

# 18.806 Transfer of Development Rights

## Part 8 Environment

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## Chapter 18.806 Transfer of Development Rights

**i** This chapter is adapted from IMC 18.10.2005 through 18.10.2080, adopted in 2013, except where noted. "Designated Official" has been changed to "Director" and "shall" has been changed to "must". Format has also been updated to the Title 18 Update style guide and the

Receiving Sites section have been divided into two sections, one for procedures and one for standards.

**i** Hillside sites have been incorporated into the draft, using 20% slopes as a threshold and mirroring many of the TDR thresholds for critical areas. As TDRs precede Terrain Management, 18.810 (Bucket 6), the proposal for hillside sites may need to be revised once that chapter is drafted.

**i** References to TDRs in 18.07 have been consolidated into this chapter: 18.07.250, Prohibited Standards; and 18.07.360, portion of District Standards Table related to TDRs.

**i** Existing TDR code for sites with critical areas relied on 18.10.450, Density calculation in critical areas, which was eliminated in the rewrite of 18.802. Relevant portions of 18.10.450 have been incorporated into this chapter to preserve tools necessary for the current form/process of TDRs

## Article I. Intent, Designation, Certification, Bank,

### 18.806.010 Intent of the transfer of development rights program.

The intent of the Transfer of Development Rights (TDR) program is to transfer density from eligible sending sites to eligible receiving sites through a voluntary process that will:

A. Decrease development pressure on critical areas by providing property owners with the opportunity for a reasonable economic return by transferring development rights from parcels with these critical areas to land more suited for urban development. Key focus areas are salmon habitat, riparian corridors, and floodways throughout the Tibbetts Creek and Issaquah Creek Basins.

#### **i** New Intent for Hillside Sites

B. Decrease the development pressure on Hillside Sites by providing property owners with the opportunity for a reasonable economic return by transferring development rights to land more suited for urban development from certain parcels with sustained slopes between 20% and 39%.

C. Increase the opportunities for providing parks.

D. Promote design and development consistent with the City's vision as established in the Comprehensive Plan; Urban Villages; and the Central Issaquah Plan.

E. Allow the transfer of development rights:

1. Between parties, through direct sale of development rights from a qualified sending site property owner to a qualified receiving site property owner; and
2. Between the City and a sending or receiving site property owner where the City may act as a TDR bank for development rights by purchasing TDRs from qualified sending sites and/or by selling them to an applicant for use on a qualified receiving site; and
3. Between King County's TDR bank and a City receiving site, as authorized through an interlocal TDR Agreement.

## 18.806.030 Designation of sending and receiving sites.

Sending sites and receiving sites are established based on their ability to meet the purpose and intent and designation criteria of the TDR program.

- A. TDR Sending and Receiving Sites Map: TDR sending and receiving sites are designated by the City on the TDR Sending and Receiving Sites Map, Figure 18.806.030(D). The Procedures to amend the TDR Sending and Receiving Sites Map are governed by Procedures, in Chapter 18.200 IMC.
- B. Designation Criteria – Sending Sites:
  1. Inside City Limits: Sending sites in the City are privately or publicly owned, and not zoned Tradition Plateau-Natural Resource Conservation Area (TP-NRCA), Conservancy-Recreation (C-Rec), Community Facilities-Facilities (CF-F), Community Facilities-Recreation (CF-R), Community Facilities-Open Space (CF-OS), or Conservancy-Residential (C-Res) and meets one or more of the following criteria:
    - a. The gross site is occupied by at least 30% critical areas and/or required critical area buffers; or
    - b. The site is contiguous with existing public open space; or
    - c. Retention of all or part of the site in permanent open space will achieve one or more of the goals and policies adopted in the Comprehensive Plan; or
    - d. The site has limited access for vehicular ingress/egress due to critical areas, excessive grade or adjacent property configuration; or limited reasonable access to wet utility connections; or
    - e. The site is located adjacent to a creek side restoration site; or
    - f. The gross site is occupied by at least 30% regulated hillside with a slope between 20% and 39%; or
    - g. The site has been identified as a potential park site.
  2. Outside City Limits: Through an interlocal agreement with King County, the City will establish criteria for privately owned TDR sending sites outside the City limits.
- C. Designation Criteria – Receiving Sites: Parcels with more than 50% critical area and/or their associated buffers or 50% regulated hillside between 20% and 39% slope are not eligible to be receiving sites, except for those sites that are over 50% in the critical aquifer recharge area. Properties accessing 229th Avenue SE cannot be receiving sites because of requirements established for the 229th traffic signal. Receiving sites must meet one or more of the following criteria:
  1. The parcel is within 3/4 of a mile from the Issaquah Transit Center, is south of I-90, and is zoned Multifamily-High, Multifamily-Medium, Mixed Use Residential, Intensive Commercial, Intensive Commercial-Central Issaquah, Mixed Use, Mixed Use-Central Issaquah, Urban Core, Urban Village-Rowley, Village Residential, Urban Village-Single Family, Urban Village-Multifamily, Urban Village Commercial/Retail, Urban Village-Mixed Use Residential, or Professional Office; or
  2. The parcel is within 1/4 mile of a transit stop, is zoned Intensive Commercial or Professional Office, and the site’s primary access and street frontage are located on “major streets” defined as: Gilman Boulevard east of SR 900, Newport Way, SR 900, NW Sammamish Road, NW Maple Street, East Lake Sammamish Parkway (ELSP), SE 56th Street to 1,200 feet east of East Lake Sammamish Parkway, Issaquah-Fall City Road, or Issaquah-Pine Lake Road SE; or
  3. The parcel is located within the Central Issaquah subarea
  4. PLACEHOLDER FOR IH BASED ON UV ZONING DISCUSSION; 1/4 mile of IH P&R and shown on the map; or

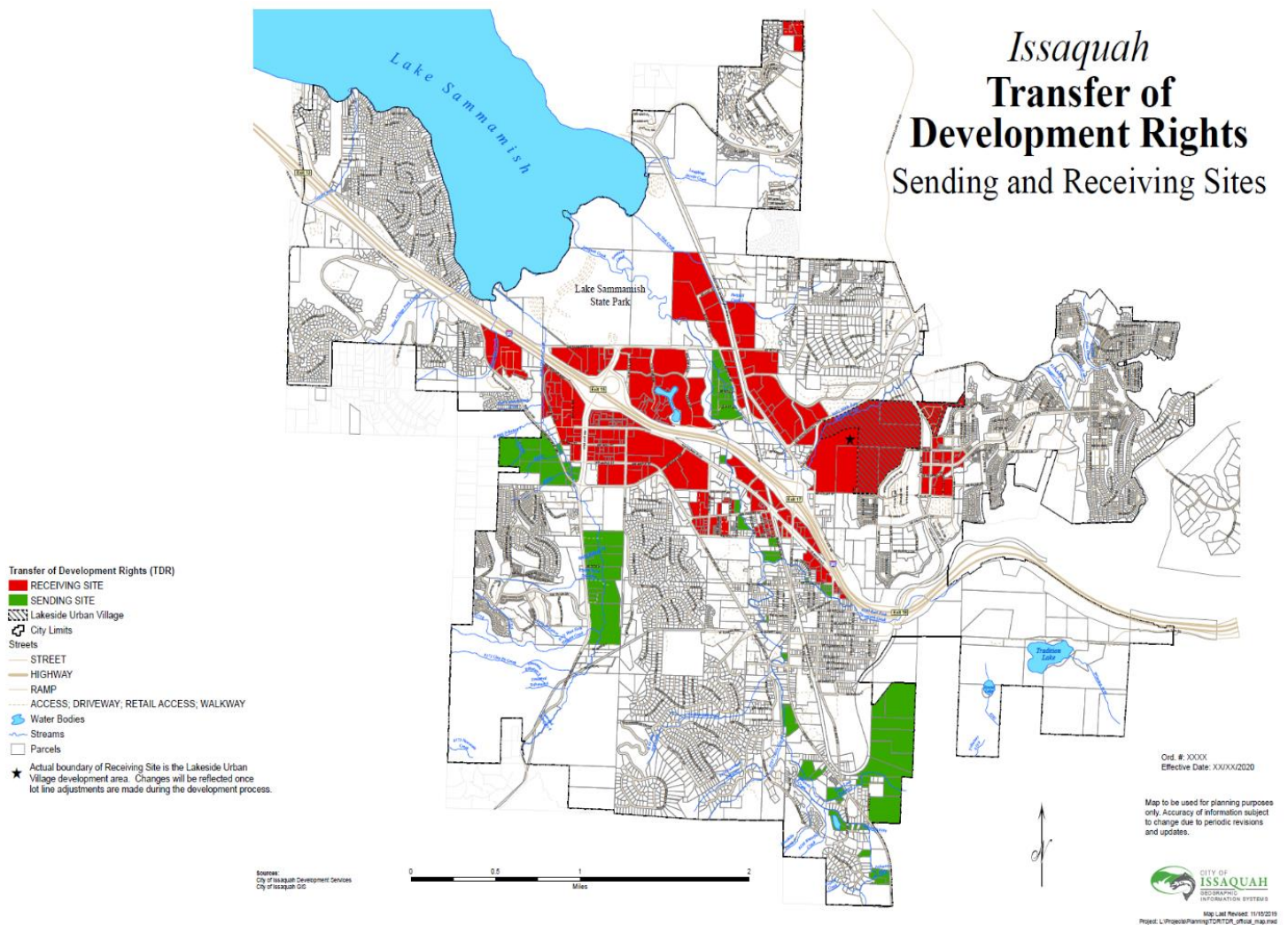
5. The parcel is within the existing development area or established expansion areas of an Urban Village. Transfer of TDRs into a UV project subject to a development agreement must be subject to the following:
  - a. The TDRs must be in addition to and not as a substitute for the development rights as specified in the development agreement.
  - b. The TDRs must not cause any of the existing or planned infrastructure to fall below the infrastructure's capacity to handle the maximum density as set forth in the development agreement.
  - c. The property owner seeking the TDRs must, as determined by the Master Developer of a Development Agreement, reimburse the Master Developer for both:
    - (1) a pro rata share of the costs of installed or required infrastructure and paid mitigations; and
    - (2) a pro rata share of the costs for entitlement allocation.
  - d. The property owner seeking the TDRs must mitigate all other increased adverse environmental and other impacts of the additional TDRs.

**i** Changed Level of Review for both sending and receiving sites from Levels 1 and 3, respectively, to Level 6. Both would require a Land Use Code amendment, so both require public hearings which are a Level 6 review.

D. TDR Map Amendments: See 18.200, Procedures

1. Adding a Sending Site: A proposal to add a sending site to the TDR Sending and Receiving Sites Map must be reviewed as a Land Use Code amendment, Level 6 review (IMC 18.200, Procedures). Review and decisions must be made based on the proposal's ability to meet the criteria established in this chapter.
2. Adding a Receiving Site: A proposal to add a receiving site to the TDR Sending and Receiving Sites Map must be reviewed as a Land Use Code amendment, Level 6 review (IMC 18.200, Procedures). Reviews and decisions must be made based on the proposal's ability to meet the criteria established in this chapter.

Figure 18.806.030(D): TDR Sending and Receiving Sites Map



### 18.806.040 Transfer of development rights bank – Purpose.

A. Purpose. The purpose of establishing the City TDR bank (“bank”) is to:

1. Facilitate the purchase and sale of development rights;
2. Purchase privately held TDR certificates; and
3. Acquire open space and park lands, as directed by the City Council.

**i** "B" is added for clarity regarding the subsequent list.

B. TDR Bank approved activities:

1. The bank may acquire development rights from any designated sending site as identified in IMC 18.806.XXX, Designation of sending and receiving sites.
2. The bank may collect funds or other donations from any designated TDR sending or receiving site, as identified in IMC 18.806.XXX, Designation of sending and receiving sites.

3. The bank may purchase and hold title to existing TDR certificates.
4. The bank may sell TDR certificates in advance of property acquisition and use the funds to fulfill the purpose of this chapter including the purchase of land for open space or parks.
5. Development rights purchased by the bank through the outright purchase of a sending site property, or through the purchase of only the development rights from a sending site property, may be retained by the bank indefinitely.
6. Transferred development rights must be certified by the City and may be purchased by an applicant for a land use development project within the City for immediate use; or an applicant may purchase TDRs to hold for future use without expiration; or TDRs may be sold or transferred to another party.

### **18.806.050 Administration of TDR bank.**

- A. The Finance Director, in coordination with the Community Planning and Development Director, is authorized to administer the TDR bank, including but not limited to:
  1. Managing the activities of the bank;
  2. Authorizing and monitoring the availability of TDR certificates;
  3. Monitoring compliance with the interlocal TDR agreement executed with King County;
  4. Administering development rights purchases, sales and issuance of letters of intent and certification;
  5. Providing periodic summary reports of the bank activity to the City Council; and
  6. Setting the value of bank-issued TDR certificates as outlined in 18.806.060.
- B. The Community Planning and Development Director must keep records of the dates, amounts and locations of development rights that have been:
  1. Issued a letter of intent;
  2. Purchased and certified; and
  3. Sold and extinguished.
- C. The bank must dispose of revenues, as directed by the City Council for the following purposes:
  1. Purchasing development rights from and acquisition of open space properties;
  2. Purchasing development rights from and acquisition of park properties;
  3. Purchasing existing privately held TDR certificates; or

**i** Added a time frame to the 5% limit to clarify intent

4. The bank may use a limited portion of the funds collected by the bank to facilitate the implementation of this chapter. These expenditures (not to exceed five percent per year without City Council approval) may include, but are not limited to, establishing and maintaining Internet web pages, marketing the TDR program, legal expenses, procuring title reports and appraisals and reimbursing the costs incurred by City departments for administering the bank fund and executing development rights purchases and sales.

**i** Added 18.806.060 TDR bank expenditure and purchase authorization to make clear how costs are determined, data needed for the exchange of

funds, and timing of payment. This language did not previously exist but was needed.

### **18.806.060 - 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 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 [PLACEHOLDER] and shall be based on the amount the city paid for the development rights and the prevailing market conditions.
- C. 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.
- D. All offers to purchase development rights from the TDR bank shall be in writing, shall include:
  - 1. a certification that the development rights, if used, shall be used only inside the Issaquah city limits;
  - 2. a minimum ten percent down payment with purchase option; and
  - 3. 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.
- E. Payment for purchase of development rights from the TDR bank shall be in full at the time the development rights are transferred.

## **Article II. Sending and Receiving TDRs**

### **18.806.070 Sending TDRs – Certification, application and procedures.**

- A. Qualifying a Sending Site for the Transfer of Development Rights:
  - 1. Eligibility: In order to sell or transfer development rights, the property owner must receive certification from either the City, or King County consistent with the provisions of the City’s TDR interlocal agreement. Subsection 18.806.060(A.2) establishes the methodology for calculating the TDR base density. TDR base density is the basis for establishing the number of TDR certificates.

**i** 18.806.060(A.2) combines 18.10.2020(A.2.a.i) and 18.10.450(B.1-3), Density calculation in critical areas

- 2. Calculation of TDRs Inside the City for residential sites with critical areas:

For development proposals containing critical areas and associated critical area buffers that occupy at least 30% of a development site, the Director shall determine allowable dwelling units for residential TDR base density using the formula below.

- a. Developable units on a subject property equal the property’s TDR base density. The maximum number of dwelling units (DU) for a lot or parcel which contains critical areas and associated critical area buffers that limit development shall be equal to the number of acres in critical area and critical area buffer that limit development, times the number of dwelling units allowed per acre, times the percentage of density credit, plus the number of dwelling units allowed on the remainder of the site;

or: (Max. DU) = (Acres in Critical Area and Critical Area Buffer) (DU/Acre) (Density Credit) + (DU allowed on remaining acreage of site).

- b. For parcels zoned SF-E (1.24 du/acre), the TDR base density must be calculated beginning with four dwelling units per acre and then calculated as defined below.
- c. The density credit figure is derived from the following table:

**18.806.070(A.2) Density Credits**

Percentage of site in buffers and/or critical areas	Translates into Density Credit
1 – 10%	100%
11 – 20%	90%
21 – 30%	80%
31 – 40%	70%
41 – 50%	60%
51 – 60%	50%
61 – 70%	40%
71 – 80%	30%
81 – 90%	20%
91 – 100%	10%

- 3. Calculation of TDRs Inside the City for residential sites without critical areas. For residentially zoned properties, the TDR base density must be calculated based on the maximum allowed dwelling units. The maximum dwelling units will be determined by the site constraints, including but not limited to: hillside regulations in Terrain Management (IMC 18.810), impervious surface ratio, height, setbacks, parking requirements, etc.

**i** 18.806.060(A.3) combines 18.10.2020(A.2.a.ii) and 18.10.450(B.4)

- 4. Calculation of TDRs Inside the City for nonresidential sites with or without critical areas. For nonresidentially zoned properties, the TDR base density must be calculated based on the maximum buildable square footage of the buildable area on the site divided by 1,200 square feet. The maximum buildable footage will be determined by the site constraints, including but not limited to: critical areas and/or associated critical area buffers (IMC 18.802), hillside regulations in Terrain Management (IMC 18.810), impervious surface ratio, height, setbacks, parking requirements, etc.
- 5. Calculation of TDRs Outside the City Limits for sites with or without critical areas. The maximum transferable number of development rights by a sending site outside of the City limits must be established through the King County certification process as required by the Issaquah/King County interlocal agreement. Each TDR unit certified by King County in this manner may be used by an Issaquah receiving site with the same process and requirements of an “Inside City Limits” sending site TDR unit.
- 6. TDR Certificate Letter of Intent: When located in the City, the Director must prepare and issue a TDR certificate letter of intent for the sending site which documents the available development rights on said



sending site. When any of these development rights are certified, the letter of intent must also be reissued to reflect the new amount of remaining development rights.

7. TDR Certificate Letter of Intent Revision Request: The applicant may request, in writing, that the Director revise the TDR certificate within 90 days of the issuance of the TDR certification letter of intent when:
  - a. The development rights have not been sold; and
  - b. The applicant demonstrates that the TDR rights were improperly calculated; or
  - c. The applicant provides additional studies, data or other information demonstrating that an adjustment of the TDR rights would be appropriate.

**B. TDR Certification:**

**1. Certifying TDRs:**

- a. **Inside City Limits:** The Director must certify the transferable development rights from a sending site, as required in subsection (B)(2) of this section, TDR Certificate Content. After the sale or transfer of all or a portion of a sending site's TDRs, and the designation of the specific area(s) of the property as permanent open space as required in subsection (B)(3) of this section is completed, the TDR certificate may be issued.
- b. **Outside City Limits:** TDR certification on sending sites outside the City limits within King County must be as required by Chapter 21A.37 KCC.
- c. Prior to the release of building permits, the receiving site applicant must deliver the TDR certificate(s) to the City and a quit claim deed and extinguishment document must be recorded on the sending site(s) and receiving site after approval of the receiving site project.

**2. TDR Certificate Content:** A TDR certificate is a recorded document, showing the number of development rights available from a qualified sending site to be used by a TDR receiving site and must delineate the number of development rights including:

- a. The number of transferred rights or ERUs; and
- b. The number of peak hour trips; and
- c. The amount of impervious surface transferable to a TDR receiving site or the additional square footage of gross floor area (above the base building height or maximum building height established in IMC 18.806.080, Receiving Sites Standards, for the underlying zoning district of the TDR receiving site) transferable to a TDR receiving site.

**3. Preservation of Open Space or Dedication of Park Land Resulting from TDR Conversion:** As part of the development rights transfer and prior to the issuance of the TDR certificate, the sending site property owner is required to document that the site, or portion of the site, is no longer developable and must be preserved to fulfill the intent of this chapter in one (1) of the following ways, as determined by the Director:

- a. **By Deed:** The sending site property owner must deed the ownership of the property in fee simple to the City subject to acceptance by the City Council of the property as public open space or public park land. The dedication must include a restriction on future development and on the installation of new utilities except:
  - (1) To allow any third party with right under an existing ingress, egress, utility, or similar easement that was established or recorded prior to the effective date of said easement to exercise such rights; and

(2) To use and maintain linear or underground utilities; provided, that any area disturbed by such activity is promptly restored to the original grade and revegetated.

b. By Conservation Easement: For open space properties only, the sending site property owner may retain ownership of the property when a conservation easement is recorded encumbering the property in perpetuity.. The conservation easement must be for the benefit of the City, recorded with King County Recorder's Office on a form approved by the City, and include the preparation and implementation of a stewardship plan to ensure the property is maintained for the benefit and protection of the natural resources, including wildlife, scenic corridors, and water quality. All conservation easements must allow City access to the property to ensure compliance with the conservation easement. The conservation easement must include:

(1) All of the critical area and associated buffer; and

(2) That portion of the developable site area equal to the percentage of TDRs sold and certified.

c. For sending sites purchased by the City, where the City wishes to sell all or some of the TDRs, the City must record a declaration of covenant in perpetuity over the property, which must include all of the critical area and a portion of the developable site area as required for property retained in private ownership and must include the preparation of a stewardship plan as required in subsection (B)(3)(b) of this section, preservation of open space.

4. Reissuing TDR Certificates: The Director must administer the TDR program by reissuing or retiring certificates when some or all of a parcel's development rights have been transferred. A TDR certificate must be reissued and recorded after the sale of TDRs to the receiving site owner and the recording of a conservation easement, covenant, or conveyance of the sending site property to the City as public open space or park land. The reissued TDR certificate must clearly state the number of remaining TDRs available for that sending site parcel. If no TDRs are available, that information must also be recorded.

C. Determining the Number of Units Remaining on a Sending Site:

1. Transferring All of the TDRs: All or a portion of the TDRs certified by the Director may be sold. If all of the TDRs are transferred, no further development must occur on the sending site and the entire parcel must remain in permanent open space or park land in perpetuity in accordance with the provisions of subsection (B)(3) of this section.

2. Transferring TDRs Over Time: TDRs from a sending site may be sold over time to more than one (1) receiving site until all development rights are sold or the property owner chooses to develop the remainder of the property.

3. Calculating Any Remaining Density on the Sending Site: If only a portion of the TDR units from a sending site are sold and transferred, the number of dwelling units or, in the case of commercially zoned land, the buildable square footage permitted on the remainder property, must be determined in accordance with the conservation easement and provisions of IMC based on the percentage of critical areas on the site.

**i** "Receiving TDRs -- Application and procedures" adapts the following IMC sections: 18.10.2050(A.1, A.6, A.7, B-D)

## **18.806.080 Receiving TDRs – Application and procedures.**

A. Transferring Development Rights to a Receiving Site: Certified development rights can be accommodated on a receiving site based on the following design and development criteria:

1. Applicability: Receiving sites may use the purchased TDRs to meet the provisions of an approved development agreement or to exceed the allowable development for new development or modification to existing development, in accordance with this chapter; provided, that all development and design standards required by the underlying zoning district must be met, unless the standards are adjusted through IMC 18.806.070, Receiving Site - procedures.
2. The City may, in its sole discretion, elect not to accept conveyance of the property if intended as open space, and require the property owner to retain the property and record a permanent conservation easement thereon in accordance with IMC 18.806.XXX, preservation of open space resulting from TDR conversion.
3. Procedures:
  - a. Using Certified TDRs: The total number of development rights from a sending site may be transferred to one (1) or more designated receiving sites.
  - b. Impact Fees: Unless otherwise provided for in a development agreement, all impact fees must be based on the final number of residential units and the total (base + TDRs) commercial/retail square footage in the receiving site proposal.
  - c. Conditions of Approval: The conditions of approval must include: (1) requirement of developer to purchase, record and certify the TDRs prior to release of building permits; (2) issuance, by the Director, of an updated TDR certificate and/or letter of intent for the sending site(s); and (3) the extinguishment document for sending and receiving site to be recorded by receiving site property owner before building permit issuance.
  - d. Notice of Decision: Notice of decision must be provided in accordance with IMC 18.04.240, Notice of decision. A notice of decision for the project must clearly state: (1) the number of TDRs transferred to the receiving site; and (2) the incorporation of TDRs into the approved project through the total density, peak trips, square footage, impervious surface, height and other related standards.
  - e. TDR Development Rights: TDR development rights once used for a land use application are valid only for the specified parcel for which they were originally approved for use and may not be transferred to a different parcel unless the original parcel is subdivided in accordance with subsection D of this section, Subdivision of TDR Receiving Sites, or if the original proposal has been withdrawn by the property owner.
  - f. Quit Claim Deed and Extinguishment Document with TDR Certificate: A TDR certificate is required to document the use of TDRs on all sending sites and receiving sites that have sold or incorporated additional development rights on their property through the TDR process. A quit claim deed and extinguishment document with the attached TDR certificate must be recorded on the sending site and the receiving site parcels describing:
    - (1) How the TDR rights are used on the receiving site per IMC 18.806.XXX , TDR Certification; and
    - (2) The number of TDRs used; and
    - (3) The source of the TDRs.

**B. Application Process and Procedures for Using TDRs:**

1. Application: A complete application for a project proposing to use TDRs on a designated receiving site must comply with IMC 18.XXX.XXX, Complete application – Sufficiency review, and must include a recent title report for the property included in the application.
2. Process:

- a. Urban Villages: An urban village development agreement, aside from Lakeside base entitlement, requires a major modification to increase the existing development density for an urban village. The major modification process for each urban village is established within the existing development agreements for the specific urban village.
- b. Proposals for receiving sites using only the TDR unit peak trips must be processed according to IMC 18.402, Table of Permitted Land Uses, required by subsection (A) of this section, Standards for Transferring Development Rights to a Receiving Site.
- c. The process required for the use of additional height, impervious surface, density and commercial square footage on a receiving site is established in this section as required in subsection (A) of this section, standards for transferring development rights to a receiving site.

**i** The following incorporates IMC 18.07.280, Prohibited standards, to identify what may be altered to accommodate TDRs on a Receiving site

- d. When a property owner intends to deed property to the City pursuant to IMC 18.806.XXX, the property owner must:
  - (1) Warrant to the City, in a form acceptable to the City, that to the best of the property owner’s knowledge, no hazardous substances have been released on the property; and
  - (2) Warrant to the City, in a form acceptable to the City, that to the best of the property owner’s knowledge, any remaining developable land will not require a reasonable use variance and can be developed as is; and
  - (3) Prior to any such transfer, provide the City with access to and allow the City to inspect the property and all books and records relating to the property.

C. Subdivision of TDR Receiving Sites:

- 1. Plat Application: TDR receiving sites may be subdivided in accordance with the requirements of Chapter 18.314 IMC, Subdivisions. The preliminary plat or short plat application must include a pro rata portion of the development rights transferred to the original parcel to each parcel created by the subdivision. At time of application, the applicant must provide a signed option letter indicating the buyer, seller, sending and receiving site tax parcel number(s) and the number of development rights to be acquired. The pro rata assignment of transferred development rights must only be in whole units. Individual TDRs may not be divided and the individual uses of a TDR may not be assigned to a new parcel.
- 2. Plat Modifications: The Hearing Examiner’s decision on a preliminary plat and the Director’s decision on a short plat may modify the assignment of TDRs proposed by the applicant when such modification is necessary to comply with the provisions of subsection B of this section, Application, Process and Procedures for Using TDRs, or the objectives of IMC 18.314, Purpose.
- 3. Plat Approval: Upon plat approval, the new assignment of the TDRs must be shown on the face of the short plat or final plat approved by the City and must be recorded with King County. Final plat approval must be contingent on the applicant providing TDR certificates with the equivalent number of additional development rights necessary within the plat as approved by the City.

**i** "Receiving TDRs - Standards" adapts the following IMC sections: 18.10.2050(A.2)-(A.5)

**18.806.090 Receiving TDRs – Standards.**

**i** 18.806.080(A) retains the prohibition on certain standards from 18.07.360 Table being modified with TDRs. The Table line in 18.07.360 is entitled: "Provisions for the use of Additional Development based on the purchase of a TDR unit", as provided in IMC [TDR section of 18.10]

- A. Receiving sites may use the purchased TDRs to exceed the following allowable development for new development or modification to existing development, in accordance with this chapter; provided, that all development and design standards required by the underlying zoning district must be met and use of TDRs occurs within the developable area and does not extend the development into critical area buffers. TDRs may be used to increase:
  - 1. Density
  - 2. Height
  - 3. Impervious Surface
- B. Residential Dwelling Units. Additional residential density may be approved through a Level X review, see Procedures in 18.200, based on the following residential density limits in the following table:

<b>Table 18.806.090(B): Residential Density</b>	
TDR Value: 1 TDR = one dwelling unit up to the following limits:	
Receiving Site Zone (Underlying Zoning)	25% increase to the underlying zone Density Limits
MF-M & MUR (14.52 dwelling units per acre)	18 dwelling units per acre
MF-H (29 dwelling units per acre)	36 dwelling units per acre
Other Zones, including UV	36 dwelling units per acre; or as specifically allowed through a development agreement or the Central Issaquah Development and Design Standards
UV-SF, UV-MF, UV-COM/RET, UV-MUR (Issaquah Highlands)	No additional residential density allowed as per Chapter 18.19B IMC, Issaquah Highlands, WSDOT TDR, and TOD Replacement Regulations, Subsequent to Development Agreement Termination

- C. Building Height and/or Gross Floor Area. The maximum building height for all zoning districts is established in IMC 18.404, Form & Intensity tables. Through transfer of development rights, a receiving site may propose additional square footage of gross floor area above the base building height or maximum building height as established in the following table:

<b>Table 18.806.090(C): Process and Conditions for Maximum Building Heights for Receiving Sites (1), (3)</b>		
Receiving Site Zoning District	Maximum building height allowed in underlying zoning district in IMC 18.404, Form & Intensity Tables	Process and Conditions for Maximum Building Height with Purchase of TDRs
		Deviations (2)
TDR Value:	NA	1 TDR = 1,200 sq. ft. (4)
MF-M	50 ft.	65 ft.
MF-H	65 ft.	65 ft.
PO	65 ft.	80 ft.
IC	65 ft.	80 ft.
Central Issaquah zones, UC, MU-CI, IC-CI, MUR, VR	Determined by the Development Bonus regulations in 18.702 and maximum height established in 18.404, Form & Intensity.	
UV	Determined by the development agreement	
UV-SF, UV-MF, UV-COM/RET, UV-MUR (Issaquah Highlands)	No additional building height allowed as per Chapter 18.19B IMC, Issaquah Highlands, WSDOT TDR, and TOD Replacement Regulations, Subsequent to Development Agreement Termination	

**Table Notes:**

- (1) Maximum height for structures in shoreline jurisdictions is 35 feet per Shorelines, 18.804.
- (2) The complete receiving site proposal is processed as established in Procedures, 18.200
- (3) For properties located in the Central Issaquah subarea, see Form & Intensity, 18.404, for Heights allowed above the Base Height.
- (4) Purchased TDRs from sending sites may be subject to an exchange rate, as determined by the Director or through King County's TDR Bank, as appropriate.

D. Impervious Surface Limits. Impervious surface limits on the receiving site may be increased as defined in the following table:

<b>Table 18.806.090(D): Process and Conditions for Impervious Surface Ratio Limits in Receiving Sites</b>			
TDR value: 1 TDR = 1,200 sq. ft (3)			
Receiving Site Zoning District	Impervious Surface Ratio Allowed in Underlying Zoning District IMC 18.404, Form & Intensity	Process and Conditions for Impervious Surface Ratio Limit with Purchase of TDRs	
		Deviation (2)	Development Agreement reviewed and approved through a Level X review
MF-M Multifamily – Medium	50%	65%	75%
MF-H Multifamily – High	50%	65%	75%

**Table 18.806.090(D): Process and Conditions for Impervious Surface Ratio Limits in Receiving Sites**

TDR value: 1 TDR = 1,200 sq. ft (3)			
Receiving Site Zoning District	Impervious Surface Ratio Allowed in Underlying Zoning District IMC 18.404, Form & Intensity	Process and Conditions for Impervious Surface Ratio Limit with Purchase of TDRs	
		Deviation (2)	Development Agreement reviewed and approved through a Level X review
PO Professional Office	65%	80%	90%
IC Intensive Commercial	65%	80%	90%
UV	Determined through the provisions of the development agreement		
Central Issaquah Plan zones	Refer to the Central Issaquah Plan for standards		
UV-SF, UV-MF, UV-COM/RET, UV-MUR (Issaquah Highlands)	N/A -- 100% impervious allowed		

**Table Notes:**

- (1) The critical aquifer recharge area is identified on maps in the Permit Center and includes wellhead protection areas based on one, five, and 10 year capture zones.
- (2) The complete receiving site proposal is processed as established in IMC 18.200, Procedures.
- (3) Purchased TDRs from sending sites may be subject to an exchange rate, as determined by the Director or through King County’s TDR bank, as appropriate.

E. Transportation Concurrency. The proposal, with TDRs, must meet the City’s transportation concurrency requirements (IMC 18.210).

**Article III. Administration**

**18.806.100 Appeals.**

- A. Any decision under this section will not be subject to appeal except as part of an appeal of the entire project. An appeal of a TDR determination may be incorporated under a project appeal under IMC 18.200, Procedures.
- B. Decisions by the Hearing Examiner regarding the transfer of development rights may be appealed to Superior Court in accordance with IMC 18.200, Procedures.

**18.806.110 Monitoring TDR certificates.**

- A. The Director must keep records and monitor both the issuance and transfer of TDR certificates and related conservation easements, and the development they represent.
- B. An annual status report on the issuance and transfer of TDRs and related stewardship plans, number of TDR transactions, properties preserved, and revenue managed by the TDR bank must be made.

## 18.806.120 Repeal.

If this chapter of the IMC is repealed by the City Council, the density of all sending sites with no transferred of TDRs must be the density allowed by IMC 18.404, Form & Intensity. If some, but not all, of the development rights from one sending site were sold, the remainder of the property must be developed as allowed in the conservation easement or covenant and by IMC 18.404, Form & Intensity, unless a development agreement with the City Council was approved prior to the repeal of this chapter. Any projects built per this chapter must not be considered a nonconforming use as defined in IMC 18.102, Definitions – N, Nonconforming situation.

**i** Definitions to be moved to the Definitions Chapter. Here now for reference.

## 18.806.130 Definitions.

Following are specific definitions for certain words, terms and phrases used in this section of the Issaquah Land Use Code. Where any of these definitions conflict with definitions used in other titles of the Municipal Code, the definitions herein must prevail when used in the context of this chapter. Other terms used in this section may be defined in Chapter 18.102 IMC.

- A. Creek side restoration: A project approved by the City for the restoration of creek side areas for the benefit of anadromous fish habitat.
- B. Designated property: Those parcels shown as TDR sending or receiving sites on the TDR Sending and Receiving Sites Map. The sending site development rights are required to become certified by the City before TDRs may be sold or transferred. (See IMC 18.806, TDR Certification.)
- C. Equivalent residential units (ERUs): One ERU is equal to either one residential unit (single family or multifamily), or 1,200 square feet of nonresidential entitlement.
- D. Exchange Rate: A transfer ratio or multiplier, determined by the Director or King County’s TDR Official, as appropriate, to correct for the market imbalance in value between development rights in sending and receiving sites.
- E. Extinguishment document, quit claim deed: When a development right is purchased and then used, the right to build a dwelling unit on the sending site is “extinguished.” It is used up and cannot be used again in any other location. The quit claim deed and extinguishment document records the sale and use of the development right on both the sending site and the receiving site and states how the development rights are applied.
- F. Hillside Sites [PLACEHOLDER]
- G. King County TDR bank: An entity authorized by King County to:
  - 1. Facilitate the private TDR market by bridging the time gap between willing sellers and buyers of TDRs;
  - 2. Act as a revolving fund for continued land protection through buying, holding, and selling TDRs (proceeds from TDR sales are used for future land protection); and
  - 3. Catalyze city-county TDR agreements by strategically acquiring development rights from high priority conservation rural/resource lands in the County that are of compelling interest for specific cities to see protected.
- H. Letter of intent, TDR certification: A signed letter provided by the City documenting availability of development rights for sale from a sending site. For those sending sites outside the City limits, this letter will be provided by King County.



- I. Public Open Space: Property owned by the City of Issaquah, King County or State Departments of Parks and Recreation and Natural Resources that is set aside to serve the purposes of protecting and conserving critical areas and natural systems.
- J. Stewardship plan: A comprehensive plan for the long-term protection and use of property (open space or park) protected through the TDR Program, developed by the property owner, monitored and enforced by the City of Issaquah. If prepared for privately held property, the plan must be approved by the City. Regardless, the plan must include:
  - 1. A course of action that prevents degradation of the values, structure and functions of the natural resources and open space and includes enhancements, as necessary, to improve the open space qualities of the property;
  - 2. An inventory of the existing conditions as well as all critical areas and their buffers;
  - 3. A plan showing any existing or proposed park improvements, protected natural areas and proposed enhancements;
  - 4. A timeline for implementing any enhancements and follow-up monitoring and maintenance; and
  - 5. A funding plan including personnel, capital and surety for implementation of the stewardship plan.
- K. TDR bank: The TDR bank (“bank”) is operated by the City for the purpose of buying, selling and holding development rights. The City may act in its capacity as a buyer and seller of development rights pursuant to IMC 18.806, TDR bank – Purpose and authorization.
- L. TDR certificate: A recorded document, issued by the City or King County (and authorized by the City), showing the number of development rights available from a sending site to be used at a TDR receiving site.
- M. TDR receiving site: Property in the City limits where existing urban services and infrastructure can accommodate additional development. TDR receiving sites are designated on the TDR Sending and Receiving Sites Map.
- N. TDR sending site: Property in the City limits that has been designated as a sending site on the TDR Sending and Receiving Sites Map. Sending sites also include property in the King County Rural or Resource Zones of the Issaquah Creek Basin as described in the King County Water Resource Inventory Area (WRIA) 8 Issaquah Creek Subarea and containing environmentally critical areas as defined in the King County Interlocal Agreement, and properties located in the CIP area designated for park improvements.