



# Transfer of Development Rights (TDR)

## Policy Primer

Protecting a community's natural assets, environmental resources and drinking water sources is critical for public health and economic well-being. However, it can seem difficult to protect these important areas without stifling growth. *Transfer of development rights* (TDR) is a powerful tool for protecting natural resources without restricting growth, and in fact directing it strategically to get better economic outcomes.

### What is TDR?

*Transfer of development rights* (TDR), sometimes known as transfer of development credits (TDC), is a market-based tool that allows communities to channel development toward designated growth areas and away from natural areas, drinking water sources and farmland. Development rights are separated from a parcel of land that needs protecting (the *sending site*) and transferred to a parcel of land more appropriate for development (the *receiving site*). Future development on the sending site is permanently restricted, thereby protecting that asset. The project in the receiving site where the TDR credit is applied gains a density bonus above what would otherwise be allowed by zoning.

The transaction occurs between private landowners who sell their development right to developers with projects in designated receiving sites. The value of the TDR credit is determined by factors such as the real estate market, local land use goals and the monetary value of lost development potential on the sending site. The TDR value can change with the market. For example, the TDR credit price



**Development rights are transferred from sensitive lands to strategic growth areas to protect community assets while promoting growth.** Image by King County Department of Natural Resources and Parks

in Montgomery County (MD) increased from \$10,000 in the 1980s to \$18,000 in 2004.<sup>1</sup>

Many programs increase the value of the TDR credit when it is transferred from a sending site to a receiving site. For example, one unit purchased in the sending site is worth two units in the receiving site. Programs also allow conversion to different uses (i.e., single family to multifamily or residential to commercial).

### Benefits for landowners, developers, communities

Under a TDR program, owners can capitalize on the development potential of their environmentally sensitive lands without the cost and risk of developing the property. In addition, they maintain land ownership and preserve the *natural* use of their land. For farmers, profit from a TDR sale could pay for farm improvements.

Purchasers of development rights are able to increase the density, and thus profit potential, of their projects if located in the designated growth areas. Putting their projects in preplanned, compact areas can increase appeal to buyers and create a more predictable development approval process.

For communities, transferring development away from agriculturally, environmentally and historically important lands maintains and protects local character and mitigates future sprawl. Preservation is fueled with private dollars, reducing taxpayer burden. Growth is strategically channeled where it will be economically most beneficial to the taxpayer and where the public investments in utilities and services have already been made.

### **Sending and Receiving Sites**

Pre-designated sending and receiving sites are the only sites eligible for sale and purchase of TDR credits. Ideally, sending sites have large tracts of undeveloped land that include sensitive drinking water sources, farms and working lands, open space, cultural resources and historic sites. State agencies often have mapping resources or lists of priority protection areas. Metropolitan planning organizations and regional councils of governments also might offer similar information.

Receiving sites are those areas that have been identified for growth. They must have sufficient infrastructure to absorb development from the sending sites. Ideally, receiving sites are coveted areas where economic development is prioritized. Purchasing TDR credits allows new projects to be positioned near jobs and transit.

A TDR bank is a private, public, quasi-public or non-profit organization that facilitates and records transactions between buyers and sellers.<sup>2</sup>

### **Establishing a TDR program**

TDR programs are established through the comprehensive plan and by local zoning

ordinances and amendments. The most successful TDR programs have been at county or regional scales, but there are also city level programs. Currently, 25 states have enabling legislation authorizing jurisdictions to establish TDR programs.

### **Keys to Success**

Effective TDR programs have:

- Clear regulations in the zoning code and comprehensive plan;
- Market demand for development in the receiving sites (designated growth areas);
- Increases in value of TDR credit between sending and receiving sites;
- Regional, cross jurisdictional coordination;
- Outreach to potential sellers and buyers and public education in receiving areas that will be experiencing increased density.

### **Where is TDR used?**

A 2007 review found approximately 180 TDR programs in 33 states.<sup>3</sup> Many of these programs are not implemented effectively, yielding mixed results. However, some programs stand out.

Established in 1980, Montgomery County's (MD) program has protected 52,000 acres of land (16% of the County's land area), worth about \$68 million. The program is successful largely due to strong market demand and downzoning of the sending area.

King County (WA) has preserved over 140,000 acres (10% of its land area) since its program started in 1998.

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<sup>1</sup> Walls, M. & McConnell, V. 2007, *Transfer of Development Rights in US Communities*, p.46. <http://tinyurl.com/dxx4nmt>

<sup>2</sup> Hanly-Forde, J. et al. *Transfer of Development Rights: Using the Market for Compensation and Preservation*. Cornell University. <http://tinyurl.com/n7z9636>

<sup>3</sup> Pruetz, R. & Pruetz, E. 2007, *Transfer of Development Rights Turns 40*, APA Planning and Environmental Law, 59(6), p.9, <http://tinyurl.com/mwa5jsk>

# Transfer of Development Rights

## KING COUNTY, WA

### Background

King County (WA) encompasses 1.4 million acres of land and had a 2012 population of almost 2 million. There are densely developed urban areas in the western part of the County, while the eastern part is largely undeveloped. In 1988, the County Council directed the Department of Natural Resources and Parks to develop a pilot *transfer of development rights* (TDR) program to protect natural assets. However, only one transfer was completed by 1995.<sup>1</sup>

To combat increasing sprawl in rural areas, the State Legislature passed the Growth Management Act in 1990, directing the fastest growing counties to develop 20-year comprehensive plans. King County responded by delineating urban growth areas and designating rural and natural areas in need of protection from sprawl.

In 1999, the King County Council appropriated \$1.5 million to establish a TDR Bank to purchase development rights from rural and natural areas and redirect them to designated growth areas. The State Legislature passed a bill supporting a *regional TDR marketplace*, and King County struck agreements with neighboring jurisdictions to designate more receiving sites, including an historic \$16 million development transfer agreement with Seattle in 2013.

### Results

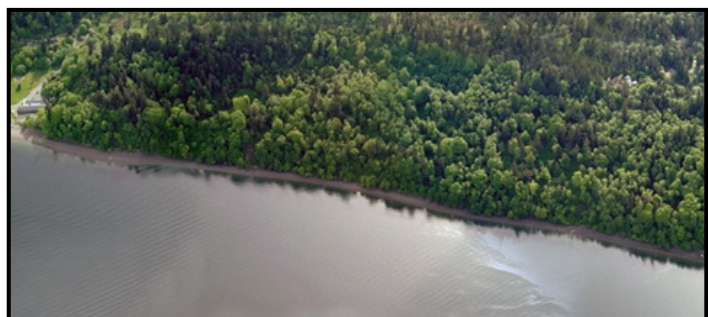
As of 2011, King County's TDR program has placed 184,621 acres of farms, forests, rural lands and urban open space under protection, and there have been 78 development credit transfers (66 private and 12 public).<sup>2</sup>

The 2013 agreement with Seattle will make 800 urban density credits available to developers and save 25,000 acres of farms and forests in rural King County. Moreover, revenues from the TDR sales will fund a \$16 million effort to improve transit, pedestrian and bicycling

**"This...will help keep our rural areas pristine while supporting the development needed to spur our economy, especially in the fast-growing technology field."**

Councilmember Jane Hague  
King County (WA)

*Enumclaw Patch, 9/17/13*



The purchase of 24 development credits from the 125-acre Bonomi Farm will protect farmland, ecological habitats and salmon spawning areas. Photo from King County TDR Bank

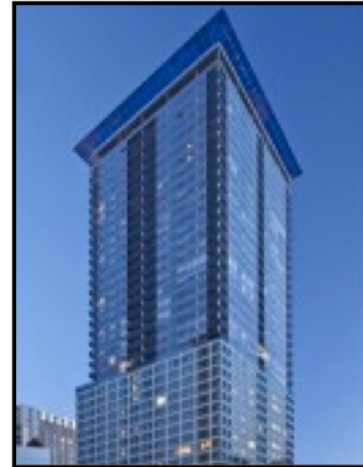
facilities in downtown Seattle's receiving areas.<sup>3</sup>

## Program structure

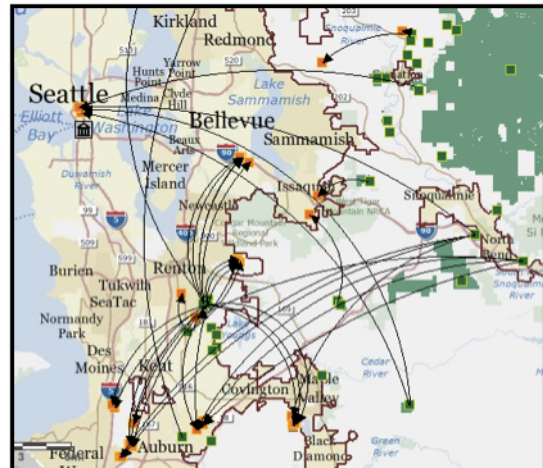
King County's Comprehensive Plan lists *rural areas*, *forests* and *urban separator areas* (low-density areas that separate the urbanized land from the rural land and are subject to annexation) as eligible sending sites. Urban separator areas are prioritized. Once development rights from sending sites are sold, the land is placed under conservation easement, protecting it from development.

Receiving areas include some eligible rural sites but are primarily located in urban areas in King County and neighboring Seattle, Issaquah, Bellevue and Sammamish. All the participating regional communities have adopted subarea plans for their receiving areas to allow the use of development credits.

King County finances its \$1.5 million TDR Bank with a property tax conservation levy authorized by the State in 1971.<sup>4</sup> The TDR Bank makes strategic development purchases to protect sensitive areas and sells those credits to developers wishing to use them in designated receiving areas. The recent sale of 49 credits recouped \$1.3 million of the initial capital investment made by the TDR Bank.<sup>5</sup> An online TDR exchange allows sellers and buyers of development credits to advertise and connect. Prices of development credits vary based on the changing market. In 2006, the average price of a credit, worth two additional units, was \$30,000. In 2013, it was \$15,000.<sup>6</sup> Funds from the Bank are also used for infrastructure improvements in the higher density receiving areas, providing an incentive to communities to accept extra density.



**Seattle's Olive-8 Building purchased 31 TDR credits for \$1 million to add 55 more units.**  
Photo from Seattle Luxury Condos



**A regional TDR market allows rural areas to sell their development rights to urban areas.**  
Image from King County Property Map Viewer

<sup>1</sup>King County Government. (2013). King County Transfer of Development Rights Program History. *Kingcounty.gov* Retrieved October 1, 2013, from <http://www.kingcounty.gov/environment/stewardship/sustainable-building/transfer-development-rights/history.aspx>

<sup>2</sup>Bonlender, B., Drewel, B., & Duvernoy, G. (2013). *Regional Transfer of Development Rights in Puget Sound*. Washington State Department of Commerce, Puget Sound Regional Council, & Forterra. p. 10-11.

<sup>3</sup>*West Seattle Herald*. (2013, September 16). Seattle and King County Councils approve historic growth-management partnership. *West Seattle Herald*. Retrieved October 1, 2013, from <http://www.westseattleherald.com/2013/09/16/news/seattle-and-king-county-councils-approve-historic>

<sup>4</sup>Cascade Land Conservancy. (2009). *A Resource Guide to Designing Transfer of Development Rights Programs in Washington State*. Cascade Land Conservancy. p. 47.

<sup>5</sup>King County Government. (2013). Transfer of Development Rights bank. *Kingcounty.gov*. Retrieved October 1, 2013, from <http://www.kingcounty.gov/environment/stewardship/sustainable-building/transfer-development-rights/bank.aspx#TransHistory>

<sup>6</sup>King County Government. (2013). TDR market information. *Kingcounty.gov*. Retrieved October 1, 2013, from <http://www.kingcounty.gov/environment/stewardship/sustainable-building/transfer-development-rights/market-info.aspx>



# Transfer of Development Rights

## King County, WA

By Neha Bhatt and Jenna Chilingirian

*This model policy is part of the TDR Policy Toolkit. Visit the “Policy Toolkits” page of the [Local Leaders Council web site](#) for more information and implementation tips.*

King County, WA’s web site describes its transfer of development rights (TDR) program as “a voluntary, incentive-based, and market-driven approach to preserve land and steer development growth away from rural and resource lands into King County’s Urban Area.” Established in 2008, the program outlines the framework for moving development rights out of natural areas and into economic core neighborhoods. It sets the eligibility criteria for which sites can send out their development rights and which can receive development credits. It authorizes a TDR Bank and establishes the rules for buying and selling development credits and recording development restrictions on those sites that sell their development rights. The code is organized as follows:

- 21A.37.010 Purpose
- 21A.37.020 Sending sites
- 21A.37.030 Receiving sites
- 21A.37.040 Calculations
- 21A.37.050 Development limitations
- 21A.37.055 Greenhouse gas emissions calculations for urban receiving sites
- 21A.37.060 Documentation of restrictions
- 21A.37.070 Sending site certification and interagency review committee process
- 21A.37.080 Transfer process
- 21A.37.100 TDR bank - purpose
- 21A.37.110 TDR bank expenditure and purchase authorization
- 21A.37.120 Administration of TDR bank
- 21A.37.130 Sale of TDR rights by TDR bank
- 21A.37.140 Requirements for transfers by the TDR bank for use in incorporated receiving areas
- 21A.37.150 Restrictions on expenditure of TDR bank funds on TDR amenities
- 21A.37.160 Establishment and duties of the TDR executive board
- 21A.37.170 Exemption from surplus provisions

**King County’s law on TDR:** <http://www.kingcounty.gov/environment/stewardship/sustainable-building/transfer-developmentrights/code.aspx>

**King County TDR fact sheet:** <ftp://ftp.kingcounty.gov/ddes/acrobat/cib/49.pdf>

**King County TDR web site:** <http://www.kingcounty.gov/environment/stewardship/sustainable-building/transfer-development-rights.aspx>

**Chapter 21A.37**

**GENERAL PROVISIONS - TRANSFER OF DEVELOPMENT RIGHTS (TDR)**

**Sections:**

- 21A.37.010 Transfer of development rights (TDR) program - purpose.
- 21A.37.020 Transfer of development rights (TDR) program - sending sites.
- 21A.37.030 Transfer of development rights (TDR) program - receiving sites.
- 21A.37.040 Transfer of development rights (TDR) program - calculations.
- 21A.37.050 Transfer of development rights (TDR) program - development limitations.
- 21A.37.055 Transfer of development rights (TDR) program - greenhouse gas emissions calculations for urban receiving sites.
- 21A.37.060 Transfer of development rights (TDR) program - documentation of restrictions.
- 21A.37.070 Transfer of development rights (TDR) program - sending site certification and interagency review committee process.
- 21A.37.080 Transfer of development rights (TDR) program - transfer process.
- 21A.37.090 Transfer of development rights (TDR) program - notice.
- 21A.37.100 Transfer of development rights (TDR) bank -- purpose.
- 21A.37.110 Transfer of development rights (TDR) bank expenditure and purchase authorization.
- 21A.37.120 Transfer of development rights (TDR) program - administration of TDR bank.
- 21A.37.130 Transfer of development rights (TDR) program - sale of TDR rights by TDR bank.
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- 21A.37.150 Transfer of development rights (TDR) program - restrictions on expenditure of TDR bank funds on TDR amenities.
- 21A.37.160 Transfer of development rights (TDR) program - establishment and duties of the TDR executive board.
- 21A.37.170 Transfer of development rights (TDR) program - exemption from surplus provisions.

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King County (WA) - <http://www.kingcounty.gov/environment/stewardship/sustainable-building/transfer-development-rights/code.aspx>

GENERAL PROVISIONS - TRANSFER OF DEVELOPMENT RIGHTS (TDR) 21A.37.010 - 21A.37.020

**21A.37.010 Transfer of development rights (TDR) program - purpose.**

A. The purpose of the transfer of development rights program is to transfer residential density from eligible sending sites to eligible receiving sites through a voluntary process that permanently preserves rural, resource and urban separator lands that provide a public benefit. The TDR provisions are intended to supplement land use regulations, resource protection efforts and open space acquisition programs and to encourage increased residential development density or increased commercial square footage, especially inside cities, where it can best be accommodated with the least impacts on the natural environment and public services by:

1. Providing an effective and predictable incentive process for property owners of rural, resource and urban separator land to preserve lands with a public benefit as described in K.C.C. 21A.37.020; and

2. Providing an efficient and streamlined administrative review system to ensure that transfers of development rights to receiving sites are evaluated in a timely way and balanced with other county goals and policies, and are adjusted to the specific conditions of each receiving site.

B. The TDR provisions in this chapter shall only apply to TDR receiving site development proposals submitted on or after September 17, 2001, and applications for approval of TDR sending sites submitted on or after September 17, 2001. (Ord. 16267 § 64, 2008: Ord. 15032 § 39, 2004: Ord. 14190 § 3, 2001: Ord. 13274 § 1, 1998. Formerly K.C.C. 21A.55.100).

**21A.37.020 Transfer of development rights (TDR) program - sending sites.**

A. For the purpose of this chapter, sending site means the entire tax lot or lots qualified under subsection B of this section. Sending sites may only be located within rural or resource lands or urban separator areas with R-1 zoning, as designated by the King County Comprehensive Plan. Except for lands zoned RA that are managed by the Washington state Department of Natural Resources as state grant or state forest lands, land in public ownership may not be sending sites. If the sending site consists of more than one tax lot, the lots must be contiguous. For purposes of this section, lots divided by a street are considered contiguous if the lots would share a common lot line if the street was removed; this provision may be waived by the interagency committee if the total acreage of a rural or resource sending site application exceeds one hundred acres. A sending site shall be maintained in a condition that is consistent with the criteria in this section under which the sending was qualified.

B. Qualification of a sending site shall demonstrate that the site contains a public benefit such that preservation of that benefit by transferring residential development rights to another site is in the public interest. A sending site must meet at least one of the following criteria:

1. Designation in the King County Comprehensive Plan or a functional plan as an agricultural production district or zoned A;

2. Designation in the King County Comprehensive Plan or a functional plan as forest production district or zoned F;

3. Designation in the King County Comprehensive Plan as rural residential, zoned RA-2.5, RA-5 or RA-10, and meeting the definition in RCW 84.34.020 of open space, farm and agricultural land, or timber land;

4. Designation in the King County Comprehensive Plan, or a functional plan as a proposed rural or resource area regional trail or rural or resource area open space site, through either:

- a. designation of a specific site; or

- b. identification of proposed rural or resource area regional trails or rural or resource area open space sites which meet adopted standards and criteria, and for rural or resource area open space sites, meet the definition of open space land, as defined in RCW 84.34.020;

5. Identification as habitat for federal listed endangered or threatened species in a written determination by the King County department of natural resources and parks, Washington state Department of Fish and Wildlife, United States Fish and Wildlife Services or a federally recognized tribe that the sending site is appropriate for preservation or acquisition; or

6. Designation in the King County Comprehensive Plan as urban separator and zoned R-1.



C. For the purposes of the TDR program, acquisition means obtaining fee simple rights in real property, or a less than a fee simple right in a form that preserves in perpetuity the public benefit supporting the designation or qualification of the property as a sending site.

D. If a sending site has any outstanding code violations, the person responsible for code compliance should resolve these violations, including any required abatement, restoration, or payment of civil penalties, before a TDR sending site may be qualified by the interagency review committee created under K.C.C. 21A.37.070. However, the interagency may qualify and certify a TDR sending site with outstanding code violations if the person responsible for code compliance has made a good faith effort to resolve the violations and the proposal is in the public interest.

E. For lots on which the entire lot or a portion of the lot has been cleared or graded in accordance with a Class II, III or IV special forest practice as defined in chapter 76.09 RCW within the six years prior to application as a TDR sending site, the applicant must provide an affidavit of compliance with the reforestation requirements of the Forest Practices Act, and any additional reforestation conditions of their forest practice permit. Lots on which the entire lot or a portion of the lot has been cleared or graded without any required forest practices or county authorization, shall be not qualified or certified as a TDR sending site for six years unless the six-year moratorium on development applications has been lifted or waived or the landowner has a reforestation plan approved by the state Department of Natural Resources and King County. (Ord. 16267 § 65, 2008: Ord. 15032 § 40, 2004: Ord. 14199 § 240, 2001: Ord. 14190 § 4, 2001: Ord. 14045 § 59, 2001: Ord. 13274 § 4, 1998. Formerly K.C.C. 21A.55.130).

#### **21A.37.030 Transfer of development rights (TDR) program - receiving sites.**

A. Receiving sites shall be:

1. King County unincorporated urban sites, except as limited in subsection D. of this section, zoned R-4 through R-48, NB, CB, RB or O, or any combination thereof. The sites may also be within potential annexation areas established under the countywide planning policies; or

2. Cities where new growth is or will be encouraged under the Growth Management Act and the countywide planning policies and where facilities and services exist or where public investments in facilities and services will be made, or

3. RA-2.5 zoned parcels, except as limited in subsection E. of this section, that meet the criteria listed in this subsection A.3. may receive development rights transferred from rural forest focus areas, and accordingly may be subdivided and developed at a maximum density of one dwelling per two and one-half acres. Increased density allowed through the designation of rural receiving areas:

- a. must be eligible to be served by domestic Group A public water service;
- b. must be located within one-quarter mile of an existing predominant pattern of rural lots smaller than five acres in size;
- c. must not adversely impact regionally or locally significant resource areas or critical areas;
- d. must not require public services and facilities to be extended to create or encourage a new pattern of smaller lots;
- e. must not be located within rural forest focus areas; and
- f. must not be located on Vashon Island or Maury Island.

B. Except as provided in this chapter, development of an unincorporated King County receiving site shall remain subject to all zoning code provisions for the base zone, except TDR receiving site developments shall comply with dimensional standards of the zone with a base density most closely comparable to the total approved density of the TDR receiving site development.

C. An unincorporated King County receiving site may accept development rights from one or more sending sites, up to the maximum density permitted under K.C.C. 21A.12.030 and 21A.12.040.

D. Property located within the outer boundaries of the Noise Remedy Areas as identified by the Seattle-Tacoma International Airport may not accept development rights.

E. Property located within the shorelands, as defined in RCW 90.58.020\*, or located on Vashon Island or Maury Island may not accept development rights. (Ord. 16267 § 66, 2008: Ord. 15606 § 24, 2006: Ord. 15032 § 41, 2004: Ord. 14190 § 5, 2001: Ord. 14045 § 60, 2001: Ord. 13274 § 5, 1998. Formerly K.C.C. 21A.55.140).

\*Reviser's note: The reference to RCW 90.58.020 is erroneous. RCW 90.58.030 was apparently intended.

**21A.37.040 Transfer of development rights (TDR) program - calculations.**

A. The number of residential development rights that an unincorporated sending site is eligible to send to a receiving site shall be determined by applying the TDR sending site base density established in subsection D. of this section to the area of the sending site, after deducting the area associated with any existing development, any retained development rights and any portion of the sending site already in a conservation easement or other similar encumbrance. For each existing dwelling unit or retained development right, the sending site area shall be reduced by the minimum lot size for that zone under K.C.C. 21A.12.030.

B. Any fractions of development rights that result from the calculations in subsection A. of this section shall not be included in the final determination of total development rights available for transfer.

C. For purposes of calculating the amount of development rights a sending site can transfer, the amount of land contained within a sending site shall be determined as follows:

1. If the sending site is an entire tax lot, the square footage or acreage shall be determined:
  - a. by the King County department of assessments records; or
  - b. by a survey funded by the applicant that has been prepared and stamped by a surveyor licensed in the state of Washington; and

2. If the sending site consists of a lot that is divided by a zoning boundary, the square footage or acreage shall be calculated separately for each zoning classification. The square footage or acreage within each zoning classification shall be determined by the King County record of the action that established the zoning and property lines, such as an approved lot line adjustment. When such records are not available or are not adequate to determine the square footage or acreage within each zoning classification, the department of development and environmental services shall calculate the square footage or acreage through the geographic information system (GIS) mapping system.

D. For the purposes of the transfer of development rights (TDR) program only, the following TDR sending site base densities apply:

1. Sending sites designated in the King County Comprehensive Plan as urban separator and zoned R-1 shall have a base density of four dwelling units per acre;

2. Sending sites zoned RA-2.5 shall have a base density of one unit for each two and one-half acres. Sending sites zoned RA-2.5 that are vacant and are smaller than 1.25 acres shall be allocated one additional TDR for each vacant lot that is smaller than 1.25 acres;

3. Sending sites zoned RA-5 or RA-10 shall have a base density of one dwelling unit per five acres. Vacant sending sites that are zone RA-5 and are smaller than two and one-half acres or that are zoned RA-10 and are smaller than five acres shall be allocated on additional TDR for each vacant lot that is smaller than two and one-half acres or five acres, respectively;

4. Sending sites zoned RA and that have a designation under the King County Shoreline Master Program of conservancy or natural shall be allocated one additional TDR;

5. Sending sites zoned A-10 and A-35 within the agricultural production district shall have a base density of one dwelling unit per five acres for transfer purposes only;

6. Sending sites zoned F within the forest production district shall have a base density of one dwelling unit per eighty acres or one dwelling unit per each lot that is between fifteen and eighty acres in size.

E. A sending site may send one development right for every legal lot created on or before September 17, 2001, if that number is greater than the number of development rights determined under subsection A. of this section.

F. The number of development rights that a King County unincorporated rural or natural resources land sending site is eligible to send to a King County incorporated urban area receiving site shall be determined through the application of a conversion ratio established by King County and the incorporated municipal jurisdiction. The conversion ratio will be applied to the number of available sending site development rights determined under subsection A. or E. of this section.

G. Development rights from one sending site may be allocated to more than one receiving site and one receiving site may accept development rights from more than one sending site.

H. The determination of the number of residential development rights a sending site has available for transfer to a receiving site shall be valid for transfer purposes only, shall be documented in a TDR certificate letter of intent and shall be considered a final determination, not to be revised due to changes to the sending site's zoning.

I. Each residential development right that originates from a sending site zoned RA, A or F shall be designated "Rural" and is equivalent to two additional units above base density in eligible receiving sites located in unincorporated urban King County. Each residential development right that originates from a sending site zoned R-1 urban separator shall be designated "Urban" and is equivalent to one additional unit above base density. (Ord. 16267 § 67, 2008: Ord. 15032 § 42, 2004: Ord. 14190 § 6, 2001: Ord. 14045 § 61, 2001: Ord. 13274 § 6, 1998. Formerly K.C.C. 21A.55.150).

**21A.37.050 Transfer of development rights (TDR) program - development limitations.**

A. Following the transfer of residential development rights a sending site may subsequently accommodate remaining residential dwelling units, if any, on the buildable portion of the parcel or parcels or be subdivided, consistent with the zoned base density provisions of the density and dimensions tables in K.C.C. 21A.12.030 and 21A.12.040, the allowable dwelling unit calculations in K.C.C. 21A.12.070 and other King County development regulations. For sending sites zoned RA, the subdivision potential remaining after a density transfer may only be actualized through a clustered subdivision, short subdivision or binding site plan that creates a permanent preservation tract as large or larger than the portion of the subdivision set aside as lots. Within rural forest focus areas, resource use tracts shall be at least fifteen acres of contiguous forest land.

B. Only those nonresidential uses directly related to, and supportive of the criteria under which the site qualified are allowed on a sending site.

C. The applicable limitations in this section shall be included in the sending site conservation easement. (Ord. 15245 § 10, 2005: Ord. 15032 § 43, 2004: Ord. 14190 § 7, 2001).

**21A.37.055 Transfer of development rights (TDR) program - greenhouse gas emissions calculations for urban receiving sites.** An urban receiving site that purchases rural TDRs may include the reduced greenhouse gas emissions that are estimated to result from the TDR in calculating the receiving site's greenhouse gas emissions. (Ord. 16267 § 68, 2008).

**21A.37.060 Transfer of development rights (TDR) program - documentation of restrictions.**

A. Prior to issuing a certificate for transferable development rights to a sending site, the department of natural resources and parks, or its successor shall record deed restrictions in the form of a conservation easement documenting the development rights that have been removed from the property and shall place a notice on the title of the sending site. The department of development and environmental services, or its successor, shall establish and maintain an internal tracking system that identifies all certified transfer of developments rights sending sites.

B. A conservation easement granted to the county or other appropriate land management agency shall be required for land contained in the sending site. The conservation easement shall be documented by a map. The conservation easement shall be placed on the entire lot or lots. The conservation easement shall identify in limitations in perpetuity on future residential and nonresidential development consistent with this chapter, as follows:

1. A conservation easement, which contains the easement map, shall be recorded on the entire sending site to indicate development limitations on the sending site;

2. For a sending site zoned A-10 or A-35, the conservation easement shall be consistent in form and substance with the purchase agreements used in the agricultural land development rights purchase program. The conservation easement shall preclude subdivision of the subject property but may permit not more than one dwelling per sending site, and shall permit agricultural uses as provided in the A-10 or A-35 zone;

GENERAL PROVISIONS - TRANSFER OF DEVELOPMENT RIGHTS (TDR) 21A.37.060 - 21A.37.070

3. For a rural sending site the conservation easement shall allow for restoration, maintenance or enhancement of native vegetation. A present conditions report shall be required to document the location of existing structures and existing native vegetation and the baseline conservation values of protected property at the time the conservation easement is put in place. If residential development will be allowed on the site under the conservation easement, the present conditions report shall be used to guide the location of residential development;

4. For a sending site qualifying as habitat for federal listed endangered or threatened species, the conservation easement shall protect habitat and allow for restoration, maintenance or enhancement of native vegetation. A present conditions report shall be required to document the location of existing structures. If existing or future residential development will be allowed on the site under the conservation easement, the present conditions report shall be used by the owner to guide the location of residential development; and

5. For a sending site zoned F, the conservation easement shall encumber the entire sending site. Lots between fifteen acres and eighty acres in size are not eligible to participate in the TDR program if they include any existing dwelling units intended to be retained, or if a new dwelling unit is proposed. For eligible lots between fifteen acres and eighty acres in size, the sending site must include the entire lot. For lots greater than eighty acres in size, the sending site shall be a minimum of eighty acres. The conservation easement shall permit forestry uses subject to a forest stewardship plan prepared by the applicant and approved by the county for ongoing forest management practices. The Forest Stewardship Plan shall include a description of the site's forest resources and the long term forest management objectives of the property owner, and shall not impose standards that exceed Title 222 WAC. (Ord. 16267 § 69, 2008: Ord. 15032 § 44, 2004: Ord. 14190 § 8, 2001).

**21A.37.070 Transfer of development rights (TDR) program - sending site certification and interagency review committee process.**

A. An interagency review committee, chaired by the directors of the department of development and environmental services and the department of natural resources and parks, or their designees, shall be responsible for qualification of sending sites. Determinations on sending site certifications made by the committee are appealable to the examiner under K.C.C. 20.24.080. The department of natural resources and parks shall be responsible for preparing a written report, which shall be signed by the director of the department of natural resources and parks or the director's designee, documenting the review and decision of the committee. The committee shall issue a TDR certification letter within sixty days of the date of submittal of a completed sending site certification application.

B. Responsibility for preparing a completed application rests exclusively with the applicant. Application for sending site certification shall include:

1. A legal description of the site;
2. A title report;
3. A brief description of the site resources and public benefit to be preserved;
4. A site plan showing the existing and proposed dwelling units, nonresidential structures, driveways, submerged lands and any area already subject to a conservation easement or other similar encumbrance;
5. Assessors map or maps of the lot or lots;
6. A statement of intent indicating whether the property ownership, after TDR certification, will be retained in private ownership or dedicated to King County or another public or private nonprofit agency;
7. Any or all of the following written in conformance with criteria established through a public rule consistent with K.C.C. chapter 2.98, if the site is qualifying as habitat for a threatened or endangered species:
  - a. a wildlife habitat conservation plan;
  - b. a wildlife habitat restoration plan; or
  - c. a wildlife present conditions report;
8. A forest stewardship plan, written in conformance with criteria established through a public rule consistent with K.C.C. chapter 2.98, if required under K.C.C. 21A.37.060.B.3. and 6.;

9. An affidavit of compliance with the reforestation requirements of the Forest Practices Act and any additional reforestation conditions of the forest practices permit for the site, if required under K.C.C. 21A.37.020.E;

10. A completed density calculation worksheet for estimating the number of available development rights; and

11. The application fee consistent with K.C.C. 27.36.020. (Ord. 15032 § 45, 2004: Ord. 14561 § 28, 2002: Ord. 14199 § 241, 2001: Ord. 14190 § 9, 2001: Ord. 13274 § 7, 1998. Formerly K.C.C. 21A55.160).

**21A.37.080 Transfer of development rights (TDR) program - transfer process.**

A. TDR development rights where both the proposed sending and receiving sites would be within unincorporated King County shall be transferred using the following process:

1. Following interagency review committee review and approval of the sending site application as described in K.C.C. 21A.37.070 the interagency review committee shall issue a TDR certificate letter of intent, agreeing to issue a TDR certificate in exchange for the proposed sending site conservation easement. After signing and notarizing the conservation easement and receiving the TDR certificate from the county, the sending site owner may market the TDR sending site development rights to potential purchasers. The TDR certificate shall be in the name of the property owner and separate from the land title. If a TDR sending site that has been reviewed and approved by the interagency review committee changes ownership, the TDR certificate letter of intent may be transferred to the new owner if requested in writing to the department of natural resources by the person or persons that owned the property when the TDR certificate letter of intent was issued, provided that the documents evidencing the transfer of ownership are also provided to the department of natural resources;

2. In applying for receiving site approval, the applicant shall provide the department of development and environmental services with one of the following:

- a. a TDR certificate letter of intent issued in the name of the applicant,
- b. a TDR certificate letter of intent issued in the name of another person or persons and a copy of a signed option to purchase those TDR sending site development rights,
- c. a TDR certificate issued in the name of the applicant, or
- d. a TDR certificate issued in the name of another person or persons and a copy of a signed option to purchase those TDR sending site development rights;

3. Following building permit approval, but before building permit issuance by the department of development and environmental services or following preliminary plat approval or preliminary short plat approval, but before final plat or short plat recording of a receiving site development proposal which includes the use of TDR development rights, the receiving site applicant shall deliver the TDR certificate issued in the applicant's name for the number of TDR development rights being used and the TDR extinguishment document to the county;

4. When the receiving site development proposal requires a public hearing under this title or K.C.C. Title 19A or its successor, that public hearing shall also serve as the hearing on the TDR proposal. The reviewing authority shall make a consolidated decision on the proposed development and use of TDR development rights and consider any appeals of the TDR proposal under the same appeal procedures set forth for the development proposal; and

5. When the development proposal does not require a public hearing under this title or K.C.C. Title 19A, the TDR proposal shall be considered along with the development proposal, and any appeals of the TDR proposal shall be considered under the same appeal procedures set forth for the development proposal.

6. Development rights from a sending site shall be considered transferred to a receiving site when a final decision is made on the TDR receiving area development proposal, the sending site is permanently protected by a completed and recorded land dedication or conservation easement, notification has been provided to the King County assessor's office and a TDR extinguishment document has been provided to the department of natural resources and parks, or its successor agency.

B. TDR development rights where the proposed receiving site would be within an incorporated King County municipal jurisdiction shall be reviewed and transferred using that jurisdiction's development application review process. (Ord. 16267 § 70, 2008: Ord. 15032 § 46, 2004: Ord. 14190 § 10, 2001: Ord. 13274 § 8, 1998. Formerly K.C.C. 21A.55.170).



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**21A.37.090 Transfer of development rights (TDR) program - notice.** Public notice consistent with the provisions of K.C.C. 20.20.060 for Type Four land use decisions shall be provided for parcels identified as TDR receiving sites. (Ord. 14190 § 11, 2001: Ord. 13274 § 9, 1998. Formerly K.C.C. 21A.55.180).

**21A.37.100 Transfer of development rights (TDR) bank -- purpose.** The purpose of the TDR bank is to assist in the implementation of the transfer of development rights (TDR) program by purchasing and selling development rights, purchasing conservation easements, and facilitating interlocal TDR agreements with cities in King County through the provision of amenity funds. The TDR bank may acquire development rights and conservation easements only from sending sites located in the rural area or in an agricultural or forest production district as designated in the King County Comprehensive Plan. Development rights purchased from the TDR bank may only be used for receiving sites in cities or in the urban unincorporated area as designated in the King County Comprehensive Plan. (Ord. 16267 § 71, 2008: Ord. 14763 § 1, 2003: Ord. 14190 § 12, 2001: Ord. 14045 § 62, 2001: Ord. 13733 § 8, 2000. Formerly K.C.C. 21A.55.200).

**21A.37.110 Transfer of development rights (TDR) bank expenditure and purchase authorization.**

A. The TDR bank may purchase development rights from qualified sending sites at prices not to exceed fair market value and to sell development rights at prices not less than fair market value. The TDR bank may accept donations of development rights from qualified TDR sending sites.

B. The TDR bank may purchase a conservation easement only if the property subject to the conservation easement is qualified as a sending site as evidenced by a TDR certificate letter of intent, the conservation easement restricts development of the sending site in the manner required by K.C.C. 21A.37.060 and the development rights generated by encumbering the sending site with the conservation easement are issued to the TDR bank at no additional cost.

C. If a conservation easement is acquired through a county park, open space, trail, agricultural, forestry or other natural resource acquisition program for a property that is qualified as a TDR sending site as evidenced by a TDR certificate letter of intent, any development rights generated by encumbering the sending site with the conservation easement may be issued to the TDR bank so long as there is no additional cost for the development rights.

D. The TDR bank may use funds to facilitate development rights transfers. These expenditures may include, but are not limited to, establishing and maintaining internet web pages, marketing TDR receiving sites, procuring title reports and appraisals and reimbursing the costs incurred by the department of natural resources and parks, water and land resources division, or its successor, for administering the TDR bank fund and executing development rights purchases and sales.

E. The TDR bank fund may be used to cover the cost of providing staff support for identifying and qualifying sending and receiving sites, and the costs of providing staff support for the TDR interagency review committee.

F. All proceeds from the sale of TDR bank development rights shall be available for acquisition of additional development rights upon approval of the TDR executive board. (Ord. 16267 § 72, 2008: Ord. 15032 § 47, 2004: Ord. 14763 § 2, 2003: Ord. 14561 § 29, 2002: Ord. 14199 § 242, 2001: Ord. 14190 § 13: Ord. 13733 § 10, 2000. Formerly K.C.C. 21A.55.210).



**21A.37.120 Transfer of development rights (TDR) program - administration of TDR bank.**

A. The department of natural resources and parks, water and land resources division, or its successor, shall administer the TDR bank fund and execute purchases of development rights and conservation easements and sales of development rights in a timely manner consistent with policy set by the TDR executive board. These responsibilities include, but are not limited to:

1. Managing the TDR bank fund;
2. Authorizing and monitoring expenditures;
3. Keeping records of the dates, amounts and locations of development rights purchases and sales, and conservation easement purchases;
4. Executing development rights purchases, sales and conservation easements; and
5. Providing periodic summary reports of TDR bank activity for TDR executive board consideration.

B. The department of natural resources and parks, water and land resources division, or its successor, in executing purchase and sale agreements for acquisition of development rights and conservation easements shall ensure sufficient values are being obtained and that all transactions, conservation easements or fee simple acquisitions are consistent with public land acquisition guidelines. (Ord. 14763 § 3, 2003: Ord. 14199 § 243, 2001: Ord. 14190 § 14, 2001: Ord. 13733 § 11, 2000. Formerly K.C.C. 21A.55.220).

**21A.37.130 Transfer of development rights (TDR) program - sale of TDR rights by TDR bank.**

A. The sale of development rights by the TDR bank shall be at a price that equals or exceeds the fair market value of the development rights. The fair market value of the development rights shall be established by the department of natural resources and shall be based on the amount the county paid for the development rights and the prevailing market conditions.

B. When selling development rights, the TDR bank may select prospective purchasers based on the price offered for the development rights, the number of development rights offered to be purchased, and the potential for the sale to achieve the purposes of the TDR program.

C. The TDR bank may sell development rights only in whole or half increments to incorporated receiving sites through an interlocal agreement. The TDR bank may sell development rights only in whole increments to unincorporated King County receiving sites.

D. All offers to purchase development rights from the TDR bank shall be in writing, shall include a certification that the development rights, if used, shall be used only inside an identified city or within the urban unincorporated area, include a minimum ten percent down payment with purchase option, shall include the number of development rights to be purchased, location of the receiving site, proposed purchase price and the required date or dates for completion of the sale, not later than three years after the date of receipt by King County of the purchase offer.

E. Payment for purchase of development rights from the TDR bank shall be in full at the time the development rights are transferred unless otherwise authorized by the department of natural resources and parks. (Ord. 15032 § 48, 2004: Ord. 14199 § 244, 2001: Ord. 14190 § 15, 2001: Ord. 13733 § 12, 2000. Formerly K.C.C. 21A.55.230).

**21A.37.140 Transfer of development rights (TDR) program - requirements for transfers by the TDR bank for use in incorporated receiving areas.**

A. For development rights sold by the TDR bank to be used in incorporated receiving site areas, the county and the affected city or cities must first have executed an interlocal agreement and the city or cities must have enacted appropriate legislation to implement the program for the receiving area.

B. At a minimum, each interlocal agreement shall describe the legislation that the receiving jurisdiction adopted or will adopt to allow the use of development rights, shall identify the receiving area, shall require the execution of a TDR extinguishment document in conformance with K.C.C. 21A.37.080, and should address the conversion ratio to be used in the receiving site area. If the city is to receive any amenity funds, the interlocal agreement shall set forth the amount of funding and the amenities to be provided in accordance with K.C.C. 21A.37.150 I. Such an interlocal agreement may also indicate that a priority should be given by the county to acquiring development rights from sending sites in specified geographic areas. If a city has a particular interest in the preservation of land in a rural or resource area or in the specific conditions on which it will be preserved, then the interlocal agreement may provide for periodic inspection or special terms in the conservation easement to be recorded against the sending site as a pre acquisition condition to purchases of development rights within specified areas by the TDR bank.

C. A TDR conversion ratio for development rights purchased from a sending site and transferred to an incorporated receiving site area may express the amount of additional development rights in terms of any combination of units, floor area, height or other applicable development standards that may be modified by the city to provide incentives for the purchase of development rights. (Ord. 14190 § 16, 2001; Ord. 13733 § 13, 2000. Formerly K.C.C. 21A.55.240).

**21A.37.150 Transfer of development rights (TDR) program - restrictions on expenditure of TDR bank funds on TDR amenities.**

A. Expenditures by the county for amenities to facilitate development rights sales shall be authorized by the TDR executive board during review of proposed interlocal agreements, and should be roughly proportionate to the value and number of development rights anticipated to be accepted in an incorporated receiving site pursuant to the controlling interlocal agreement, or in the unincorporated urban area, in accordance with K.C.C. 21A.37.040.

B. The county shall not expend funds on TDR amenities in a city before execution of an interlocal agreement, except that:

1. The executive may authorize up to twelve thousand dollars be spent by the county on TDR amenities before a development rights transfer for use at a receiving site or for the execution of an interlocal agreement if the TDR executive board recommends that the funds be spent based on a finding that the expenditure will expedite a proposed transfer of development rights or facilitate acceptance of a proposed transfer of development rights by the community around a proposed or established receiving site area;

2. King County may distribute the funds directly to a city if a scope of work, schedule and budget governing the use of the funds is mutually agreed to in writing by King County and the affected city. Such an agreement need not be in the form of an interlocal agreement; and

3. The funds may be used for project design renderings, engineering or other professional services performed by persons or entities selected from the King County approved architecture and engineering roster maintained by the department of finance or an affected city's approved architecture and engineering roster, or selected by an affected city through its procurements processes consistent with state law and city ordinances.

C. TDR amenities may include the acquisition, design or construction of public art, cultural and community facilities, parks, open space, trails, roads, parking, landscaping, sidewalks, other streetscape improvements, transit-related improvements or other improvements or programs that facilitate increased densities on or near receiving sites.

D. When King County funds amenities in whole or in part, the funding shall not commit the county to funding any additional amenities or improvements to existing or uncompleted amenities.

E. King County funding of amenities shall not exceed appropriations adopted by the council or funding authorized in interlocal agreements, whichever is less.

F. Public transportation amenities shall enhance the transportation system. These amenities may include capital improvements such as passenger and layover facilities, if the improvements are within a designated receiving area or within one thousand five hundred feet of a receiving site. These amenities may also include programs such as the provision of security at passenger and layover facilities and programs that reduce the use of single occupant vehicles, including car sharing and bus pass programs.

G. Road fund amenities shall enhance the transportation system. These amenities may include capital improvements, such as streets, traffic signals, sidewalks, street landscaping, bicycle lanes and pedestrian overpasses, if the improvements are within a designated receiving site area or within one thousand five hundred feet of a receiving site. These amenities may also include programs that enhance the transportation system.

H. All amenity funding provided by King County to cities to facilitate the transfer of development rights shall be consistent with federal, state and local laws.

I. The timing and amounts of funds for amenities paid by King County to each participating city shall be determined in an adopted interlocal agreement. The interlocal agreement shall set forth the amount of funding to be provided by the county, an anticipated scope of work, work schedule and budget governing the use of the amenity funds. Except for the amount of funding to be provided by the county, these terms may be modified by written agreement between King County and the city. Such an agreement need not be in the form of an interlocal agreement. Such an agreement must be authorized by the TDR executive board. If amenity funds are paid to a city to operate a program, the interlocal agreement shall set the period during which the program is to be funded by King County.

J. A city that receives amenity funds from the county is responsible for using the funds for the purposes and according to the terms of the governing interlocal agreement.

K. To facilitate timely implementation of capital improvements or programs at the lowest possible cost, King County may make amenity payments as authorized in an interlocal agreement to a city before completion of the required improvements or implementation programs, as applicable. If all or part of the required improvements or implementation programs in an interlocal agreement to be paid for from King County funds are not completed by a city within five years from the date of the transfer of amenity funds, then, unless the funds have been used for substitute amenities by agreement of the city and King County, those funds, plus interest, shall be returned to King County and deposited into the originating amenity fund for reallocation to other TDR projects.

L. King County is not responsible for maintenance, operating and replacement costs associated with amenity capital improvements inside cities, unless expressly agreed to in an interlocal agreement. (Ord. 14190 § 17, 2001; Ord. 13733 § 14, 2000. Formerly K.C.C. 21A.55.250).

**21A.37.160 Transfer of development rights (TDR) program - establishment and duties of the TDR executive board.**

A. The TDR executive board is hereby established. The TDR executive board shall be composed of the director of the budget office, the director of the department of natural resources and parks, the director of the department of transportation and the director of finance, or their designees. A representative from the King County council staff, designated by the council chair, may participate as an ex officio, nonvoting member of the TDR executive board. The TDR executive board shall be chaired by the director of the department of natural resources and parks or that director's designee.

B. The issues that may be addressed by the executive board include, but are not limited to, using site evaluation criteria established by administrative rules, ranking and selecting sending sites to be purchased by the TDR bank, recommending interlocal agreements and the provision of TDR amenities, if any, to be forwarded to the executive, identifying future funding for amenities in the annual budget process, enter into other written agreements necessary to facilitate density transfers by the TDR bank and otherwise oversee the operation of the TDR bank to measure the effectiveness in achieving the policy goals of the TDR program.

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C. The department of natural resources and parks shall provide lead staff support to the TDR executive board. Staff duties include, but are not limited to:

1. Making recommendations to the TDR executive board on TDR program and TDR bank issues on which the TDR executive board must take action;
2. Facilitating development rights transfers through marketing and outreach to the public, community organizations, developers and cities;
3. Identifying potential receiving sites;
4. Developing proposed interlocal agreements with cities;
5. Assisting in the implementation of TDR executive board policy in cooperation with other departments;
6. Ranking certified sending sites for consideration by the TDR executive board;
7. Negotiating with cities to establish city receiving areas with the provision of amenities;
8. Preparing agendas for TDR executive board meetings;
9. Recording TDR executive board meeting summaries;
10. Preparing administrative rules in accordance with K.C.C. chapter 2.98 to implement this chapter; and
11. Preparing periodic reports on the progress of the TDR program to the council with assistance from other departments. (Ord. 15032 § 49, 2004: Ord. 14763 § 4, 2003: Ord. 14561 § 30, 2002: Ord. 14199 § 245, 2001: Ord. 14190 § 18, 2001: Ord. 13733 § 15, 2000. Formerly K.C.C. 21A.55.260).

**21A.37.170 Transfer of development rights (TDR) program - exemption from surplus provisions.** The transfer of development rights from the TDR bank may be completed consistent with King County's needs and in accordance with the criteria of this chapter. The transfers are exempt from the real and personal property provisions of K.C.C. chapter 4.56. (Ord. 14190 § 19, 2001: Ord. 13733 § 16, 2000. Formerly K.C.C. 21A.55.270).