



Staff Report to Planning Commission

Issue Title: Update Transfer Development Rights in Section 3.28, Rural Element

Meeting Date: November 1, 2011

Time Required: 1 hour

Attendees: Scott Diener, Manager, Policy, and Planning (P&P), DCD
Jeff Smith, Senior Planner, P&P, DCD

Action Requested At This Meeting: Discuss and understand key issues for the Comprehensive Plan Amendment to revise policies in Section 3.2.4 Transfer Development Policies of the Rural Element, and pass a recommendation to the Board (BOC).

Project Proposal: Comprehensive Plan Amendment to amend Policies regarding the Transfer Development Rights

Project Description: The proposed amendment to the Kitsap County Comprehensive Plan is to update the policies in the Section 3.2.8 Transfer Development Rights (TDR) to clarify the intent of the County's TDR program to preserve rural lands and to convey density to urban designated receiving sites. Please Review the attached policies for the proposed comprehensive Plan amendment. The referenced amended polices can be found at:
<http://www.kitsapgov.com/dcd/pc/Materials/2011/10-18/TDR%20Draft%20Rev%20Policies%2010-18-11.pdf>

Background: Transfer of Development Rights (TDR) is a market-based tool for conserving land or structure determined to have a public benefit in rural areas. Transfer of development rights are a voluntary transfer of development rights from a (rural) sending area with lower density to a receiving area with higher population density, i.e. cities, towns or urban growth area. It complements other incentive-based tools, land or easement acquisition programs, and other regulatory techniques intended to achieve selected growth management objectives. A jurisdiction's objectives might include conserving land for forestry, and farming, maintaining historic structures, preserving housing choices, promoting multi-use non-motorized paths, or protecting wetlands, or other critical areas.

The use of Transferable Development Right is authorized by the Growth Management Act at RCW 36.70A.090 as follows: "A comprehensive plan should provide for innovative land use management techniques, including, but not limited to, density bonuses, cluster housing, planned unit development and the transfer of development rights." The State Legislature passed additional legislation in 2009, to establish a regional transfer of development rights in the Central Puget Sound, which includes Kitsap County, King County, Pierce County, and Snohomish County (RCW 43.362 Program Established for Puget Sound). The legislature provided funding for approximately \$450,000 to the three larger counties and cities to develop a regional process to implement policies in the PSRC Vision 2040 that is currently under way.

Existing TDR Program: Through the Comprehensive Plan update, the County in 2006 adopted the initial requirements and procedures to process TDRs in unincorporated Kitsap County. The existing TDR program can be found in Kitsap County Code Chapter 17.430 Transfer Development Rights is more regulatory in nature only to require TDRs for site-specific Comprehensive Plan amendments involving proposals for a higher density or intensity designation. Staff drafted an application, an informational handout, and created a TDR web page to help disseminate information about the program to the public. The 2006 adoption of the program is the first attempt by the County at implementing TDRs. Transfer ratios are based the allowed density in the rural zone. The code requires that all designated receiving areas or parcels must be within an urban growth area.

In the County during the early 1990s, there was an attempt for paid development rights (PDRs), which was not approved by the voters. The City of Bainbridge Island is the only jurisdiction that has an adopted program.

In 2010, the City of Port Orchard was awarded a \$97,000 grant from the Washington State Department of Commerce to propose Transfer Development Rights Program to operate within the city and to coordinate with Kitsap County and the respective existing TDR program. A requirement of the grant was for the city and the county to enter into an "Inter-local Agreement" (ILA) to incorporate the County's existing program and to propose elements for Port Orchard's proposed TDR program. Kitsap County as the sub contractor was responsible for four deliverables under the ILA, 1) Summary documentation of the County's existing TDR program, 2) Summary of the County's proposed methodology for establishing a transfer ratio for TDR sending sites. 3) Propose a TDR Draft Comprehensive Plan or proposed TDR regulation amendments. 4) Final ILA between the Port Orchard and the County for the implementation of the of an inter-jurisdictional TDR program.

As identified above per the third task, the proposal now is for amendments to the Comprehensive Plan TDR polices, and amendments to the regulations will be proposed in early 2012 once the methodology to establish a transfer ratios for sending sites.

I. Project location and characteristics

The proposed Comprehensive Plan amendments include policy updates that affect property in unincorporated rural Kitsap County, and City of Port Orchard and other cities or urban growth areas within the County.

II. Amendment Type

Pursuant to Kitsap County Code Title 21 Land use and Development Procedures, these Comprehensive Plan amendments are required to be reviewed as a Type-IV legislative decision by the Board. The County has sent a notice of intent to the amendments, per RCW 36.70A, to the Washington Department of Commerce on September 29, 2011.

III. Comprehensive Plan and Zoning

The proposals are countywide and have the potential to affect all rural and urban zoning classifications and comprehensive plan designations if all requirements are met for rural sending sites and urban receiving zones.

IV. State Environmental Policy Act (SEPA)

On September 28, 2011, Kitsap County SEPA Official issued an environmental determination through the State Environmental Policy Act (SEPA) a "Determination of Non-Significance" (DNS) and Notice of Adoption of Existing Environmental Documents. The SEPA comment and appeal period closes on October 17, 2011. Prior to the closing of the comment period, the Responsible Official received comments from the Noel Higa, Economic Development Director, Port Gamble S'Klallam Tribe and Alison O'Sullivan, Biologist, Suquamish Tribe. They both recommended inserting "urban" be in Policies RL-73, RL-76, and "only" in RL-78 to clarify that rural to rural area TDRs should not be allowed.

V. Staff Analysis and Consistency Review

Staff has reviewed the proposed amendments and provided analysis of their consistency with the Growth Management Act, Multi County Planning Policies, Countywide Planning Policies, and the Kitsap County Comprehensive Plan. This analysis is shown below.

A. Growth Management Act

RCW 36.70A.020 Planning Goals: The goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan. The proposal to amend the TDR Comprehensive Plan policies in the Rural Element is consistent with the following

goals of the Act:

Goal (1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.

Goal (2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.

Goal (4) Housing. Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.

Goal (8) Natural resource industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.

Goal (9) Open space and recreation. Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks, multi-use non-motorized paths and other recreation facilities.

Goal (10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

Goal (13) Historic preservation. Identify and encourage the preservation of lands, sites, and structures that have historical or archaeological significance.

B. Puget Sound Regional Council's (PSRC) Vision 2040

Transfer and Purchase of Development Rights Strategy: DP-Action-12 The Puget Sound Regional Council, together with its member jurisdictions, will develop a regional strategy for transfer of development rights programs (TDR), purchase of development rights programs (PDR), and other innovative techniques and strategies to protect rural areas and resource lands from overdevelopment.

- Short-term / MPP-DP-21, 25, 30, 48
- Results and Products: *report and recommendations to Growth Management Policy Board and Executive Board*

MPP-DP-25: Use existing and new tools and strategies to address vested development to ensure that future growth meets existing permitting and development standards and prevents further fragmentation of rural lands.

MPP-DP-28: Support long-term solutions for the environmental and economic sustainability of agriculture and forestry within rural areas.

Goal: The region will conserve its natural resource land permanently by designating, maintaining, and enhancing farm, forest, and mineral lands.

MPP-DP-29: Protect and enhance significant open spaces, natural resources, and critical areas

MPP-DP-30: Establish best management practices that protect the long-term integrity of the natural environment, adjacent land uses, and the long-term productivity of resource lands.

MPP-DP-31: Support the sustainability of designated resource lands. Do not convert these lands to other uses.

C. Countywide Planning Policy

The Kitsap County Board of Commissioners adopted the Kitsap Countywide Planning Policies by ordinance on November 19, 2007 (Ordinance 403-2007). The proposed amendments are consistent with these policies. These policies include the following considerations:

Element A Countywide Growth Pattern, Policy 3.d.

Develop a program for the Transfer of Development Rights to preserve lands with important public benefits.

Consistent. The proposed amendments broaden the intent of the Kitsap County's TDR program from a regulatory program to allow the increase of comprehensive plan designations and zoning to a program to change current growth patterns in rural areas by transferring from low density rural areas to higher density urban areas .

Element B. Urban Growth Areas

The intent of the element is to encourage urban residential densities, commercial, and industrial developments in areas where urban services can be most economically provided by cities or urban service providers. In addition, the element provides a methodology for concentrating development within urban areas, and to monitor growth with reasonable measures.

Consistent. The proposed amendments to the TDR program provide an additional method concentrate development in receiving areas where urban service can most economically provided.

Element D: Rural Land Uses and Development Patterns

The element provides a framework for preserving rural lands, the protection of rural development patterns, and maintains a rural level of service.

Consistent. The proposed amendments to the TDR policies provide a tool to help preserve rural lands in perpetuity by the use of conservation easements and discourage urban level impacts in rural unincorporated Kitsap County

Element E. Countywide Strategies for Open Space Preservation, Resource Preservation, and Critical Areas

The strategy is to conserve these areas and connect them to create a regional open space network to protect critical areas, conserve natural resources, and preserve lands and resources of countywide and local significance.

Consistent. The proposed amendments provide a process to protect areas rural lands that have the potential for development that contain critical areas, open space corridors for long-term preservation.

Element I. Affordable Housing

The strategy is for cities and counties to provide affordable housing for all income levels at a variety of densities.

Consistent. The proposed amendments will help provide additional opportunities to provide affordable housing at receiving sites as one of many incentives to develop above and beyond existing code requirements.

VI. Staff Findings of Fact

Staff review concludes the following findings:

1. The proposed amendments are consistent with the Washington State Growth Management Act (GMA), State Environmental Policy Act (SEPA), Multi-County Planning Policies, and Kitsap Countywide Planning Policies.
2. The proposed amendments are consistent with the goals and policies contained within the Kitsap County Comprehensive Plan and associated development regulations.
3. The County gave adequate public notice to solicit comments consistent with Title 21 Land Use and Development Procedures.

IX. Staff Recommendation

Staff recommends **APPROVAL** of the proposed amendments. For Policy RL-75(b.) staff recommends adding the "at required rural densities" after the word clustering for further clarification.

Recommendation: DCD recommends that the BCC advise DCD of final direction, and schedule a hearing, with a date of final adoption to be decided later with deliberation alongside Title 21 'Land Use and Development Procedures'.

Follow-up Notes & Outcomes:

*Comprehensive Plan Amendments – Transfer Development Rights
Staff Report
Kitsap Planning and Zoning
October 25, 2011*

Attachments:

- Attachment 1, pgs 1 –7, Planning Commission Staff Report
- Attachment 2, pgs 1 –3, 'Clean' Planning Commission Recommendation
- Attachment 3, pgs 1 – 3, DCD-Recommended Modifications to Planning Commission Recommendation
- Attachment 4, pgs 1 – 4, Public Comment from S'Klallam and Suquamish Tribes

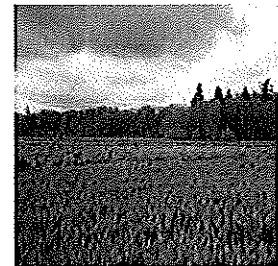
1 **3.2.8 Transfer Development Rights**

2 Transfer Development Rights (TDR) is a market-based tool for conserving land or
 3 structures determined to have public benefit. It complements other incentive-based
 4 tools, land or easement acquisition programs, and other regulatory techniques intended
 5 to achieve selected growth management objectives. The use of TDR is authorized by
 6 GMA (Growth Management Act) in RCW Section 36.70A.090 as follows:

7
 8 A comprehensive plan should provide for innovative land use management
 9 techniques, including, but not limited to, density bonuses, cluster housing,
 10 planned unit developments, and the transfer of development rights.

11 *See Chapter 2, Land Use, for policies relating to urban areas of the county, where TDR-*
 12 *receiving sites would be located.*

Goal 15. Promote the TDR from land valuable to the public, especially rural and resource areas, to urban areas, in order to preserve the rural environment, encourage retention of rural resource-based uses, and avoid the demand for urban service demands in rural areas.



13
 14 Policy RL-66 Continue efforts to implement an effective and focused TDR program, as
 15 an innovative means to preserve private lands with countywide public
 16 benefit, to encourage higher densities in appropriate areas, and reduce
 17 residential development capacity in natural resource areas.

18 Policy RL-67 Consider the reduction of development in the rural area by encouraging
 19 the TDR from private rural lands into the UGA as the top priority of the
 20 voluntary TDR Program.

21 Policy RL-68 Support and work actively to facilitate the transfer of rural development
 22 rights for the following:

- 23 a. Preserve the rural environment, encourage retention of resource –
 24 based uses, and reduce service demands in the rural areas.
- 25
 26 b. Provide protection to significant natural resources, which include but
 27 are not limited to habitat corridors, shorelines, and areas with a critical
 28 recharging affect.
- 29
 30 c. Increase the regional open space system consistent with the County
 31 Open Space Plan per KCC Chapter 18.12.

32

- 1 d. Encourage rural farm preservation and other related agricultural
 2 activities countywide, as noted in the Comprehensive Plan Agriculture
 3 goals and policies, Kitsap County Strategic Agricultural Pan and
 4 Inventory.
- 5
- 6 e. Promote interconnected rural non-motorized greenbelt corridors to
 7 provide alternative mode of transportation and recreation activities
 8 consistent with goals and policies in Sections 2.2.9 Opens Space and
 9 Greenways, and 10.2.3 Parks and Open Space Acquisition.
- 10
- 11 f. Promote the use of innovative land use development techniques in
 12 rural areas by clustering, and to employ low impact development
 13 practices.
- 14
- 15 g. Provide bonus TDR credit for non-conforming lot sending sites, which
 16 were created prior to the adoption of the Kitsap County
 17 Comprehensive Plan (legacy lots).
- 18
- 19 h. Encourage compact development within defined urban centers and
 20 provide convenient and attractive commercial and personal service
 21 centers.
- 22
- 23 i. Preserve historic sites consistent with goals and policies of Section
 24 2.2.10 Historic Preservation of the Land use Element, Comprehensive
 25 Plan.

26 Policy RL-69 Promote transfer of development rights by facilitating the transfer from
 27 private property owners with sending sites to property owners with
 28 receiving sites, and by working with cities to develop Interlocal
 29 agreements that encourage transfers into cities and within adopted
 30 appropriations.

31

32 Policy RL-70 Require private properties qualified as sending sites to provide a protected
 33 area of sufficient size to provide public benefit. Priority candidates for
 34 sending sites are:

- 35 a. All Rural Lands.
- 36
- 37 b. Lands contributing to protection of significant landscape or habitat features.
- 38
- 39 c. Lands contributing to the protection of environmentally sensitive
 40 susceptible features including but not limited to aquifer recharge areas, and

1 sites supporting federally threatened or endangered species, and/or wildlife
2 habitat corridors.

- 3 d. Lands that contribute to preservation of scenic views or maintaining the
4 rural character or that are suitable for inclusions in and provide important
5 links to the regional open space system.

6 Policy RL-71 Consider the following as candidate for TDR receiving sites:

- 7 a. Unincorporated UGAs and incorporated cities may receive transfer of
8 development rights to include but not limited to increased project density,
9 building height, and reduced off-street parking in urban centers.

- 10
11 b. Preferences should be given by locations within designated urban centers,
12 or adjacent to transit stations and park and ride lots. Transfers to
13 incorporated areas shall be detailed in an Interlocal agreement between
14 the city and County.

Jeff N. Smith

From: Noel Higa [noelh@pgst.nsn.us]
Sent: Monday, October 10, 2011 9:46 AM
To: Jeff N. Smith
Cc: Steve Heacock; Jessica Coyle; Roma Call; Paul McCollum; Jeromy Sullivan
Subject: Re: FW: SEPA Determination and Checklist

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Jeff --

I am the Director of Economic Development for the Port Gamble S'Klallam Tribe. I just got the proposed TDR Comp Plan amendment from Steve Heacock and would like to suggest some additional clarification to emphasize the intent of GMA that TDRs be used only for rural-to-urban density transfers. In Policies RL-73, RL-76 and RL-78 I think it would be appropriate to emphasize the intent that the receiving areas be urban in to make it clear that rural-to-rural transfers are not intended:

Policy RL-73 Continue efforts to implement and effective and focused TDR program, as an innovative means to preserve private lands with countywide public benefit, to encourage higher densities in appropriate urban areas, and reduce residential development capacity in natural resource areas.

Policy RL-76 Promote transfer of development rights by facilitating the transfer from private property owners with sending sites to property owners with urban receiving sites, and by working with cities to develop Interlocal agreements that encourage transfers into cities and within adopted appropriations.

Policy RL-78 Consider the following as candidate for TDR receiving sites:

a. Only Unincorporated UGAs and incorporated cities may receive transfer of development rights to include but not limited to increased project density, building height, and reduced off-street parking in urban centers.

These changes would eliminate the potential for transfers into LAMIRDs or from one rural area into another. This is implied in Goal 20, but is not explicit.

Goal 20 Promote the TDR from land valuable to the public, especially rural and resource areas, to urban areas, in order to preserve the rural environment, encourage retention of rural resource-based uses, and avoid the demand for urban service demands in rural areas.

(As an aside, in Policy RL-73, I think there's a typo. Should be "implement and effective" ... ?)

Please let me know what you think.

Thanks,
Noel
360.297.7432
noelh@pgst.nsn.us

On 10/10/2011 8:51 AM, Steve Heacock wrote:
Good morning Noel:

Here's the draft TDR info from Jeff Smith.

Best,
Steve Heacock, Environmental Programs Planner 3
Kitsap County Department of Community Development
337-5777

Jeff N. Smith

From: Alison Osullivan [aosullivan@suquamish.nsn.us]
Sent: Monday, October 10, 2011 11:10 AM
To: Steve Heacock
Cc: jsmith@co.kitsap.wa.us; Noel Higa
Subject: RE: SEPA DNS for Code Revision related to Transfer of Development Rights

Follow Up Flag: Follow up
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Steve/Jeff,

I agree with the email that Noel Higa sent responding to the SEPA DNS that stated it needs to be clearly identified where densities can be increased. See suggested changes below.

Policy RL-73 Continue efforts to implement and effective and focused TDR program, as an innovative means to preserve private lands with countywide public benefit, to encourage higher densities in appropriate urban areas, and reduce residential development capacity in natural resource areas.

Policy RL-76 Promote transfer of development rights by facilitating the transfer from private property owners with sending sites to property owners with urban receiving sites, and by working with cities to develop Interlocal agreements that encourage transfers into cities and within adopted appropriations.

Policy RL-78 Consider the following as candidate for TDR receiving sites:

a. Only Unincorporated UGAs and incorporated cities may receive transfer of development rights to include but not limited to increased project density, building height, and reduced off-street parking in urban centers.

Alison

Alison O'Sullivan
Biologist, Suquamish Tribe
18490 Suquamish Way
P.O. Box 498
Suquamish, WA 98392
phone: (360) 394-8447
fax: (360) 598-4666

From: Steve Heacock [mailto:SHeacock@co.kitsap.wa.us]
Sent: Thursday, October 06, 2011 1:35 PM
To: 'ECY RE SEPA UNIT'
Cc: Piazza, Gina L (DFW); Jessica Coyle; Alison Osullivan; rlumper@skokomish.org; jkonovsky@squaxin.nsn.us; McGraner, Patrick (ECY); Burcar, Joe (ECY); mark.olson@navy.mil; Waldbillig, Chris M (DFW); Nicole Floyd; jweaver@cityofportorchard.us; Alyse S. Nelson; Barry Berezowsky; Andrea Spencer; tosinski@kitsaphba.com; mcclure@kitsapregionalcouncil.org; rolson@psrc.org; jon@orminc.com; scacchair@gmail.com; Naomi Maasberg; Cooper, Betsy; re_moyer@msn.com; l.redling@att.net; caroleleining35@gmail.com; Scott Diener; Larry Keeton
Subject: SEPA DNS for Code Revision related to Transfer of Development Rights

Hello SEPA Unit:

Attached is the SEPA Checklist and SEPA Programmatic DNS for a Code revision to update Kitsap County policies related to the Transfer of Development Rights.

Interested parties, please contact me should you have any questions related to the SEPA process. If you have questions about the proposed code revision or the TDR process, please contact Jeff Smith, Senior Land Use Planner, cc'd here, and available by phone at (360) 337-5777.

Best,
Steve Heacock, Environmental Programs Planner 3
Kitsap County Department of Community Development
337-5777