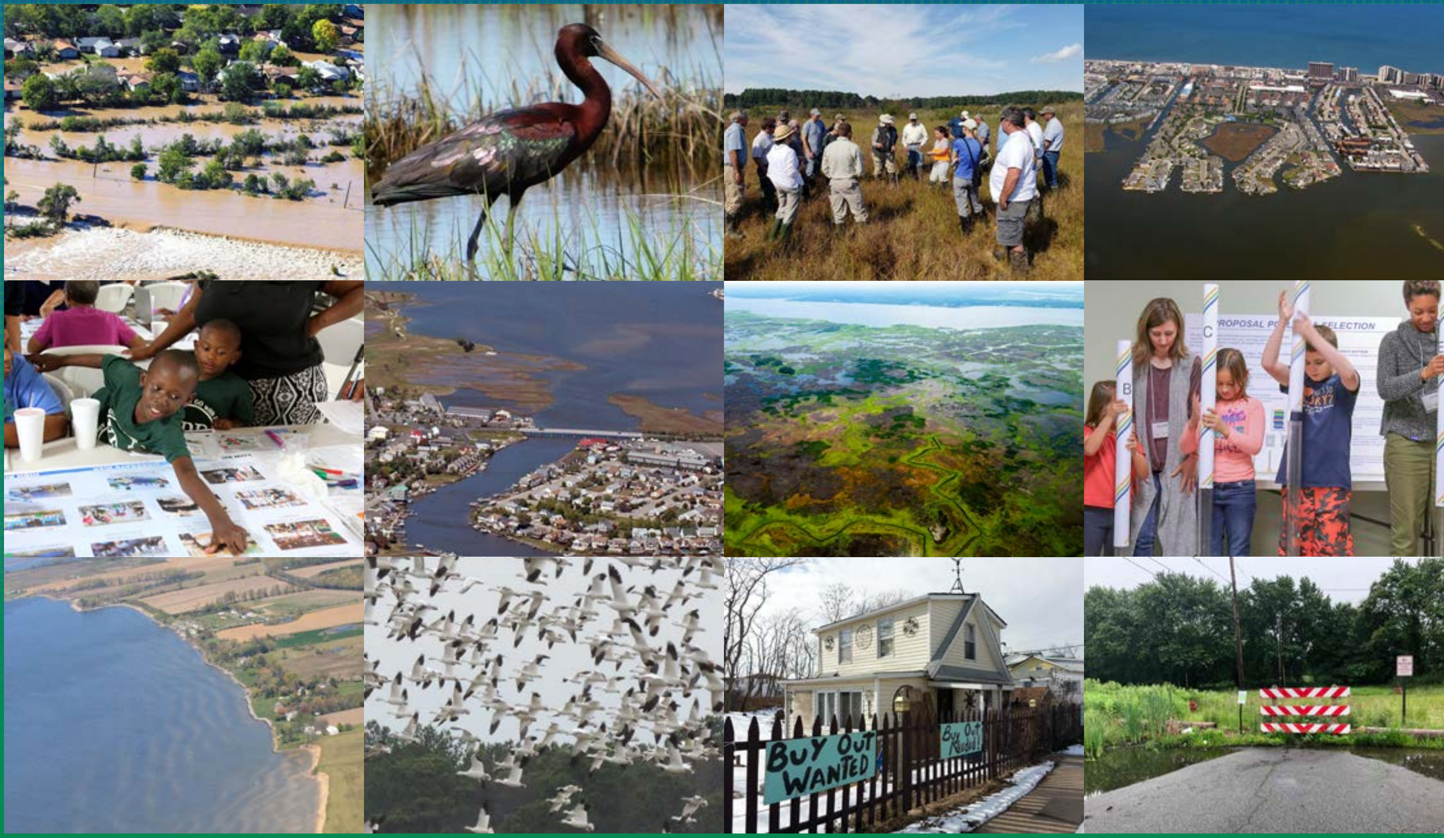
Managing the Retreat from Rising Seas

King County, Washington: Transfer of Development Rights Program



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(bottom row, left to right): Integration and Application Network, University of Maryland Center for Environmental Science; Betty Whetzel (Courtesy of U.S. Fish and Wildlife Service); Matt Green; Katie Spidalieri, Georgetown Climate Center.

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Managing the Retreat from Rising Seas: Lessons and Tools from 17 Case Studies

About This Report

As seas continue to rise and disaster events and extreme weather increase in frequency and intensity, climate change is driving state and local policymakers to evaluate strategies to adapt to various risks affecting many communities. In addition to protection (e.g., hard shoreline armoring) and accommodation (e.g., elevating or flood-proofing structures) measures, coastal governments and communities are increasingly evaluating managed retreat, where appropriate, as a potential component of their comprehensive adaptation strategies. Managed retreat is the coordinated process of voluntarily and equitably relocating people, structures, and infrastructure away from vulnerable coastal areas in response to episodic or chronic threats to facilitate the transition of individual people, communities, and ecosystems (both species and habitats) inland.

The aim of managed retreat is to proactively move people, structures, and infrastructure out of harm's way before disasters occur to maximize benefits and minimize costs for communities and ecosystems. For example, policymakers may maximize opportunities for flood and risk reduction by conserving wetlands and protecting habitat migration corridors and minimize the social, psychological, and economic costs of relocation by making investments in safer, affordable housing within existing communities.

This report is composed of 17 individual case studies. Each one tells a different story about how states, local governments, and communities across the country are approaching questions about managed retreat. Together, the case studies highlight how different types of legal and policy tools are being considered and implemented across a range of jurisdictions — from urban, suburban, and rural to riverine and coastal — to help support new and ongoing discussions on the subject. These case studies are intended to provide transferable lessons and potential management practices for coastal state and local policymakers evaluating managed retreat as one part of a strategy to adapt to climate change on the coast.

Collectively, these case studies present a suite, although not an exhaustive list, of legal and policy tools that can be used to facilitate managed retreat efforts. Legal and policy tools featured include: planning; hazard mitigation buyouts and open space acquisitions, as well as other acquisition tools like land swaps and reversionary interests; land use and zoning; and Transfer of Development Rights programs. The case studies also highlight various policy tradeoffs and procedural considerations necessitated by retreat decisions. Each jurisdiction is confronting different challenges and opportunities and has different, perhaps even competing, objectives for retreat. In addition, stakeholders in each of these cases are attempting to balance multiple considerations, including:

protecting coastal ecosystems and the environment; fostering community engagement and equity; preparing "receiving communities" or areas where people may voluntarily choose to relocate; and assessing public and private funding options and availability. The case studies included in this report were selected to reflect the interdisciplinary and complex nature of retreat decisions and underscore the need for comprehensive solutions and decisionmaking processes to address these challenging considerations.

Where possible, all of the case studies share a consistent organizational format to allow easier cross-comparison of strategies, processes, and takeaways:

- The **Background** section introduces state or local context for each case study, including the risks and hazards facing each jurisdiction and its road to considering or implementing managed retreat strategies.
- The **Managed Retreat Examples** section focuses on the legal and policy tools that have been designed and implemented to support managed retreat strategies on the ground.
- The **Environment** section highlights how floodplains and coastal ecosystems have been restored, conserved, and protected as a part of comprehensive managed retreat strategies to provide ecosystem and community benefits, like reducing flood risk and creating community assets such as parks and trails.
- The **Community Engagement** section summarizes how affected residents have been contributing to planning and decisionmaking processes for climate adaptation and managed retreat.
- The **Funding** section identifies how the programs, plans, and projects discussed have been funded by federal, state, and local government and private sources.
- The **Next Steps** section captures the anticipated future actions that jurisdictions may take in implementing these managed retreat strategies.
- The **Considerations and Lessons Learned** section concludes with the primary takeaways from each example that other coastal state and local policymakers and communities may consider when developing or implementing their own managed retreat strategies using these legal and policy tools.

The case studies in this report were informed by policymakers, practitioners, and community members leading, engaging in, or participating in the work presented in this report. No statements or opinions, however, should be attributed to any individual or organization included in the *Acknowledgements* section of this report. It is also important to note that the programs and planning processes described in each case study are ongoing and the content included in this report is current as of early 2020. Future updates about these case studies will be captured in Georgetown Climate Center's online resources on managed retreat.

These case studies were written to support Georgetown Climate Center's Managed Retreat Toolkit, which also includes additional case study examples and a deeper exploration of specific legal and policy tools for use by state and local decisionmakers, climate adaptation practitioners, and planners. For future updates about these and other case studies and the Managed Retreat Toolkit, please visit the **Managed Retreat Toolkit** and the **Adaptation Clearinghouse**.

King County, Washington: Transfer of Development Rights Program

Executive Summary

The King County Transfer of Development Rights (TDR) Program in Washington State uses a unique market-based tool to achieve long-term planning goals and incentivize development in strategic areas that can be coupled with other legal and policy tools as a part of comprehensive coastal retreat strategies. King County created the TDR Program in response to state growth area management requirements and objectives. Municipalities and unincorporated areas across the county can voluntarily choose to participate in and integrate the necessary provisions into their local codes. Municipal programs are then administered individually according to local laws and an interlocal legal agreement with King County. Participating local governments designate two areas "sending areas" — typically farmland, forest, open space, or priority natural resources areas — where they want to limit new development; and "receiving areas" in mostly urban areas where existing services and infrastructure can accommodate growth. Landowners in sending areas can sell their development rights to project proponents in receiving areas who can then use those rights to increase the size or density of a development project. Between 2000 and July 2019, 144,290 acres of rural and resource lands were conserved and protected through the King County TDR Program. As a result, 2,467 potential dwelling units have been relocated from rural to urban areas. Washington State created the Landscape Conservation and Local Infrastructure Program to support TDR Programs like King County's by financing infrastructure development and other improvements in receiving communities to ensure these areas can keep pace with population growth. The King County TDR Program provides one example of how several types of land acquisition programs and funding sources can be leveraged to achieve the benefits of both conservation and new, more resilient development. In a managed retreat context, TDR Programs modeled after King County can be used to preserve lands for ecological benefits through conservation easements, while ensuring new development is concentrated in areas that are less vulnerable to flooding and coastal hazards, such as sea-level rise and storm surges.

Background

King County is located in the northwestern corner of Washington State off Puget Sound and borders the Cascade Mountain Range to the east. King County is home to the City of Seattle and encompasses both incorporated and unincorporated areas. As of 2018, the county's estimated population was approximately 2.2. million, making it the most populous county in Washington.[1] Generally, development in the western part of the county is more urban while development becomes gradually sparser to the east, with suburban developments, then rural residential lands, and farms and forestlands.[2] Eastern King County is mountainous, and primarily consists of wilderness areas, forestlands, or restricted watersheds to protect and sustain the region's drinking water.[3]

In 1988, King County implemented a three-year pilot Transfer Development of Rights (TDR) program to support land conservation and steer development away from rural and natural resource lands in the east into higher density urban areas in the west.[4] In 2001, the TDR Program was incorporated into the County Code.[5] The TDR Program is voluntary and uses a market-based approach to allow landowners to separate the right to develop from their bundle of property rights into a tradable commodity. King County has used the TDR Program as a tool to promote rural and natural resource land conservation by transferring development out of rural "sending areas" — which are a priority for preservation as natural areas or floodplains (e.g., areas with current or future high-flood risk, valuable natural resources, or high potential for future development or subdivision) — and into urban "receiving areas" that are appropriate for additional growth or increased density (e.g., areas with lower flood risk and ideally affordable housing and existing supporting infrastructure and services).

Managed Retreat Examples

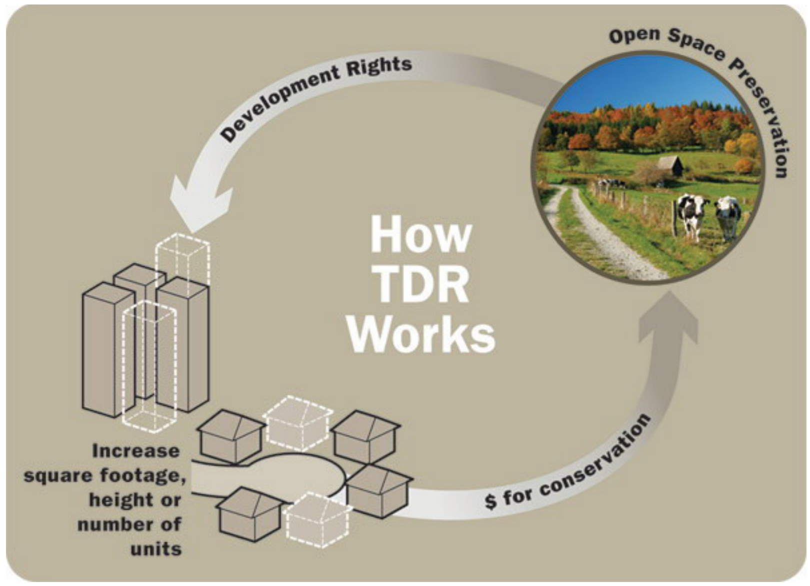
Transfer of Development Rights Program

King County's TDR Program could serve as a model approach for using market-based tools as a part of comprehensive managed retreat strategies to encourage the preservation of sensitive coastal ecosystems while reducing development in vulnerable coastal areas. Under the King County TDR Program, qualifying landowners can choose to separate some or all of their unused development rights from their property. Development rights can be bought and sold as a tradable commodity separate from the land itself. Separated development rights are typically sold to developers in receiving sites, such as designated urban areas eligible for increased density. By acquiring TDR credits, developers can increase the density of proposed development above base zoning standards in receiving areas, while the original sending parcel is preserved through a conservation easement. King County has two TDR models to acquire development rights. In the first, King County pays property owners for conservation easements and the King County TDR Bank (see description below) then holds the development rights. In the other model, landowners voluntarily place a conservation easement on their land and the development rights are made available for the landowner to sell. In the second model, there are fewer upfront costs for the county. Under both models, property owners are ultimately compensated for their development rights and are also eligible for reduced property tax rates for lands protected by conservation easements. Landowners who qualify to send or sell TDRs must own property located within one of six designated rural, agricultural, or forest zones, and the land must provide at least one of the following public benefits:

- Agricultural potential
- Forestry potential
- Critical wildlife habitat
- Open space
- Regional trail connectors or urban separators

The number of development rights for a given property is calculated based on existing and remaining development potential (using a qualification process involving the location and size of the parcel, minus the amount of any submerged lands or land being retained for development on the site).

King County administers and provides regional support for TDR Programs implemented at the local level in participating municipalities.[6] King County's model is a voluntary program that allows municipalities within the county, like Seattle, to adopt a TDR Program through local ordinance and incorporate it into their codes according to a county-city interlocal agreement. King County and participating municipalities jointly evaluate and determine individual sending and receiving site designations, developer benefits (such as increasing density), and revenue-sharing agreements with the county depending on the terms of these interlocal agreements. The county operates and maintains a TDR Bank that acquires and holds credits to provide ongoing access to "banked" credits for developers. By providing a stable market for banked credits, the TDR Bank eliminates the need for developers to find new credits on an as-needed basis, removes certain administrative barriers that can slow project implementation, and enables more developers to participate in the TDR program. In addition, the county eases administrative burdens on municipalities by leading the TDR Bank on behalf of all the participating jurisdictions.



How Transfer of Development Rights Programs Work.

This illustration from King County presents a simplified overview of Transfer of Development Rights transactions.

Credit: **Program Overview: Transfer of Development Rights**, King Cnty. (last updated Aug. 19, 2019).

Funding and Financing

In addition to the King County TDR Program, King County and the State of Washington provide innovative examples of funding and financing tools to support and implement retreat decisions on the ground.

Open Space Acquisitions and Conservation

King County has leveraged work across different types of state, regional, and local land acquisition programs to achieve co-benefits and combine multiple funding sources for land purchases. The main source of funding for the purchase of conservation easements and fee simple interests in King County is the Washington State Conservation Futures Tax (CFT), a local property tax.[7] Applications for CFT funds are reviewed by a citizen advisory committee that makes recommendations to the King County Executive and Council on how funds should be allocated. Awarded projects require municipalities to supply a 100 percent funding match equivalent to the amount of the CFT identified for a project. For purposes of leveraging different public and private funding sources, the TDR Program is often capable of providing the 100 percent match to support mutually beneficial land acquisition projects at the municipal level. Since 1982, King County has used funds from CFT to protect more than 111,000 acres of land, forests, and other conservation parcels from development. CFT is an useful example of a local funding source that provides more flexibility for conservation land acquisitions than other sources, such as the federal government, that carry more restrictive post-acquisition land-use requirements (e.g., Federal Emergency Management Agency Hazard Mitigation Grants).

Preparing Receiving Areas

To complement the TDR Program, the State of Washington developed a tool for counties and cities to minimize the funding challenges associated with preparing receiving areas to support increased development and housing. In 2011, the state passed legislation to create the Landscape Conservation and Local Infrastructure Program (LCLIP) to provide funding to offset the cost of infrastructure and other community services in King, Pierce, and Snohomish counties.[8] By adopting a TDR Program and agreeing to accept a specified amount of regional (as opposed to only municipal) development rights, municipalities within these three counties are eligible to receive a bonus portion of their county's property tax revenues to finance investments in receiving areas, such as transportation and water and sewer system repairs and upgrades, construction of public transit, community amenities like parks and trails, and electric, gas, and other utility infrastructure.[9] LCLIP only reallocates a portion of the incremental property taxes that result from new development and does not impose any new tax burden on residents or businesses.

As of 2019, Seattle is the only city that has created a "Local Infrastructure Project Area" tax financing district for its Downtown, Denny Triangle, and South Lake Union neighborhoods. The tax district is an interlocal agreement between Seattle and King County[10] and amends the city's municipal code through a local ordinance.[11] LCLIP provides a unique example of a financing tool to support comprehensive investments in infrastructure development in receiving areas.

Considerations and Lessons Learned

The King County TDR Program demonstrates how growth management and land conservation goals can be achieved through implementing innovative planning, land-use, and funding and financing tools. First, the TDR Program provides two primary benefits to King County and local residents: (1) ecologically and culturally important land and resources are protected at little or no public expense; and (2) future growth is concentrated in urban areas. Between 2000 and July 2019, 144,290 acres of rural and resource lands were conserved and protected through the King County TDR Program. As a result, 2,467 potential dwelling units have been relocated from rural to urban areas. A similar approach could be adapted for a coastal retreat context to support development patterns in less vulnerable, inland areas.

Second, King County and the state's use of diverse funding sources provide cost-effective ways to acquire and conserve lands for environmental benefits while preparing receiving areas with infrastructure investments. By allowing landowners to sell conservation easements, the county is able to avoid the costs of buying land outright and is not burdened with the long-term management costs of land preservation. Other jurisdictions may also consider adopting the state's Landscape Conservation and Local Infrastructure Program model to make funding available to support the new infrastructure demands TDR Programs generate in receiving communities.

Endnotes

1 *Statistical Profile of: King County*, King County, **https://www.kingcounty.gov/~/media/depts/executive/performance-strategy-budget/regional-planning/Demographics/Dec-2018-Update/KC-Profile2018.ashx?la=en** (last visited Dec. 11, 2019).

2 *King County's Environment*, King County, **https://www.kingcounty.gov/about/region/environment.aspx** (last updated Oct. 27, 2017).

3 *Id.*

4 *King County TDR Program History*, King County, **https://www.kingcounty.gov/services/environment/stewardship/sustainable-building/transfer-development-rights/history.aspx** (last updated Aug. 13, 2019).

5 King County Code ch. 21A.37, General Provisions — Transfer of Development Rights (TDR) (2008), *available at* **https://www.kingcounty.gov/~/media/services/environment/stewardship/sustainable-building/documents/tdr/KCC_Title_21A37_Dec2008.ashx?la=en**.

6 For more information on both the incorporated (e.g., Seattle) and unincorporated areas of King County participating in the TDR Program as sending or receiving areas, see the King County TDR Program main website at *Transfer of Development Rights: King County, Washington*, King County, **https://www.kingcounty.gov/services/environment/stewardship/sustainable-building/transfer-development-rights.aspx** (last updated Aug. 12, 2019).

7 *Conservation Futures (CFT)*, King County, **https://www.kingcounty.gov/services/environment/stewardship/conservation-futures.aspx** (last updated Nov. 20, 2019).

8 *See Growth Management Development Rights — Washington State Department of Commerce*, Wa. Dep't of Commerce, **https://www.commerce.wa.gov/serving-communities/gro wth-management/growth-management-topics/development-rights/** (last visited Dec. 11, 2019).

9 *See id*.

10 Interlocal Agreement for Regional Transfer of Development Rights and Tax Increment Financing of Infrastructure by and between the City of Seattle and King County (Oct. 3, 2013), *available at* **https://deptofcommerce.app.box.com/s/j3mxnl6fdivxl1qecjanxihp3wkxnz5j**.

11 City of Seattle Ordinance 124285, Council Bill 117832 (June 13, 2013), *available at* **https://deptofcommerce.app.box.com/s/j3mxnl6fdivxl1qecjanxihp3wkxnz5j**.

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