Whatcom County

TDR/PDR Multi-Stakeholder Work Group

Final Report

October 3, 2018

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1. **Introduction**

Whatcom County has an important interest in protecting agricultural lands, rural areas, and sensitive watersheds throughout the county. Protection of these areas benefits all County residents, including those living in cities. At the same time, cities have the responsibility to plan for future growth in their communities, providing adequate land and densities to accommodate urban growth over the 20-year planning period. These city planning efforts, intended to attract the majority of population growth into urban areas, also benefit the County as a whole. County and city planning efforts must be coordinated and consistent under the Growth Management Act or GMA (RCW 36.70A.100).

Agricultural and Rural Lands

Agriculture has been an important component of the Whatcom County economy for a long time and remains so today. The *Preliminary Assessment of Drivers of Agricultural Land Conversion in Whatcom County Washington* report (Aug. 2016, hereinafter referenced as "*Drivers of Agricultural Land Conversion* report") states:

> . . . The county has always been a leader in agricultural products with dairy being the mainstay. Whatcom is the sixth largest agriculture county in Washington and ranks in the top 3% out of 3,065 U.S. agricultural counties. The 2012 Census of Agriculture shows that 1,702 Whatcom farms representing 115,831 acres produced 357 million dollars of agricultural goods, an average of nearly $210,000 per farm. . . (pp. 14-15).

The GMA requires counties to designate and conserve agricultural lands of long-term commercial significance (RCW 36.70A.060 and .170). The Whatcom County Comprehensive Plan designates almost 86,000 acres of Agriculture land, most of which is in the central and northern areas of the County. The Comprehensive Plan indicates the purpose of the Agriculture designation is:

> To recognize and promote agriculture in Whatcom County and protect prime agricultural soils and productive agricultural lands from conversion to other uses. To prevent conflicts between residential and agricultural uses (p. 2-90).

Designated Agriculture land is located adjacent to five of the seven cities in Whatcom County (Everson, Ferndale, Lynden, Nooksack, and Sumas).

The GMA also requires county comprehensive plans to include rural land use designations to protect rural character (RCW 36.70A.070(5)). Approximately 38,000 acres in the Rural one dwelling/five acres (R5A) and Rural one dwelling/ten acres (R10A) zones, which constitute almost 1/3 of these zoning districts, are actively farmed (*Drivers of Agricultural Land Conversion* report, p. 16). While agriculture is one valued component of rural lands, there are also other factors that make rural lands valuable to County residents. In fact the Whatcom County Comprehensive Plan addresses multiple factors in the purpose of the Rural designation, which is:

> To provide opportunity for a variety of low-density residential development including cluster development with the flexibility to practice farming or forestry, or operate a home occupation or cottage industry; to retain a sense of community. Also to encourage agriculture and forestry activities through the use of incentives (p. 2-90).

Maintaining agricultural lands and rural character are both important to the quality of life and sense of place in Whatcom County.

<u>Watersheds</u>

Lake Whatcom is the drinking water source for approximately 100,000 people, many of whom live in Bellingham (http://www.whatcomcounty.us/984/Lake-Whatcom-Management). The Lake also provides swimming, fishing, and boating opportunities for both City and County residents, along with fish and wildlife habitat. The majority of the 36,000 acre watershed is located within unincorporated Whatcom County. Therefore, both the City of Bellingham and Whatcom County have important interests in preserving Lake Whatcom water quality by managing land use in the watershed.

The City of Blaine is located on Drayton Harbor. The Drayton Harbor Watershed is over 36,000 acres. The watershed includes a relatively large area in the City of Blaine, a smaller area in the City of Ferndale, rural lands, and agricultural lands. The Whatcom County Comprehensive Plan states:

> Both the County and the City of Blaine are concerned about water quality in Drayton Harbor. Drayton Harbor has a rich history as a shellfish resource. Studies have shown that fecal coliform levels in Drayton Harbor are high and have led to the closure of shellfish harvesting beds. Harvest has been restricted due to fecal pollution since 1952 with closures beginning in 1988. In 1995 the Drayton Harbor Shellfish Protection District was established. Drayton Harbor was entirely closed to commercial shellfish harvest in 1999. In 2004, 575 acres were upgraded to conditionally approved with closures occurring after heavy rainfall. Currently the conditionally approved portion is closed from November through February. Several waterbodies in the watershed are on the 303(d) list, including California and Dakota Creeks. In 2007, the County adopted an update to the Drayton Harbor Shellfish Protection District Recovery Plan. This plan reflects the success of reopening some areas for shellfish harvesting in 2004 and outlines future plans for Drayton Harbor restoration. In 2014, the City initiated a three-year project intended to identify point and nonpoint sources of pollution and take corrective action. . . Land uses throughout the watershed contribute to water quality in the Harbor and efforts by both the County and the City are necessary to manage water quality (p. 2-28).

Both the City and the County have important interests in preserving Drayton Harbor water quality by managing land use in the watershed.

City Planning / Urban Growth

The GMA states that the county must ". . . designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature. . ." (RCW 36.70A.110(1)). Additionally, the Whatcom County Comprehensive Plan's vision statement indicates:

> Whatcom County is a place where urban growth is concentrated in urban areas, where there is a distinct boundary between urban and rural uses, where agricultural use is encouraged, and where resource lands and water resources are protected. Rural areas are peaceful and quiet with less traffic and congestion than in urban areas. There is low-density development with open spaces allowing for privacy. A sense of community is retained and local input is considered in land use decisions (p. 2-1).

Whatcom County and the cities worked in close cooperation and coordination in the 2016 comprehensive plan updates. The County and cities jointly agreed on population growth allocations to the cities and the remainder of the County, which were incorporated into the Whatcom County Comprehensive Plan by Ordinance 2016-034. Finding 44 of this ordinance states:

> The population growth allocations to the UGAs total 58,433 additional people over the planning period (which equates to approximately 84% of countywide population growth). The population growth allocation to the remainder of the county, outside UGAs, totals 11,217 additional people (which equates to approximately 16% of the countywide population growth).

Funneling urban growth into the cities is not only required by the GMA, but also helps preserve agricultural, rural, and environmental areas in unincorporated Whatcom County. Therefore, the cities and Whatcom County have an important shared interest in encouraging growth inside city limits and other urban growth areas (UGAs).

Existing TDR and PDR Programs

The County has an existing transfer of development rights (TDR) program and purchase of development rights (PDR) program. The TDR program is intended to move development rights from the Lake Whatcom Watershed and sensitive environmental areas in the Birch Bay area to urban locations that are more appropriate for growth. The PDR program purchases development rights from agricultural and rural lands and retires these rights in order to reduce development in these areas. The PDR program is funded by a combination of local dollars and grants. The main source of local funding for the PDR program is the Conservation Futures tax. However, Conservation Future funds are also used for park land and other conservation projects. The existing TDR and PDR programs are discussed in more detail later in this report.

Whatcom County Comprehensive Plan Policy 2A-14

The Whatcom County Council adopted the Comprehensive Plan update in August 2016 (Ordinance 2016-034). New Comprehensive Plan Policy 2A-14 includes convening a multi-stakeholder work group tasked with:

- Reviewing the current TDR and PDR programs.
- Identifying political, financial, and regulatory barriers to effective TDR and PDR programs.
- Identifying opportunities and solutions for creating a workable TDR program.
- Identifying mechanisms to create a PDR fund that could be used to protect important agricultural and rural lands.
- Recommending policy and regulatory amendments necessary to implement the above policy.
- Identifying proposed sending areas in critical areas, the Agricultural Zone, and the Rural Study Areas.
- Identifying receiving areas.
- Identifying other factors and/or growth management tools.
- Exchangeable development rights that have economic value, with the potential for multiple methods of assigning and converting value.
- Interlocal agreements that grant economic value to exchangeable development rights and that insure development rights can be used in receiving areas.

The Whatcom County Executive originally appointed the Whatcom County Transfer of Development Rights (TDR)/Purchase of Development Rights (PDR) Multi-Stakeholder Work Group in February 2017. Members of the Work Group are shown below:

Ralph Black	TDR User (Chair)
Jori Burnett	City of Ferndale (Vice-Chair)
Chris Behee	City of Bellingham
Michael Jones	City of Blaine
Rollin Harper	Cities of Everson, Nooksack, and Sumas
Dave Timmer	City of Lynden
Bill Henshaw	Building Industry
Betty Sanchez	Realtors
Myrle Foster	Rural Property owner
Phil Thompson	Economist
Steve Powers	Affordable housing
Rod Erickson	Agriculture
Karlee Deatherage	Environmental
Rud Browne	County Council Member

Former Members: Brad Rader and Steven Globerman

The Work Group met from March 2017 to October 2018. The primary recommendation of the Work Group is to transition from a traditional TDR program, which has not worked well in the past, to a density credit program. In a density credit program, a developer pays cash to receive development incentives instead of purchasing TDRs. The cash can provide supplemental funding to protect agricultural and rural areas. The density credit model is a simple and efficient tool that could allow increased development in cities, UGAs, and other appropriate areas while providing additional funding for purchasing development rights in agricultural and rural areas and, potentially, for city amenities. Therefore, the Work Group recommends that the County and cities primarily focus on the density credit model in the future and that new incentives be tied to a density credit program (rather than the TDR program). The existing TDR program should be refined, but the County should not put major effort into reforming the program. The Work Group's full recommendations are set forth in Section 12 of this report.

2. Current TDR Program

The Growth Management Act (GMA), originally adopted by the state legislature in 1990, states "A comprehensive plan should provide for innovative land use management techniques, including, but not limited to, density bonuses, cluster housing, planned unit developments, and the transfer of development rights" (RCW 36.70A.090). The Whatcom County Comprehensive Plan contains a number of policies relating to TDRs, including:

Policy 2F-4: Review and adopt, where appropriate, incentive programs such as cluster density bonuses in urban growth areas, purchase of development rights, *transfer of development rights*, and tax deferrals.

Policy 8A-2: . . . Measures that can be taken to support working farms and maintain the agricultural land base should include . . . A workable *transfer of development rights program (TDR)* in which the development potential of a site could be transferred to another location where development is more favorable. . .

Whatcom County has adopted a series of ordinances relating to transfer of development rights over the last 35 years. These include:

- *Ordinance 82-58* – The County adopted new Chapter 20.89, entitled "Density Transfer Procedure," in the Title 20 Zoning Ordinance in 1982. This code allowed increased multi-family densities when development rights were transferred from undeveloped single family lots or multi-family tracts. These provisions, which were adopted soon after approval of the Lake Whatcom Subarea Plan, were originally applied within Sudden Valley.

- *Ordinance 97-046* – The County adopted a new Urban Residential - Mixed (URMX) zoning district in association with the Urban Fringe Subarea Plan update in 1997. The URMX zone was designated as a TDR receiving area in the Bellingham UGA. Development rights could be voluntarily transferred to increase the density allowed in the URMX zone.

- *Ordinance 99-087* – Chapter 20.89 underwent a significant re-write and the Lake Whatcom Watershed was officially designated as a "sending area" in 1999.

- *Ordinance 2004-044* - Several sections of the County Code were amended in 2004 to require TDRs for urban growth area expansions and rezones that increased residential density. However, there were several exceptions to these mandatory provisions, including requests initiated by a government agency.

- *Ordinance 2005-002* - The Official Whatcom County Zoning Map was amended in 2005 to establish sending areas in the Birch Bay area.

At the current time, there are two main categories of TDR provisions in the Whatcom County Code (WCC): Optional provisions and mandatory provisions. These are addressed below.

Optional TDR Provisions

The County Zoning Code allows land owners to increase development in certain urban zones by transferring density from areas where County policy seeks to reduce development potential. These provisions are strictly voluntary. Developers may utilize these provisions, but are not required to use them.

Bellingham UGA - Urban Residential Mixed (URMX) Zoning District. The URMX zoning has a number of different densities including 6-10 dwellings/acre and 6-12 dwellings/acre. The lower density figure can be obtained if public water & sewer are available to the site. Density can be increased to the higher density figure if public water & sewer are available and development rights are transferred from the Lake Whatcom Watershed. Each development right transferred from the Lake Whatcom watershed may be used to develop three additional dwelling units in the URMX zone (WCC 20.24.252). An example is provided below to illustrate how this could work in the URMX (6-12) zone. The example assumes a 20 acre site and that 50% of the site is taken up by wetlands, roads, stormwater facilities, etc.

URMX (6-12)

Gross Acres	20
Wetlands, roads, stormwater facilities, etc.	50%
Net Developable Acres	10
Units/Net Developable Acre (without using TDRs)	6
Total Units (without using TDRs)	60
Units/Gross Acre (using TDRs)	12
Total Units (using TDRs)	240

In the example above, 60 dwelling units could be constructed on the hypothetical 20 acre site in the URMX (6-12) zone without using TDRs. If TDRs are utilized, the total number of units could theoretically be increased to 240. URMX zones only exist in the Bellingham UGA. However, Bellingham generally does not extend public water and sewer outside city limits. The maximum density in the UGA, outside city limits, is one dwelling/10 acres when public water and sewer are not available. Therefore, the URMX zone does not function well as a TDR receiving area.

Birch Bay UGA - Urban Residential Medium Density (URM-24) Zoning District. The URM-24 zoning allows 10 to 24 dwellings/acre. The lower density figure can be obtained if public water and sewer are available to the site. Density can be increased to the higher density figure if public water & sewer are available and development rights are transferred from the sending areas in the Birch Bay area or the Lake Whatcom Watershed. Each development right transferred may be used to develop three additional dwelling units in the URM-24 zone (WCC 20.22.252). An example is provided below to illustrate how this could work in the URM-24 zone. The example assumes a 40 acre site and that 50% of the site is taken up by wetlands, roads, stormwater facilities, etc.

URM-24

Gross Acres	40
Wetlands, roads, stormwater facilities, etc.	50%
Net Developable Acres	20
Units/Net Developable Acre (without using TDRs)	10
Total Units (without using TDRs)	200
Units/Gross Acre (using TDRs)	24
Total Units (using TDRs)	960

In the example above, 200 dwelling units could be constructed on the hypothetical 40 acre site in the URM-24 zone without using TDRs. If TDRs are utilized, the total number of units could theoretically be increased to 960. This constitutes 760 additional dwelling units that could theoretically be added through the TDR program (at a 3:1 ratio, 254 development rights would have to be purchased to gain 760 more dwelling units). In this example, the gross density would be 24 units/acre (960 units/40 gross acres), but the net density would be 48 units/acre (960 units/20 net acres). It should be noted that the only URM-24 zone in the County is located in the Birch Bay UGA. Public water & sewer are generally available in the Birch Bay UGA and multi-family development is allowed in the URM-24 zone. However, an analysis of subdivisions and short plats conducted during the 2016 UGA review found that achieved net densities in the Birch Bay UGA averaged 5.9 dwellings/net acre (2004-2013). Additionally, wetlands will impact the extent to which future development can occur in the URM-24 zone. Given past development trends, and the critical areas present in the receiving zone, it may be unrealistic to expect the area to develop at the maximum density allowed by zoning with TDRs.

The Whatcom County Zoning Ordinance states:

> A TDR that is not associated with a pending development application and that is not proposed for transfer to another parcel at the time of application may be certified administratively by the Whatcom County planning and development services department. Upon satisfactory application for certification of TDRs for future sale or transfer, the number of TDRs on a sending area parcel shall be certified through the issuance of serially numbered individual certificates for each TDR verified for that parcel. . . (WCC 20.89.061).

A total of 247 development rights have been certified for transfer in Whatcom County. Only 18 of these development rights have actually been transferred.

Mandatory TDR Provisions

The Whatcom County Code contains provisions that require utilization of TDRs under certain circumstances. If these conditions are met, then it is mandatory to transfer development rights.

Urban Growth Area Expansions - Proposed urban growth area expansions are required to acquire development rights from a designated TDR sending area at a ratio of one development right for every five acres added to the UGA (WCC 20.89.051(3)). These provisions, which were originally adopted in 2004 in Ordinance # 2004-044, contain several exceptions summarized below:

- The county council may modify the TDR requirement if a development agreement has been made. The development agreement should include affordable housing, density, allowed uses, bulk and setback standards, open space, parks, landscaping, buffers, critical areas, transportation and circulation, streetscapes, design standards and mitigation measures.
- Urban growth area expansions initiated by a government agency, correction of map errors, properties that are urban in character, or expansions where the public interest is served are also exempt from the TDR requirement.

Rezones in Urban Growth Areas – Proposed rezones that would increase residential density in urban growth areas are required to acquire development rights from a designated TDR sending area (WCC 20.89.051(2)). These provisions, which were also adopted in 2004 in Ordinance # 2004-044, require one development right to be transferred for every three additional dwelling units obtained through rezones within a designated urban growth area. However, as with UGA expansions, there are several exceptions summarized below:

- The county council may modify the TDR requirement if a development agreement has been made. The development agreement should include affordable housing, density, allowed uses, bulk and setback standards, open space, parks, landscaping, buffers, critical areas, transportation and circulation, streetscapes, design standards and mitigation measures.
- Rezones initiated by a government agency, rezone correction of map errors, establishing one zoning district on a property with two or more zoning districts, zoning revisions that are intended to make a nonconforming use a conforming use or rezones where the public interest is served are also exempt from the TDR requirement.

Although these mandatory requirements were adopted in 2004, they have not resulted in transfer of any development rights to date. This is primarily due to the fact that cities requesting UGA expansions are exempt from the TDR requirements.

3. <u>Current PDR Program</u>

Whatcom County Comprehensive Plan Policy 8A-2 is to:

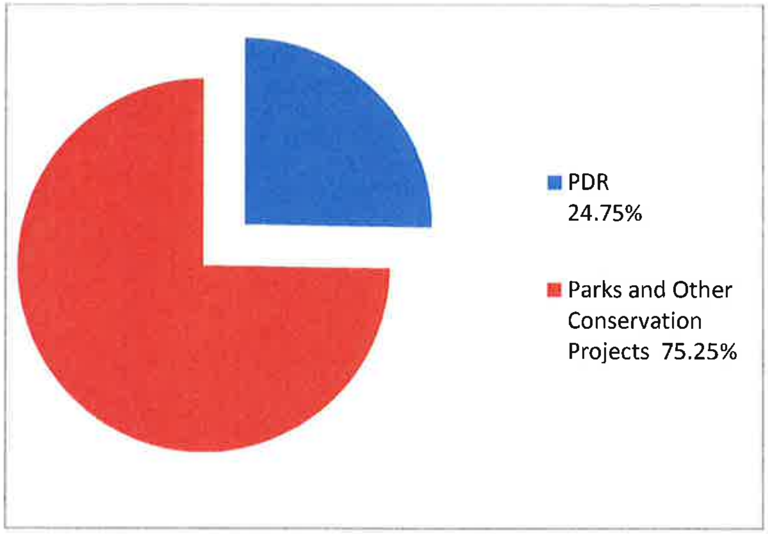
> Maintain a working agricultural land base sufficient to support a viable local agricultural industry by considering the impacts to farmers and agricultural lands as part of the legislative decision making process. Measures that can be taken to support working farms and maintain the agricultural land base should include:
>
> - . . . Maintaining a *Purchase of Development Rights (PDR)* program that facilitates the removal of development rights from productive farmland and provides permanent protection of those agricultural lands through the use of conservation easements or other legal mechanisms. . .

In 1992, the County established the Conservation Futures Property Tax Levy and Fund (Ordinance 92-002, now codified as WCC 3.25). This County Code states ". . . The levy shall be applied at a rate of six and one-quarter cents per $1,000 of assessed valuation" (WCC 3.25.010). As of 2018, the Conservation Futures tax rate is just under four cents per $1,000 assessed valuation (*Statement of Assessed Valuations, Tax Rates, and Taxes Levied Within the Various Taxing Districts of Whatcom County,* Whatcom County Assessor). The revenue from the fund:

> . . . shall be used solely to acquire rights and interests in open space land, farm and agricultural land, and timber land . . . so as to protect, preserve, maintain, improve, restore, limit the future use of, or otherwise conserve the property for public use or enjoyment . . . (WCC 3.25.030).

Approximately $1.1 million in Conservation Future taxes will be collected from County and city land owners in 2018. Additionally, as of the beginning of 2018, the Conservation Futures fund balance was about $3.6 million. The fund is used for PDR easement purchases and acquisition/maintenance of parks and other conservation projects, as shown below.

Use of Conservation Futures Tax (2002-2017)



In 2001, the Whatcom County Council approved Resolution 2001-049 *In Support of Expenditures from Conservation Futures Fund to Acquire Property Interests in Agricultural Land for Strategic Conservation Purposes*. This Resolution recognized that productive farms have long served and still serve as a crucial component of the economic and cultural life of Whatcom County. The Resolution also stated:

> . . . The Council commits itself to expend a fair and significant share of the Conservation Futures Funds for acquiring interests in agricultural lands;
>
> . . . a Purchase of Development Rights Steering Committee be created by the Executive with the charge of developing a PDR program for Whatcom County in concert with the Whatcom County Agriculture Advisory Committee. . .

The Purchase of Development Rights Steering Committee issued its recommendations in May of 2002. The Whatcom County Council adopted the "Agricultural Purchase of Development Rights Program" (WCC 3.25A) in September 2002 under Ordinance No. 2002-054. This Ordinance stated that "Whatcom County government recognizes agriculture as a major contributor to the local economy and a high quality of life for Whatcom County citizens." The purpose of the PDR Program is:

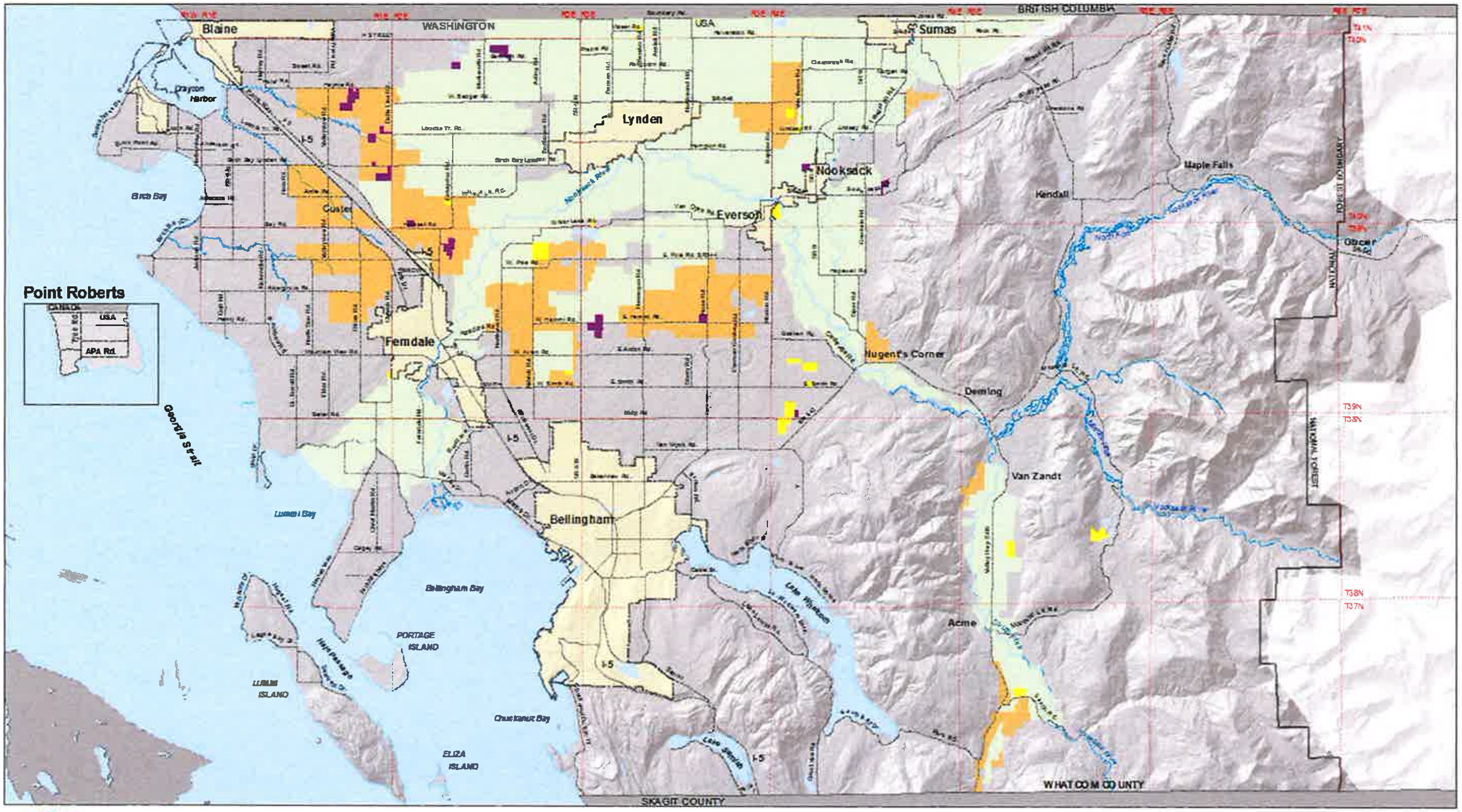
> To establish a voluntary agricultural purchase of development rights program for Whatcom County which will enhance the protection of the county's farmland, enhance the long-term viability of the agricultural enterprises within the county and provide public benefit by retaining properties in permanent resource use (WCC 3.25A.020).

The *Whatcom County Agricultural Purchase of Development Rights Program Guidelines* (revised April 2013) provide the rules and procedures for operating the PDR Program. Properties must be in the Agriculture or Rural zoning districts to be eligible for the PDR Program. The Guidelines provide five site selection criteria to guide the review of eligible properties:

- Land Evaluation (relating to soil characteristics);
- Site Evaluation (parcel size, # of development rights, % of parcel actively farmed, etc.);
- Special Considerations (historical significance, views, wetlands, wildlife habitat, etc.);
- Bargain Sale Opportunity (offer below market value);
- Bonus Points (sites in target or rural study areas).

Staff ranks the applications, with review and adjustments by the PDR Oversight Committee. If the County Council approves the application, the County pays the land owner fair market value for the development rights, a conservation easement is placed on the land restricting future development, and the farmer continues agricultural practices on the land.

Since creation of the PDR Program, the County has purchased 130 development rights on 919 acres in the R5A, R10A, and Agriculture zoning districts. The total price tag has been approximately $6.1 million. The County has spent more than $3.2 million from the Conservation Futures Fund to purchase these development rights. The other $2.9 million has come primarily from the U.S. Department of Agriculture (with relatively small shares from the state and a local non-profit organization). Agricultural conservation easements that the County has already purchased, along with current PDR applications, are shown on the map below.



N

Whatcom County

- Purchase of Development Rights 2018

Current PDR Applications

Purchased

Rural Study Areas

Agriculture Zone

4. <u>Current Sending and Receiving Areas</u>

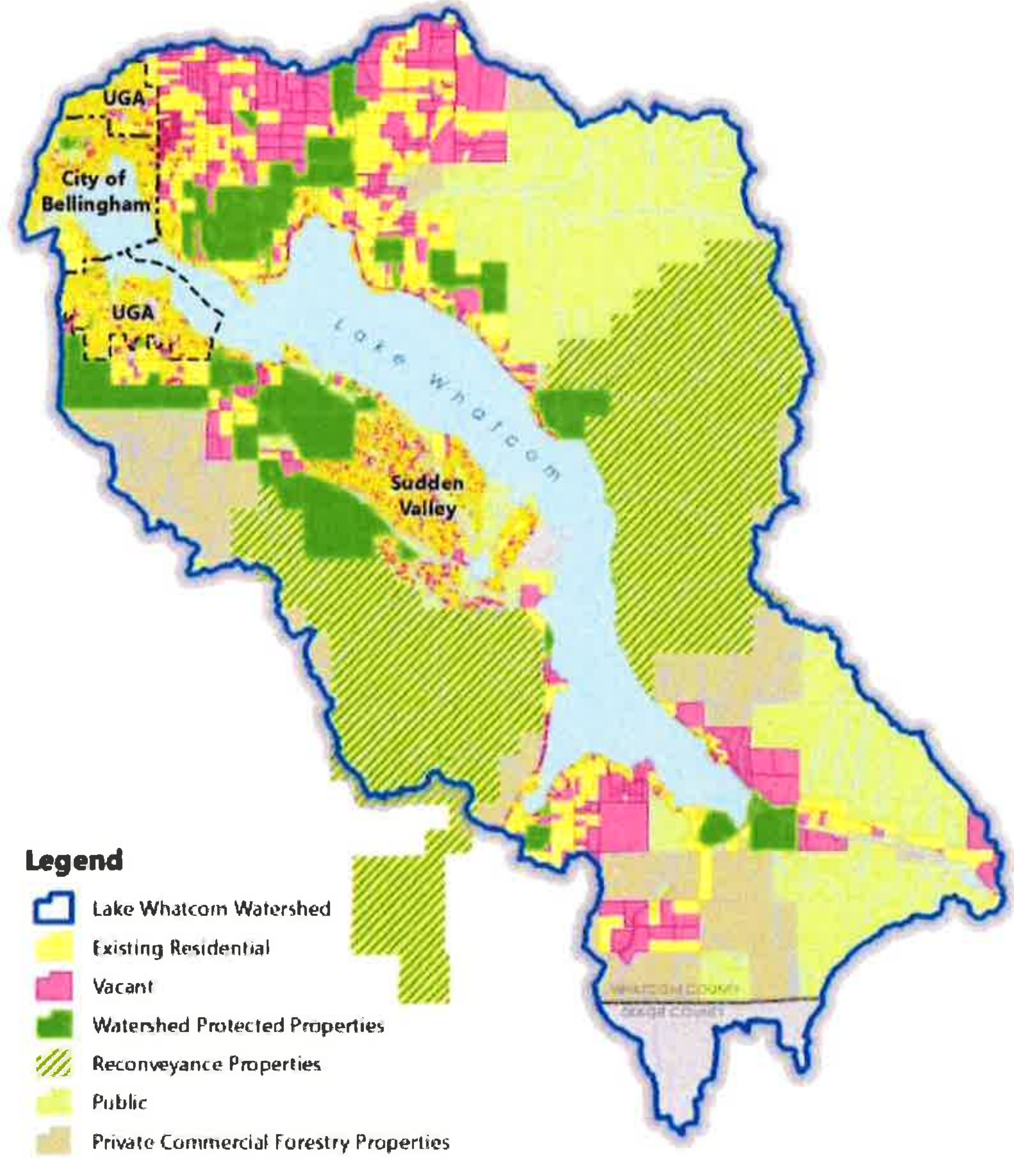
Lake Whatcom / Bellingham

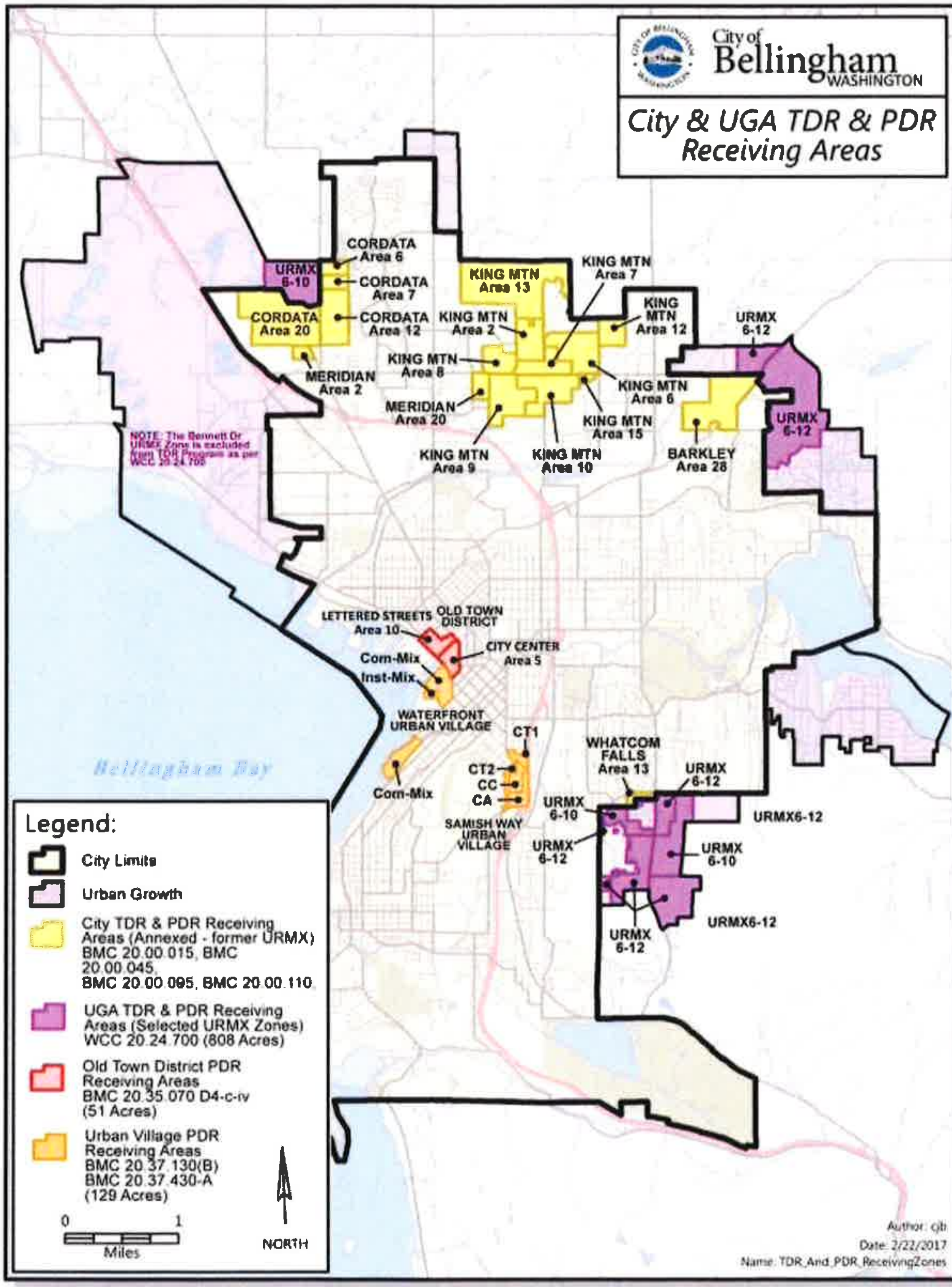
In 1997, the Whatcom County Council adopted a new Urban Residential - Mixed (URMX) zoning district, which served as a TDR receiving area in the Bellingham UGA (Ordinance 97-046). In 1999, the Lake Whatcom Watershed was designated as a TDR sending area (Ordinance 99-087). Only development rights from the Lake Whatcom Watershed sending area may be transferred to receiving areas within the Bellingham UGA (WCC 20.89.052(1)).

WCC 20.89.051(4) states "In cooperation with Whatcom County, cities may designate additional TDR receiving areas within their jurisdictional boundaries for the purposes of receiving transferred densities pursuant to this chapter." The City of Bellingham has designated TDR receiving areas to accommodate development rights from the Lake Whatcom Watershed (including unincorporated portions of the Watershed).

There are an estimated 1,631 development rights in the Lake Whatcom Watershed that could, potentially, be transferred to receiving areas. The receiving areas within the City of Bellingham have an estimated capacity to accommodate up to 6,801 development rights from Whatcom County's TDR program or up to 7,378 development rights from Bellingham's PDR program. Additionally, once annexed, the URMX zones in the Bellingham UGA could accommodate an estimated additional 2,565 development rights from TDRs and/or PDRs. The capacity estimates for both sending and receiving areas were generated by City of Bellingham Planning staff utilizing 2017 property ownership, zoning, and permit system data.

Lake Whatcom Sending Area





City of Bellingham WASHINGTON
City & UGA TDR & PDR Receiving Areas
CORDATA Area 6
URMX 6-10
CORDATA Area 7
CORDATA Area 20
CORDATA Area 12
MERIDIAN Area 2
KING MTN Area 13
KING MTN Area 7
KING MTN Area 2
KING MTN Area 12
KING MTN Area 8
KING MTN Area 6
MERIDIAN Area 20
KING MTN Area 15
KING MTN Area 9
KING MTN Area 10
BARKLEY Area 28
URMX 6-12
URMX 6-12
NOTE: The Bennett Dr URMX Zone is excluded from TDR Program as per WCC 20.24.700
LETTERED STREETS Area 10
OLD TOWN DISTRICT
CITY CENTER Area 5
Com-Mix
Inst-Mix
WATERFRONT URBAN VILLAGE
CT1
CT2
CC
CA
Com-Mix
SAMISH WAY URBAN VILLAGE
Bellingham Bay
WHATCOM FALLS Area 13
URMX 6-12
URMX 6-10
URMX6-12
URMX 6-12
URMX 6-10
URMX6-12
URMX 6-12
Legend:
City Limits
Urban Growth
City TDR & PDR Receiving Areas (Annexed - former URMX) BMC 20.00.015, BMC 20.00.045, BMC 20.00.095, BMC 20.00.110
UGA TDR & PDR Receiving Areas (Selected URMX Zones) WCC 20.24.700 (808 Acres)
Old Town District PDR Receiving Areas BMC 20.35.070 D4-c-iv (51 Acres)
Urban Village PDR Receiving Areas BMC 20.37.130(B) BMC 20.37.430-A (129 Acres)
0
1
Miles
NORTH
Author: cjb
Date: 2/22/2017
Name: TDR_And_PDR_ReceivingZones

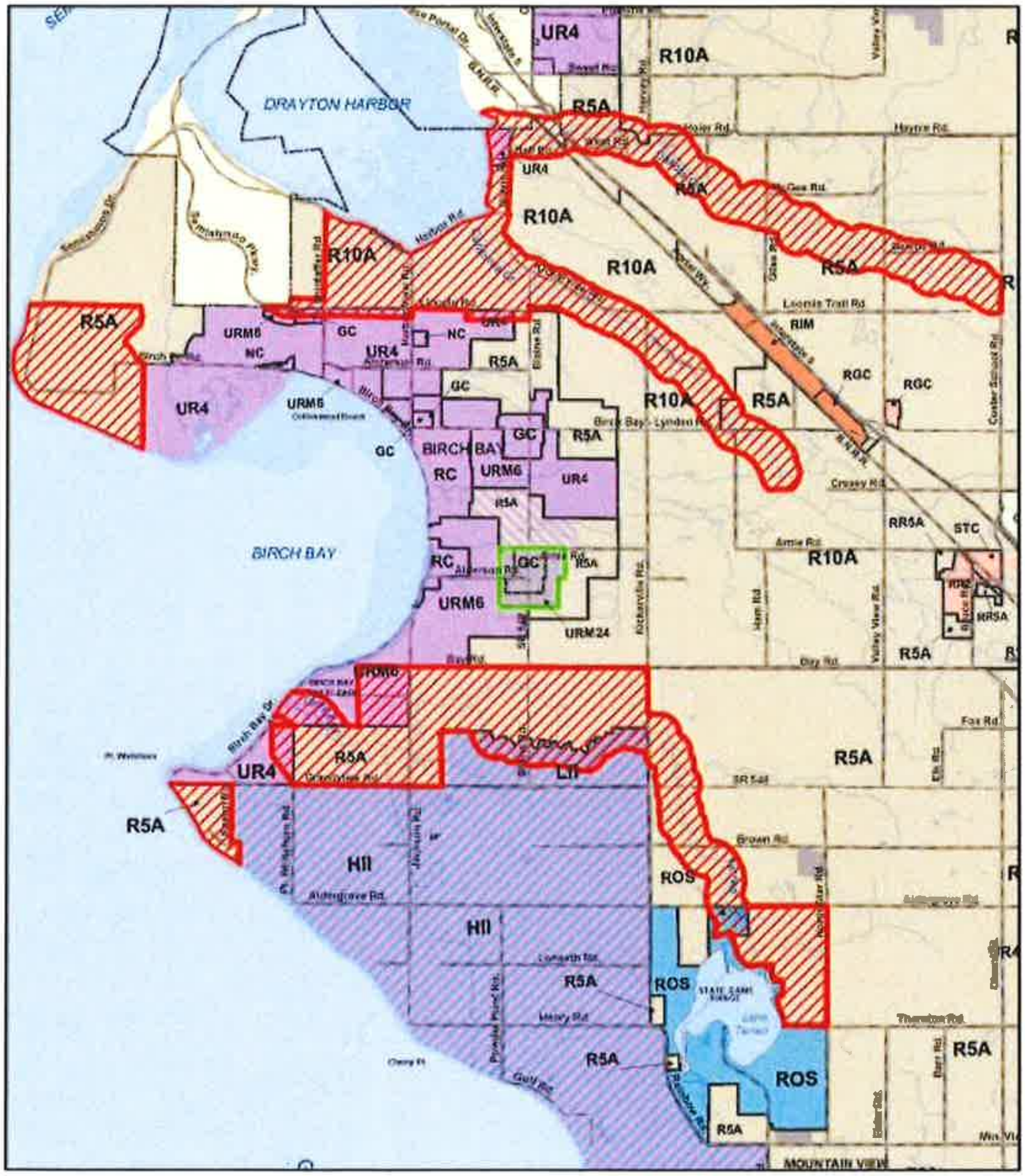
Small Cities

The cities of Blaine, Everson, Ferndale, Lynden, Nooksack, and Sumas have not adopted TDR receiving areas.

Birch Bay

In 2005, the Official Whatcom County Zoning Map was amended to establish sending areas in the Birch Bay area (Ordinance 2005-002). Development rights from any sending area (Birch Bay or the Lake Whatcom Watershed) may be transferred to the receiving area within the Birch Bay UGA (WCC 20.89.052(2)).

There are approximately 703 potential development rights that could be transferred out of Birch Bay sending areas. The Birch Bay receiving area could theoretically accommodate 1,858 additional dwelling units if TDRs are utilized. However, the site would have to be developed at 24 dwellings/gross acre and critical areas exist on portions of the receiving area. Therefore, it may be unrealistic to expect that the Birch Bay receiving area will develop at the maximum density allowed by the zoning. In other words, this receiving area may not accommodate the full 1,858 additional dwellings allowed through the TDR program.



Birch Bay Area

TDR Sending and Receiving Areas

Legend

TDR Sending Areas

TDR Receiving Area

5. **Barriers to Effective TDR and PDR Programs**

Transfer of Development Rights Program

There are a number of barriers to an effective TDR program in Whatcom County. Identified barriers are set forth and discussed briefly below.

TDR Barrier # 1 – Lack of Market Demand for Higher Densities

The *Bellingham Annexation Areas Transfer of Development Rights Program Feasibility Analysis* (January 2009) was prepared by Property Counselors for the City of Bellingham. This report states:

> . . . new subdivisions are being developed at densities below the base densities under current zoning. Developers are forgoing development rights they are already entitled to; they are not likely to pay for additional rights. . . (p. 4).
>
> . . . The demand for development at different densities determines the degree to which a TDR program will provide an incentive to developers. If higher densities create value, a developer will be willing to spend a portion of that value in return for the density. . . (p. 12).
>
> . . . existing areas in the UGA are not being built out to their theoretical maximum densities, it does not seem that there will be any significant demand for TDRs in the annexation areas in the next decade . . . (p. 14).

The *Bellingham Annexation Areas Transfer of Development Rights Program Feasibility Analysis* indicates that, as of 2009, builders were not building to the maximum density allowed by the zoning and, therefore, had no need to purchase development rights to achieve higher densities (pp. 4, 5, 12, 19, and 24). Between 1999 and 2008, the URMX zone in the Bellingham UGA built out at 43% of maximum capacity allowed by zoning (p. 13). Lack of demand is an important factor explaining why the TDR program isn't working well (pp. 4 and 19).

Since 2008, cities have generally increased allowed residential densities, which is in accordance with the Whatcom County Comprehensive Plan (e.g. Goal 2P and Policy 2N-5). At the current time, development is generally at or below maximum densities allowed by city zoning. Therefore, there is minimal demand to increase densities above the base densities allowed by existing zoning.

There is also a sense that, in some areas, the easy to develop land has already been built upon and that site conditions in remaining areas may not lend themselves to higher densities.

TDR Barrier # 2 – Lack of Relevant Incentives

The primary incentive for a developer to use the TDR program in the Whatcom County Zoning Code is the assumed ability to meet market demand, and thereby earn additional returns, through increased residential density. However, in order to meet market demand, land is often developed at densities at or below those allowed by zoning. Therefore, increasing residential densities has not provided a large incentive to entice developers to utilize the TDR program.

There are other incentives for using TDRs in the Whatcom County Zoning Code:

- Fee reductions (WCC 20.89.072);
- Landscaping requirement reductions (WCC 20.89.073);
- Increased lot coverage (WCC 20.89.073); and
- Lot size, lot width, setback, and parking modifications in subdivisions (WCC 20.89.090).

The County Zoning Code does not allow for increased building height or increased floor/area ratios for commercial buildings as an incentive for using TDRs at the current time.

Neither increased residential densities nor the other existing incentives have provided developers with sufficient opportunities to derive adequate profits to undertake the added risks associated with using the TDR program. Therefore, additional new incentives should be considered.

TDR Barrier # 3 – Limited County TDR Receiving Areas

The following TDR receiving areas have been designated in unincorporated Whatcom County:

- Receiving areas in the Bellingham UGA (outside city limits); and
- A receiving area in the Birch Bay UGA.

Bellingham UGA - The URMX receiving areas in the Bellingham UGA, outside city limits, can only be developed with urban residential densities if public water and sewer are available. City of Bellingham Municipal Code 15.36.010 generally prohibits extension of water and sewer outside city limits (see Ordinance 2011-05-025). Therefore, the Bellingham UGA does not provide effective TDR receiving areas at the current time.

Birch Bay UGA – The Birch Bay UGA has a URM-24 zone that is designated as a receiving area. Birch Bay generally has public water and sewer and this zoning district can accommodate both single family and multi-family dwellings. The URM-24 zone requires a minimum density of 10 dwelling units/net acre, which is above achieved densities for subdivisions in the Birch Bay UGA (2004-2013). Additionally, this receiving area would have to be developed at 24 dwellings/gross acre to accommodate the entire 1,858 dwelling units potentially available through the TDR program. In light of recent achieved densities and critical area constraints, it may be unlikely that such a density would be developed.

TDR Barrier # 4 – City Participation

At the current time, the City of Bellingham has designated receiving areas for TDRs from the Lake Whatcom Watershed sending area. The City of Bellingham, with a 2018 population of 88,500, has a significant incentive to participate in this program because Lake Whatcom is the City's drinking water source. There are also several water districts that receive water from the City and/or draw water from the Lake.

The receiving areas within the City of Bellingham can accommodate an estimated 6,801 development rights from the Lake Whatcom Watershed TDR sending area and/or the City's PDR Program. Once annexed, the URMX zones in the Bellingham UGA could accommodate an additional 2,565 development rights. However, the receiving areas generally develop at densities allowed by the underlying zoning without the need for TDRs.

The six small cities have not designated receiving areas for TDRs from County sending areas. While preservation of agricultural lands, creek corridors, and rural areas may be desirable from a city perspective, stronger incentives may be needed to attract city participation in a TDR program. King County has provided "amenity funds" to cities participating in the TDR program, in recognition of the fact that it may be more costly for cities to provide urban infrastructure for increased densities transferred from rural areas. However, in Whatcom County, no such amenity funds have been identified to encourage cities to participate in the TDR program.

TDR Barrier # 5 – Uncertainty / Complexity for Developers

The Whatcom County Zoning Code has a discretionary permitting process for increasing density at receiving areas through TDRs (WCC 20.89.065(2)). This means that a developer has to design a project, pay fees, and submit the application for County approval before finding out whether they can actually increase density through the TDR program.

The *Bellingham Annexation Areas Transfer of Development Rights Program Feasibility Analysis* (2009) indicates that:

> . . . Most developers are skeptical about the value of TDRs primarily because of uncertainty about exactly how it would work and whether higher density projects could ultimately be approved. . . (p. 4).
>
> . . . Several individuals representing the development community stated the TDR program had limited appeal due primarily to uncertainty associated with the program. Such uncertainty is manifested in a scenario whereby a developer purchases TDRs to obtain higher density, then encounters neighborhood opposition when they attempt to proceed with their proposed

> project. In essence, they felt that TDRs had no value today due to such uncertainty, and this is evident by the program's lack of use. . . (p. 18).
>
> The administrative requirements of the program may discourage its use. . . (p. 19).

TDR Barrier # 6 – Lack of In Lieu Fee

The Whatcom County Zoning Code allows "in lieu payments" if a development rights bank has been established. Specifically, WCC 20.89.034 states:

> Payments may be accepted by the development rights bank in lieu of the transfer of development rights from a sending area. In lieu payments shall be utilized by the development rights bank for purchase, sale or transfer of development rights. The development rights bank oversight committee shall establish procedures for the acceptance and utilization of in lieu payments.

At the current time, Whatcom County does not have a development rights bank. Therefore, in lieu payments are not authorized.

TDR Barrier # 7 – Additional Costs Act as Disincentive

Cities create a vision for their communities through the comprehensive planning process and enact zoning to fulfill that vision. Increasing density via TDRs may not be consistent with a city's vision or may change the character of the area. Additionally, TDR programs may create a disincentive for higher densities and affordable housing by increasing development costs when compared to simply re-zoning property for higher densities.

The main goal of the County's existing TDR program is to extinguish development rights in the Lake Whatcom Watershed and other areas (rather than to achieve higher densities). At the current time, if cities want to encourage higher densities they simply modify the zoning to allow increased development. They do not have to provide benefits (i.e., extinguishment of development rights) in the unincorporated portion of the County to allow higher densities in cities.

Requiring TDRs for city upzones would provide a benefit in unincorporated areas of the County, but may also create a disincentive for higher densities and affordable housing projects inside the cities than would otherwise be the case. In some instances, reduced density in unincorporated areas may provide a significant benefit to city residents (such as Lake Whatcom water quality protection, which is advantageous to Bellingham residents who drink the water). However, in other cases the benefit of reduced densities in unincorporated areas may not be readily apparent to city residents.

TDR Barrier # 8 – State Law (RCW 82.02.020)

In 2016, the cities of Blaine and Ferndale submitted letters to the County Council regarding Policy 2A-14. These cities indicated that requiring TDRs for UGA expansions would essentially be a tax. Staff asked the Prosecuting Attorney's Office to review this issue.

Royce Buckingham, Civil Deputy with the Whatcom County Prosecuting Attorney's Office, discussed RCW 82.02.020 (state preempts certain tax fields) with the Work Group on June 7, 2017. RCW 82.02.020 states:

> . . . no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land. . .
>
> This section does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of a proposed development, subdivision, or plat. . .

The Civil Deputy stated that requiring TDRs for UGA expansions would constitute a fee or charge on a re-classification of land. Therefore, under the statute, a jurisdiction can't require TDRs for UGA expansions.

The Civil Deputy indicated that there is an exception for "voluntary agreements." However, land re-classifications such as UGA expansions are not covered by the exception and such re-classifications do not create a direct, identifiable impact. The direct impact would occur later, if and when the land is developed.

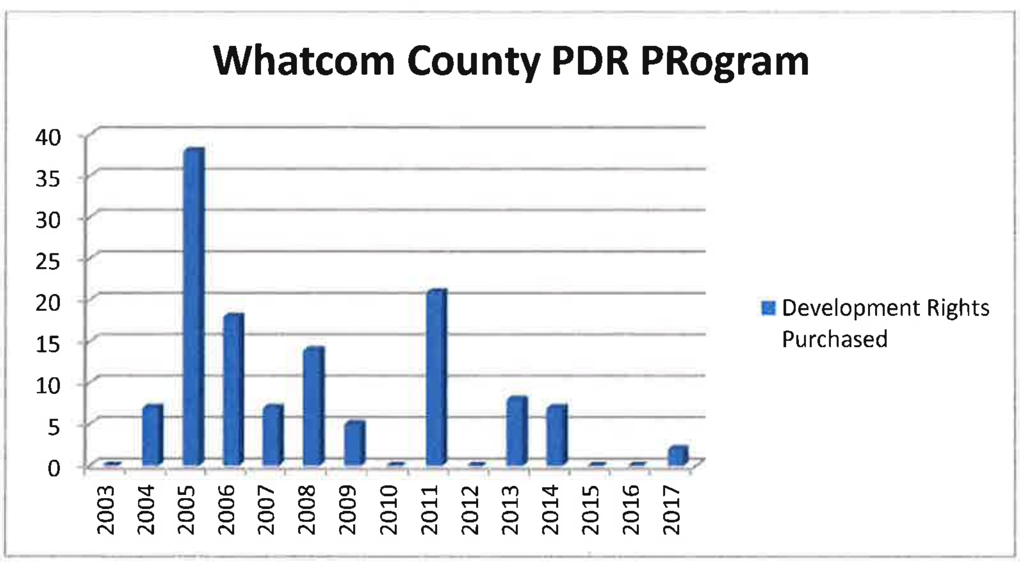
In summary, it's the opinion of the Civil Deputy from the Whatcom County Prosecuting Attorney's Office that the County can't require TDRs for UGA expansions under RCW 82.02.020. This opinion relates to a mandatory TDR program (a government *requirement* to purchase TDRs when expanding a UGA). However, there are no legal issues associated with a voluntary TDR program where developers may choose to purchase TDRs in order to acquire increased density or other incentives offered by the program.

Purchase of Development Rights Program

The Whatcom County PDR program has been more successful than the TDR program. The PDR program's local funding source is the Conservation Futures tax. The program has also received matching funds over the years. In the first 16 years of the PDR program (from the time it came into existence in September 2002 to September 2018), approximately $6.1 million (over $3.2 million of local funds and $2.9 million of matching funds) has been expended to retire 130 development rights on 919 acres. The annual average figures shown below:

Development Rights Retired:	8.13	per year
Acres Preserved	57.44	per year
County Funds Expended	$201,587	per year
Matching Funds Expended	$181,881	per year
Total Funds Expended	$383,469	per year

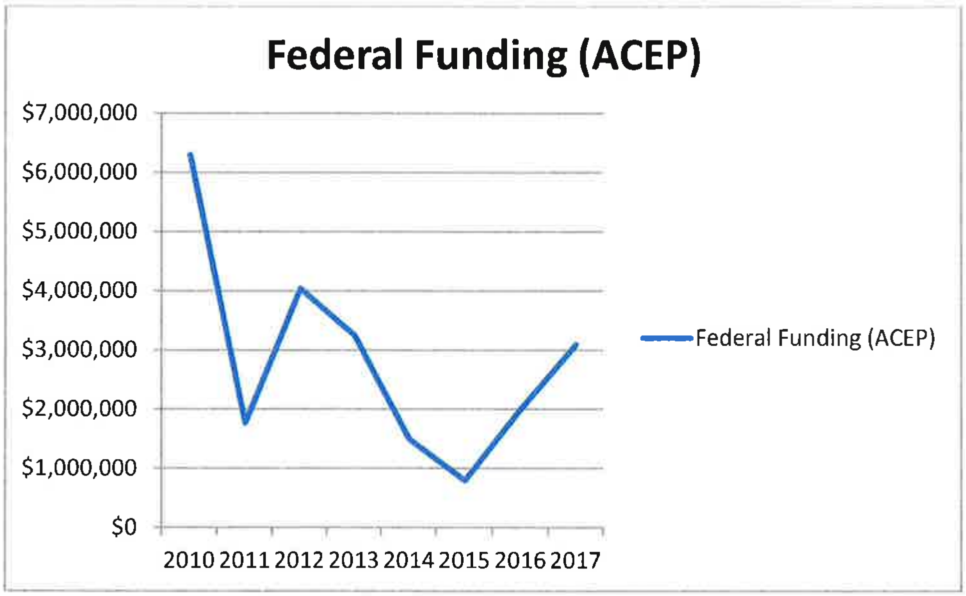
While the PDR program has enjoyed a measure of success, progress in purchasing agricultural development rights has slowed over the years as shown in the chart below.



There are several issues or barriers that may be hindering progress of the program, which are set forth and discussed briefly below.

PDR Barrier # 1 – Uncertainty / Variability in Federal Matching Funds

United States Department of Agriculture monies have accounted for over 91% of the matching funds received by the County (the remaining match has been received from the state and a local non-profit organization). Since 2010, federal funding allocated to Washington State has varied from a high of $6.3 million in 2010 to a low of $800,000 in 2015. The amount allocated to the state in 2017 is $3.1 million (not including monies specifically earmarked for a certain area in eastern Washington). Federal monies, allocated to Washington State through the "Agricultural Conservation Easement Program" (ACEP) are shown below.



Federal funding available to the PDR program has been highly variable in the past and remains uncertain for the future. The County should continue to monitor this situation and explore alternative matching fund sources.

PDR Barrier # 2 – Uncertainty / Variability in Local Funds

The Conservation Futures tax provides the local funding source for the PDR program. The County Code, originally adopted in 1992, states that ". . . The levy shall be applied at a rate of six and one-quarter cents per $1,000 of assessed valuation. . . ." (WCC 3.25.010) but it currently is collected at a rate of about four cents per $1,000 assessed valuation. Additionally, between 2002 and 2017, the PDR program has received about 25% of the Conservation Futures revenue, with the remainder going to parks and other conservation projects.

PDR Barrier # 3 – Federal Staffing

At times, it takes the federal government long periods to review local applications for match funding. The United States Department of Agriculture staff in Washington State assigned to reviewing local government applications for federal funding has been reduced in the last few years. It is also unclear to what extent federal government bureaucratic procedures slow down the processing of match funding applications submitted by local governments. In any event, the federal review process can make it difficult on PDR applicants waiting to hear if the County will, in fact, purchase their agricultural development rights.

6. <u>Opportunities/Alternatives to a Workable TDR Program</u>

Whatcom County Comprehensive Plan Policy 2A-14 tasks the TDR/PDR Work Group with identifying opportunities and solutions for creating a workable TDR program. Potential opportunities, solutions, and alternatives include:

- Density Credit Program: General Information and Price
- Density Credit Program: Incentives
- Density Credit Program: Density Bonus Areas in Cities
- Density Credit Program: Density Bonus Areas in UGAs
- Density Credit Program: Accessory Dwelling Units (ADU)
- Density Credit Program: Rural Areas
- Simplifying the TDR Program
- Establishing a TDR Bank

<u>*Opportunity # 1 - Density Credit Program: General Information and Price*</u>

The *Draft EIS Whatcom County Comprehensive Plan and Development Regulations Update and Urban Growth Area Review* (March 2015) states:

> A TDR program relocates development potential from one property to another . . .
>
> A Density Transfer Credit program uses the same principle, but allows the developer to obtain density through a purchase of density credits as opposed to actual development rights. The money generated through density credits can be used for the Purchase of Development Rights (PDR) program (p. 2-21).

The TDR Handbook: Designing and Implementing Transfer of Development Rights Programs by Nelson, Pruetz, and Woodruff (2012) defines density transfer charges (DTCs – also known as density transfer credits) as a program in which ". . . developers gain bonus development potential at receiving sites using a cash payment instead of TDRs. The jurisdiction uses the revenue from these payments to preserve land . . ." (p. 45). A related concept is in lieu fees, where the developer can either pay cash or utilize TDRs. *The TDR Handbook* lists advantages of DTCs, which are summarized as follows:

- Developers know the cost up front;

- Developers do not have to find and negotiate with a willing TDR seller(s);

- Local government can use the cash on their highest preservation priorities (rather than the developer choosing where to buy TDRs within the sending area);

- The cash can be utilized in an existing PDR program (and the cash may be part of local matching funds used to leverage additional federal funding);

- Simplifies administration of the program. Reduces the time and resources needed to administer the program;

- Provides similar benefits as a traditional TDR program; and

- Jurisdictions don't need to determine sending/receiving area ratios (pp. 45 and 47).

The TDR Handbook states ". . . DTCs can accomplish many of the same objectives as TDR programs but with far fewer complications. . ." (p. 45). *The TDR Handbook* provides a case study for Berthoud, Colorado, which charged DTC fees of $3,000 for a single family residence and $1,500 per multi-family dwelling unit from 2000-2009. Berthoud's DTC fees were discontinued in 2009 because of the recession (pp. 46-47). The Whatcom County PDR Oversight Committee looked at this issue on August 25, 2017, and recommended that the County consider a density credit charge of $4,000. The City of Bellingham has a voluntary PDR program that charges $5,000 for each bonus unit in the city. The money raised from the city's program goes towards Lake Whatcom Watershed preservation. Bellingham had their first significant private use of this program in 2017 for a development on Telegraph Rd. The TDR-PDR Work Group recommends the following density credit prices for each bonus dwelling unit acquired:

- Birch Bay UGA: $ 4,000

- Rural Areas: Grand total average development right cost over the most recent five year period (this figure for 2013-2017 was $58,945)

The Whatcom County Council adopted a new chapter in the Zoning Code entitled "Density Credits" (WCC 20.91) on November 21, 2017 (Ordinance 2017-062). The purposes of the new chapter are to incentivize increased land use intensity in urban growth areas and decrease residential density in agricultural and rural areas by authorizing density credits. The density credit program allows increased density in exchange for a voluntary contribution towards preserving agricultural lands and open space. This would be accomplished through a voluntary payment of funds to Whatcom County for use in the Agricultural Purchase of Development Rights Program (WCC 3.25A) in order to allow a density bonus as set forth in the Whatcom County Zoning Code. At the current time, the density bonus provisions allow higher density single family residential development in the Resort Commercial zone in the Birch Bay UGA. The County Council also adopted a $4,000 density credit fee on December 5, 2017 (Ordinance 2017-072).

A density credit program is an attractive alternative to a traditional TDR program, as it would simplify the process and avoid several of the pitfalls associated with TDR programs. Therefore, the County and cities should give serious consideration to joint density credit programs. Additionally, the County should consider expanding its existing density credit program to a variety of zoning districts. New or expanded programs could include utilizing density credits as an alternative to traditional upzones in areas deemed appropriate by the local jurisdiction. Additionally, the County and cities should primarily focus on the density credit model in the future and new incentives should be tied to a density credit program rather than the TDR program.

Opportunity # 2 – Density Credit Program: Incentives

The TDR Handbook indicates that there must be value in using TDRs in receiving areas – otherwise "the market has no incentive to acquire those rights" (p. 39). Nick Bratton of Forterra spoke to the TDR/PDR Work Group on May 3, 2017. He indicated that if a developer can profit from the incentives offered by the TDR program, they will use the program. If they can't profit from the TDR program, they simply will not use it.

At the current time, the Whatcom County density credit program provides the following incentive for developers using the program: Increased single family residential densities in the Birch Bay Resort Commercial zone (WCC 20.85.108(4) and WCC 20.91.020).

A report entitled *Regional Transfer of Development Rights in Puget Sound* by the State Department of Commerce, Puget Sound Regional Council, and Forterra (2013) states:

> In most TDR programs that seek to protect open space or natural resource land in sending areas, the sending-area development right available for sale is the right to build a residential unit. In some TDR programs, however, the development right for sale from the sending area can be converted into another type of commodity in the receiving area. For example, a TDR created by extinguishing the right to build a residential unit in a residential area could be converted into the right to build additional commercial floor area or additional building height in the receiving area (p. 5).

The *Regional Transfer of Development Rights in Puget Sound* report indicates that, in addition to increased residential densities, other incentives offered by a TDR program that may be more attractive to developers and the community include but are not limited to:

- Increased commercial floor area;
- Increased building height;
- Reduced parking requirements;
- Increased impervious surface;
- Reduced open space requirements; and
- Reduced setbacks (p. 5).

Whatcom County should incorporate such additional incentives into the Zoning Code to provide a wide array of options for developers utilizing the density credit program. In addition to the above incentives, the County and cities may want to consider the following methods or other methods appropriate to the jurisdiction:

- Allowing developers to reduce minimum urban densities in cities (should not allow suburban densities though);
- Providing city water and/or sewer outside city limits; and
- Reducing critical area buffers.

Reducing minimum urban densities and providing city water and sewer would require agreement by the cities.

The Work Group recommends that the County establish a technical group to explore a density credit proposal that may allow a land owner to impact lower quality wetlands if they contribute funds to the Purchase of Development Rights Program used to protect higher quality wetlands. The Work Group recommends that the technical group consider the following, when developing this proposal:

- The geographic area where the program would apply, including whether cities could participate.

- The categories of wetlands and associated buffers that could be impacted under this program.

- Whether the program should only address wetland buffer impacts or should also address direct wetland alterations. State Department of Ecology is involved when the wetland is filled or altered. Ecology is not involved when wetland buffer encroachments are proposed.

- The categories of wetlands that would be preserved through this program.

- The method of protecting wetlands under this program. It is recommended that the developer contribute funds to the County's Purchase of Development Rights Program. The PDR Administrator would use these funds to retire development rights and/or acquire easements on properties that contain wetlands designated for preservation under the program consistent with the Critical Areas Ordinance's "Wetland Mitigation" regulations (WCC 16.16.680).

- The density credit fees that should be charged for wetland buffer impacts and/or direct wetland alterations.

- Any code changes necessary to implement the proposal.

Opportunity # 3 - Density Credit Program: Density Bonus Areas in Cities

If the cities and County partner together on a density credit program, it would be necessary to designate density bonus areas (where development incentives can be utilized) within City limits where public water and sewer infrastructure can be provided to serve urban development. As previously mentioned, the City of Bellingham has designated TDR receiving areas to accommodate TDRs from unincorporated Whatcom County (the Lake Whatcom Watershed). Bellingham also has designated areas that can utilize the city's PDR program to increase density. None of the small cities have designated bonus density areas for a density credit program at this time. There are several issues associated with small city participation:

- How would the city benefit?
- What city incentives would attract developers to use the density credit program?

Cities have raised the issue that a density credit program should be meaningful to city residents and decision makers. For example, funds from density credits for increased land use intensity in a city could go towards a variety of public benefits, including but not limited to:

- Regional trail corridors that connect urban areas;
- Publically accessible open space;
- Watershed protection;
- Habitat and environmental resources;
- Agricultural lands; and
- Scenic view sheds.

However, cities have also expressed concern that extinguishing development rights adjacent to a city or UGA would limit future options for expansion. In any event, if there is no clear benefit to the city (i.e. development rights are purchased on the other side of the County), then the concept of providing "amenity funds" to cities should be explored.

King County has provided "amenity funds" to cities participating in their TDR program, in recognition of the fact that it may be more costly for cities to provide urban infrastructure for increased densities transferred from unincorporated areas. Michael Murphy, King County TDR Program Manager, gave a presentation to the TDR/PDR Work Group via conference call on June 7, 2017. Mr. Murphy stated that King County provides amenity funds to cities in several forms. For example:

- Lump Sum – King County provided Bellevue with a lump sum up front, when they signed the interlocal agreement to participate in the TDR program. They used the money to purchase open space, but it could be used for street lights, sidewalks, parks, etc.

- Portion of TDR Sale Money – King County provides Sammamish with a percentage of the revenue from TDR sales by the TDR bank.

- Tax Revenue Sharing – King County shares property tax money with Seattle through the Landscape Conservation and Local Infrastructure Program (LCLIP), which is applicable to King, Pierce, and Snohomish Counties.

Identifying a benefit to city residents (or providing amenity funds) would be an important component of partnering with cities to develop a density credit program. In a density credit program, revenue generated from purchases of development incentives could be shared by the County and city, providing a simple method for cities to also benefit from the program.

If the cities were to participate in the density credit program, they would have to formulate incentives to make it attractive for developers to utilize the program. Cities have indicated that residential development is generally occurring at or below current zoned densities, so other incentives may be needed to entice developers to use a density credit program. City zoning code changes would be needed to implement such a program.

Opportunity # 4 - Density Credit Program: Density Bonus Areas in UGAs

As previously discussed, Whatcom County has designated TDR receiving areas in the Bellingham UGA and the Birch Bay UGA. The Bellingham UGA essentially does not function as a TDR receiving area because the City generally does not extend public water and sewer to the UGA anymore. Therefore, urban development does not occur until annexation. The Birch Bay UGA has one TDR receiving area, but no development rights have been transferred to this area yet.

The TDR/PDR Work Group recommends focusing on a density credit program, rather than on a traditional TDR program. This simplified approach would provide additional developer incentives for areas in the UGA when density credits are purchased. In November 2017, the County Council adopted a density credit program for the Resort Commercial zone in the Birch Bay UGA and should consider expanding this program to other areas in the UGA. Specifically, the lower density Urban Residential four dwellings/acre (and possibly Urban Residential Medium Density six dwellings/acre) zones in the Birch Bay UGA should be considered for increased density through the proposed density credit program.

The Columbia Valley UGA, in the eastern part of the County, could also be designated as a receiving area. In fact, the Foothills Subarea Plan contains an implementation task to:

> Revise the Official Whatcom County Zoning Ordinance to designate Rural and Rural Forestry areas in the Foothills Subarea as transfer of development rights (TDR) sending areas and the Columbia Valley UGA or other urban growth areas as TDR receiving areas in order to preserve open space in rural and forestry areas (p. 15-7).

However, increasing densities in the Columbia Valley UGA should be carefully considered in light of the long drive to major employment centers, medical facilities, social services, and shopping areas.

Opportunity # 5 – Density Credit Program: Accessory Dwelling Units (ADU)

King County allows TDRs from sending areas to rural receiving areas to increase the size of accessory dwelling units from 1,000 to 1,500 square feet (King County Code 21A.08.030).

The King County TDR Program Manager indicated that they have had some TDR transfers to rural areas, but that the majority of transfers have been into urban areas such as Seattle.

The Whatcom County Zoning Code currently allows accessory dwelling units, subject to a variety of conditions, in the following zones:

- Urban Residential (WCC 20.20.132);
- Urban Residential Medium Density (WCC 20.22.132);
- Urban Residential Mixed (WCC 20.24.133);
- Residential Rural (WCC 20.32.132);
- Rural Residential – Island, which is applicable to Lummi Island (WCC 20.34.132);
- Rural (WCC 20.36.132);
- Point Roberts Transitional District (WCC 20.37.132);
- Small Town Commercial (WCC 20.61.153); and
- Resort Commercial (WCC 20.64.132).

ADU Incentive 1 - Accessory dwelling units are currently limited to 1,248 square feet in these zoning districts. The TDR/PDR Work Group recommends increasing the size limit by 500 square feet to a maximum of 1,748 square feet if density credits are purchased. It is recommended that the price should be $8/square foot up to the 500 square foot maximum. The Work Group recommends that this rural incentive should be available anywhere that accessory dwelling units are allowed in the County.

ADU Incentive 2 - Additionally, the TDR/PDR Work Group recommends allowing an investor to pay to retire one full development right in a rural or agricultural area in exchange for eliminating the following requirement, which is normally imposed on accessory dwelling units:

> The owner(s) of the single-family lot upon which the accessory apartment or detached accessory dwelling unit is located shall occupy as their primary domicile at least one of the dwelling units on that lot.

This would allow an investor (who retires one full development right) to rent out both the main house and the accessory dwelling unit on the property, as the owner would not have to live on the site.

ADU Incentive 2 can be utilized, anywhere accessory dwelling units are allowed, in the areas shown below:

Rural Areas - In rural areas (outside UGAs) the parcel would have to be:

a. Outside of Rural Study Areas (areas zoned R5A and R10A that are valuable for agriculture);

b. Covered by less than 50% Agriculture Protection Overlay Soils;

c. Outside the Lake Whatcom, Lake Padden, and Lake Samish watersheds;

d. Outside the 100 year floodplain;

e. Outside shoreline jurisdiction;

f. Outside an alluvial fan;

g. Outside of and more than 1,000′ from a Mineral Resource Lands designation;

h. More than 1 mile from the runway of the Bellingham International Airport;

i. Outside UGA Reserves;

j. More than 1 mile from the boundary of a city;

k. More than 1 mile from the boundary of a UGA;

l. Within a Group A or Group B Public Water System Service Area, excluding:
   - Group A Systems currently exceeding Water Right Limits;
   - Group A Systems projected to exceed water right limits at full build-out; and
   - Group A Systems with no data on system water rights or use.

UGA - In UGAs, the parcel would have to be:

a. Outside the Lake Whatcom, Lake Padden, and Lake Samish watersheds;

b. Outside the 100 year floodplain;

c. Outside shoreline jurisdiction;

d. Outside an alluvial fan;

e. Outside of and more than 1,000' from a Mineral Resource Lands designation;

f. More than 1 mile from the runway of the Bellingham International Airport;

g. Within a Group A or Group B Public Water System Service Area, excluding:
   - Group A Systems currently exceeding Water Right Limits;
   - Group A Systems projected to exceed water right limits at full build-out; and
   - Group A Systems with no data on system water rights or use.

The Work Group recommends that more than one incentive may be used per parcel.

<u>Opportunity # 6 - Density Credit Program: Rural Areas</u>

King County allows TDRs from sending areas to rural receiving areas to increase the density in the "RA-2.5" zone from 0.2 dwellings/acre to 0.4 dwellings/acre (King County Code 21A.12.030). This is equivalent to going from one dwelling/five acres to one dwelling/2.5 acres.

Rural Incentive 1 - The TDR/PDR Work Group recommends allowing a density of one dwelling/2.5 acres in the Rural one dwelling/five acre (R5A) zone if the proposed density credit program is used. This proposal targets density bonus areas, which could be developed at a density of one dwelling/2.5 acres, that have access to an existing public water system. In return for the extra density, cash would be contributed to the County's PDR program through the purchase of density credits. One development right would have to be retired in a rural or agriculture area for every new lot allowed so that there would be no net increase in development potential. Additionally, this concept should be considered with a degree of caution, as it may come as a surprise to rural land owners who purchased property in the R5A zone expecting surrounding land uses to develop at a maximum density of one dwelling/five acres. Critical area regulations could also make development at a density of one dwelling/2.5 acres more challenging in some areas. To utilize Rural Incentive 1, the parcel would have to be in the R5A zone and meet the same criteria as ADU Incentive 2 for Rural areas (be outside of Rural Study Areas, covered by less than 50% Agriculture Protection Overlay Soils, etc.).

<u>Opportunity # 7 – Simplifying the TDR Program</u>

The existing TDR program is cumbersome and not used very often. Additionally, the density credit model provides an attractive alternative to a traditional TDR program. Therefore, the existing TDR program should be refined, but the County should not put major effort into reforming the program.

The existing TDR provisions (WCC 20.89 and other sections of the County Zoning Code) contain language that could be simplified or clarified. Examples are provided below:

- Definition of Development Rights – WCC 20.89.021 provides the following definition:

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

  The first part of the definition indicates that development rights are based upon gross density (as defined in WCC 20.97.170). Gross density is computed based upon the total area of the parcel. For example, the R5A zone allows a gross density of one dwelling/five acres. On a 20 acre parcel, four homes would be allowed. This is a straightforward concept. However, the definition goes on to state that development rights are measured in maximum units per "developable acre" and that development potential must be demonstrated by the owner on lands impacted by critical areas. Developable land is land available after deductions for wetlands, roads, stormwater management facilities, etc. It adds a degree of complexity to require a rural sending property owner to "demonstrate" development potential when critical areas are present. Does this mean that the rural property owner must hire a consultant to perform a wetland delineation or other critical areas analysis? A less complex method would simply base development rights upon the gross density allowed on the sending area parcel.

- In Lieu Payments - WCC 20.89.025 defines in lieu payments as ". . . payment of funds to the development rights bank in lieu of the transfer of development rights from a sending area. . ." Additionally, WCC 20.89.034 states "Payments may be accepted by the development rights bank in lieu of the transfer of development rights from a sending area. . ." Because the County adopted a density credit program (which is a similar concept), the in lieu payment language in WCC 20.89 could be deleted. This would eliminate the possibility for overlap/confusion between in lieu fees and the density credit program. Additionally, the density credit program can be accomplished without a development rights bank.

- Incentives – WCC 20.89.090 provides various incentives for long plats (such as modifying minimum lot size, lot width, setbacks, and building coverage) when TDRs are used. These incentives could be simplified and/or clarified. For example, WCC 20.89.090(1) allows the modification of lot width if TDRs are used. However, WCC 20.89.090(4) imposes additional criteria for reducing lot width. These provisions should be harmonized so there is no confusion about the qualifications for using the incentives.

Opportunity # 8 – Establishing a TDR Bank (Development Rights Bank)

WCC 20.89.081 states:

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

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

The TDR Handbook – Designing and Implementing Transfer of Development Rights Programs (2012) outlines some of the advantages of a TDR bank:

- The sending site owners are assured of having a buyer whenever they want to sell.

- The price of development rights is more likely to stabilize when institutions operate in the market. Conversely, TDR prices can be more volatile and unpredictable when private parties make all sales and purchases.

- Developers have some assurance that they will be able to buy TDRs when needed, without having to negotiate individually with numerous sending site property owners.

- With the right procedures, TDR transactions can become fast, certain, and easy, comparable to banking transactions (p. 121).

Nick Bratton of Forterra spoke to the TDR/PDR Work Group on May 3, 2017. He indicated that a TDR bank is an entity that buys and sells development rights. TDR banks have several advantages. There is greater convenience for developers. For example, a developer can get a number of TDRs from a single bank – they don't need to search for multiple land owners to put together enough TDRs. Additionally, TDR banks have discretion to spend the proceeds on higher priority conservation properties (as opposed to a developer potentially purchasing TDRs from lower priority conservation areas). However, when a bank is a public entity (like a county), an appraisal is needed because they cannot pay more than fair market value for development rights. Appraisals may cost $3,000 to $7,000. There needs to be enough transactions to justify a TDR bank. Nick did not recommend forming a TDR bank for an emerging TDR program, as it may be an inefficient use of public resources.

A TDR bank would provide a method to simply the TDR process for people who sell or buy TDRs. However, a bank would require staffing, financial expertise, appraisals, an oversight committee, and funding to start the program. Additionally, it may not be needed at all because the County is transitioning to a "density credit" system, where developers simply contribute monies to the County PDR program in order to acquire higher densities or other incentives.

7. PDR Fund to Protect Agricultural and Rural Lands

Whatcom County Comprehensive Plan Policy 2A-14 tasks the TDR/PDR Work Group with "Identifying mechanisms to create a PDR fund that could be used to protect important agricultural and rural lands."

The Whatcom County 2017-2018 Budget states that the Conservation Futures fund is used for:

> "Activities related to acquisition of parks land and development rights with the goal of conserving property for public use and enjoyment. Funded by a property tax collected in accordance with RCW 84.34.230" (Volume 2 – Page 65).

The Conservations Futures tax is the primary source of local funding for the Purchase of Development Rights Program. However, Conservation Futures funds are also used for parks and other conservation projects. The County also receives federal and state matching funds and seeks donations from other funding partners. The County Council determines allocation of Conservation Futures revenues.

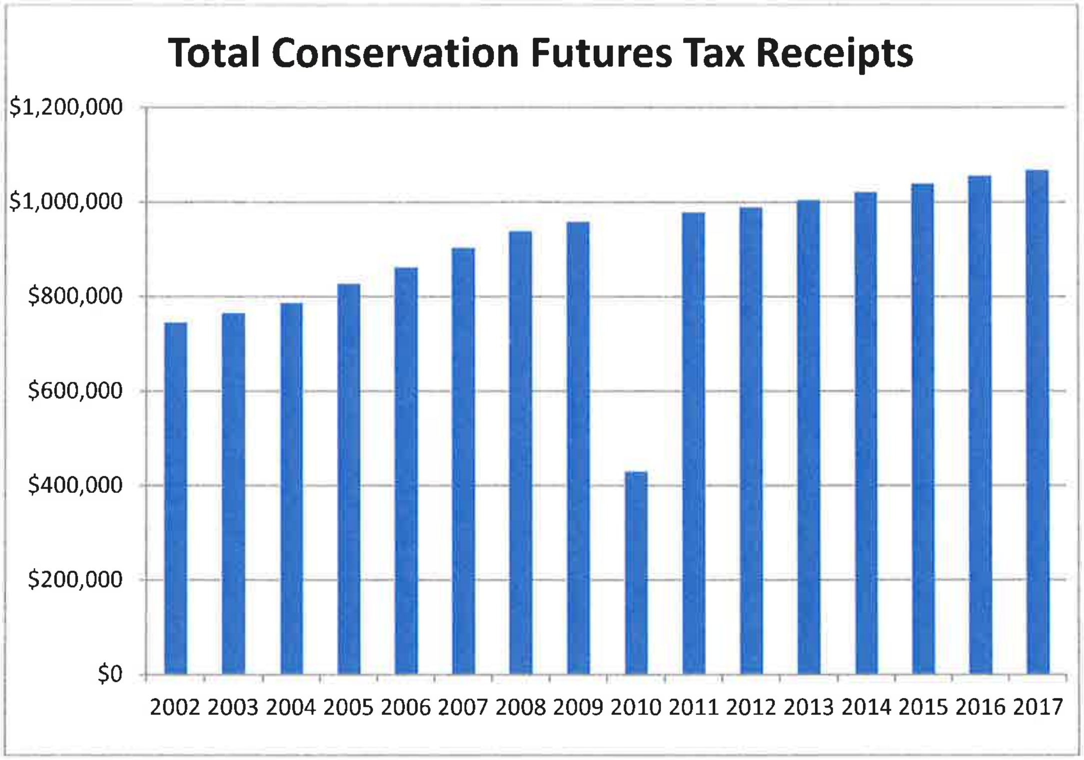
The following charts are shown below:

- Total Conservation Futures Tax Receipts – Shows the total Conservation Futures tax revenue collected each year.

- Conservation Futures Expenditures on PDRs – Shows the total spent on PDRs each year.

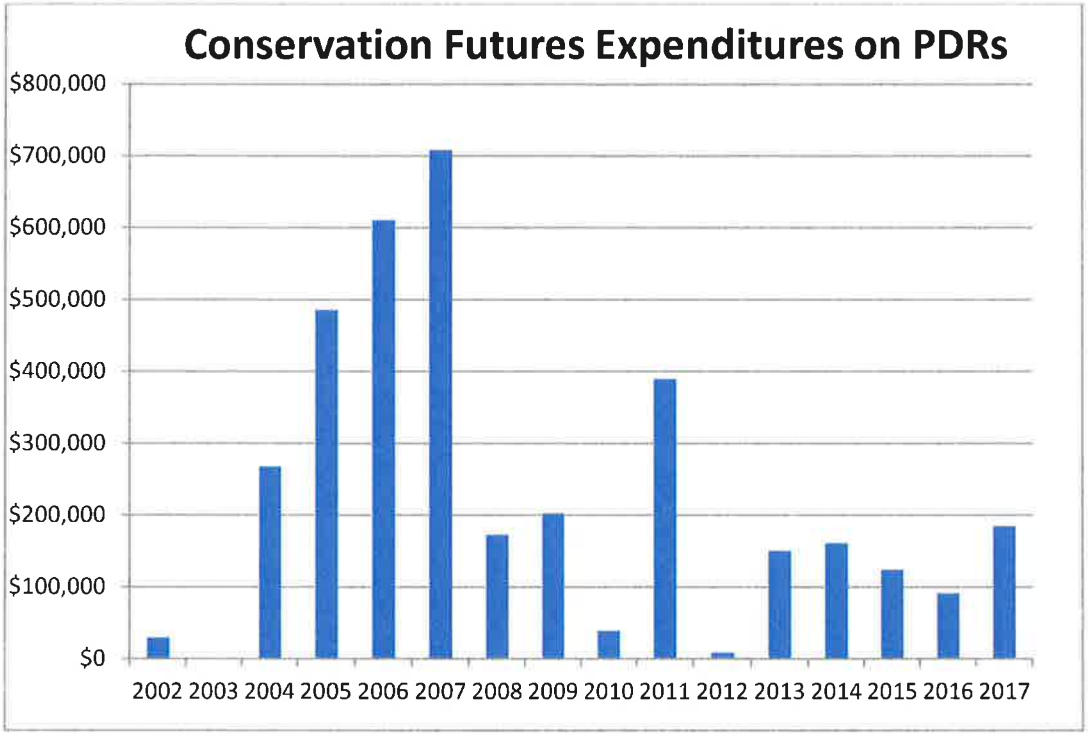
- % of Total Receipts Expended on PDRs – Shows the percentage of Conservation Futures tax revenue collected each year that is spent on the PDR program that same year.

- Conservation Futures Year-End Fund Balance – Shows the total amount in the Conservation Futures Fund at the end of each year.

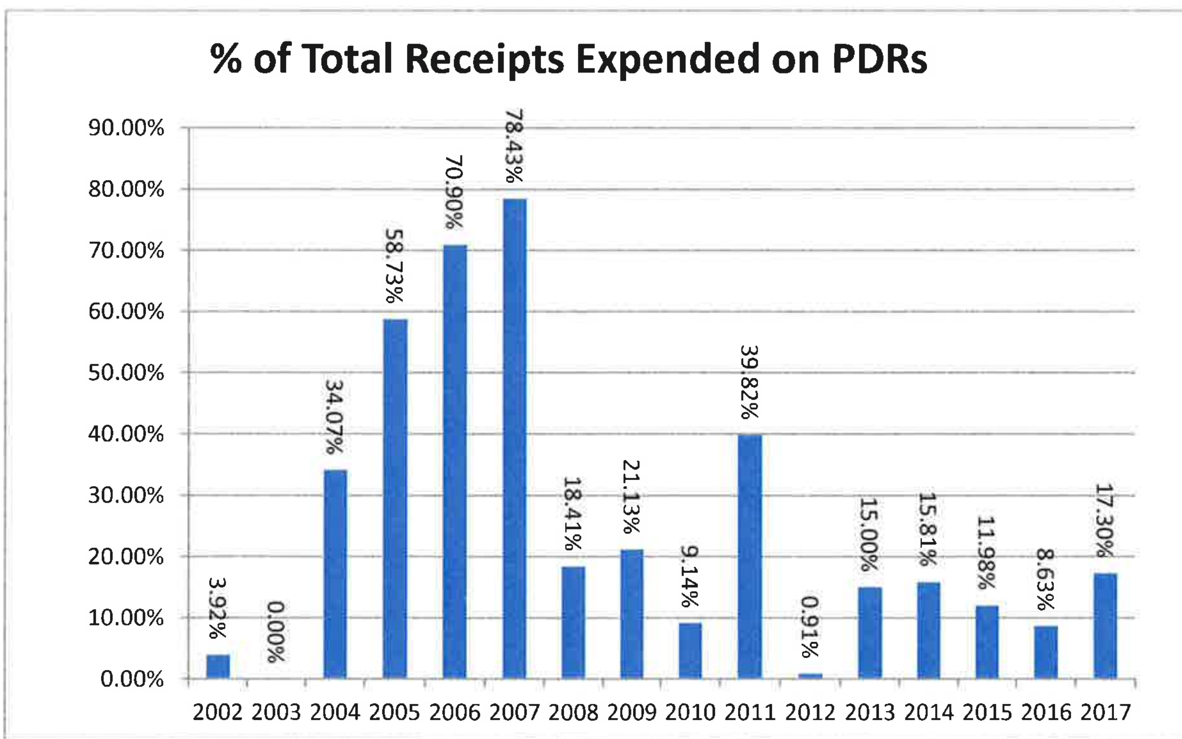


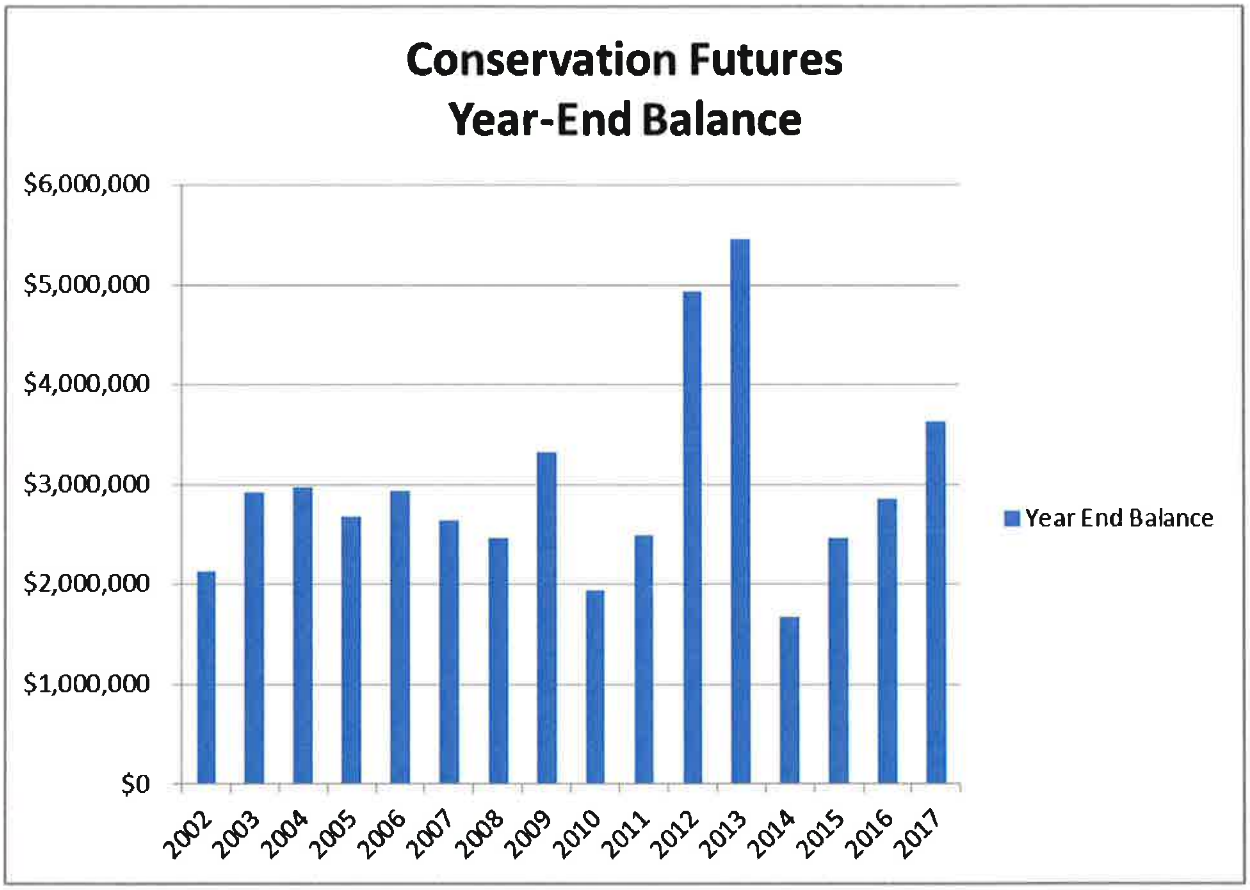
Source: Statement of Assessed Valuations, Tax Rates, and Taxes Levied Within the Various Taxing Districts of Whatcom County (Whatcom County Assessor).

NOTE: Whatcom County Ordinance 2009-080, which was adopted in the economic downturn, states ". . . the County Council has determined it is necessary to decrease the Conservation Futures tax levy by $543,000 for 2010 and increase the General Fund property tax levy by an offsetting $543,000 for 2010 to fund essential county services. . ."



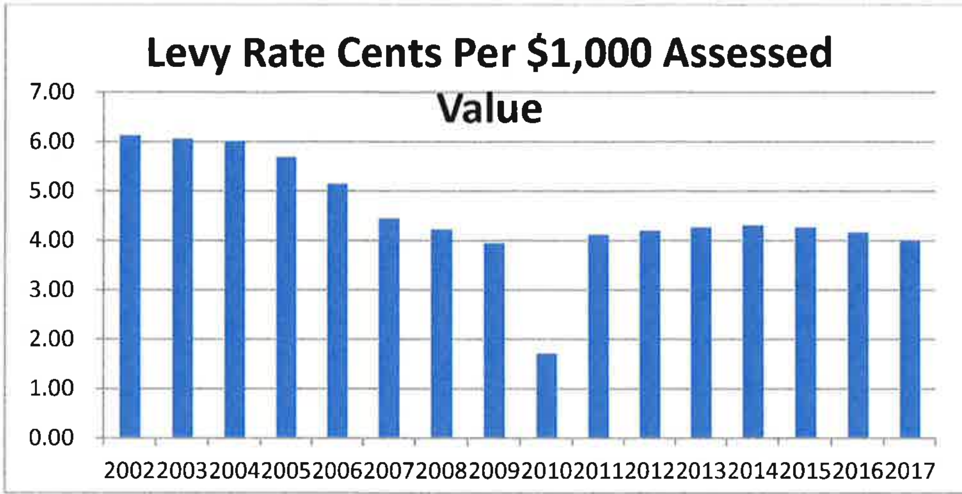
Source: Whatcom County Finance Department 1/31/2018. Chart shows net expenditures, because some expenditures were reimbursed by federal grants or other sources.





As previously mentioned, the County established the Conservation Futures Property Tax Levy and Fund in 1992. The County Code states ". . . The levy shall be applied at a rate of six and one-quarter cents per $1,000 of assessed valuation" (WCC 3.25.010). As of 2017, the Conservation Futures tax rate is approximately four cents per $1,000 assessed.

The levy rate has declined over the last 15 years as assessed valuations of existing properties have increased, new construction has added assessed valuation to the tax rolls, and the County has chosen not to increase the amount of Conservation Futures tax collected (except for the increased property tax levy that is the result of new construction). It should be noted that the increase in taxes collected is limited by state law to a maximum of 1% per year or the rate of inflation, whichever is lower. The County has banked unused capacity and retains the ability to increase the taxes levied at a future date.



Source: Statement of Assessed Valuations, Tax Rates, and Taxes Levied Within the Various Taxing Districts of Whatcom County (Whatcom County Assessor).

The Conservation Futures tax is an existing local funding source and the County Council could modify the levy rate to collect additional revenue. The County has secured limited funding for the PDR program from the Whatcom Community Foundation. The Whatcom County Council adopted a new "Density Credit" Chapter in the Zoning Code (WCC 20.91) in November 2017 that could potentially raise revenue through developer incentives. While revenue from the Community Foundation and/or density credits may provide supplemental funding to the PDR program, it is not anticipated that they will provide funding at the level generated by the Conservation Futures tax.

At the current time, the County collects a real estate excise tax, which is a tax upon sales of real estate, under WCC 3.20.024 and 3.20.025. The tax on real estate sales is currently ½ of 1% of the selling price. An additional real estate excise tax is authorized for conservation areas by state law (RCW 82.46.070). The Municipal Research and Services Center (MRSC) website describes this option as follows:

> A county legislative authority may submit a ballot proposition to the voters for an additional real estate excise tax on each sale of real property in the county at a rate not to exceed 1% of the selling price. The revenue from this tax is restricted to the acquisition and maintenance of conservation areas. Conservation areas are defined in RCW 36.32.570 as:
>
> > land and water that has environmental, agricultural, aesthetic, cultural, scientific, historic, scenic, or low-intensity recreational value for existing and future generations, and includes, but is not limited to, open spaces, wetlands, marshes, aquifer recharge areas, shoreline areas, naturals areas, and other lands and waters that are important to preserve flora and fauna.
>
> The property buyer, rather than the seller, pays this tax as outlined in RCW 82.46.070. Only San Juan County has levied this tax to date.

The County could also issue bonds for the PDR Program and repay the bondholders with future tax revenues.

The Whatcom County Budget (2017-2018) discusses the "Whatcom County Fund Structure." The County has six different fund types: General Fund, Special Revenue Funds, Debt Service Funds, Capital Projects Funds, Enterprise Funds, and Internal Service Funds. The County Budget describes the Conservation Futures Fund, which is under the Special Revenue Funds category, as:

> A fund created to collect a real property tax levy applied to all taxable real property within Whatcom County. This fund may be used to acquire rights and interests in open space land, farm and agriculture land, and timberland with the goal of conserving property for public use or enjoyment" (Volume 1 – Page 23).

Planning & Development Services Department staff met with the County's Finance Manager and Senior Budget Analyst on August 16, 2017 to discuss the possibility of creating a new PDR fund. They indicated that the County Council could adopt an ordinance establishing a new PDR fund. However, the existing Conservation Futures fund, which can be used to hold other dedicated monies allocated to the PDR program, is functioning adequately at present. Additionally, there are administrative and reporting tasks associated with creating a new fund. Therefore, they recommended establishing a new fund only if significant new monetary resources become available that would be placed in the fund.

8. Proposed Sending and Receiving Areas

Whatcom County Comprehensive Plan Policy 2A-14 tasks the TDR/PDR Work Group with identifying:

- Proposed sending areas in critical areas, the Agricultural Zone, and the Rural Study Areas; and
- Proposed receiving areas.

Density Credit Model Preferred Over Traditional TDR Model

The Work Group finds that the density credit model, where a developer pays to receive development incentives instead of purchasing TDRs, is a simple and efficient tool that could allow increased development potential in cities, UGAs, and other appropriate areas while also providing supplemental funding for reducing development in agricultural and rural areas and, potentially for city amenities. Therefore, the Work Group recommends that the County and cities should primarily focus on the density credit model in the future and that new incentives should be tied to a density credit program (rather than the TDR program). The existing TDR program should be refined, but the County should not put major effort into reforming the program.

This shift in emphasis means that the County may direct PDR investments that utilize density credit funds to areas that also benefit the cities (rather than focusing on additional TDR sending areas). Additionally, areas may be designated in cities and UGAs for bonus densities under the density credit system (rather than focusing on additional TDR receiving areas).

Density Credit Program: Directed PDR Investments

It is anticipated that the majority of funding for the County's PDR program will continue to come from the Conservation Futures tax and funds from the federal government. The regular PDR site selection process will continue to apply to the development rights purchased with these funds.

However, if cities create density credit programs, and some of the money from these programs goes to the County's PDR program, investment of these funds may be directed to properties that benefit both the County and the applicable city. As previously mentioned, funds from density credits for increased land use intensity in a city could go towards a variety of public benefits, including but not limited to:

- Regional trail corridors that connect urban areas;
- Publically accessible open space;
- Watershed protection;
- Habitat and environmental resources;
- Agricultural lands; and
- Scenic view sheds.

Comprehensive Plan Policy 2A-14 indicates that areas that are candidates for future sending areas are critical areas, the Agriculture zone, and Rural Study Areas. The PDR Oversight Committee recommended an update to the PDR Program Guidelines on January 26, 2018. This update includes identification of priority areas in three distinct categories: Agricultural, forestry, and ecological areas. It is anticipated that the PDR Program Guidelines will be presented to County Council for consideration and approval in fall 2018.

If city density credit programs are enacted, the County and the applicable city would need to work together to select PDR priority areas, identified in the PDR Program Guidelines, where funds from the city's density credit program would be invested.

Density Credit Program: Bonus Density Areas

The cities and County should designate areas that can accommodate increased land use intensity utilizing a density credit program.

The areas with the greatest potential for high intensity urban development are in the cities. While Whatcom County may negotiate with cities on density credit program provisions, it does not have direct control over land use regulations inside city limits. The City of Bellingham has already designated TDR receiving areas and has a PDR program intended to reduce development potential in the Lake Whatcom watershed. It is recommended that the six small cities designate areas within their respective cities and UGAs that could be developed at increased urban intensities in association with a density credit program. The cities would have to develop incentives that developers want to utilize (i.e. purchase density credits to obtain), such as:

- Increased residential densities;
- Reduced minimum lot sizes;
- Increased heights;
- Increased floor area ratios;
- Increased lot coverage; and/or
- Increased size of accessory dwelling units.

Additionally, cities would have to consider where the development incentives should be offered, such as:

- In specific zoning districts;
- In specified portions of a zoning district;
- In a specified section of the city; and/or
- In UGAs, outside of current city limits, once the area has been annexed.

Any funds acquired through such a program could be divided between the County and City (or used by the County to purchase development rights that benefit both the County and the city).

Whatcom County has direct control over land use regulation, including densities, in unincorporated areas such as the Birch Bay UGA and rural lands. The County should consider expanding the density credit program in the Birch Bay UGA and, in limited circumstances, utilizing the density credit program in rural areas (See *Section 6 Opportunities/Alternatives to a Workable TDR Program*).

<u>TDR Program: Sending and Receiving Areas</u>

As mentioned, the Work Group recommends focusing on the density credit model, rather than traditional TDR sending and receiving areas. However, using the traditional TDR program, an opportunity may exist to allow the owners of separate non-contiguous parcels to transfer density from one parcel to the other. This would encourage protection of higher quality agricultural soils and critical areas without an overall increase in the number of dwellings allowed in the rural area.

For example, if a land owner has two separate 20 acre parcels both zoned R5A, the owners would typically be allowed to divide the land and build four homes on each parcel under standard zoning rules. Under this approach, the density could be transferred from one of the parcels (e.g. that has development constraints or high quality agricultural soils) to the other parcel (which does not have as many constraints). The end result would be zero development capacity on one of the 20 acre parcels and eight dwellings on the other 20 acre parcel.

This concept could be utilized to transfer density from one part of the rural area to another part of the rural area. The receiving parcel would be developed as a cluster subdivision.

This concept should not be allowed to increase density in any of the following:

- Lake Whatcom Watershed;
- UGAs and UGA Reserves;
- Lummi Island;
- Agriculture zone;
- Rural Forestry zone;
- Commercial Forestry zone;
- Mineral Resource Lands Overlay.

The Work Group is not formally recommending that this concept be implemented, but has included it in the report to allow the concept to receive further consideration prior to a formal proposal. Any such proposal in rural areas would have to be carefully reviewed under the Growth Management Act and Whatcom County Comprehensive Plan to ensure that rural character is preserved in these areas.

9. Other Factors and/or Growth Management Tools

Whatcom County Comprehensive Plan Policy 2A-14 tasks the TDR/PDR Work Group with "Identifying other factors and/or growth management tools" relating to UGA expansions and mitigating impacts of residential development in rural lands, agricultural areas, and sensitive watersheds.

Other Factors

The Whatcom County Code contains criteria for approving Comprehensive Plan amendments, which include UGA expansions. Additionally, the Whatcom County Comprehensive Plan includes the following policies:

- Policy 2GG-3 – Criteria for rezoning land in the Rural one dwelling/ten acre (R10A) district. In summary, these criteria address residential density in the area, not allowing rezones in UGA Reserves (which may be considered for inclusion in the UGA at a later date), and not allowing rezones in Rural Study Areas (that are valuable for agriculture).

- Policy 8A-3 – Criteria for de-designating lands from the Agriculture designation. In summary, these criteria address whether the land is already characterized by urban growth, whether the land is used or capable of being used for agricultural production, and whether the land has long term commercial significance for agriculture. The criteria are based upon the Growth Management Act (GMA), Washington Administrative Code, and applicable court cases.

- Policy 2N-5 -"Protect resource lands by controlling or buffering adjacent uses and encouraging increased densities within existing city boundaries before expanding into county resource lands." Resource lands include the Agriculture designation.

- Policy 10J-14 – "Existing Urban Growth Areas shall not be designated or expanded nor new Urban Growth Areas designated within the Lake Whatcom Watershed, and rezones that allow greater residential densities will not be allowed."

- Policy 2K-3 "Prohibit expansion of urban growth areas into floodplains, except where allowed under the GMA, and consider danger to individuals related to flooding when designating land use in other areas."

- Goal 2P – Encourages cities to approve new residential developments within a range of urban densities. Policy 2P-1 states "Encourage cities to adopt and implement policies and development regulations that promote urban densities."

The County has a process for evaluating UGA amendments. Additionally, existing policies require consideration of Agricultural lands and protection of the Lake Whatcom Watershed when UGA expansions are proposed.

In accordance with the GMA, Whatcom County completed the eight-year update of the Comprehensive Plan in August 2016 (Ordinance 2016-034). This update was conducted in close coordination with the cities, as required by the GMA. Finding 62 of the Ordinance states:

> The County's population is projected to grow by 33.8% over the 23-year planning period. Prior to the 2016 UGA review, there were a total 51,684 acres in UGAs (including within cities). A total of 345 acres are added to UGAs in the 2016 UGA review. This constitutes a 0.7% increase in the land in UGAs on a county-wide basis. . .

The County worked together with the cities to judiciously size UGAs in the 2016 Comprehensive Plan update. Maintaining a high level of County/city coordination will help achieve the common goals of facilitating urban densities in cities, conserving Agricultural lands, and protecting sensitive watersheds.

Whatcom County Comprehensive Plan Policy 2A-14 was adopted in the 2016 update. This policy states:

> . . Based upon the findings of the multi-stakeholder work group, consider strategies that could require purchase, transfer or otherwise incentivize removal of potential development rights from rural or resource lands in exchange for UGA expansions and other upzones.

However, RCW 82.02.020 (relating to state preemption of certain tax fields) indicates:

> . . . no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land. . .
>
> This section does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of a proposed development, subdivision, or plat. . .

The Civil Deputy from the Whatcom County Prosecuting Attorney's Office has expressed the opinion that requiring TDRs for UGA expansions or rezones would constitute a tax, fee, or charge on a re-classification of land, would not qualify for the "voluntary agreement" exception, and is not allowed under RCW 82.02.020. Therefore, TDRs should not be required in "exchange for UGA expansions and other upzones" as suggested by existing Whatcom County Comprehensive Plan Policy 2A-14.

Additionally, WCC 20.89.051 (2) and (3) state that certain rezone requests and UGA expansions are required to transfer development rights from a designated TDR sending area. The County should also consider deleting this language from the Zoning Code.

Growth Management Tools

The County and Cities' Planners Group issued a "Growth Management Tools Report" (March 2015). This report addresses both non-urban tools and urban tools designed to ensure that the majority of countywide growth takes place in UGAs, as planned. The tools identified in the report are:

Non-Urban Tools

- Decreased Non-Urban Densities
- Rural Lot Consolidation
- Transfer of Development Rights/Density Transfer Credits
- Purchase of Development Rights
- Rezone of Rural Land Study Areas to Agricultural Lands
- Require Agriculture as a Primary Use and Limited Accessory Uses
- Agricultural Mitigation
- Tools to Reduce Impacts on Agricultural and Rural Lands But Not Reduce Overall Density
- Permit Metering
- Water Well Limitations
- Impact Fees

Urban Tools

- Increased Urban Densities
- Minimum Urban Densities
- Urban Mixed Use
- Utility Extension Policy
- Annexation Policy
- Mix of Single- and Multi-family Capacity
- Lot Size Averaging
- Land Value Taxation
- Fee Reduction Incentives

The Work Group recognizes this report and refers the reader to it for further information on these potential tools.

10. Economic Value of Development Rights

Whatcom County Comprehensive Plan Policy 2A-14 includes examining "Exchangeable development rights that have economic value, with the potential for multiple methods of assigning and converting value."

As previously mentioned, the TDR/PDR Work Group recommends a shift in emphasis from a traditional TDR program to density credit programs. In this context, primary questions relating to economic value include:

- Are the incentives offered by the density credit programs desirable to developers?
- Does the price tag associated with the incentives provide developers the opportunity to increase profit?

If the answer to either of these questions is "no," then developers will not utilize the density credit programs.

Other jurisdictions in Western Washington have commissioned TDR market studies, with the average cost in the $40,000 range. Whatcom County could hire a consultant to conduct a market study to recommend incentives that would be attractive to developers in the current economic environment along with associated price tags.

Alternatively, the cities and County could adopt incentives and adjust those incentives over time to provide developers with the opportunity to profit from increased land use intensities. Additionally, with the density transfer credit system, the local government could modify the density credit price in response to changing economic conditions. This approach is recommended as the lower cost alternative.

Density credit programs may be used to essentially transfer residential density from rural and agricultural areas to urban areas, where growth is targeted. However, as previously mentioned, there are also other incentives that may be employed in a density credit program. For example, if a developer voluntarily contributes to reduce development in rural or agricultural areas, a variety of urban incentives could be offered including but not limited to:

- Increased commercial floor area;
- Increased building height;
- Reduced parking requirements;
- Increased impervious surface;
- Reduced open space requirements; and
- Reduced setbacks (p. 5).

A variety of incentives should be explored that align with city and County goals and may be attractive to developers. The corresponding cost to developers to access these incentives will need to be developed and adjusted over time to meet market demands.

11. Interlocal Agreements

Comprehensive Plan Policy 2A-14 addresses interlocal agreements that "grant economic value to exchangeable development rights and that insure development rights can be used in receiving areas."

Whatcom County has an interlocal agreement with each city concerning "Planning, Annexation and Development" within the UGA. These interlocal agreements, which were approved in 2012, address a number of topics including TDRs. The existing interlocal agreements include the following language:

> *Bellingham Interlocal* - The City agrees to participate in a County initiated effort to further develop a TDR/PDR program for the Lake Whatcom Watershed (Section 11.B).
>
> *Blaine Interlocal* - The City and County will work to develop a mechanism and procedure to transfer development rights, which may include the purchase of development rights and/or in lieu fees, from the rural areas within the Drayton Harbor Watershed to the City and/or annexation areas (Section 11).
>
> The Everson, Ferndale, Lynden, Nooksack, and Sumas interlocal agreements with the County each state:
>
>> The City and County will work to develop a mechanism and procedure to transfer development rights, which may include the purchase of development rights and/or in lieu fees, from designated Agricultural resource lands or rural areas to the City and/or annexation areas (Section 11.B of each interlocal).

In order to facilitate cooperative efforts between the cities and County, it is recommended that new interlocal agreements be developed or that existing interlocal agreements be revised to address a density credit program. These interlocal agreements should generally include the following:

- Framework for inter-jurisdictional density credit program;
- Generalized statement of incentives that could be offered by the city;
- Generalized statement of where the development incentives could be offered within the City (and/or in the UGA following annexation);
- How any density credit fees collected by the City would be divided between the City and the County;
- Generalized statement of how the City would utilize any funds from developer participation in the City's density credit program; and
- Agreement on how the County PDR Program would utilize any funds from developer participation in the City's density credit program.

It is acknowledged that the City of Bellingham has an existing Lake Whatcom Watershed PDR program.

12. Recommended Policy and Regulatory Changes

TDR/PDR Work Group recommendations are shown below:

A. Voluntary Density Credit Program

The Work Group finds that the density credit model, where a developer pays cash to receive development incentives instead of purchasing TDRs, is a simple and efficient tool that could potentially provide supplemental funding to reduce development in agricultural and rural areas through the County's existing PDR program. Therefore, the Work Group recommends that the County and cities primarily focus on the density credit model in the future and that new incentives should generally be tied to a density credit program (rather than existing TDR programs).

The City of Bellingham has an existing Purchase of Development Rights program aimed at reducing development in the Lake Whatcom Watershed. Whatcom County adopted a density credit program in 2017, but it only applies to Resort Commercial zones in the Birch Bay UGA at the current time. These existing programs allow developers to increase land use intensity by making a payment that would be utilized to purchase and retire development rights in the Lake Whatcom Watershed or the County's agricultural areas.

Expanding the density credit program is the highest priority change that has been identified. This is because it would help preserve agricultural and rural lands while providing a simple procedure for developers who want to access the incentives offered by the program. The density credit program should be expanded for the following, as discussed earlier in this report:

- Small cities;
- Additional areas in the Birch Bay UGA;
- Certain rural areas; and
- Accessory dwelling units.

B. Whatcom County Comprehensive Plan Amendments

The Work Group recommends amendments to the Whatcom County Comprehensive Plan as shown in Appendix A. These amendments reflect the proposed shift from a traditional TDR program to the new density credit model.

C. Voluntary TDR Program

The existing TDR program is cumbersome and not used very often. However, there are 247 certified TDRs in the County (some of which have been transferred). Therefore, the Work Group recommends keeping the existing TDR program. The existing TDR program should be refined, but the County should not put major effort into reforming the program. Specifically, the existing TDR program should be simplified as much as possible. However, new incentives should generally be reserved for the density credit program.

D. Mandatory TDR Program

A Civil Deputy from the County Prosecuting Attorney's Office stated that, in his opinion, the County cannot require TDRs for UGA expansions or rezones under RCW 82.02.020.

The TDR/PDR Work Group recommends that the County consider deleting WCC 20.89.051 (2) and (3), which state that certain rezone requests and UGA expansions are required to transfer development rights from designated TDR sending areas.

E. TDR Bank

Establishing a TDR bank is not recommended at the current time. Staffing, financial expertise, appraisals, an oversight committee, and funding would be needed to start the bank (for a TDR program that has not been widely used in the past).

F. New PDR Fund

The TDR/PDR Work Group recommends that the County create a PDR fund, in consultation with the Whatcom County Finance Department, if significant new funding sources become available. The Conservation Futures fund is adequate at the existing time to serve the needs of the PDR program. If a separate County PDR fund is not created, the County Finance Department should track funds that are raised through the density credit program to ensure that these funds are used for their intended purpose.

Appendix A – Comprehensive Plan Amendments

Chapter 2 (Land Use)

Policy 2A-14: Maintain a density credit program to incentivize increased land use intensity in designated areas and decrease residential density in agricultural and rural areas by authorizing density credits. Density credits allow development incentives, such as increased density, in exchange for a voluntary contribution towards preserving agricultural lands and open space. This is accomplished through a voluntary payment of funds to Whatcom County for use in the Agricultural Purchase of Development Rights Program (WCC 3.25A) in order to allow a higher density as specifically set forth in the Whatcom County Zoning Code.

~~Strive to establish by December 2017 a clear, predictable, and fair process for allowing expansion of urban growth areas that considers reasonable measures to mitigate the impacts of residential development in rural lands, agricultural areas (broadly defined), and sensitive watersheds. This process should include:~~

1. ~~Consultation with a focus group of potential TDR/PDR users in the building industry.~~
2. ~~Convening a multi-stakeholder work group, including the Cities, tasked with:~~
   - ~~Reviewing the current TDR and PDR programs.~~
   - ~~Identifying political, financial, and regulatory barriers to effective TDR and PDR programs.~~
   - ~~Identifying opportunities and solutions for creating a workable TDR program.~~
   - ~~Identifying mechanisms to create a PDR fund that could be used to protect important agricultural and rural lands.~~
   - ~~Recommending policy and regulatory amendments necessary to implement the above policy.~~
   - ~~Identifying proposed sending areas in critical areas, the Agricultural Zone, and the Rural Study Areas.~~
   - ~~Identifying receiving areas.~~

- ~~Identifying other factors and/or growth management tools.~~
- ~~Exchangeable development rights that have economic value, with the potential for multiple methods of assigning and converting value.~~
- ~~Interlocal agreements that grant economic value to exchangeable development rights and that insure development rights can be used in receiving areas.~~

3. ~~Based upon the findings of the multi-stakeholder work group, consider strategies that could require purchase, transfer or otherwise incentivize removal of potential development rights from rural or resource lands in exchange for UGA expansions and other upzones.~~

Rationale: In November 2017, the Whatcom County Council adopted a density credit program applicable to portions of the Birch Bay UGA (Ordinance 2017-062). The proposed Comprehensive Plan amendments would shift the emphasis in County Policy from a traditional TDR program, which has not worked well over the years, to the density credit program. Advantages of a density credit program, compared to a traditional TDR program, include:

- Developers know the cost up front;
- Developers do not have to find and negotiate with a willing TDR seller(s);
- Local government can use the cash on their highest preservation priorities (rather than the developer choosing where to buy TDRs within the sending area);
- The cash can be utilized in an existing PDR program (and the cash may be part of local matching funds used to leverage additional federal funding);
- Simplifies administration of the program. Reduces the time and resources needed to administer the program;
- Provides similar benefits as a traditional TDR program; and
- Jurisdictions don't need to determine sending/receiving area ratios.

Summarized from *The TDR Handbook: Designing and Implementing Transfer of Development Rights Programs* by Nelson, Pruetz, and Woodruff, 2012, pp. 45 and 47).

Additionally, the TDR/PDR Multi-Stakeholder Work Group will issue recommendations in 2018. It is anticipated that the County Council will make a final decision on these Comprehensive Plan amendments in 2019, after the Work Group completes its work.

Policy 2F-4: Review and adopt, where appropriate, incentive programs such as ~~cluster~~ density bonuses in urban growth areas in association with the density credit program, purchase of development rights, transfer of development rights, and tax deferrals.

Rationale: This change incorporates a reference to the density credit program. New density bonus provisions in UGAs, if priced appropriately, can provide a win-win situation where a developer has the potential for increased profit while simultaneously contributing to the removal of development rights in rural or agricultural areas through the County's PDR program.

Policy 2H-2: Establish incentive programs such as ~~cluster~~ density bonuses in urban growth areas in association with the density credit program~~,~~ and purchase of development rights, ~~and voluntary, workable transfer of development rights,~~ where appropriate, to compensate property owners if rights are unduly infringed.

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to the density credit program.

Policy 2N-3: Consider development incentives, such as density bonuses, in ~~cities and~~ UGAs in association with the density credit program.~~as receiving areas for development rights transferred from sending areas.~~ Encourage cities to consider development incentives in association with a cooperative City-County density credit program.

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to a density credit program. It also encourages cities to establish density credit programs in conjunction with the County.

Policy 2U-5: Review and update the interlocal agreement with Bellingham, prior to expiration of the current interlocal agreement, to provide for:

- Coordinated growth management and capital facility planning;
- timing and provision of utility services and other urban services;
- timing and procedures to be used for review of adequate land supply;
- timing of annexations;
- revenue sharing formulas prior to and after annexation;
- development standards and regulations;

- joint City/County review of development proposals in the UGA;
- affordable housing; and
- a density credit program and/or transfer of development rights within the City of Bellingham.

Rationale: The existing interlocal agreement between Whatcom County and the City of Bellingham is valid through the year 2022. When the interlocal is updated in 2022, it should reference a density credit program. The City of Bellingham already has a fee in lieu program (City Resolution 2009-024), which is essentially the same as a density credit program. This policy also recognizes that TDRs from the Lake Whatcom Watershed have been certified in the past. Therefore, the reference to TDRs should be maintained until all of these development rights have been utilized/extinguished.

Policy 2U-7: Whatcom County and Bellingham should designate areas that can accommodate density bonuses in association with a density credit program and/or receiving areas within the City of Bellingham and its UGA for Transfer of Development Rights from the Lake Whatcom Watershed.

Rationale: The City of Bellingham already has a fee in lieu program (City Resolution 2009-024), which is essentially the same as a density credit program. This policy also recognizes that TDRs from the Lake Whatcom Watershed have been certified in the past. Therefore, the reference to TDRs should be maintained until all of these development rights have been extinguished.

Policy 2DD-10: Adopt and maintain incentive programs, such as purchase of development rights, the density credit program,~~transfer of development rights,~~ and tax deferrals, to achieve desired land use policies in rural areas and in areas where there are compelling reasons to do so.

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to the density credit program.

Policy 2UU-4: Support the retention of open space and open space corridors through the use of education and incentives, such as purchase ~~or transfer~~ of development rights, density bonuses within UGAs in association with the density credit program, cluster development, and acquisition of easements.

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to the density credit program. New density bonus provisions in UGAs, if priced appropriately, can provide a win-win situation where a developer has the potential for increased profit while simultaneously contributing to the removal of development rights in rural or agricultural areas through the County's PDR program.

Policy 2UU-6: Improve public access to shorelines and other lands using such mechanisms as purchase ~~or transfer~~ of development rights, density bonuses within UGAs in association with the density credit program, and open space tax status.

Rationale: Same as rationale for Policy 2UU-4 above.

Chapter 3 (Housing)

Policy 3F-1: Include incentives in land use regulations, in UGAs and in Planned Unit Developments (PUDs), to offset the reduced profit inherent in more affordable types of housing. Incentives might include ~~transfer of development rights,~~ density bonuses, fee waivers, expedited permit review, and/or infrastructure concessions to protect developers wherever special needs populations are specifically served.

Rationale: This change reflects the shift away from a traditional TDR.

Chapter 8 (Resource Lands)

Policy 8A-2: Maintain a working agricultural land base sufficient to support a viable local agricultural industry by considering the impacts to farmers and agricultural lands as part of the legislative decision making process. Measures that can be taken to support working farms and maintain the agricultural land base should include:

- Maintenance of 100,000 acres of agricultural land to support a healthy agricultural industry.
- A density credit program where development incentives are offered in cities and/or UGAs if density credits are purchased by the developer. Funds from the density credit program would supplement the existing Purchase of Development Rights (PDR) program funding. ~~workable transfer of development rights program (TDR) in which the development potential of a site could be transferred to another location where development is more favorable.~~
- ~~The workable TDR program shall give priority to the creation of economically viable receiving areas.~~

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to the density credit program. It recognizes that monies taken in through the density credit program would go towards reducing development potential in areas suitable for agriculture.

- Developing a marketplace approach to strengthening agricultural practices while enhancing larger-scale watershed processes and functions by identifying feasible opportunities on agricultural land to improve both watershed health and agricultural viability and developing incentives and tools to compensate farmers for actions that exceed minimum regulatory standards.
- Maintaining a Purchase of Development Rights (PDR) program that facilitates the removal of development rights from productive farmland and provides permanent protection of those agricultural lands through the use of conservation easements or other legal mechanisms.
- Incentives and cooperation between landowners and public agencies such as the use of the current use tax assessment provisions.
- Implementing land use policies that encourage farming on Rural lands of high agricultural productivity and potential.
- Discouraging conversion of designated agricultural lands to non-agricultural uses.
- Track acres lost due to conversion, development, or policy implementation such as critical areas ordinance, so mitigation strategies can be implemented to offset the acres lost.
- Education and marketing of programs that emphasize recognition of the local and regional significance of agricultural land as a natural resource and the economic, social and ecological benefits it provides.
- Working cooperatively with local farmers and coordinating with local and state agencies to address water quality impacts of agricultural activities on local streams and groundwater.
- Securing an adequate, sustainable, and legal supply of irrigation water sufficient to support the long-term viability of the local agricultural industry.
- Identify and evaluate any new or changed zoning or comprehensive plan agricultural lands of long term commercial significance designations as needed or warranted for the Rural Study Areas.
- Economic development assistance to agricultural-related enterprises.
- Recognize regulatory impacts and encourage farm friendly regulations.

Chapter 10 (Environment)

Policy 10C-3: Emphasize an approach to environmental protection by encouraging the use of conservation easements, open space taxation, land acquisition, purchase~~/voluntary, workable transfer~~ of development rights, the density credit program, and other mechanisms that assist affected property owners.

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to the density credit program.

Policy 10E-6: Maintain a comprehensive program of regulatory and non-regulatory mechanisms to achieve Natural Hazard goals and policies. This program should include such mechanisms as education, tax incentives, zoning, land use regulations, conservation easements, purchase of development rights, ~~transfer of development rights,~~ and public acquisition.

Rationale: This change reflects the shift away from a traditional TDR. It does not reference the density credit program, because funds from density credits will go towards preserving rural and agricultural lands and are not specifically targeted towards naturally hazardous areas.

Policy 10L-16: Consider ~~establishing~~ important habitat areas (as set forth in best available science and Wildlife Advisory Committee recommendations) in the Purchase of Development Rights Program Guidelines site evaluation criteria. ~~as sending areas after creating a voluntary, workable transfer of development rights (TDR) program.~~

Rationale: This change reflects the shift away from a traditional TDR. It also recognizes that the existing PDR Program Guidelines "site evaluation" criteria include conservation values such as wildlife habitat.

Policy 10P-17: Consider establishing the Drayton Harbor Watershed as an area for directed PDR investments and encourage the cities of Blaine and Ferndale to establish density credit programs that provide funding to the County PDR program.~~sending area when considering a transfer of development rights (TDR) program.~~

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to the density credit program. It also encourages a cooperative effort between the County and cities that would provide developer incentives in the cities while reducing development potential in the rural and/or agricultural areas of the Drayton Harbor Watershed.