conservation district), 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, and pass it on to heirs. A conservation easement is placed on a sending site as a prerequisite for the county awarding TDR certificates to the owner to sell. The conservation easement typically restricts any further development of the property (unless the owner retains some rights for this purpose), but allows resource-based uses, such as farming and forestry, to continue.

Conservation easements are generally effective in perpetuity. Although some members of the community have suggested that the TDR program should operate with term easements, for example an easement that is effective for only a 20-year period, such easements are problematic for at least two reasons. First, term easements do not support the goals of the TDR program—namely, they do not contribute to the long-term viability of farming and timber production. Secondly, the Central Puget Sound Growth Management Hearings Board invalidated the Kitsap County TDR program’s use of 40-year term easements on grounds their use was inconsistent with GMA; precedent suggests their use would be disallowed⁵².

The existing conservation easement for Snohomish County’s TDR program is a template that is designed to allow flexibility for the sending site landowner’s ability to continue non-development uses of the encumbered property. The county’s TDR easement differs from that used in the PDR program in two important ways. First, because of the requirements stipulated by the state and federal agencies (RCO, NRCS) that contribute funding to PDR acquisitions, a property’s development rights are extinguished as part of these transactions and may not be transferred or re-sold. Second, additional conditions set by these agencies include a restriction on habitat restoration uses. The objective of this provision is to prohibit not only development, but other conversions of the property to non-agricultural use.

These conditions of the easement highlight differences between the PDR and TDR programs. The content of the TDR easement is less restrictive than that for PDR because a central goal of the TDR program is to protect sending areas from development by moving development potential into areas where it is better accommodated. The restriction of uses on a sending site other than development falls outside the purview of the TDR program.



⁵² See Central Puget Sound Growth Management Hearings Board, “CPSGMHB Decisions”, 07-3-0019c, *Suquamish II v. Kitsap County*, <http://www.gmhb.wa.gov/central/decisions/index.html>, last accessed February 2011.

This feature of the TDR easement presents complications. During its outreach efforts CLC identified two elements that stakeholder groups have identified as being drawbacks of the TDR easement as it is currently structured. First, PDS staff have characterized the flexibility of the easement as having both positive and negative aspects. The flexibility is beneficial because it gives the sending site landowner an opportunity to negotiate allowed uses with the county. This latitude accommodates a range of diverse uses that may be associated with agriculture or forestry but are not required to be so. The accompanying limitation of this approach is that easement negotiations between the county and sending site landowner may take more time and become more complex than would otherwise happen if the easement terms were more rigid. County staff have also suggested that the TDR easement and negotiation process may be simplified by narrowing the scope of restricted uses. To the extent that the county can formalize the easement language there may be opportunities for simplifying this step of the TDR process.

Second, some members of the agricultural community, including members of the Snohomish County Agricultural Advisory Board, have expressed concern about the narrow scope of the TDR easement. This is specifically directed at the fact that the easement does not restrict habitat restoration as a sending site use. This is a valid perspective as the Agricultural Advisory Board is concerned about situations where farmland may be converted to non-agricultural uses, which include both development and habitat restoration.

Cascade Land Conservancy recognizes that the concerns of the Agricultural Advisory Board deserve further discussion with the county and believes that, for the purposes of this study, the specific language of the easement constitutes a separate issue from the questions CLC was tasked with examining. In terms of the complexity of easement language negotiations as identified by county staff, it is difficult to evaluate the extent to which this issue affects the efficiency of program administration given the low number of sending area purchases that have occurred.

Recommendation: no change, but monitor

Snohomish County's TDR program has successfully negotiated and recorded easements on properties in two separate purchases. This small number of transactions involving easement negotiations, combined with the fact that the county's existing easement language has not been shown to be a limiting factor in program participation, suggests that there may not be a need to change the existing easement at present.

To the extent that easement complexity, confusion, or difficulties in negotiation create obstacles to program participation, the county should highlight these and consider modifications to the easement language. If future transactions demonstrate that simplifications to the easement can enhance the efficiency and effectiveness of the program, the county should pursue these opportunities. TDR program staff should document issues that delay the easement negotiation process in transactions and gather feedback from sending area program participants to inform subsequent improvements to this component of the program.

While Cascade Land Conservancy believes that the question of whether or not the TDR program easement should restrict habitat restoration is worthy of consideration, it is beyond the scope of this report for CLC to examine.

Interlocal Agreements

An interlocal agreement is a legal contract between two or more counties and cities that specifies the conditions under which TDR credits may be transferred (typically from an unincorporated county into or adjacent to an incorporated city). Interlocal agreements must be endorsed by the legislative bodies of each jurisdiction.

Although there are revenue benefits to cities associated with growth, there are also additional costs, such as those associated with infrastructure improvements and increased demand for services. Consequently, cities may be more inclined to create TDR policies if offered incentives. These are generally negotiated and finalized in an interlocal agreement between the two jurisdictions.

What type of incentives the county can or should provide will depend on the needs and resources of each jurisdiction. Following are examples of incentives used in TDR interlocal agreements in other programs from around the country:

- *Compliance with City Development Standards.* Fort Collins, CO cooperates with Larimer County to implement a TDR program that channels development from a reservoir area within the county to receiving sites inside the city's urban growth area. To ease the burden of increased development on the city, the county reviews receiving site projects to ensure they comply with density and design standards set forth by the city. Fort Collins annexes receiving site land as soon as the county approves development. In addition to guaranteeing that new growth conforms to city guidelines, the TDR program also helps Fort Collins establish a buffer of open space between neighboring towns.
- *Maintained Quality of Life.* Boulder County, CO has interlocal TDR agreements with nine out of 10 incorporated cities within the county. Several of the agreements require that a minimum percentage of transactions support the conservation of open space directly surrounding the jurisdiction. Cities support this technique because it assures that their citizens can enjoy nearby open space created by accepting extra density.
- *Protection of a Specific Natural Resource.* Issaquah, WA, has a within-city TDR program it developed in 2005 to protect critical areas within city limits. One critical resource, Issaquah Creek, is of particular interest to the city. To expand the city's ability to protect Issaquah Creek in the vicinity of the city, Issaquah entered into an

interlocal agreement with King County, whereby it agreed to accept density off county property; however, it negotiated a total amount it was willing to accept (75 TDR credits) and the physical extent of the sending area (Issaquah Creek basin). Similarly, Bellingham, WA signed an agreement with Whatcom County to accept TDR credits from county land around Lake Whatcom, the city's source of drinking water.

- *Establishment of Community Separator.* Fruita, CO lies along Interstate 70 adjacent to the cities of Grand Junction and Palisade. To prevent scattered development from blurring boundaries between the cities, Fruita agreed to accept TDR credit transfers from a "buffer zone," or area of land in unincorporated Mesa County that separates Fruita from Grand Junction. The three cities and county also provide financial support for a purchase of development rights program to further protect community identity.

In addition to entering interlocal agreements, cities in Snohomish County (as well as the other counties participating in the regional TDR marketplace- King, Pierce, and Kitsap) have the option of unilaterally adopting an administrative rule (WAC 365-198) that provides terms and conditions for a city to accept county development rights in lieu of an interlocal agreement. A description of this rulemaking process is available on the Department of Commerce website⁵³.

Recommendation: Pursue interlocal agreements with cities as appropriate

As discussed earlier, cities are conceptually the natural receiving sites for new growth into a region. While the recent nature of growth in Snohomish County combined with the present economic circumstances in the housing market may be limiting present demand, it is advisable for the county to start a dialogue with cities in an effort to determine common goals TDR may help address. As one example of this, at the time of this report's publication the county is commencing discussions with the City of Snohomish to pursue an interlocal agreement for the city's TDR program.

⁵³ Washington State Department of Commerce website, Interlocal Terms and Conditions Rulemaking <http://www.commerce.wa.gov/site/1338/default.aspx>

VI. Concluding Remarks

Concluding Remarks

The intent of this document is to provide county leadership an in-depth introduction to PDR and TDR, to report the findings of CLC's research and outreach efforts, and to recommend program frameworks and administrative models that CLC believes can effectively advance the goals of each program while improving their integration. Supporting these recommendations are accompanying documents showing public revenue sources, draft language for a TDR ordinance, a detailed economic analysis, maps illustrating the geographic extent of the recommendations, a glossary, a summary of TDR programs in Washington, and a supplemental description of CLC's pursuit of a TDR pilot project.

These recommendations and supporting documents are intended to provide the Snohomish County Council and the citizens of the county a framework and basis for discussing PDR and TDR in a public process. The ultimate policy and associated elements of PDR and TDR programs in the county will be decided by county leadership.

Appendix A: About Cascade Land Conservancy



Cascade Land Conservancy (CLC) is Washington’s largest independent land conservation and stewardship organization. Over the past decade, CLC has led the conservation of more than 173,000 acres across the Central Puget Sound region, Kittitas County, 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 Snohomish, King, Pierce, Mason, and Kittitas counties.

CLC designed transfer of development rights (TDR) programs for Pierce and Kittitas Counties, working under contract. Its staff continually research TDR programs across the country, staying up-to-date on the latest techniques and policy changes in TDR, and as a result have become leading experts on TDR programs and ordinances in the state. Counties and cities approach CLC as the regional leader in TDR programs. Based on its experience designing transfer of development rights programs in King and Pierce County, as well as its policy work for the state’s Department of Commerce, CLC is uniquely positioned to assist Snohomish County in addressing its resource land conservation goals.

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

