A STUDY OF TRANSFER OF DEVELOPMENT RIGHTS (TDR) IN THURSTON COUNTY, WASHINGTON

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Introduction

The Thurston County Board of Commissioners in 2010 adopted a goal of fully implementing the county's existing transfer of development rights program (TDR) to preserve agricultural lands and open space. Since 2009, an informal group of interested stakeholders has been meeting to discuss ways to enhance the program. The group is broken into three subcommittees: the Sending Subcommittee (composed of those selling development rights); the Receiving Subcommittee (composed of those purchasing development rights); and the Program Details Subcommittee.

This report and the corresponding research was produced for the stakeholders group by Evergreen College students Jenna Fissenden and Steven Michener as part of an independent learning contract, with guidance from Thurston County staff. The purpose of this study is to address the functional and dysfunctional components of Thurston County's existing transfer of development rights program. This report also analyzes and conceptually applies proven methodologies from working TDR programs throughout the United States.

Transfer of Development Rights Explained

Transfer of development rights (TDR) is "a land use regulatory tool under which development rights can be severed from a tract of land and sold in a market transaction. The parcel from which the rights are transferred is then permanently restricted as to future development, and the purchaser of the rights may assign them to a different parcel to gain additional density" (Taintor). TDR programs serve both farmers and the community by preserving designated long-term agriculture, ultimately cultivating a more agriculturally independent economy.

Research/Analysis

A feasibility matrix was created to evaluate the potential of implementing features from other successful programs across the United States into Thurston County's TDR program. Feasibility matrices, for the purpose of this research, break down effective programs into four components: legal, social/policy, economic and technical and then apply their effectiveness to Thurston County's potential for a workable program. The Growth Management Act (GMA), Urban Growth Area (UGA) and other relevant regulations were considered in order to make projections for Thurston County.

There are many working TDR programs throughout the United States. Analyzing those models within the framework of a feasibility matrix highlights which prospective elements could be applied in Thurston County. For example, Calvert County in Maryland created the Purchase and Retirement Fund (PAR) in which the county purchases development credits from sending areas and permanently retires them, ultimately serving the farmers and reducing the number of houses built. The feasibility of the PAR program depends upon a potential-site agriculture tax or the partial allocation of funds from the Real Estate Excise Tax (REET) in order to fund purchases in an ongoing way.

Municipal and county governments are possible stewards under the PAR model -- provided adequate funding is available to purchase the development rights. Land is put under permanent easement; therefore, environmental organizations are generally supportive of this approach. Citizen support for the program typically depends upon whether a tax is imposed. Economically, PAR is feasible through matching and leveraging. If funding is available to the county through EPA grants, REET and Conservation futures, a PAR fund is achievable. Calvert County's model also depends upon proper staffing.

Currently, Thurston County's TDR program allows for one unit of increased density, while in most all other county programs, the addition of units is higher. For example, in Pinelands New Jersey, one purchased development credit transfers into four units in a receiving area (Pruetz). An increased ratio in Thurston County is legally feasible and in compliance with the Urban Growth Area (UGA) as well as the county's current comprehensive plan; however there is minimal incentive for developers or receiving areas. Increasing the unit ratio may create more stimulus for the purchase of credits, creating an economic gain for both the sending and receiving areas as well municipalities.

While an increase in ratio is feasible under Thurston County and state policies, the incorporated areas (cities) that receive the increased densities must also approve of the ratio. This can pose a challenge if a receiving city resists the increased densities resulting from a TDR program or expresses a “not in my back yard” philosophy.

The above models represent just a few options that could be feasible in Thurston County. Many programs across the U.S. have worked well due to factors not entirely controlled by the counties, but instead by market demand. Other factors affect the workability of a TDR program, such as the willingness of incorporated cities to participate in the program and the availability of receiving areas.

Considering the state of the economy as well as the housing market, demand for increased density within Thurston County cities is minimal. Due to lack of demand, programs must adapt accordingly. One way to compensate would be through creative incentives such as carbon sequestration, increased height restrictions on city buildings, stormwater credits and/or by-right permitting.

Market Demand

In its report on TDRs, the Cascade Land Conservancy emphasizes the role of market demand. The conservancy notes: “Because TDR is a market-based program, adequate demand for increased density (or other development incentives) is essential to the emergence of a robust TDR marketplace” (Cascade Land Conservancy). Since TDR programs depend highly on market demand, a thorough background analysis should be completed to find an appropriate transfer ratio that is of value to all stakeholders. As mentioned above, many working programs around the country feature an increased density ratio instead of a one-to-one ratio. A severed credit should be worth more to a property owner in a sending area than what the land would be worth after development. Of course, the value of this credit must be worth more to a developer in a receiving area than the value had by foregoing the planned incentive. Currently, Thurston County's one-to-one ratio is of value to sending site property owners but not to receiving site stakeholders.

Transfer of Development Rights versus Purchase of Development Rights

Transfer of development Rights (TDR) and purchase of development rights (PDR) programs have been used successfully in other preservation programs around the country. PDR programs can even be used effectively in the market-based system. A PDR system buys development rights and extinguishes them, then places a conservation easement on the land from which it was sold. This can be an effective tool to preserve land that abuts an urban growth boundary or land that is environmentally significant, such as watersheds and estuaries.

By extinguishing rights with public funds, a jurisdiction can drive demand for existing rights by limiting supply. King County, WA, for example, used this combination of PDR and TDR with great success; the county now has extinguished development rights on more than 90,000 acres of land. However, a majority of these credits have been bought and transferred. Most of King County's credits have been purchased with earmarked tax revenue and are currently available for sale. King County is a prime example of using TDR and PDR together to preserve key areas first and to establish a market. King County has established many key psychological factors by acquiring these credits and then selling them at a fair market rate. The program administrators provide confidence for stakeholders by investing in the program and establishing a going rate for credits that is public knowledge.

TDR Banks

A TDR bank is an open forum usually found on a jurisdiction's TDR website along with the program description. A bank has many functions, including providing a place for buyers and sellers to post a need for TDR credits and credits that are for sale. A jurisdiction may also use the bank to kickstart a market by posting TDR credits for sale. Managers of working TDR programs have concluded that a bank is an essential tool for the success of the program. Ultimately, a TDR bank has potential to provide stakeholders with confidence in the program and provides security in the marketplace by making the monetary value of TDR credits transparent to the public.

Clear, Defined Sending and Receiving Areas

In Thurston County's TDR program, sending areas are defined as those areas that are zoned for long-term agriculture, while receiving areas are found inside the urban growth boundary and are subject to county or municipal zoning. There is an interest in extending the current program to include environmentally sensitive areas and working lands that are beneficial to Thurston County's economy and future environmental health. By clearly defining and ranking sending areas according to their importance to the county, a defined number of TDR credits can be established for possible use. This action will create a solid market base and in turn allow cities to plan for increased density needed to protect these areas. Clear and defined receiving areas that are able to accommodate the increased density can then be established. These receiving areas should also be considered for by-right permitting and up-front environmental analysis, giving more incentive to developers to use TDR credits.

Public Education and Outreach

According to the Cascade Land Conservancy, "Activity in a TDR program will be limited if potential participants are not aware of its existence, its benefits, or their eligibility" (Cascade Land Conservancy Guide). A well funded and thought-out marketing campaign will help make the public aware of the program and its goals. This campaign should be sensitive to the wants, needs and attitudes of current property owners as well as stakeholders' feelings toward government interference of property and increasing growth (Cascade Land Conservancy, guide).

All of the working programs that were reviewed have up-to-date and informative websites clearly explaining their TDR programs' functions and goals. A webpage describing the program with access to applications and forms, maps, history of sales, lists of buyers and sellers and a FAQ sheet is a useful way to communicate easily with the public at little expense. This is also an effective way to publish information about the benefits and goals of the program – again, with little cost to the county or municipality. Thurston County's TDR website is available on www.co.thurston.wa.us/planning.

Benefits to Sending Areas: Preservation of Farmland

There are currently 487,040 total acres in Thurston County and only 11,550 acres are zoned long-term agriculture. While the comprehensive plans for Thurston County and its municipalities share a common goal of maintaining rural character and protecting working lands, the designated long-term agriculture acreage is limited.

Aesthetically, preserving farmland is essential to fulfilling the county's all-encompassing vision of maintaining rural character. The most recent updated Thurston County Comprehensive Plan, amended in 2008, states the following under the headline of "Agriculture Resources":

> "They recognize the essential role of land conservation and local food production in maintaining the quality of life and long-term sustainability of the community. In addition, they recognize the multiple benefits provided by farmland, including wildlife habitat and flood control. The community also recognizes that maintaining viable agricultural resources requires a partnership with the farming community."

TDR programs offer economic benefits to farmers through compensation. Rather than selling prime agricultural land for development, farmers are able to sell credits instead, thus receiving compensation and a guaranteed future of farming.

Benefits to Receiving Areas

In a functional TDR program, both sending and receiving areas must accrue benefits. Creating an incentive-based system is a viable option when market demand is minimal. If increasing density is impractical, receiving areas can also look to new incentives such as expediting the approval process for development through a by-right system. The City of Olympia provides an incentive by allowing TDR-credit buyers to use their credits to build at a density that would otherwise be too low under existing zoning requirements. This approach appeals to the general attitudes of local residents who value a rural setting.

When developers purchase TDR credits and apply them to building at an increased density close to the downtown region, both the municipality and the citizens benefit. By pushing density further away from agricultural areas, fewer services and infrastructure are necessary. Time, expenditures and labor are required to fulfill the needs of rural citizens, all of which require municipal or county resources. With less resources delegated to residents outside the city, receiving areas benefit exponentially.

Conclusion

The workability of a TDR program relies heavily upon community involvement in which citizens hold intrinsic value in agricultural and environmental resources. There are three factors that drive a workable TDR program: market demand, education and sense of place. In order to revitalize Thurston County's current program, municipalities and the county must work together to establish distinct guidelines that are not only clear, but accessible and easy to use for both sending and receiving areas.

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