Teton County & Town of Jackson TDR Feasibility Assessment
Findings and Recommendations

July 31, 2015

About this Document

Teton County and the Town of Jackson are jointly preparing land development regulations to implement the vision of their 2012 comprehensive plan update. Jackson Hole Conservation Alliance (JHCA) is interested to understand whether a market-based real estate tool, transfer of development rights (TDR), is a viable means for conserving rural lands in Jackson Hole and—if yes—what opportunities may exist for its inclusion in emerging regulations.

JHCA retained Skip Swenson to conduct its feasibility analysis. He has developed numerous TDR programs at the state, county, and city scales in Washington State and also has advised groups pursuing TDR in Georgia, Virginia, and Alberta.

TDR Feasibility Study Overview

The primary purpose of this study is to address the following questions:

- Is TDR legal?
- Is TDR a viable option for achieving conservation goals?
- How might TDR be used in Jackson Hole?

To answer these questions, the study is segmented into the following sections:

1. Legality
2. Conservation Lands / Sending Sites
3. Growth Areas / Receiving Sites
4. Program Design Considerations and Recommendations
5. Opportunities
6. Implementation Considerations

Summary of Findings

From a legal and financial perspective, this analysis suggests TDR is a viable tool in Jackson Hole when designed to address the unique characteristics of the local real estate market. The primary obstacle for TDR, such that one exists, is identifying appropriate and politically palatable opportunities for its use within the emerging suite of development regulations.

Specific findings:

- Strong evidence supports the legality of TDR in Wyoming generally and in Teton County specifically
- Jackson Hole's private rural land is owned by a limited number of owners, and it is generally speaking expensive; both facts have implications for TDR feasibility
- The financial performance of certain Town of Jackson and Complete Neighborhoods development types—specifically single-family housing and condos—could support a market-based conservation program like TDR, all else equal
- The viability of TDR as it is commonly employed elsewhere is questionable due to a number of factors; however, market-based conservation is feasible if the combination of a standard TDR program and an in-lieu-of-TDR fee (ILF) program is employed
- Opportunities exist within the emerging town and county land development regulations to employ TDR/ILF

Feasibility Analysis

1. TDR Legality in Wyoming and Teton County

Strong evidence exists within state and local laws, as well as case law, supporting the legal basis for TDR in Wyoming and its use in Teton County and the Town of Jackson.[1]

2. Sending Sites / Areas for Conservation

Jackson Hole Conservation Alliance identified private, unincorporated lands outside of Complete Neighborhoods as the conservation target for this analysis. A majority of lands within this target are owned by fewer than ten landowners.

Data

Rural land values proved challenging to obtain for the analysis; however, a reasonable sample of 54 rural properties ranging between three and 580 acres was obtained through multiple sources.[2] Summary statistics of all data were generated, but ultimately a sample of 19 properties—those representing ownerships of at least 34.5 acres—were selected to establish a range of property values on which to base development right value estimates. The subset was selected given its similarity to JHCA's target for rural conservation.

Allocation Rate

Development right allocation rate refers to the number of development rights that a landowner may sell from a given property. A standard allocation rate issues development rights in

[1] For a complete legal analysis, see Appendix 1.

[2] See Appendix 2 for the complete dataset, assumptions, further analysis, and figures.

accordance with base zoning—which is my recommendation for a Teton County program: 1 development right per 35 acres.[3]

Development Right Value Estimates
Based on the dataset and a zoning-based allocation rate, development right values were deduced using a conservative assumption: development potential represents 65% of a given rural parcel's total value.[4] The resulting range of values, representing expected values within the TDR marketplace, is summarized as follows:[5]

Figure 1

Estimated Development Right Values (@65% of land values)		
For parcels min. acres =	**34.5**	*19*
min	**$ 668,571.43**	
25th	**$ 1,648,636.36**	
median	**$ 3,071,250.00**	
75th	$ 3,844,208.33	
max	$ 35,717,500.00	

Unlike other conservation tools, TDR operates on market efficiencies. All else equal, TDR tends to conserve properties with the lowest priced development rights. With this in mind, it is reasonable to assume the majority of development rights purchased in an active TDR market will not fall within the upper 50% of marketplace values. Rather, most development rights purchased in the market will fall within the lower half of the market (in this case, $668K - $3.1M).

3. Receiving Sites / Development Using TDR

Jackson Hole Conservation Alliance identified two general targets for receiving sites:

- In-town zones
- Complete Neighborhoods

Specific applications for using TDR or TDR-like tools in receiving areas will vary by zone and circumstance; however, based on analysis and recent activities around proposed development regulations, some themes can be identified.[6]

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[3] Basing development right allocation on property rights defined by zoning aligns with universally understood land-ownership concepts and avoids unnecessary program complications that may hinder participation. That said, an alternative allocation method may be warranted should the Complete Neighborhood PRD concept be adopted; it is based on a greater allocation of development rights than is afforded through base zoning (i.e. a 9x bonus), and in that specific case differing allocations may prove problematic for a TDR program. Please note any change in allocation rate nullifies the subsequent exchange rate calculations in this study.

[4] While the percentage will vary by parcel, for purposes of estimation 65% is the recommendation of FCS Group based on its experience. It also aligns with the experience of Jackson Hole Land Trust, which estimates 30-80% as the typical range for development value as a percentage of total land value in its conservation transactions.

[5] Given a skewed distribution of values on the high end of the distribution, median is a more appropriate measure of centrality than average.

[6] See section 5 of this document

Willingness to Pay for Additional Units
Jackson Hole Conservation Alliance identified prototypical project types on which to base a feasibility assessment for TDR—all of which are residential in nature.[7] To understand the capacity of developers to access incentives FCS Group conducted residual land value analysis across these receiving area project types: [8]

- Standard Single Family 4 units per 1 acre (4:1) development
- Small Lot Single Family 7:1 development
- Townhome 12:1 development
- Apartments 36:1 development
- Apartments over commercial 36:1 + 5000 square feet of commercial
- Flats/Condominiums 32:1 development
- Flats/Condominiums 32:1 + 5000 square feet of commercial

Assuming a project profit requirement of 20%, FCS Group estimates that all building types but apartments (with or without commercial) are financially viable in the current real estate market, all else equal.[9] Moreover, all feasible building types generate a surplus beyond the assumed 20% profit requirement—suggesting an ability (or "willingness") by developers to pay some amount for the opportunity to build additional units. For purposes of this study, this translates to an ability to pay for TDR credits.

Figure 2

Ability/Willingness To Pay for One Additional Unit (if land is owned)				
CN Standard SF	CN Small SF	Townhome	Condos	Condos - Mixed Use
$ 278,300	$ 146,800	$ 120,014	$ 56,507	$ 114,946

To interpret table results using an example: If a developer building a condo (with commercial) project in town seeks more units than is otherwise allowable, she is willing to pay up to $114,946 per additional unit to do so and still realize a 20% profit on the project.

Exchange Rates
Development right values rarely equal developer surplus, or the willingness of developers to pay for an additional unit. Typically, development right values exceed a developer's per-unit willingness to pay. Exchange rates correct this imbalance and are critical to the success of any TDR program.

Using the 25th percentile estimated development right value as the anticipated median of a likely TDR market, and comparing this to the estimated values developers are willing to pay for additional units, minimum exchange rates for viable project types are estimated in Figure 3 (in red).

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[7] While residential-to-commercial conversions for TDR are commonplace in other markets, strictly commercial zones or building types are not considered in this analysis.
[8] See Appendix 3 for its complete analysis
[9] FCS Group determined a 20% profit margin to be a conservative, yet appropriate, estimate for its analysis.

Figure 3

		Ability/Willingness To Pay for One Additional Unit (if land is owned)				
		CN Standard SF	CN Small SF	Townhome	Condos	Condos - Mixed Use
Sending Areas>34.5 acres		$ 278,300	$ 146,800	$ 120,014	$ 56,507	$ 114,946
25th Percentile Value	$ 1,648,636.36	6	12	14	30	15

To interpret table results using an example: If a developer building a condo (with commercial) project in town seeks more units than is otherwise allowable, and if the expected market cost for a development right is $1.65 million, she must be allowed to build at least 15 additional units in exchange for purchasing a TDR credit.[10]

4. Program Design Considerations and Recommendations

As outlined above, evidence and analysis supports the legal and financial viability of TDR in Teton County and the Town of Jackson, all else equal. That said, at least three factors merit consideration:

- *Limited rural ownerships:* A majority of sending areas are owned by as few as seven landowners. Consequently, the potential for an active TDR marketplace with healthy price competition is limited; the potential for price-setting or related market manipulation is a concern.
- *Development right costs:* Given its unique setting and landowner demographics, Jackson land costs—and consequently development right costs—are high. Receiving site developers will require significant unit incentives to make TDR worthwhile. In some cases (e.g. condos without commercial), this may eliminate the practicality of using TDR—especially amongst developers who are not also rural sending site landowners.
- *Rural Cluster Provisions:* The existing 3x, 6x, and 9x rural cluster subdivision provisions compete with TDR, complicating decision-making for landowners and potentially creating value expectations exceeding actual development right values—which has unknown implications for a TDR marketplace.

All things considered, *the viability of TDR as it is commonly considered is questionable.* The basic form of TDR (transferring rights from one property to another), assuming appropriate receiving site incentives are identified, is likely to be used primarily by landowners holding both sending and receiving sites. If TDR were used by developers that are not rural landowners, it would likely occur only in the largest developments given exchange rate requirements.

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[10] Analysis results represent break-even exchange rates for purposes of assessing feasibility. When setting exchange rates for a TDR program, it is advisable to be conservative.

That said, *these concerns are mitigated / market-based conservation is feasible if the combination of a standard TDR program and an in-lieu-of-TDR fee program* is employed. For a given project such a combined program would allow:

- TDR transactions between sending site landowners and receiving site developers (different ownership); or,
- TDR transactions between sending and receiving site holdings of a given landowner (single ownership); or,
- In-lieu-of-TDR fees paid by developers to the county or a third-party administrator

In-lieu of TDR Programs
In-lieu fees (ILF) may be used to achieve land conservation as an alternative to using TDR. Developers pay a fee to the county in exchange for the ability to access additional units / height / FAR /etc. Once adequate fees are collected, they are used to fund conservation easement purchases in priority conservation areas.

The addition of ILF addresses the concerns highlighted above. Moreover, it results in more development-generated funding for conservation than TDR alone is likely to produce in Jackson Hole. Given local real estate market dynamics, my recommendation is for an ILF fee pegged to estimated developer surpluses and applied on a per-unit or per-FAR basis (as appropriate).

It must be noted incorporating ILF requires a greater level of county and/or county agent participation—amongst other things in terms of fee collection and administration, land acquisitions, and long-term stewardship requirements.

On the other hand, ILF offers a benefit over TDR with regard to its ability to target conservation purchases. Whereas TDR is a blunt instrument that allows the market to determine where conservation occurs, ILF allows for targeting and the pursuit of high-priority properties. In combination the two offer a suite of benefits that neither alone affords the Jackson Hole market.

5. TDR / ILF Opportunities

Project Types
All else equal, based on FCS Group analysis TDR/ILF is feasible for prototypical projects of all building types analyzed, with the exception of apartments. Viable project types include:

- Standard Single Family 4 units per 1 acre (4:1) development
- Small Lot Single Family 7:1 development
- Townhome 12:1 development
- Flats/Condominiums 32:1 development
- Flats/Condominiums 32:1 + 5000 square feet of commercial

Commercial project viability is beyond the scope of this analysis and remains an unknown.

Incentives / Zoning
TDR and ILF are incentive-based systems, however applied.[11] If TDR/ILF is to work, demand for development must exceed regulatory limitations and development regulations must support its use.

Common applications for TDR involve the setting of "base" height / FAR / density, with the possibility of accessing more through the purchase and placement of development rights. Base/incentive zones may be established within the existing comprehensive plan maximums or together they may exceed the current maximums—whichever is market-appropriate and politically feasible.[12]

Applications
Given the timing of this analysis, it is difficult to prescribe specific incentives. As regulations across rural, complete neighborhood, and in-town zones emerge, opportunities worth exploring include:

- *Single-family zones:* If incentives can be identified, single-family homes generate significant surplus relative to other building types than could support conservation[13]
- *Townhouses:* If feasible, expanding beyond 12-units per acre via incentives
- *Condos:*
    - Adding height/FAR to long-term rental/ residence condo projects via incentives
    - Adding height/FAR to short-term lease condo projects in the lodging overlay zone[14]

Future Considerations
Other opportunities for TDR/ILF applications that may exist, but are beyond the scope of this analysis and/or which cannot be informed by this study, include:

- *Commercial zones:* Allow developers to access incentive commercial square footage / height / FAR—including hotels in the lodging overlay zone
- *Replacing 3x rural clusters with TDR:* Remove the current "3x" bonus provisions that expand rural development and replace it with TDR-based clustering—which still provides landowners an opportunity for bonuses, but overall represents fewer potential rural units
- *All future upzones / density increases:* Require TDR/ILF for all future land use actions resulting in increased density beyond what the comprehensive plan envisions or the 1994 Land Development Regulations allow

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[11] It is possible for ILF to be applied instead as a development fee; however, such application is beyond the scope of this analysis.
[12] Although incentives such as added FAR and height are most common, countless opportunities exist to incentivize development—notably parking reductions, which may be germane for certain downtown zones. For more examples of incentives, see "Transfer of Development Rights Incentives That Jurisdictions Can Provide for Developers", *Washington Department of Commerce*, http://www.commerce.wa.gov/Documents/GMS-TDR-toplink-Developer-Incentives.pdf (accessed July 30, 2015)
[13] Based on FCS Group analysis, one* challenge for single-family homes incentive creation is that, all else equal, developers are financially driven to build fewer single family homes per acre; four homes per acre yields more surplus than seven units per acre. It is possible greater densities than seven per acre would reverse this relationship; however, that cannot be ascertained by this dataset.
[14] The presumption is these are condos approved on their own merits, i.e. they are not additive due to TDR/ILF

- *Development agreements:* Include TDR/ILF provisions for all development agreements that result in new development that does not otherwise conform with regulations

6. Conclusion and Considerations

From a legal and financial perspective, this analysis suggests TDR is a viable tool in Jackson Hole when designed to address the unique characteristics of the local real estate market. The primary obstacle for TDR, such that one exists, is identifying appropriate and politically palatable opportunities for its use within the emerging suite of development regulations.

Should these be identified and a TDR/ILF program is pursued, a number of issues must be considered to ensure successful implementation. Unfortunately, many TDR programs have proven unsuccessful given poor design.

At a minimum, Teton County and the Town of Jackson must carefully consider the following:

- Design and code support
- Interaction with other comprehensive plan goals and incentives—notably housing
- Transaction mechanisms and program support
- Administrative processes for issuing and tracking development right credits
- Acquisitions for ILF properties
- Easements or deed restrictions
- Closings and document transmission

Appendix 1: Legal Opinion on TDR

Attorney Timothy Lindstrom, a nationally recognized expert on conservation law, provided a comprehensive legal opinion concerning the use of TDR, concluding:

> *The authorities cited in the preceding sections of this letter have not been "cherry-picked" out of a number of differing opinions about county zoning authority. The authorities are all in accord that counties have broad authority to implement zoning and planning in any reasonable manner. It is also clear that such authority includes such things as zoning freezes, limitation on house size, and PUDs; none of which regulations are expressly authorized.*
>
> *Although there is no express authority for adoption of a transferrable development rights ordinance, I believe it is highly likely that the adoption of such an ordinance, along the lines described at the beginning of this letter, would be upheld by the Supreme Court of Wyoming as an exercise of power properly implied from the zoning and planning enabling authority. I think it also useful that the Supreme Court has taken judicial notice of the unique natural and scenic character of Teton County in the Crow case.*
>
> *The opinion of the Attorney General regarding the matters covered by this letter can certainly be sought. However, it would be a significant break from precedent for the Attorney General to find that a TDR ordinance is outside the scope of existing zoning and planning authority available to counties.*

For the full legal opinion, please see "Alliance TDR Legal Opinion."

Appendix 2: Rural Parcel Data

Jackson Hole Conservation Alliance pursued several avenues to obtain detailed rural parcel data for this analysis, with the dual goal of ascertaining a range and distribution of target conservation property values and establishing development right value estimates. Readily available data sources proved limited; however, a sample of parcels useful for analysis was compiled from three sources: current listings, mined MLS listing data, and a sample of comparable conservation property sales from a local appraiser.

Please note:

- The dataset represents best available information as of July 2015
- Findings and recommendations are based on analysis of this dataset and informed assumptions, also provided in this appendix

Dataset and Calculations:

Appendix Figure 1

Category	Price	Acres	Development Rights (Est.)	Development Right Values (Est. @65%)
Property 4 (South Wilson)	$7,500	1	1	11,143
South Jackson	$2,200,000	3	1	1,430,000
South Jackson	$2,395,000	3	1	1,556,750
South Jackson	$1,175,000	3	1	763,750
North Jackson	$1,420,000	3.11	1	923,000
North Jackson	$2,950,000	3.21	1	1,917,500
North Jackson	$1,750,000	3.35	1	1,137,500
North Jackson	$2,495,000	3.51	1	1,621,750
South Jackson	$1,995,000	3.98	1	1,296,750
North Jackson	$5,995,000	4.36	1	3,896,750
South Jackson	$2,600,000	4.55	1	1,690,000
South Jackson	$895,000	4.73	1	581,750
North Jackson	$2,275,000	5	1	1,478,750
North Jackson	$4,395,000	5	1	2,856,750
South Jackson	$875,000	5	1	568,750
South Jackson	$950,000	5	1	617,500
South Jackson	$875,000	5	1	568,750
South Jackson	$950,000	5	1	617,500
North Jackson	$4,950,000	5.02	1	3,217,500
South Jackson	$1,125,000	5.07	1	731,250
South Jackson	$1,125,000	5.07	1	731,250
North Jackson	$2,495,000	5.08	1	1,621,750
South Jackson	$2,650,000	6.14	1	1,722,500
South Jackson	$2,650,000	6.15	1	1,722,500
North Jackson	$5,495,000	7.37	1	3,571,750
South Jackson	$2,275,000	8.45	1	1,478,750
South Jackson	$2,275,000	8.45	1	1,478,750
South Jackson	$995,000	9.42	1	646,750
South Jackson	$995,000	9.42	1	646,750
South Jackson	$1,950,000	9.8	1	1,267,500
South Jackson	$1,950,000	9.8	1	1,267,500
South Jackson	$3,250,000	12.46	1	2,112,500
South Jackson	$3,250,000	12.46	1	2,112,500
South Jackson	$2,995,000	20	1	1,946,750
South Jackson	$2,995,000	20	1	1,946,750
South Jackson	$4,995,000	34.51	1	3,246,750
South Jackson	$4,995,000	34.51	1	3,246,750
South Jackson	$5,495,000	35.5	1	3,571,750
South Jackson	$54,950,000	35.5	1	35,717,500
Property 1 (unknown locale)	$360,000	36.63	1	668,571
South Jackson	$1,950,000	40.88	1	1,152,273
South Jackson	$1,950,000	40.88	1	1,152,273
North of Gros Vetre Butte	$16,000,000	70.88	2	5,200,000
North Jackson	$22,000,000	72	2	7,150,000
South Jackson	$11,000,000	104	3	2,465,517
North of Wilson	$9,900,000	105	3	2,145,000
North of Wilson	$14,200,000	105	3	3,076,667
Skyline Ranch Vicinity	$19,000,000	105	3	4,116,667
South of Wilson	$13,900,000	125	4	2,581,429
Property 2 (South Wilson)	$1,500,000	139.66	4	892,857
North of Gros Vetre Butte	$18,900,000	160	4	3,071,250
South Jackson	$17,850,000	172	5	2,367,857
Property 3 (North Jackson)	$1,500,000	181.29	5	710,084
Skyline Ranch Vicinity	$45,000,000	580	6	4,875,000

Data Sources and Assumptions:

General Assumptions

- Sample data received is accurate
- Sample data is representative of land value range and distribution
- Sample data represents parcels in rural zoning, affording one saleable development right per 35 acres

Assumptions by Source (Color coded, per data table)

Appendix Figure 2

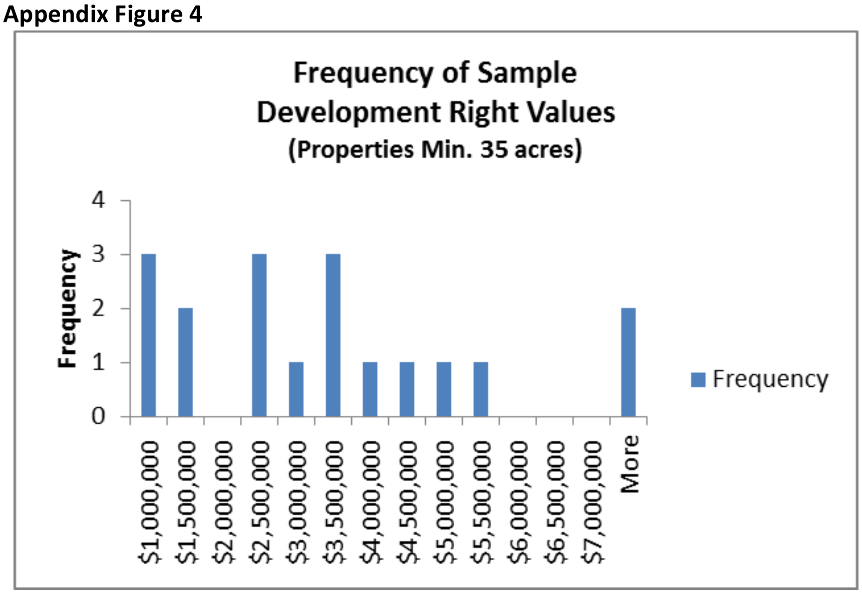
Provider	Data Source	Notes	Assumptions
FCS Group	Teton Board of Realtors, flexmls.com (accessed 6/17/15)	Zoning and parcel detail unavailable General area categories provided are not translatable to specific locations	Assumes development value = 65% of total land cost; assumption recommended by FCS Group and corroborates with Jackson Hole Land Trust estimate that typical range for property development values is 30-80% of total land value Assumes conforming parcels
JHCA	MLS listings (date accessed unknown)	Per spreadsheet: "Subdividable vacant land in Teton County"	Assumes development value = 65% of total land cost Assumes conforming parcels where detail is unavailable
Local Appraiser	Comparable sales of conservation properties, 2005-2013 (emailed to JHCA 7/13/2015)	Per email: "Some comparables…sold subject to conservation easements"	Assumes value of raw land only - development right values must be calculated using DR=65% of total value Parcel-specific adjustment values should be calculated on total value (note: provided data only adjusted at the per acre scale)

Dataset Summary Statistics / Development Right Cost Estimates:

Appendix Figure 3

Estimated Development Right Values (@65% of land values)		
For parcels min. acre =	**3**	*54*
min	**$ 11,142.86**	
25th	**$ 900,392.86**	
median	**$ 1,621,750.00**	
75th	$ 2,787,919.64	
max	$ 35,717,500.00	
For parcels min. acres =	**10**	*23*
min	**$ 668,571.43**	
25th	**$ 1,946,750.00**	
median	**$ 2,465,517.24**	
75th	$ 3,409,250.00	
max	$ 35,717,500.00	
For parcels min. acres =	**34.5**	*19*
min	**$ 668,571.43**	
25th	**$ 1,648,636.36**	
median	**$ 3,071,250.00**	
75th	$ 3,844,208.33	
max	$ 35,717,500.00	

Appendix Figure 4

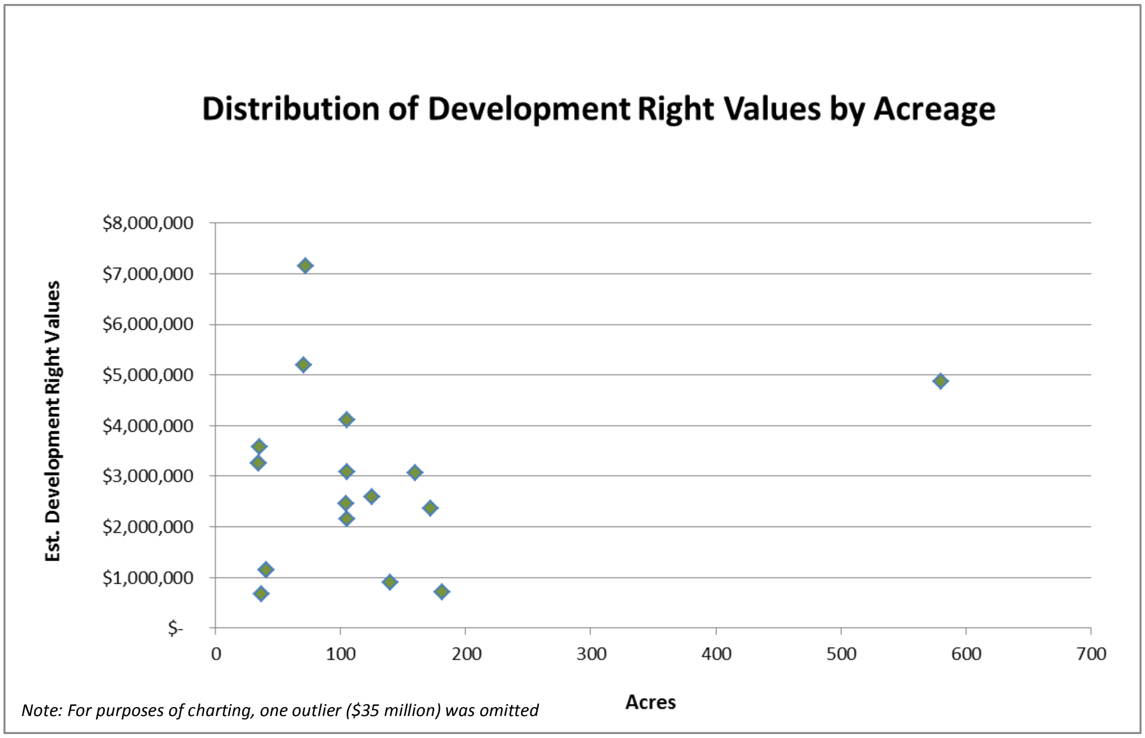


Of note:

- While all data were considered, only properties at least 35 acres in size were chosen as the basis for the analysis given the sending site criteria established by JHCA
- No notable distribution pattern in the data exists, save a tail toward higher values

Data Distribution: Development Right Value Estimates by Parcel Acreage

Appendix Figure 5



Of note:

- Only properties of at least 35 acres are charted, per the analysis
- Development right cost per acreage is not clearly correlated with property size, as is often seen in other markets
- Lack of correlation is likely indicative of the unique characteristics of Jackson Hole real estate as relates to land values and development

Appendix 3: Real Estate Market Assessment and Residual Land Analysis

FCS Group made significant contributions to this analysis by conducting a financial feasibility analysis of several residential development types in the Jackson Hole area. Activities required to complete this work included:

- Documenting expected residual land value analyses for up to 4 development prototypes including: rural single family dwelling; urban single family dwelling; urban mixed-use development (housing over commercial); and urban apartment development.
- Identifying key assumptions regarding construction costs, tenant improvements, common areas, O&M costs, supportable debt and supportable equity.
- Preparing 10-year financial pro forma spreadsheet model for each development prototype.
- Performing sensitivity analysis to test varying levels of density (units per acre).
- Preparing this Technical Memorandum of findings.

For the complete analysis, please see "Alliance Land Development Study Market Memo."