



City Council, Regular Meeting

AGENDA

January 18, 2011

6:30 pm – 9:30 pm
Council Chambers

Call to Order

Roll Call/Pledge of Allegiance

Approval of Agenda

Student Liaison Reports

- Eastlake High School
- Skyline High School

Presentations/Proclamations

- Presentation: Waste Management/Susan Robinson

Public Comment

Note: *This is an opportunity for the public to address the Council. Three-minutes limit per person or 5 minutes if representing the official position of a recognized community organization.*

Consent Agenda

- Payroll for period ending December 31, 2010 for pay date January 5, 2011 in the amount of \$251,646.25
1. Approval: Claims for period ending January 18, 2011 in the amount of \$2,186,108.60 for Check No.28289 through No.28424
 2. Interlocal: Surplus Property Services/State of Washington
 3. Contract: Domestic Violence Advocate/Leyton

Public Hearings

4. Ordinance: First Reading Repealing The Transfer Of Development Density Credits Regulations And Adopting Transfer Of Development Rights Regulations Codified Into Chapter 80 Of Title 21A Of The Sammamish Municipal Code

Unfinished Business - None

City Council meetings are wheelchair accessible. American Sign Language (ASL) interpretation is available upon request. Please phone (425) 295-0500 at least 48 hours in advance. Assisted Listening Devices are also available upon request.

New Business

5. Interlocal Agreement: Transfer of Development Rights/King County

Council Reports

City Manager Report

Executive Session – If necessary

Adjournment

AGENDA CALENDAR

Jan. 2011			
Mon. 1/17	6:30 pm	Holiday	Martin Luther King Day – City Offices Closed
Tues. 1/18	6:30 pm	Regular Meeting	Presentation: Waste Management (Susan Robinson) Public Hearing: Ordinance First Reading Transfer Of Development Rights Resolution: Final Acceptance ELSP Phase IA Project (consent) Interlocal: Transfer of Development Rights/King County Interlocal: Surplus Property Services/State of Washington (consent) Contract: Kimberly Leyton/ Domestic Violence Advocate (consent)
Feb. 2011			
Tues. 2/1	6:30 pm	Regular Meeting	Canceled
Feb 3-5		Council Policy Session	
Tues. 2/8	6:30 pm	Special Meeting	SR520 Tolling Update(Craig Stone) PC Handoff Code Changes/Animal Regs/Zoning Change/Electric Vehicle Charging Stations Ordinance Second Reading Transfer Of Development Rights Interlocal: Jail Services/ Yakima Contract: Sammamish Landing Modified Phase 1/Watershed (consent)
Mon. 2/14	6:30 pm	Study Session	
Tues. 2/15	6:30 pm	Regular Meeting/Study Session	Update: Wireless Amendments
Mon. 2/21	Closed	Holiday	President's Day – City Offices Closed
Mar. 2011			
Tues. 3/1	6:30 pm	Regular	Public Hearing: Third Reading Ordinance for Wireless Amendments
Tues. 3/8	6:30 pm	Joint Meeting with Parks Commission	Review: PRO Plan
Mon. 3/14	6:30 pm	Joint Study Session/PC	Sustainability
Tues. 3/15	6:30 pm	Regular Meeting	
Apr. 2011			
Tues. 4/5	6:30 pm	Regular	
Tues. 4/12	6:30 pm	Study Session	
Mon. 4/18	6:30 pm	Study Session	
Tues. 4/19	6:30 pm	Regular Meeting	
May 2011			
Tues. 5/3	6:30 pm	Regular	
Tues. 5/10	6:30 pm	Study Session	
Mon. 5/16	6:30 pm	Study Session	
Tues. 5/17	6:30 pm	Regular Meeting	
Mon. 5/30	Closed	Holiday	Memorial Day – City Offices Closed
Jun. 2011			
Tues. 6/7	6:30 pm	Regular	
Tues. 6/14	6:30 pm	Joint Meeting with Parks Commission	Review: PRO Plan

Mon. 6/20	6:30 pm	Study Session	
Tues. 6/21	6:30 pm	Regular Meeting	
Jul. 2011			
Mon. 7/4	Closed	Holiday	Independence Day – City Offices Closed
Tues. 7/5	6:30 pm	Regular	
Tues. 7/12	6:30 pm	Study Session	
Mon. 7/18	6:30 pm	Study Session	
August 2011			NO MEETINGS
Sept. 2011			
Mon. 9/5		Holiday	Labor Day– City Offices Closed
Tues. 9/6	6:30 pm	Regular	
Tues. 9/13	6:30 pm	Study Session	
Mon. 9/19	6:30 pm	Study Session	
Tues. 9/20	6:30 pm	Regular Meeting	
Oct. 2011			
Tues. 10/4	6:30 pm	Regular	
Tues. 10/11	6:30 pm	Study Session	
Mon. 10/17	6:30 pm	Study Session	
Tues. 10/18	6:30 pm	Regular Meeting	
Nov. 2011			
Tues. 11/1	6:30 pm	Regular	
Tues. 11/08	6:30 pm	Study Session	
Mon. 11/14	6:30 pm	Study Session	
Tues. 11/15	6:30 pm	Regular Meeting	
Dec. 2011			
Tues. 12/6	6:30 pm	Regular	
Tues. 12/13	6:30 pm	Study Session	
Mon. 12/19	6:30 pm	Study Session	
Tues. 12/20	6:30 pm	Regular Meeting	

To Be Scheduled	To Be Scheduled	Parked Items
Code Enforcement Code Amendments (1/18/2011) Ordinance: Second Reading Puget Sound Energy Franchise Franchise: Cable TV Bid Award: Room 202 Tenant Improvements (Consent)	Final Acceptance: ELSP Phase 1A Final Acceptance: 244 th Avenue Improvement Project Final Acceptance: SE 20 th Street Non-motorized Improvement Project Contract: Stewart, Beall/ Public Defender (consent)	Joint Meeting/Issaquah School Dist. Joint Meeting/LWSD Joint Meeting/Issaquah City Council Joint Meeting/Samm PW & S Focus Groups for Community Center

<< December

January 2011

February >>

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3 5:30 p.m. Council Office Hour	4 6:30 p.m. City Council Meeting	5 6:30 p.m. Parks and Recreation Commission Meeting	6 6:30 p.m. Community Garden Steering Committee Meeting 6:30 p.m. Planning Commission Meeting	7	8
9 11 a.m. Arts Commission Retreat	10	11 5 p.m. Finance Committee Meeting 6:30 p.m. City Council Study Session	12	13	14	15
16	17 8 a.m. Martin Luther King Day City offices closed 5:30 p.m. City Council Office Hour Canceled 6:30 p.m. City Council Study Session Canceled	18 6:30 p.m. City Council Meeting	19 2 p.m. Artist Lecture and Walk-thru 6 p.m. Sammamish Youth Board Meeting	20 6:30 p.m. Planning Commission Meeting	21	22 5:30 p.m. SAMMAMISH POLICE FORUM - The Internet and Social Media: What Parents Need to Know
23	24 6:30 p.m. Arts Commission Meeting	25	26	27 4 p.m. Public Safety Committee Meeting	28	29
30	31					

<< January

February 2011

March >>

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1 6:30 p.m. City Council Meeting Canceled	2 6:30 p.m. Parks and Recreation Commission Meeting	3 City Council Retreat 6:30 p.m. Planning Commission Meeting	4 City Council Retreat	5 City Council Retreat 1 p.m. Sammamish Celebrate Chinese Art & Culture
6	7 5:30 p.m. City Council Council Office Hour	8 6:30 p.m. City Council Special Meeting	9	10	11	12
13	14 6:30 p.m. City Council Study Session	15 6:30 p.m. City Council Meeting	16 6 p.m. Sammamish Youth Board Meeting	17 6:30 p.m. Planning Commission Meeting	18	19
20	21 8 a.m. Presidents' Day City offices closed	22	23	24	25	26
27	28 6:30 p.m. Arts Commission Meeting					



MEMORANDUM

TO: Melonie Anderson/City Clerk
FROM: Marlene/Finance Department
DATE: January 13, 2011
RE: Claims for January 18, 2011

	\$	316,738.55	
		1,835.06	
316,738.55	+	633,788.98	
1,835.06	+	187,216.97	
633,788.98	+	1,046,408.79	
187,216.97	+	120.25	
1,046,408.79	+		
120.25	+		
2,186,108.60	*		

TOTAL \$ 2,186,108.60

Check # 28289 through # 28424

Accounts Payable

Check Register Totals Only

User: mdunham
 Printed: 1/4/2011 - 12:15 PM



Check	Date	Vendor No	Vendor Name	Amount	Voucher
28289	01/05/2011	ANI	ANI Administrators NW Inc	1,618.15	0
28290	01/05/2011	AWCMED	AWC Employee BenefitsTrust	98,270.27	0
28291	01/05/2011	CHAP13	Chapter 13 Trustee	1,100.00	0
28292	01/05/2011	ICMA401	ICMA 401	36,315.02	0
28293	01/05/2011	ICMA401x	ICMA401	5,563.28	0
28294	01/05/2011	ICMA457	ICMA457	30,835.88	0
28295	01/05/2011	ISD	Issaquah School District	133,760.00	0
28296	01/05/2011	LWSD	Lake Washington School Dist	8,712.00	0
28297	01/05/2011	PREPAIDL	Pre-Paid Legal Services, Inc	145.45	0
28298	01/05/2011	WATREAS	Wa State Treasurer	418.50	0

Check Total:

316,738.55

Accounts Payable
Computer Check Register

User: mdunham
 Printed: 01/04/2011 - 2:08PM
 Bank Account: APPR
 Batch: 005.01.2011



Check	Vendor No	Vendor Name	Date	Invoice No	Amount
28299	AWCMED	AWC Employee BenefitsTrus	1/5/2011		
				01/2011	1,093.19
				01/2011	741.87
		Check 28299 Total:			1,835.06
		Report Total:			1,835.06

Accounts Payable

Check Register Totals Only

User: mdunham
 Printed: 1/12/2011 - 12:17 PM



Check	Date	Vendor No	Vendor Name	Amount	Voucher
28300	01/18/2011	ACE	Ace Hardware, LLC	274.14	0
28301	01/18/2011	ADOLFSON	ESA Adolfsen	1,893.22	0
28302	01/18/2011	AMERICAW	America West Environmental Supplie	24,496.33	0
28303	01/18/2011	BHC	BHC Consultants, LLC	1,468.22	0
28304	01/18/2011	BUTKUS	Pete Butkus	80.04	0
28305	01/18/2011	CADMAN	Cadman, Inc.	451.71	0
28306	01/18/2011	CHANEY	Rebecca Chaney	148.50	0
28307	01/18/2011	COSTCO	Costco Wholesale	1,124.51	0
28308	01/18/2011	DEERE	John Deere Landscapes	4,342.22	0
28309	01/18/2011	DEJONG	Cory de Jong & Son Inc	344.93	0
28310	01/18/2011	EASTEQ	Eastside Equipment & Marine	222.40	0
28311	01/18/2011	ENCOMPAS	Encompass	1,700.00	0
28312	01/18/2011	EWINGIRR	Ewing Irrigation	24,756.79	0
28313	01/18/2011	FAITH	Faith In Action	2,500.00	0
28314	01/18/2011	FASTENAL	Fastenal Industrial Supplies	2,424.12	0
28315	01/18/2011	GRAINGER	Grainger	25,386.13	0
28316	01/18/2011	HDFOWL	H. D. Fowler Company	304.98	0
28317	01/18/2011	HEROHOUS	NAMI Eastside Hero House	375.00	0
28318	01/18/2011	HOMEDE	Home Depot	468.39	0
28319	01/18/2011	HWA	HWA GeoSciences, Inc	2,323.10	0
28320	01/18/2011	IRONMT	Iron Mountain	512.21	0
28321	01/18/2011	ISSAQI	Issaquah Press, Inc.	420.00	0
28322	01/18/2011	ISSTROPH	Issaquah Trophy & Awards	23.85	0
28323	01/18/2011	KEENEY	Keeney's Office Plus	175.16	0
28324	01/18/2011	KINGDD	King County DDES	951.68	0
28325	01/18/2011	KINGFI	King County Finance A/R	21,657.89	0
28326	01/18/2011	KINGGIS	King County GIS Center	3,052.00	0
28327	01/18/2011	KINGPET	King County Pet Licenses	155.00	0
28328	01/18/2011	KIRTLEY	Kirtley Cole	383,779.39	0
28329	01/18/2011	LAKESIDE	Lakeside Industries	578.49	0
28330	01/18/2011	LANE	Lane & Associates	1,809.30	0
28331	01/18/2011	LESSCHWA	Les Schwab Tire Center	932.44	0
28332	01/18/2011	LEXIS	Lexis Nexis Risk Data Mgmt	54.75	0
28333	01/18/2011	LOCHNER	Lochner, Inc.	1,925.94	0
28334	01/18/2011	MAKERS	Makers Architecture & Urban	840.00	0
28335	01/18/2011	MICRO	Microflex, Inc.	110.64	0
28336	01/18/2011	MINUTE	Minuteman Press	89.27	0
28337	01/18/2011	MOBERLY	Lynn Moberly	7,250.00	0
28338	01/18/2011	NABARR	National Barricade Co., LLC	95.27	0
28339	01/18/2011	NAPA	Genunine Parts Company/Issaquah	112.82	0
28340	01/18/2011	NAPA/RED	Napa Auto Parts Redmond	68.36	0
28341	01/18/2011	NESAM	NE Sammamish Sewer & Water	90.48	0
28342	01/18/2011	NEXTEL	Nextel Communications	2,166.59	0
28343	01/18/2011	OILCAN	Oil Can Henry's	223.38	0
28344	01/18/2011	OPOWER	OPower, Inc	10,000.00	0
28345	01/18/2011	PIEDMONT	Piedmont Directional Signs	175.00	0
28346	01/18/2011	PLATT	Platt Electric	313.68	0
28347	01/18/2011	POA	Pacific Office Automation	118.02	0
28348	01/18/2011	PSE	Puget Sound Energy	6,951.37	0
28349	01/18/2011	PUGETSOU	Puget Sound Bank	18,362.65	0

Check	Date	Vendor No	Vendor Name	Amount	
28350	01/18/2011	SAMCITIZ	Sammamish Citizen Corps Council	6,394.32	0
28351	01/18/2011	SB&MAC	Stewart Beall & MacNichols	3,760.00	0
28352	01/18/2011	SCI	SCI Infrastructures, LLC	33,556.59	0
28353	01/18/2011	SEATIM	Seattle Times	412.49	0
28354	01/18/2011	SHANNONW	Shannon & Wilson Inc	1,364.22	0
28355	01/18/2011	SKYLINE	Skyline High School	375.00	0
28356	01/18/2011	STOECKL	Jane C. Stoecklin	110.00	0
28357	01/18/2011	TRANSP0	Transpo Group, Inc	3,794.62	0
28358	01/18/2011	UNITRENT	United Rentals NW, Inc	1,133.68	0
28359	01/18/2011	VOYAGER	Voyager	4,922.85	0
28360	01/18/2011	WALAB	Wa State Dept of Labor & Indus	14,092.57	0
28361	01/18/2011	WATERSH	The Watershed Company	3,187.24	0
28362	01/18/2011	WAWORK	Washington Workwear Stores Inc	2,605.04	0
				<hr/> <hr/>	
Check Total:				633,788.98	
				<hr/> <hr/>	

Accounts Payable

Check Register Totals Only

User: mdunham
 Printed: 1/13/2011 - 9:38 AM



Check	Date	Vendor No	Vendor Name	Amount	Voucher
28363	01/18/2011	BERGERPA	Berger Partnership	2,713.00	0
28364	01/18/2011	EWINGIRR	Ewing Irrigation	10,120.46	0
28365	01/18/2011	FAIRWEAT	Fair Weather Site Furnishings	14,495.61	0
28366	01/18/2011	FIREPROT	Fire Protection, Inc.	457.71	0
28367	01/18/2011	FRONTIER	Frontier Bank	161.58	0
28368	01/18/2011	GRAYOS	Gray & Osborne, Inc.	1,024.24	0
28369	01/18/2011	HENDER	Henderson Young & Co	881.50	0
28370	01/18/2011	HWA	HWA GeoSciences, Inc	4,379.00	0
28371	01/18/2011	KINGWAT	King County Finance Water & Land E	20,497.76	0
28372	01/18/2011	LPD	LPD Engineering PLLC	12,375.25	0
28373	01/18/2011	MACDONAL	MacDonald-Miller	753.91	0
28374	01/18/2011	MAILPO	Mail Post	2,862.86	0
28375	01/18/2011	NESAM	NE Sammamish Sewer & Water	1,102.64	0
28376	01/18/2011	NWCASC	Northwest Cascade, Inc.	577.52	0
28377	01/18/2011	PARAME	Parametrix, Inc.	856.72	0
28378	01/18/2011	PSE	Puget Sound Energy	2,629.78	0
28379	01/18/2011	RH2	RH2 Engineering Inc	491.50	0
28380	01/18/2011	ROTH	Roth Hill LLC	290.01	0
28381	01/18/2011	SAM	Sammamish Plateau Water Sewer	197.41	0
28382	01/18/2011	SAMSYMPH	Sammamish Symphony Orchestra Ass	500.00	0
28383	01/18/2011	SCI	SCI Infrastructures, LLC	91,653.88	0
28384	01/18/2011	SEQUOYAH	Sequoyah Electric, LLC	308.43	0
28385	01/18/2011	SINK	Sink Combs Dethlefs	850.00	0
28386	01/18/2011	STAPLES	Staples Advantage	1,988.41	0
28387	01/18/2011	TLC	Total Landscape Corp	7,679.64	0
28388	01/18/2011	TRANDAFI	Marian Trandafir	250.00	0
28389	01/18/2011	TRIANGLE	Triangle Associates, Inc	6,406.70	0
28390	01/18/2011	WACE	Wa Assoc of Code Enforcement	40.00	0
28391	01/18/2011	WAECOL	Wa State Dept of Ecology	625.00	0
28392	01/18/2011	WNPS	Wa Native Plant Society	46.45	0
				187,216.97	
Check Total:					

Accounts Payable

Check Register Totals Only

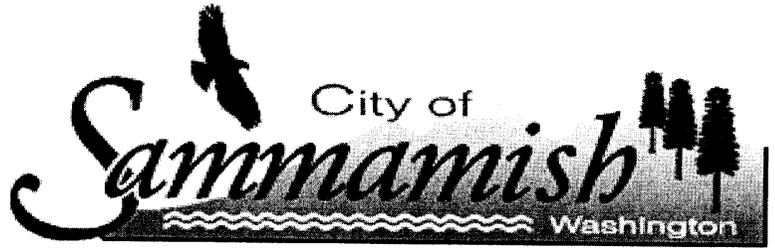
User: mdunham
 Printed: 1/13/2011 - 10:59 AM



Check	Date	Vendor No	Vendor Name	Amount	Voucher
28393	01/18/2011	AMERICAW	America West Environmental Supplie	5,662.65	0
28394	01/18/2011	ANDERMEL	Melonie Anderson	61.63	0
28395	01/18/2011	AWC	Association of Wa Cities	655.00	0
28396	01/18/2011	AWCMED	AWC Employee BenefitsTrust	891.29	0
28397	01/18/2011	BANKNY	Bank Of New York Mellon	301.75	0
28398	01/18/2011	BRICKMAN	Brickman Group Ltd LLC	4,442.14	0
28399	01/18/2011	CENTRO	Centro Information Systems	270.36	0
28400	01/18/2011	COMCAST2	COMCAST	99.95	0
28401	01/18/2011	DEERE	John Deere Landscapes	31.43	0
28402	01/18/2011	EASTFIRE	Eastside Fire & Rescue	709,547.72	0
28403	01/18/2011	ECO3	ECO3 Associates LLC	300.00	0
28404	01/18/2011	GUARDIAN	Guardian Security	96.00	0
28405	01/18/2011	GUROL	Kamuron GuroI	54.92	0
28406	01/18/2011	HDFOWL	H. D. Fowler Company	772.55	0
28407	01/18/2011	HONDAKU	Issaquah Honda Kubota	47.74	0
28408	01/18/2011	IBSEN	IBSEN Towing	351.96	0
28409	01/18/2011	ICMA	ICMA	1,400.00	0
28410	01/18/2011	KINGFI	King County Finance A/R	971.00	0
28411	01/18/2011	MICRO	Microflex, Inc.	1,200.00	0
28412	01/18/2011	NWCASC	Northwest Cascade, Inc.	326.42	0
28413	01/18/2011	OILCAN	Oil Can Henry's	43.79	0
28414	01/18/2011	PRYOR	Fred Pryor Seminars	149.00	0
28415	01/18/2011	RICHARDS	Jessi Richardson	229.35	0
28416	01/18/2011	SONITROL	Sonitrol Pacific	803.77	0
28417	01/18/2011	SUBURB	Suburban Cities Association	22,990.99	0
28418	01/18/2011	SUNBELT	Sunbelt Rentals	234.86	0
28419	01/18/2011	WAALARM	Wa Alarm Inc	152.52	0
28420	01/18/2011	WAINS	Wa Cities Insurance Authority	293,648.00	0
28421	01/18/2011	WCMA	Wa City/County Mgmt Assoc	332.00	0
28422	01/18/2011	WFOA	Wa Finance Officers Assoc	300.00	0
28423	01/18/2011	WMTA	Wa Municipal Treasurers' Assoc	40.00	0

Check Total: 1,046,408.79

Accounts Payable
Computer Check Register



User: mdunham
 Printed: 01/13/2011 - 1:07PM
 Bank Account: APPR
 Batch: 007.01.2011

Check	Vendor No	Vendor Name	Date	Invoice No	Amount
28424	VERIZON	Verizon Wireless	1/14/2011		120.25
Check 28424 Total:					120.25
Report Total:					120.25



City Council Agenda Bill

Meeting Date: January 18, 2011

Date Submitted: January 11, 2011

Originating Department: Admin Services

Clearances:

- | | | |
|--|--|---|
| <input type="checkbox"/> City Manager | <input type="checkbox"/> Community Development | <input type="checkbox"/> Parks & Recreation |
| <input type="checkbox"/> Attorney | <input type="checkbox"/> Finance & IT | <input type="checkbox"/> Police |
| <input checked="" type="checkbox"/> Admin Services | <input type="checkbox"/> Fire | <input type="checkbox"/> Public Works |

Subject: Interagency Agreement to provide Surplus Property Services

Action Required: Authorize the City Manager to sign the Agreement

Exhibits: 1. Interagency Agreement between the State of Washington Department of General Administration and the City of Sammamish for Surplus Property Services.

Budget: NA

Summary Statement:

This is an Agreement between the State of Washington and the City for surplus property services. Under this Agreement the State could sell City surplus property.

Background:

The City of Sammamish has established a policy for disposal of surplus property:

Sammamish Municipal Code 2.50.010(1) (i)

Sale of unneeded surplus personal property with an estimated cumulative value of \$10,000 or less, which has been declared surplus personal property by the City Manager may be disposed of by the City Manager in accordance with state law and informal procedures that reflect the best interests of the City, (Ordinance 2004-145).

This Agreement is consistent with City Policy and provides an efficient and cost effective means to dispose of surplus property.

Financial Impact:

The financial impact will depend on the value of property that has been declared surplus.



City Council Agenda Bill

Recommended Motion:

Move to Authorize the City Manager to sign the Interagency Agreement between the State of Washington Department of General Administration and the City of Sammamish for Surplus Property Services.

**INTERAGENCY AGREEMENT
BETWEEN
STATE OF WASHINGTON
DEPARTMENT OF GENERAL ADMINISTRATION
AND
CITY OF SAMMAMISH**

THIS AGREEMENT is made and entered into by and between the Department of General Administration, Services Division, Materials Management Center, Surplus Property, hereinafter referred to as "GA" and the City of Sammamish, hereinafter referred to as the "CITY" pursuant to the authority granted by Chapter 39.34 RCW.

IT IS THE PURPOSE OF THIS AGREEMENT to provide Surplus Property services for the CITY.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, or attached and incorporated by reference and made a part hereof, the above named parties mutually agree as follows:

1. STATEMENT OF WORK

GA, under its authority in RCW 43.19.1919, acting on behalf of the CITY shall furnish the necessary personnel and services and otherwise do all things necessary for or incidental to the performance of the work set forth in this Agreement.

GA agrees to sell vehicles, equipment and other personal property, except for hazardous materials, that are declared surplus and turned over to GA for disposal ("Property"). GA further agrees to include the following clause in its Terms and Conditions of sale with any purchase of the CITY Property in substantially the same form: "All available information about the item has been reported in this listing. The item may have defects of which the Washington State Surplus Program is unaware. You are bidding on these item(s) 'as is, where is.' All sales are final. Personal inspection is strongly advised. Failure to inspect the item shall not be grounds for any claim or property abandonment." All surplus property turned over to GA is publicly advertised via the GA website (www.ga.wa.gov/surplus). Methods for selling surplus property will include, but are not limited to:

1. Priority Sales (See WAC 236-48-190)
2. Public Sales
3. Internet Sales

A. GA agrees to provide the following services:

1. Properly store and assume responsibility for the safekeeping of all vehicles, equipment and other personal property.
2. Endeavor to obtain resale prices equal to the industry standard trade-in or quick sale equipment values.
3. Sell surplus property turned over to GA in a timely manner, collect payment from buyer, and reimburse the CITY the proceeds of sales, less GA's authorized fees per current published fee schedule (www.ga.wa.gov/surplus).
4. Take all necessary administrative actions to ensure surplus property turned over to GA ownership is legally and fully transferred from the CITY to the buyer.
5. Take responsibility for resolving any ownership issues that may arise after surplus property is purchased.
6. Set up Login ID and Password to the Property Disposal System for CITY staff authorized to submit surplus property.
7. Review SF267-A submitted within 24 hours and assign a GA Authority Number for approved property.

B. CITY agrees that it will:

1. Submit disposal forms SF267-A for all surplus property using GA's online Property Disposal Request System, along with signed vehicle and equipment titles.
2. Contact GA at (360) 753-3508, two days (48 hours) prior to delivery of surplus property.
 - a. Transportation/Hauling Services are available through GA's Transportation Services. Please contact transportservices@ga.wa.gov, for a quote to haul your surplus property.
3. Dispose of the following hazardous materials themselves:
 - a. Asbestos – Any product containing more than 1 percent asbestos, including wrapped pining, fireproofing materials, fireproof safes, fire retardant clothing, floor tiles, ceiling tiles, etc.
 - b. Polychlorinated biphenyls (PCB's) – Including transformers, capacitors, electrical equipment containing capacitors or transformers, fluorescent fixtures, liquid filled electrical devices, etc.
 - c. Liquids, Flammable or toxic liquids and powders, including paints, solvents, cleaners, copier fluids, etc.
 - d. Radioactive Materials – Including smoke detectors, x-ray equipment, etc.
 - e. Pesticides/Herbicides – Including insecticides, fungicides, herbicides, wood preservative, disinfectants, and any other substances intended to control pests.

2. PERIOD OF PERFORMANCE

Subject to its other provisions, the period of performance of this Agreement shall commence when this Agreement is properly signed, and continue until terminated by either party, as provided herein.

This Agreement cancels and supersedes all previous agreements between GA and the CITY for surplus property services.

3. CONSIDERATION

After deducting its fee, GA shall reimburse the CITY for the sale of surplus property. Compensation shall be based on the current Surplus Property Fee Schedule located on GA's website (www.ga.wa.gov/surplus). GA reserves the right to amend their Fee Schedule when GA receives authorization to do so. GA will notify the CITY, in writing within thirty (30) days prior to Office of Financial Management approved rate changes.

4. PAYMENT PROCEDURE

GA shall submit surplus property proceeds to the CITY within thirty (30) days of sale of surplus property.

The surplus property proceeds shall be forwarded to the following:

City of Sammamish
Attn: Accounts Receivable
801 228th Avenue SE
Sammamish, WA 98075

5. AGREEMENT CHANGES, MODIFICATIONS AND AMENDMENTS

This Agreement may be changed, modified or amended by written agreement executed by both parties.

6. CONTRACT MANAGEMENT

The representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement.

Exhibit 1

- A. The GA representative on this Agreement shall be: Program Manager, Materials Management, 7511 New Market Street, Tumwater, WA 98512, (360) 753-3508, SurplusMail@ga.wa.gov
- B. The CITY representative on this Agreement shall be: Marlene Dunham, Finance Specialist, 801 228th Avenue SE, Sammamish, WA 98075, 425-295-0595, mdunham@ci.sammamish.wa.us.

7. INDEMNIFICATION

To the fullest extent permitted by law, the CITY shall indemnify, defend, and hold harmless State, agencies of State and all officials, agents and employees of State, from and against all claims arising from the sale or transaction before, during, or after the sale. "Claim," as used in this Agreement, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom.

CITY expressly agrees to indemnify, defend, and hold harmless State for any claim arising out of or incidental to CITY performance or failure to perform its rights, duties and obligations under this Agreement. CITY shall be required to indemnify, defend, and hold harmless State only to the extent claim is caused in whole or in part by negligent acts or omissions of the CITY.

8. TERMINATION

Either party may terminate this Agreement upon 30-days' prior written notification to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

9. TERMINATION FOR NON-USE

If services in Statement of Work have not been used in 5 years, this agreement is automatically terminated without further notice. To commence services, the CITY must sign a new service agreement.

Execution

We, the undersigned, agree to the terms of the foregoing Agreement.

**Department of General Administration
Services Division**

City of Sammamish

SIGNATURE

DOUG COLEMAN
NAME

MATERIALS MANAGEMENT CENTER MANAGER
TITLE

DATE

SIGNATURE

NAME

TITLE

DATE

TEMPLATED APPROVED AS TO FORM BY:
The Office of the Attorney General
November 1, 2010



City Council Agenda Bill

Meeting Date: January 18, 2011

Date Submitted: December 9, 2010

Originating Department: City Manager

Clearances:

<input checked="" type="checkbox"/> City Manager	<input type="checkbox"/> Community Development	<input type="checkbox"/> Parks & Recreation
<input checked="" type="checkbox"/> Attorney	<input type="checkbox"/> Finance & IT	<input type="checkbox"/> Police
<input checked="" type="checkbox"/> Admin Services	<input type="checkbox"/> Fire	<input type="checkbox"/> Public Works

Subject: 2011 Contract for Domestic Violence Advocate Services

Action Required: Approve 2011 Contract for Domestic Violence Advocate Services

Exhibits: 1. 2011 Contract for Domestic Violence Advocate Services

Budget: 2011-2012 Budget \$16,000

Summary Statement:

This is a renewal of our current contract for Domestic Violence Advocate Services with Kimberly Leyton.

Background:

With the objective of working with the prosecutor to encourage the prosecution of each case while ensuring the safety, support, and education of the victim, the Domestic Violence Advocate shall complete the following specific duties for domestic violence cases filed by the City of Sammamish Prosecutor:

- Contact the victim upon receipt of the police report
- Make referrals to necessary community advocacy services (i.e., EDVP, Protection Order Office, etc.)
- Work with the prosecutor and the police to secure any additional evidence or information necessary to the prosecution of the case, (i.e., photographs, affidavits, additional statements, etc.)
- Educate the victim about the court process and about his or her role as a witness.
- Maintain contact with the prosecutor through telephone calls and case notes.
- Provide staff training about domestic violence issues when requested.
- Assess the victim's willingness to participate as a witness.

Financial Impact:

2011-2012 - \$16,000

Recommended Motion:

Move to approve 2011 Contract for Domestic Violence Advocate Services.

RECEIVED

JAN 07 2011

City of Sammamish

CONTRACT FOR DOMESTIC VIOLENCE ADVOCATE SERVICES

City of Sammamish and Kimberly Leyton

This Agreement is entered into by and between the City of Sammamish, Washington, a non-charter optional municipal code city, hereinafter referred to as "the City," and Kimberly Leyton, hereinafter referred to as "the Contractor," whose principal office is located at Seattle, Washington.

WHEREAS, the City has determined the need to have domestic violence advocate services performed for its citizens but does not have the resources to perform such services; and

WHEREAS, the City desires to have the Contractor perform such services pursuant to certain terms and conditions, now, therefore,

IN CONSIDERATION OF the mutual benefits and conditions set forth below, the parties hereto agree as follows:

1. Scope and Schedule of Services to be Performed by the Contractor. The Contractor shall perform those services described on Exhibit A attached hereto and incorporated by this reference as if fully set forth herein. In performing such services, the Contractor shall at all times comply with all federal, state, and local statutes, rules, and ordinances applicable to the performance of such services and the handling of any funds used in connection therewith. The Contractor shall request and obtain written approval from the City prior to the initiation of any specific task not included in the scope of services. If the scope or schedule is to be modified in any way, prior written approval is also required.

2. Compensation and Method of Payment. The City shall make payments to the Contractor based on month-end billings. The City shall pay the Contractor for services rendered within thirty (30) days after receipt of a billing voucher in the form similar to that set forth on Exhibit B attached hereto and incorporated herein by this reference. The Contractor shall be paid an amount \$29.85 (2010 Rate \$30.00 x .995) per hour. The Contractor shall not proceed with the provision of services in excess of thirty (30) hours per month without the express permission of the City Manager or his designee. The Contractor shall submit time sheets setting forth the services provided, by case name. The Contractor shall complete and return Exhibit C, Taxpayer Identification Number, to the City prior to or along with the first billing voucher submittal.

The Contractor shall be reimbursed for mileage at the current IRS rate. The Contractor's request for mileage reimbursement shall accompany the voucher shown on Exhibit B and shall include documentation of the mileage incurred.

3. Duration of Agreement. This Agreement shall be in full force and effect for a period commencing on January 1, 2011 until December 31, 2011, unless sooner terminated under the provisions hereinafter specified. With the consent of the parties, renewals or extensions of this Agreement may be made annually.

4. Ownership and Use of Documents. All documents, drawings, specifications, and other materials produced by the Contractor in connection with the services rendered under this Agreement shall be the property of the City whether the project for which they are made is executed or not.

5. Independent Contractor. The Contractor and the City agree that the Contractor is an independent contractor with respect to the services provided pursuant to this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties hereto. Neither the Contractor nor any employee of the Contractor shall be entitled to any benefits accorded City employees by virtue of the services provided under this Agreement. The City shall not be responsible for withholding or otherwise deducting federal income tax or social security or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to the Contractor, or any employee of the Contractor.

6. Indemnification. The Contractor shall indemnify, defend, and hold harmless the City, its agents, and employees, from and against any and all liability arising from injury or death to persons or damage to property resulting in whole or in part from negligent acts or omissions of the Contractor, its agents, servants, officers or employees, irrespective of whether in connection with such act or omission it is alleged or claimed that an act of the City, or its agents or employees caused or contributed thereto. In the event that the City shall elect to defend itself against any claim or suit arising from such injury, death or damage, the Contractor shall, in addition to indemnifying and holding the City harmless from any liability, indemnify the City for any and all expense incurred by the City in defending such claim or suit, including reasonable attorney's fees.

7. Insurance.

A. The Contractor shall procure and maintain in full force throughout the duration of the Agreement automobile insurance with combined single limits of liability not less than \$500,000 for bodily injury, including personal injury or death and property damage. The Contractor shall also procure and maintain in full force throughout the duration of the Agreement an umbrella policy with limits of liability not less than \$1,000,000. Said policies shall name the City as an additional named insured and shall include a provision prohibiting cancellation or reduction in the amount of said policy except upon thirty (30) days prior written notice to the City. Cancellation of the required insurance shall automatically result in termination of this Agreement.

B. Certificates of coverage as required by Paragraph A above shall be delivered to the City within fifteen (15) days of execution of this Agreement.

8. Record Keeping and Reporting.

A. The Contractor shall maintain accounts and records, including personnel, property, financial, and programmatic records which sufficiently and properly reflect all direct and indirect costs of any nature expended and services performed in the performance of this

Agreement, and other such records as may be deemed necessary by the City to ensure the performance of this Agreement.

B. These records shall be maintained for a period of seven (7) years after termination hereof unless permission to destroy them is granted by the office of the archivist in accordance with RCW Chapter 40.14 and by the City.

9. Audits and Inspections. The records and documents with respect to all matters covered by this Agreement shall be subject at all times to inspection, review or audit by law during the performance of this Agreement.

10. Termination. This Agreement may at any time be terminated by the City giving to the Contractor thirty (30) days written notice of the City's intention to terminate the same.

11. Discrimination Prohibited. The Contractor shall not discriminate against any employee, applicant for employment, or any person seeking the services of the Contractor to be provided under this Agreement on the basis of race, color, religion, creed, sex, age, national origin, marital status or presence of any sensory, mental or physical handicap.

12. Assignment and Subcontract. The Contractor may not assign or subcontract any portion of the services contemplated by this Agreement without the prior written consent of the City; provided, the Contractor may subcontract without prior City approval on a temporary, short-term basis with other qualified domestic violence advocates to provide services under this Agreement in the event of a conflict of interest or the Contractor's temporary absence.

13. Contract Oversight. The Contractor shall refer questions or concerns related to this Agreement, other than the Scope of Work, to the City Manager. The Contractor shall refer questions regarding the Scope of Work to the City Attorney or his designee.

14. Entire Agreement. This Agreement contains the entire Agreement between the parties hereto and no other Agreements, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or bind any of the parties hereto. Either party may request changes in the Agreement. Proposed changes, which are mutually agreed upon, shall be incorporated by written amendments to this Agreement.

15. Notices. Notices to the City of Sammamish shall be sent to the following address:

City Manager
City of Sammamish
801 228th Ave SE
Sammamish, WA 98075
(425) 295-0500 - Office
(425) 295-0600 - Fax

Notices to the Contractor shall be sent to the following address:

Kimberly Leyton
24234 SE 9th Street
Sammamish, WA 98075
(425) 785-4803

The point of contact for the Contractor or the person providing the contract services is:

Bruce Disend
Kenyon Disend, PLLC
(425) 392-7090 – Office
(425) 392-7071 - Fax

16. Applicable Law: Venue: Attorney's Fees. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be exclusively in King County, Washington. The prevailing party in any such action shall be entitled to its attorney's fees and costs of suit.

Kimberly Leyton: R. Leyton Date: 11/7/11

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this day personally appeared before me ^{Kimberly Leyton} ~~Diane Tatum~~, to me known to be the individual described in and who executed the within and foregoing instrument and acknowledged to me that she signed the same as her free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this _____ day of _____, 20__

Notary Public- in and for the State of
Washington, residing at _____
Printed Name: _____
My appointment expires: _____

EXHIBIT A

Scope of Services to be Provided by Contractor. With the objective of working with the prosecutor to encourage the prosecution of each case while ensuring the safety, support, and education of the victim, the Contractor shall complete the following specific duties for domestic violence cases filed by the City of Sammamish Prosecutor:

- A. Contact the victim upon receipt of the police report.
- B. Make referrals to necessary community advocacy services (i.e., EDVP, Protection Order Office, etc.)
- C. Work with the prosecutor and the police to secure any additional evidence or information necessary to the prosecution of the case, (i.e., photographs, Smith affidavits, additional statements, etc).
- D. Educate the victim about the court process and about his or her role as a witness.
- E. Maintain contact with the prosecutor through telephone calls and case notes.
- F. Provide staff training about domestic violence issues when requested.
- G. Assess the victim's willingness to participate as a witness.

EXHIBIT B

City of Sammamish
Billing Voucher

To: City of Sammamish

Contractor: Kimberly Leyton Telephone: (425) 785-4803

Mailing Address: 24234 SE 9th Street, Sammamish, WA 98075

Specific Program: Domestic Violence Legal Advocate

Contract period: _____ Reporting Period: _____

Amount requested this invoice: _____

Invoice Number: ___ Date of Invoice: _____

Authorized signature

BUDGET SUMMARY:

Total contract amount
Previous payments
Current request
Total requested this contract to date
Balance remaining

Note: If applicable, submit a separate voucher for each program which is Funded by your City of Sammamish contract.

For Department Use Only

Approved for Payment:

Date: _____

EXHIBIT C

CITY OF SAMMAMISH

TAX IDENTIFICATION NUMBER

In order for you to receive reimbursement from the City of Sammamish, we must have either a Tax Identification Number or a Social Security Number. The Internal Revenue Code requires a Form 1099 for payments to every person or organization other than a corporation for services performed in the course of trade or business. Further, the law requires us to withhold 20% on reportable amounts paid to unincorporated persons who have not supplied us with their correct Tax Identification Number or Social Security Number.

Please complete the Following information request form and return it to the City of Sammamish before or along with the submittal of the first billing voucher.

Please check the appropriate category:

Corporation Partnership Government Agency

Individual/Proprietor Other (please explain)

TIN#: _____ - _____

SS#: 537-88-6782

Print Name: Kimberly Leyton

Print Title: Victim Advocate

Business Name: _____

Business Address: 24234 SE 9th St., Sammamish, WA 98075

Business Phone: 425 785 4803

1/7/11
Date


Authorized Signature (required)



City Council Agenda Bill

Meeting Date: January 18, 2011

Date Submitted: January 11, 2011

Originating Department: Community Development

Clearances:

<input checked="" type="checkbox"/> City Manager	<input checked="" type="checkbox"/> Community Development	<input type="checkbox"/> Parks & Recreation
<input type="checkbox"/> Attorney	<input type="checkbox"/> Finance & IT	<input type="checkbox"/> Police
<input type="checkbox"/> Admin Services	<input type="checkbox"/> Fire	<input type="checkbox"/> Public Works

Subject: Transfer of Development Rights - amendments to the Sammamish Municipal Code

Action Required: First Reading, Public Hearing – No Action Required

Exhibits:

1. Proposed Ordinance with Attachment A
2. In-City Sending Site area map
3. Washington State RCO - Conservation Tools final report by GordonDerr, LLP
4. Market Analysis by Gibbons and Riely, PLLC
5. Peer jurisdictions – TDR transfer history by Cascade Land Conservancy

Budget: N/A

Summary Statement:

To implement the adopted Town Center Subarea Plan, this ordinance would adopt Transfer of Development Rights regulations. The Development Regulations would be codified in the Sammamish Municipal Code as chapter 21A.80, and authorize sending sites within the City or unincorporated King County to transfer density into the Town Center. The proposed regulations are intended to complement the proposed Interlocal Agreement with King County.

Background:

The Planning Commission and staff held a public hearing on November 4 that was continued to November 10, 2010. The Planning Commission received public input from a private property owner in the Town Center. On December 14, 2010, the Planning Commission recommended that the City Council adopt the Draft Ordinance and Attachment A.

The City Council identified several questions on December 14, 2010, which will be addressed through the staff presentation and the attached exhibits. In particular, the City Council requested additional information regarding several questions, including the following:

1. The market analysis for TDRs in the Town Center;
2. Alternative methods for conserving land ;
3. Transfer history for peer jurisdictions; and
4. The TC-D zone as a potential sending site.



City Council Agenda Bill

Financial Impact: N/A

Recommended Motions: Open public hearing and take testimony.

Close public hearing and move to adopt the Transfer of Development Rights Regulations as 21A.80 of the Sammamish Municipal Code.

- OR -

Continue public hearing to February 15, 2011.

DRAFT
CITY OF SAMMAMISH
WASHINGTON
ORDINANCE NO. O2011 -

AN ORDINANCE OF THE CITY OF SAMMAMISH, WASHINGTON, REPEALING THE TRANSFER OF DEVELOPMENT DENSITY CREDITS REGULATIONS AND ADOPTING TRANSFER OF DEVELOPMENT RIGHTS REGULATIONS CODIFIED INTO CHAPTER 80 OF TITLE 21A OF THE SAMMAMISH MUNICIPAL CODE

WHEREAS, the City incorporated in August of 2009;

WHEREAS, the City Council adopted the City's Comprehensive Plan on September 16, 2003, and the City has enacted zoning consistent with the comprehensive plan; and

WHEREAS, the City Council adopted the Sammamish Municipal Code on October 7, 2003 and subsequent revisions have been made since that time; and

WHEREAS, the City Council adopted the Town Center Plan on June 9, 2008, which established the policy basis for the development of the Transfer of Development Rights regulations and program; and

WHEREAS, the Transfer of Development Rights regulations and program will authorize development consistent with the policy direction of the adopted Town Center Plan, subject to specific regulatory provisions; and

WHEREAS, a State Environmental Policy Act (SEPA) Determination of Non Significance for the proposed Transfer of Development Rights regulations was issued on January XX, 2011; and

WHEREAS, in accordance with RCW 36.70A, a request for expedited review was received by the State of Washington Department of Commerce on December 8, 2010 and was granted expedited review on December XX, 2010; and

WHEREAS, the public process for the proposed amendments has provided for public participation opportunities at public meetings and hearings before the Planning Commission and City Council between November of 2010 and January of 2011; and

WHEREAS, the Planning Commission held public meetings and public hearings in November of 2010 and forwarded recommended Transfer of Development Rights regulations to the City Council on December 14, 2010; and

WHEREAS, the City Council considered the proposed Transfer of Development Rights at a City Council public hearing on January 4, 2011, **which was continued on January 18, 2011;** and

WHEREAS, the City Council considered the Planning Commission's recommendation, public comment, and other available information.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAMMAMISH, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Adoption of the Transfer of Development Rights regulations. The Transfer of Development Rights Regulations as set forth in Attachment "A" to this ordinance is hereby adopted.

Section 2. Codification of the Transfer of Development Rights regulations. The City Council authorizes the Community Development Director and City Clerk to codify the regulatory provisions of the Transfer of Development Rights ordinance into Title 21A of the Sammamish Municipal Code for ease of use and reference.

Section 3. Interpretation. The City Council authorizes the Community Development Director to administratively interpret these provisions as necessary to implement the intent of the Council.

Section 4. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 5. Effective Date. This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE XX DAY OF JANUARY 2011.

CITY OF SAMMAMISH

Mayor

ATTEST/AUTHENTICATED:

Exhibit 1

Melonie Anderson, City Clerk

Approved as to form:

Bruce L. Disend, City Attorney

Filed with the City Clerk:
Public Hearing:
First Reading:
Public Hearing:
Second Reading:
Passed by the City Council:
Date of Publication:
Effective Date:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

TDR Ordinance Elements:

- 21A.80 – Transfer of Development Rights (*New chapter replacing original*)
 - 21A.80.010 Purpose
 - 21A.80.020 Applicability
 - 21A.80.030 Sending Sites
 - 21A.80.040 Receiving Sites
 - 21A.80.050 Calculation of Available Development Rights from Sending Sites
 - 21A.80.060 Sending Site Certification
 - 21A.80.070 Documentation of Restrictions
 - 21A.80.080 Sending Site Development Limitations
 - 21A.80.090 Receiving Site Incentives
 - 21A.80.100 TDR Transfer Process

- 21A.15 - Technical Terms and Land Use Definitions (*Supplemental sections*)
 - 21A.15.XXX "Conservation easement"
 - 21A.15.XXX "Development right"
 - 21A.15.XXX "Interlocal agreement"
 - 21A.15.XXX "Partially Developed"
 - 21A.15.955 "Receiving site" (*Replaced definition*)
 - 21A.15.XXX "Sending site"
 - 21A.15.XXX "TDR certificate"
 - 21A.15.XXX "TDR certificate of intent"
 - 21A.15.XXX "TDR program"
 - 21A.15.XXX "TDR sending site application"
 - 21A.15.XXX "Transfer of Development Rights (TDR)"

- 20.05 – Procedures for Land Use Permit Applications, Public Notice, Hearings, and Appeals
 - 20.05.020 Classification of land use decision processes (*Edit*)

Transfer of Development Rights

1
2
3 21A.80.010 Purpose and Intent
4
5 21A.80.020 Applicability
6
7 21A.80.030 Sending Site Categories and Criteria
8
9 21A.80.040 Receiving Sites
10
11 21A.80.050 Calculation of Available Development Rights from Sending Sites
12
13 21A.80.060 Sending Site Certification
14
15 21A.80.070 Documentation of Restrictions
16
17 21A.80.080 Sending Site Development Limitations
18
19 21A.80.090 Receiving Site Incentives
20
21 21A.80.100 TDR Transfer Process
22
23

24 21A.80.010 Purpose and Intent.

- 25 A. The purpose of the transfer of development rights (TDR) program is to implement a market-
26 based tool to permanently preserve partially developed or undeveloped land with important
27 public benefits, such as farmland, forestland, open space, and wildlife habitat, through the
28 private acquisition of the development rights on those lands (“sending sites”) and the
29 subsequent transfer of those rights to lands more suitable for development (“receiving sites”).
30 B. The TDR provisions supplement land use regulations, resource protection efforts and open
31 space acquisition programs and are intended to encourage increased residential development
32 density or increased commercial square footage where it can best be accommodated by:
33 1. Providing an incentive process for property owners of partially developed property,
34 undeveloped land, farmland, forestland, open space and wildlife habitat to preserve
35 lands with a public benefit; and
36 2. Providing an administrative review process to ensure that transfers of development
37 rights are evaluated and administered in a fair and timely manner in accordance with
38 other City goals and policies.
39

40 21A.80.020 Applicability.

41 All new development on a site identified as a “receiving site” pursuant to 21A.80.040 shall have the
42 option to acquire a certified Transfer of Development Right to increase the development potential of the
43 receiving site. All private property owners owning a site that qualifies as a “sending site” pursuant to
44 21A.80.030 and 21A.80.050 shall have the option to request sending site certification and to sell the
45 development potential of a sending site to an interested buyer. The development potential of a sending
46 site, as determined by site certification pursuant to SMC 21A.80.060, may be transferred and credited to
47 a receiving site only when the transfer is approved in accordance with this chapter.
48

49 21A.80.030 Sending Site Categories and Criteria.

- 1 A. A sending site may be certified by the City pursuant to SMC 21A.80.060 provided the sending
2 site meets the criteria for one of the following sending site categories below, and the provisions
3 of section “B.”.
- 4 1) In-City Sending Sites. Undeveloped or partially developed properties located within the
5 following areas may qualify as “in-City sending sites”. The department shall maintain maps
6 of the approximate location of these areas, which shall be subject to field verification as part
7 of the certification process:
- 8 a. Properties located within the Thompson Sub-basin; or,
9 b. Properties located within the Inglewood Sub-basin; or,
10 c. Properties located within Erosion Hazards – special district overlay; or,
11 d. Properties located within the Wetland Management Areas – special district overlay.
- 12 2) Inter-jurisdictional Sending Sites:
- 13 a. Unincorporated King County land identified by the City Council in an Interlocal
14 Agreement with King County; or
15 b. Land identified by the City Council in an Interlocal Agreement with another
16 jurisdiction.
- 17 3) For the purposes of this chapter, “undeveloped” properties are properties that have the
18 potential to accommodate dwelling units and do not currently contain dwelling units.
- 19 B. To be eligible for the TDR program, all sending sites shall be certified by the City pursuant to
20 SMC 21A.80.060, have intact development potential, and provide a defined public benefit.
- 21 1) A sending site is deemed to have a defined public benefit if the site is:
- 22 a. Open space adjacent to, or connected with, City Park or open space lands; or
23 b. Wildlife habitat for threatened and/or endangered species listed by the federal
24 government or the State of Washington; or
25 c. Located such that preservation will provide additional protection for sensitive sub-
26 basins or environmentally critical areas; or
27 d. Farmland; or
28 e. Forestland.
- 29 2) A sending site is deemed to have intact development potential if the area proposed for
30 conservation is:
- 31 a. Of sufficient area to create at least one development right pursuant to 21A.80.050;
32 and
33 b. Contiguous, except for division by public rights-of-way; and
34 c. The sending site's development rights or development capacity is not exhausted
35 through any of the following:
- 36 i. Existing development on the site; or
37 ii. Agriculture, recreation, or open space easements; or
38 iii. Conservation of environmentally sensitive areas and their buffers through
39 means including, but not limited to, an open space easement or native
40 growth easement; or
41 iv. Alteration by a conservation easement, or through any agreement.
- 42 C. Development rights acquired from eligible sending sites may be transferred to eligible receiving
43 sites through the TDR transfer process. After completion of the conveyance of a sending site’s
44 development rights, the property shall be maintained in a condition that is consistent with the
45 criteria in this chapter under which the sending site was qualified by means of a TDR
46 conservation easement.
- 47 D. Publicly owned property shall not be eligible to become a sending site unless the site is
48 identified as a sending site in an interlocal agreement.
49

1 21A.80.040 Receiving Sites.

- 2 A. Eligible receiving sites shall be:
 - 3 1. Town Center Subarea properties as follows:
 - 4 a. Commercial properties in Zone A of the Town Center Subarea
 - 5 b. Residential properties in Zones A, B, C, and D of the Town Center Subarea
 - 6 2. [Placeholder for future receiving sites]
- 7 B. Except as provided in this chapter, development of a receiving site shall remain subject to all
- 8 use, lot coverage, height, setback and other applicable requirements of the Sammamish
- 9 Municipal Code.
- 10 C. A Town Center Subarea receiving site may accept density credits, up to the maximum density
- 11 authorized pursuant to SMC 21B.25, from any sending site or combination of sending sites.
- 12 D. A [Placeholder for future receiving sites] receiving site may accept density credits, up to the
- 13 maximum density authorized pursuant to SMC 21A.25, from any sending site or combination of
- 14 sending sites.

15
16 21A.80.050 Calculation of Available Development Rights from Sending Sites.

17 The number of development rights that a sending site is eligible to sell under this program shall be
18 calculated based upon the sending site category established pursuant to SMC 21A.80.030, provided:

- 19 A. Inter-jurisdictional Sending Sites.
 - 20 1. The number of development rights eligible for sale on a sending site located on land
 - 21 identified by the City Council in an Interlocal Agreement with another jurisdiction, shall
 - 22 be determined pursuant to the Interlocal Agreement.
 - 23 2. If the sending site is located on un-incorporated King County land identified by the City
 - 24 Council in an Interlocal Agreement with King County, the number of development rights
 - 25 eligible for sale may be determined pursuant to the Interlocal Agreement.
- 26 B. In-City Sending Sites. The number of development rights eligible for sale on a sending site
- 27 located in the In-City Preservation Sending Site category shall be determined pursuant to SMC
- 28 21A.25.070 and 21A.25.080, subject to the limitation of subsection "C." below, and provided
- 29 that the minimum number of development rights for a undeveloped property shall be one per
- 30 legal lot.
- 31 C. No development rights may be assigned to land already encumbered by a conservation
- 32 easement unless expressly reserved by the easement.

33
34 21A.80.060 Sending Site Certification

- 35 A. Sending sites located within Sammamish
 - 36 1. The City shall be responsible for determining whether properties are eligible to be
 - 37 considered a sending site. The City shall base its decision on the materials provided by
 - 38 the landowner in a TDR sending site application and a satisfaction of the sending site
 - 39 requirements outlined in 21A.80.030 and calculations in 21A.80.050.
 - 40 2. Responsibility for preparing a completed sending site application rests exclusively with
 - 41 the applicant. Application forms shall be available from the Department of Community
 - 42 Development.
 - 43 3. Sending site landowners may obtain TDR certificates which can be transferred pursuant
 - 44 to 21A.80.100 and used by receiving area landowners. The process for obtaining the
 - 45 TDR certificates is as follows:
 - 46 a. Following City review and approval of an application for TDR certificates by the
 - 47 sending site owner, the City shall issue a TDR certificate letter of intent. The letter
 - 48 shall contain the following:

- i. A determination of the number of development rights calculated for the sending site pursuant to 21A.80.050 and 21A.80.100; and
 - ii. An agreement by the City to issue a corresponding number of TDR certificates in conversion for an conservation easement granted by the City or the City's designated agent; and
 - iii. A summary of the expected terms of use for the sending site established through 21A.80.070.
- b. The sending site owner may use the TDR certificate letter of intent to market sending site development rights to potential purchasers, but the certificate letter of intent shall have no value and cannot be transferred or used to obtain increased development rights within receiving areas.
 - c. The letter of intent shall expire 10 years from the date of issuance by the City of Sammamish.
 - d. As provided by the TDR certificate letter of intent, the City shall issue serially numbered TDR certificates to the sending site owner upon acceptance of a TDR conservation easement. The City shall have 90 days from the date the conservation easement is offered by the sending site owner in which to conduct, at its discretion, a review of the sending site records and/or a site inspection.
 - e. A TDR conservation easement will not encumber a sending site until such time as a TDR certificate or certificates have been issued to sending site landowners pursuant to 21A.80.100 except by owner preference. The Director is authorized to create administrative rules to provide for phased development of a project incorporating TDRs.

B. Sending sites located outside of Sammamish

- 1. All development rights transferred through an interlocal agreement with another jurisdiction from sending sites located outside of the city limits of Sammamish shall be transferred into Sammamish pursuant to the terms of the interlocal TDR agreement with the relevant jurisdiction.
- 2. All development rights that are not subject to the terms of an interlocal agreement with another jurisdiction and are transferred from sending sites located outside the city limits of Sammamish, shall be transferred into Sammamish pursuant to 21A.80.060(A).

21A.80.070 Documentation of Restrictions

- A. TDR certificates issued to sending sites by the City of Sammamish shall have a conservation easement restricting the deed and granted to the City of Sammamish, or an appropriate agent, recorded with King County and notice placed on the title of the sending parcel.
- B. TDR certificates issued to sending sites pursuant to an interlocal agreement with another jurisdiction shall have a conservation easement restricting the deed recorded with King County and notice placed on the title of the sending parcel.
- C. The Director shall establish the form of conservation easements issued by the City of Sammamish; however the conservation easement shall contain at a minimum, the following items:
 - 1. The number of development rights extinguished on the sending site through the TDR certificate issuance;
 - 2. The specific public benefit identified on the subject site pursuant to SMC 21A.80.030; and,
 - 3. The terms of use for the subject site, consistent with required protections of the identified public benefit;

- 1 4. The intent of the conservation easement shall be to encumber the property perpetually;
2 however, authorization for the release of the conservation easement may be granted,
3 subject to the following provisions:
4 a. At least 50 years have elapsed from the date of recording of the conservation
5 easement, and provided the Director determines that the public benefit is
6 eliminated pursuant to sections "b." through "d." below. If the Director
7 determines that public benefit is eliminated, the time period may be reduced to
8 a minimum of 10 years, subject to the provisions "b." through "d." below; and
9 b. The City has the first right of refusal on acquisition of the property; and
10 c. The Director shall determine that:
11 i. The original purpose of the easement is no longer practical or
12 economical; and
13 ii. The original public benefit has been effectively eliminated on the
14 constrained sending site;
15 d. The public benefit is preserved by the owner of the sending site:
16 i. Acquiring sufficient development rights from an alternative sending site
17 and preserving an equivalent public benefit as determined by the
18 Director; or
19 ii. Providing an equivalent public benefit to the City as determined by the
20 Director, in the case where a TDR program is no longer applicable.
21

22 21A.80.080 Sending Site Development Limitations

- 23 A. Sending sites that the City has issued TDR Certificate letter of intent for, shall be limited to uses
24 consistent with the purpose and intent of this chapter and with the criteria originally used as the
25 basis for issuing the letter of intent to the sending site pursuant to SMC 21A.80.030 and .060.
26 Failure to use the sending site in a manner consistent with the original certification may result in
27 the City not issuing TDR certificates.
28 B. When only a portion of a site's development rights have been conveyed and extinguished, the
29 owner retains all rights on the remaining buildable portion of the property and may exercise
30 them pursuant to Sammamish Municipal Code.
31 C. The conservation easement by its terms may reserve dwelling units that may be developed in
32 the future. Transferred development rights explicitly identified in the conservation easement
33 pursuant to SMC 21A.80.070, shall be separated from the property through the conservation
34 easement.
35 D. The landowner shall not undertake any division, subdivision or partitioning of the property,
36 whether by physical or legal process, which includes, but is not limited to, any subdivision, short
37 subdivision, platting, binding site plan, testamentary division, or other process by which the
38 property is divided into lots or in which title to different portions of the property are not held in
39 unified ownership, unless such land division allocates the reserved development rights between
40 the divided parcels of property in a manner consistent with the terms of the conservation
41 easement.
42 E. Use of a sending site subject to a conservation easement shall be limited to uses consistent with
43 the purpose and intent of this chapter and with the criteria originally used to establish the
44 sending site.
45 F. Once an undeveloped or partially developed sending site has been encumbered by a
46 conservation easement, additional development potential within the sending site area
47 constrained by the conservation easement cannot be created by means of a rezone of the
48 property.
49

1 21A.80.090 Receiving Site Incentives

2 A. Development rights may be purchased to achieve TDR-based incentive densities allowed by
3 Sammamish development regulations on receiving sites identified in 21A.80.040.

4 B. Receiving site incentives:

5 1. Town Center

6 i. The following table outlines TDR-based incentives for eligible receiving sites
7 with the purchase of a development right. (For example, a sending site in the R-
8 1 zone that generates 1 TDR, will allow for the creation of 4 dwelling units at a
9 receiving in the TC-C zone of the Town Center. Alternatively, the same site in
10 the R-1 zone that generates 1 TDR, will allow 7,716 square feet of additional
11 commercial development in the Town Center):

12 Table A – Receiving site incentive table.

		Sending Zoning			
		R-1	R-4	R-6	KC Lands
Receiving Zoning	Commercial	7716 sq-ft	3560 sq-ft	2600 sq-ft	3560 sq-ft
	Zone C	4 du	2 du	1 du	2 du
	Zone B	7 du	3 du	2 du	3 du
	Zone A	10 du	5 du	4 du	5 du
	Zone D	7 du	3 du	2 du	3 du

14 2. [Placeholder for future receiving sites]

15 C. Modification of receiving site incentives:

16 1. The Director is authorized to administratively adopt a revised incentive table to address
17 changing economic conditions or to further refine the receiving site incentives. The
18 Director is also authorized to administratively adopt receiving site incentives for sending
19 sites not currently identified in section “B” above. The incentive table shall not be
20 revised more than once in a calendar year. The Director shall base the administrative
21 adoption of a revised incentive table on the following economic analysis:

- 22 i. The expected marginal value of the receiving site incentives; and
- 23 ii. The prevailing cost of per square foot commercial or residential development
- 24 and the impact of the acquisition of TDR’s on a project marginal returns; and
- 25 iii. The appropriate regional costs of development per commercial square foot or
- 26 residential dwelling unit; and
- 27 iv. Consistency with the conservation principles and purpose and intent of this
- 28 chapter.

29 2. Once adopted by the Director, the modified receiving site incentive table shall be used
30 for calculation of receiving site incentives. Within 14 days of adopting a revised
31 incentive table, the Director shall mail notification to property owners with an active
32 TDR certificate letter of intent following adoption of a revised incentive table.

33 3. If adoption of a revised incentive table is requested by a developer or private property
34 owner, the burden of preparing the economic analysis shall be on the developer or
35 private property owner.

36 4. The Director shall keep a log of modified receiving site incentives and shall periodically
37 report the modifications to the City Council.
38

39 21A.80.100 TDR Transfer Process

1
2
3
4
5
6
7
8
9
10
11
12

- A. Receiving site landowners are required to transfer sending site TDR certificates to achieve TDR-based incentive densities. Permit applications may be submitted without the purchase of TDR certificates, but no permits for development associated with a TDR project shall be issued until the TDR certificate requirement is satisfied.
- B. The required TDR certificates may be acquired by:
 - 1. Transferring development rights from certified sending sites; or
 - 2. Transferring development rights from certified sending sites owned by a receiving site owner; or
 - 3. Purchasing previously purchased, unexecuted development rights from another buyer.
- C. All receiving site projects using TDR must be in accordance with all other applicable laws and regulations.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49

21A.15 Technical Terms and Land Use Definitions

...

21A.15.XXX "Conservation easement" is a legal agreement between a landowner and a land trust or government agency that permanently limits uses of the land in order to protect its non-development values. It allows the landowner to continue to own and use the land, to sell it, or to pass it on to heirs. A conservation easement is placed on a sending site at the time development rights are sold from the property. The conservation easement typically prohibits any further development of the property but allows resource uses, such as farming and forestry, to continue.

21A.15.XXX "Development right" is an interest in and the right under current law to use and / or subdivide a lot for any and all residential, commercial, and industrial purposes.

21A.15.XXX "Interlocal agreement" is a legal contract between two or more local jurisdictions (cities and counties) that specifies the conditions under which development rights may be transferred (typically from an unincorporated county into an incorporated city). Interlocal agreements must be endorsed by the legislative bodies of both jurisdictions.

21A.15.XXX "Partially Developed" means a lot or lots where a portion of the lot or lots have been improved with a single family home and associated appurtenances consistent with the underlying zoning designation, and the remaining portion of the lot or lots are unimproved and retains additional development right(s).

~~21A.15.955 "Receiving site" means land for which allowable residential density is increased over the base density permitted by the underlying zone, by virtue of permanently securing and dedicating to the City of Sammamish, or another qualifying agency, the development potential of an associated sending site.~~ "Receiving site" means those lots where the procurement of development rights enable a permissible change in the allowed intensity on the property pursuant to the TDR chapter and all other controlling policies and law.

21A.15.XXX "Sending site" means designated lot or lots with development rights which landowners may sell in exchange for placing a conservation easement on the property or a portion of the property.

21A.15.XXX "TDR certificate" is a form of currency that represents development rights available for sale and use.

21A.15.XXX "TDR certificate of intent" is a document issued to a landowner upon approval of a TDR sending site application. The letter contains a determination of the number of development rights calculated for the sending site and an agreement by the City to issue a corresponding number of TDR certificates in exchange for a conservation easement. The sending site owner may use the TDR certificate letter of intent to market development rights to potential purchasers, but the letter of intent document has no value itself and cannot be transferred or used to obtain increased development rights within receiving areas.

21A.15.XXX "TDR program" is a market-based program that permanently conserves lands with important public benefits by establishing a means to transfer development rights from eligible sending sites to eligible receiving sites through a voluntary process that fairly compensates landowners while providing a public benefit for communities.

1
2
3
4
5
6
7
8
9

21A.15.XXX "TDR sending site application" is an application that a sending site landowner must file in order to be eligible for consideration for designation as a TDR sending site.

21A.15.XXX "Transfer of Development Rights (TDR)" means the transfer of the right to develop or build from sending sites to receiving sites.

1

2 20.05.020 Classifications of land use decision processes.

3 ...

4 Exhibit A

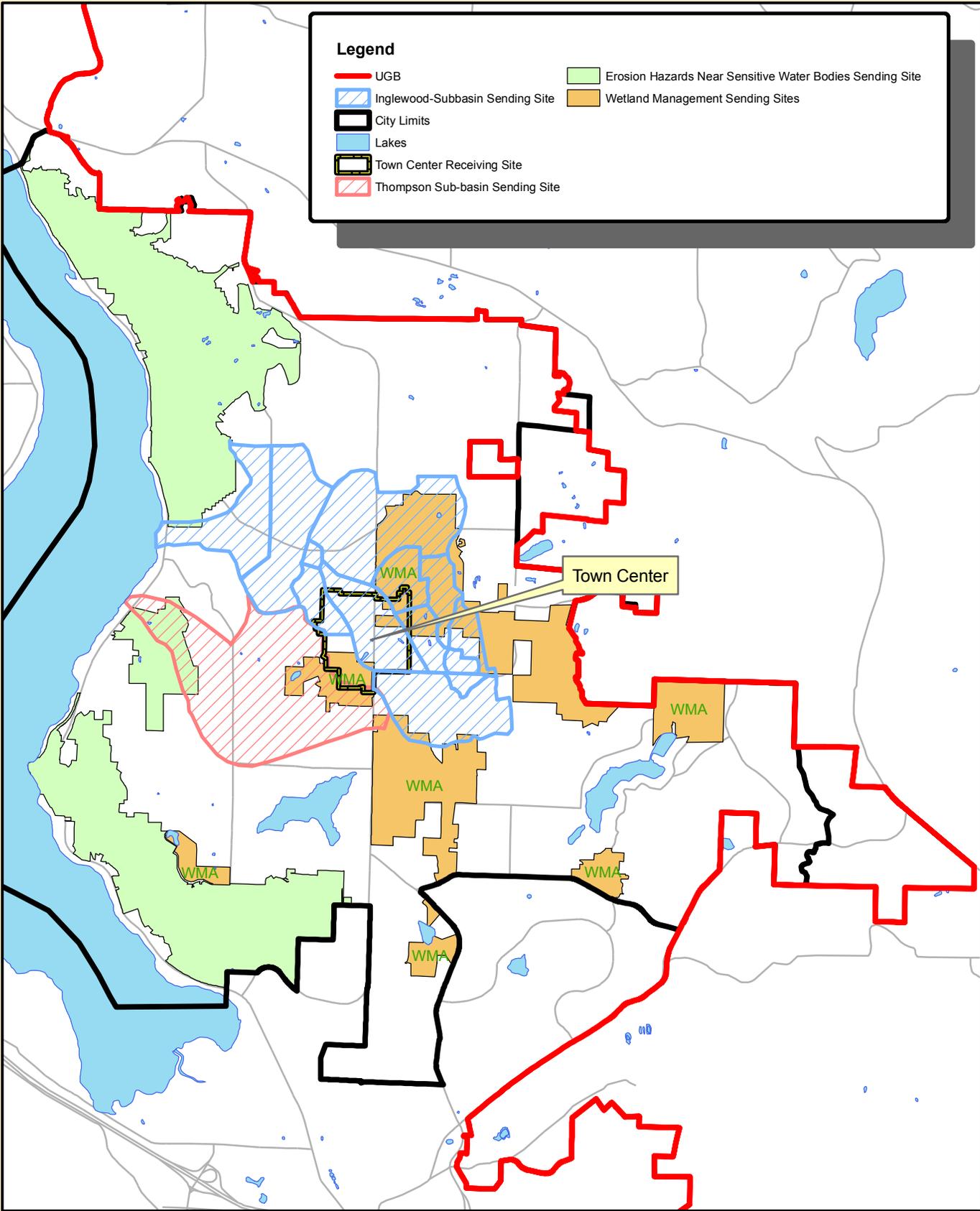
5 LAND USE DECISION TYPE

Type 1	Decision by Director, no administrative appeal	Building; clearing and grading; boundary line adjustment; temporary use; TDR sending site certification; right-of-way; road variance except those rendered in conjunction with a subdivision or short plat decision ¹ ; variance from the requirements of Chapter 9.04 KCC as adopted by Chapter 15.05 SMC; shoreline exemption; approval of a conversion harvest plan
Type 2	Decision by Director appealable to hearing examiner, no further administrative appeal	Short plat; road variance decisions rendered in conjunction with a short plat decision; zoning variance; conditional use permit; shoreline substantial development permits (SSDP); procedural and substantive SEPA decision; site development permit; approval of residential density incentives; reuse of public schools; reasonable use exceptions under SMC 21A.50.070(2); preliminary determinations under SMC 20.05.030(2); critical areas exceptions and decisions to require studies or to approve, condition or deny a development proposal based on the requirements of Chapter 21A.50 SMC; binding site plan

6

Legend

- UGB
- Inglewood-Subbasin Sending Site
- City Limits
- Lakes
- Town Center Receiving Site
- Thompson Sub-basin Sending Site
- Erosion Hazards Near Sensitive Water Bodies Sending Site
- Wetland Management Sending Sites



**Draft
Transfer Development Right
Sending Sites**

Conservation Tools:

An Evaluation and Comparison of the Use of Certain Land Preservation Mechanisms



Final Report
December 23, 2009

Prepared for:

WASHINGTON STATE RECREATION AND CONSERVATION OFFICE

Pursuant to SHB 1957 (2009)

Prepared by:

GordonDerr LLP

Duncan Greene, J.D.

T. C. Richmond, J.D.

GordonDerr
ATTORNEYS AT LAW^{LLP}

Land MattersSM

With:

ENTRIX, Inc.

Gretchen Greene, Ph.D.

Travis Greenwalt, M.B.A.

 **ENTRIX**
Down to Earth. Down to Business.SM

Table of Contents

Executive Summary	iii
Chapter 1 Introduction	1-1
Chapter 2 Analysis	2-1
2.1 Methodology	2-1
2.1.1 Identify Land Preservation Mechanisms.....	2-1
2.1.2 Identify Land Preservation Goals.....	2-2
2.1.3 Identify Evaluation Criteria.....	2-5
2.1.4 Conduct Analysis	2-6
2.2 Analysis by Mechanism.....	2-8
2.2.1 Fee Simple Acquisitions	2-8
2.2.2 Perpetual Conservation Easements.....	2-12
2.2.3 Term Conservation Easements	2-20
2.2.4 Conservation Leases.....	2-25
2.2.5 Restrictive Covenants.....	2-28
2.2.6 Fee Simple / Leaseback Transactions	2-31
2.2.7 Deferred Purchase Mechanisms.....	2-35
2.2.8 Voluntary Conservation Registries.....	2-40
2.3 Analysis by Criterion.....	2-43
2.3.1 Ability to Achieve Conservation Goals	2-43
2.3.2 Impact on Landowner's Continued Use	2-49
2.3.3 Costs Over Time	2-50
2.3.4 Ability to Respond to Future Changes.....	2-59
2.3.5 Ability to Combine with Other Mechanisms	2-61
2.3.6 Funding Constraints	2-62
2.4 Hypothetical Case Study.....	2-63
Chapter 3 Conclusion.....	3-1

Appendix A: EPCAT Assumptions and Description A-1
Bibliography B-1
Photo Credits..... P-1



EXECUTIVE SUMMARY

Pursuant to SHB 1957 (2009), this report evaluates and compares eight land preservation mechanisms based on their ability to achieve conservation goals, their cost, their ability to respond to future changes, and several other criteria selected to highlight the practical advantages and disadvantages of each mechanism.

The report provides a framework for comparing these eight mechanisms under the influences of legal, practical and economic circumstances. The construction of this framework led to several general conclusions about the benefits and risks of land preservation mechanisms. The report uses a hypothetical case study to illustrate how the report's framework and conclusions can be used to select land preservation mechanisms under particular circumstances.

We summarize the report's analytical framework and our conclusions below.

Framework for Comparing Land Preservation Mechanisms

This report provides a criteria-based framework for determining which land preservation mechanisms are most appropriate and cost effective in achieving the conservation goals of state natural resource agencies.

State agencies advance conservation goals not only through the direct acquisition of property interests but also through grant funding to state agencies and other preservation entities, such as land trusts, local governments, and tribes, which often use state grant funds and work to advance the same broad conservation goals as state agencies. Thus, while this report focuses on the use of land preservation mechanisms by state agencies, it also considers their use by other preservation entities.

The term "**preservation entity**," as used in this report, includes state natural resource agencies, local governments, land trusts, tribes, and other public and private entities working to advance the conservation goals of state agencies.

This framework can be applied at both the programmatic level and the project level. At the programmatic level, a preservation entity can use the framework to evaluate which mechanisms generally have a greater potential for achieving a particular conservation goal – such as the goal of preserving ecological values, the goal of preserving working landscapes, or the goals of preserving recreational, open space, scenic, historical or cultural values. At the project level, a preservation entity can use the framework to identify which mechanism or combination of mechanisms should be used to achieve a particular conservation goal in the context of a particular property, landowner, and economic circumstances.

At both the programmatic and project level, this report’s criteria-based framework promotes a methodical comparison of each mechanism’s ability to achieve conservation goals in the context of initial and long-term costs, ability to respond to future changes, impact on the landowner’s continued use of the land, ability to combine different mechanisms, and funding constraints on the use of a particular mechanism.

General Conclusions About Land Preservation Mechanisms

This report also offers several general conclusions about land preservation mechanisms in light of the evaluation criteria. These conclusions illustrate key differences between perpetual mechanisms and temporary mechanisms, as well as differences between fee simple acquisitions and perpetual conservation easements.

Perpetual Mechanisms Versus Temporary Mechanisms

This report’s conclusions highlight the distinction between so-called “perpetual” land preservation mechanisms (such as fee simple acquisitions and perpetual conservation easements), which have a potentially indefinite duration, and temporary mechanisms (such as “term conservation easements” and leases), which have a fixed duration.

In particular, this report offers the following conclusions regarding the ability of perpetual and temporary mechanisms to achieve conservation goals, the costs of perpetual and temporary mechanisms over time, and the ability of perpetual and temporary mechanisms to respond to changes over time:

- **Ability to Achieve Conservation Goals.** Generally, because perpetual land preservation mechanisms have an indefinite duration and do not automatically expire, they have a greater potential than temporary mechanisms to achieve the conservation goals of state agencies.

As a legal matter, the statutory framework that defines the conservation goals of state natural resource agencies in Washington uses language that favors a perpetual approach to land conservation. Moreover, as a practical matter, perpetual mechanisms should be favored because the conversion of natural, open space, and resource lands to residential and other incompatible uses is essentially permanent. Temporary mechanisms only delay, but do not foreclose, the possibility of conversion.

Perpetual land preservation mechanisms, unlike temporary mechanisms, provide long-term “conservation equity” because they create perpetual assets with inherent financial value. This conservation equity generally can be retained or liquidated at the holder’s discretion and re-invested in other conservation lands, consistent with any funding source limitations, in order to maximize the conservation benefits of a particular investment.

While some landowners prefer temporary mechanisms because they do not permanently encumber the land and allow the landowner to retain the long-term value of the land’s appreciated development rights, this benefit to the landowner is also a disadvantage to the preservation entity. When an entity uses a temporary mechanism, it assumes the risk that the landowner will convert the property to incompatible uses after the expiration of the mechanism’s term. This risk greatly reduces the mechanism’s ability to achieve long-term conservation goals. In some cases, however, a preservation entity may be able to accommodate a landowner’s desire to retain some of the property’s “upside” price appreciation potential by using a perpetual conservation easement in which the landowner reserves the right to exercise certain limited development rights in less sensitive areas of the property.

For these reasons, as a general rule, preservation entities should consider using temporary mechanisms only under limited circumstances.

- **Costs Over Time.** Temporary mechanisms tend to require a lower initial capital investment than perpetual mechanisms because the landowner retains the long-term equity associated with the property’s full development potential. If a preservation entity’s goal is temporary, a temporary mechanism may be less costly than a perpetual mechanism. However, most conservation goals are not temporary. If the property’s conservation benefit is to be retained over time, the total cost of a temporary mechanism will eventually exceed the cost of a perpetual mechanism. This is because the preservation entity will be required to repeat its initial capital investment (as well as certain administrative costs) with each renewal of the temporary mechanism’s term.

The precise moment during the life of a conservation project when the cost of a temporary mechanism will exceed the cost of a perpetual mechanism depends on several variables, such as the duration of the mechanism’s term, the threat of conversion,

and the level of uncertainty. These variables can be used to conduct an economic analysis of a perpetual or temporary mechanism's long-term cost under particular circumstances. Because the outcome of this analysis depends on assumptions for each variable, we have included an Excel spreadsheet model with this report that gives the reader a tool to experiment with different assumptions and view different outcomes on line and bar graphs comparing the costs of the four mechanisms listed in SHB 1957.

This report concludes that the cost of perpetual mechanisms tends to be lower than the cost of temporary mechanisms when there is a high threat of conversion and when the state places a high value on conservation goals in the more distant future. Conversely, temporary mechanisms tend to be less costly when the conversion pressure is lower and when the state places a lower value on the distant future.

The statutory framework that guides the work of state natural resource agencies presumes that development pressures will remain relatively constant and generally favors a long-term approach to land preservation. Under this framework, perpetual mechanisms would be seen as less costly than temporary mechanisms. Moreover, even when an economic analysis indicates that temporary mechanisms are less costly, they do not provide long-term protection against conversion or conservation equity. In most cases, these disadvantages would outweigh the lower cost of a temporary mechanism.

- **Ability to Respond to Future Changes.** In general, perpetual mechanisms provide the most flexibility in responding to future economic, social, and environmental changes. Because they create conservation equity and are not dependent upon the continued availability of funding, perpetual mechanisms preserve more options for responding to future changes that could affect the conservation values of a particular property.

As noted above, the state statutes governing land preservation efforts by state natural resource agencies presume that the need for conservation of ecological resources, working lands, and public recreational lands will remain relatively constant. If economic or social changes reduce the need for such conservation, the equity provided by permanent mechanisms will give preservation entities flexibility in determining whether to retain or liquidate such assets.

Similarly, permanent mechanisms give the state flexibility in responding to environmental changes such as climate change because they can be used to create a portfolio of conservation equity, which the state can retain or liquidate and re-invest as part of an overall adaptive management approach. Temporary mechanisms, in contrast, generally fail to confront the reality of change and result in fewer options in the long run. For example, if a preservation entity determines that climate change has rendered a property protected through fee simple acquisition unsuitable for its original conservation purpose,

the entity can consider using the property for another conservation purpose or selling the property and re-investing the funds in other conservation lands. The decision regarding whether and how a perpetual interest should be retained or liquidated may depend on limitations associated with funding sources for the original acquisition, which could constrain the entity's ability to sell or dedicate the property to another use. With a temporary mechanism such as a lease, however, the entity would not have this option at all because a lease does not provide long-term equity.

Fee Simple Acquisitions Versus Perpetual Conservation Easements

This report also identifies the following key distinctions between fee simple acquisitions and perpetual conservation easements, the two most commonly used perpetual land preservation mechanisms:

- **Ability to Achieve Conservation Goals.** Fee simple acquisitions have a greater potential to achieve conservation goals that require control over the entire parcel because a sensitive resource cannot effectively be segregated from the landowner's conflicting uses of that parcel. Fee simple acquisition is often necessary when the conservation goal requires active restoration of the property. Perpetual conservation easements, in contrast, have a greater potential to achieve conservation goals when the property's conservation values can be targeted and segregated from conflicting uses of the same parcel, such as when a conservation easement is used to protect a stream buffer but allows continued farming or forestry outside the buffer area.

Perpetual conservation easements are especially appropriate for working lands preservation because they allow the landowner to continue to work the land while preventing conversion to incompatible uses. Fee simple / leaseback and reserved life estate transactions may offer useful alternatives to perpetual conservation easements in preserving working landscapes. However, the use of these mechanisms may be limited by grant funding constraints.

As noted below, fee simple acquisitions also have a greater potential to respond to future changes than perpetual conservation easements, although easements can be drafted to allow some flexibility in responding to changes.

- **Costs Over Time.** Perpetual conservation easements are often seen as less costly than fee simple acquisitions because the initial capital cost of a conservation easement is generally lower than the cost of fee simple acquisition. The capital cost of a conservation easement is proportional to the development rights purchased with the easement, with

the cost typically ranging from 25 to 85 percent of the fee simple value. Conservation easements that impose limited restrictions or encumber only a small portion of the property have lower capital costs than easements that impose severe restrictions or encumber most or all of the property.

However, a comparison of the true costs of fee simple acquisitions and perpetual conservation easements over time depends on several assumptions about their long-term costs. These long-term costs include the cost of monitoring and enforcing conservation easements and the cost of owning and managing fee simple lands.

If a preservation entity assumes that these long-term costs will be roughly comparable, or that fee simple management costs will be higher than easement monitoring and enforcement costs (for example, as a result of climate change), then the total cost of a perpetual easement will generally be lower than the total cost of fee simple acquisition. On the other hand, if a preservation entity assumes that easement monitoring and enforcement costs will be higher than fee simple management costs (for example, due to repeated violations and challenges by future landowners), then the total cost of most conservation easements will be higher – but even under this conservative assumption, the long-term cost of most perpetual conservation easements is unlikely to exceed the total fee simple cost.

The Excel spreadsheet model included with this report allows the reader to explore a wide variety of alternative assumptions and outcomes about these costs.

- **Ability to Respond to Future Changes.** Because fee simple acquisitions give preservation entities greater discretion in the management and ownership of land, they generally provide more flexibility than perpetual conservation easements in responding to future economic, social and environmental changes. However, perpetual conservation easements can be drafted to include dynamic terms that provide some flexibility in responding to future changes. For example, perpetual working forest conservation easements can be drafted to respond to economic changes by allowing the landowner to repurchase certain development rights if a neutral arbitrator determines that forestry is no longer economically viable on the property. Similarly, perpetual conservation easements can be drafted to respond to environmental changes, such as the preservation entity's potential need to terminate a particular easement and re-invest its appreciated value in other land as a result of climate change that renders the property unsuitable for conservation.

By applying this report's analytical framework and the Excel spreadsheet model included with this report, a preservation entity can test these general conclusions under the particular circumstances of its programmatic charge and individual proposed or potential investments.

Chapter 1: INTRODUCTION

In 2009, the Washington State Legislature directed the Washington State Recreation and Conservation Office (“RCO”) to prepare a report evaluating and comparing the use of certain land preservation mechanisms. SHB 1957 (2009), Sec. 7, provides as follows:

Within existing funds, the recreation and conservation office must evaluate the use of land preservation mechanisms such as fee simple acquisitions, conservation easements, term conservation easements, and leases and the ability of each to respond to future economic, social, and environmental changes. The recreation and conservation office must compare the relative advantages and disadvantages and costs of each of these land preservation mechanisms. The recreation and conservation office must report its findings and recommendations to the appropriate committees of the legislature by January 1, 2010.

On July 17, 2009, RCO issued a Request for Proposals from contractors qualified to prepare the report mandated by SHB 1957. The law firm of GordonDerr LLP (“GordonDerr”) was selected to prepare the report, with assistance from the Economics Group of ENTRIX, Inc. (“ENTRIX”). GordonDerr and ENTRIX contracted with RCO to prepare a report evaluating and comparing the mechanisms listed in SHB 1957 and a limited number of additional mechanisms. This report is based on a review of existing literature addressing land preservation mechanisms, interviews with staff from state natural resource agencies and land trusts, and legal and economic analysis.

This report presents an analysis of the four land preservation mechanisms listed in SHB 1957 and four additional mechanisms used by preservation entities. The eight mechanisms analyzed in this report include the following:

- (1) Fee Simple Acquisitions
- (2) Perpetual Conservation Easements
- (3) Term Conservation Easements
- (4) Conservation Leases

- (5) Restrictive Covenants
- (6) Fee Simple / Leaseback Transactions
- (7) Deferred Purchase Mechanisms
- (8) Voluntary Conservation Registries

With input from RCO staff and interviewees, we selected the following criteria for analysis of each mechanism:

- Ability to Achieve Conservation Goals
- Impact on Landowner's Continued Use
- Costs Over Time
- Ability to Respond to Future Changes
- Ability to Combine with Other Mechanisms
- Funding Constraints



Chapter 2: Analysis

The analysis in this report is organized as follows:

- **In Section 2.1**, we discuss the methodology used in developing the report;
- **In Section 2.2**, we analyze each land preservation mechanism using the selected set of criteria;
- **In Section 2.3**, we analyze how each criterion fares under the various land preservation mechanisms; and
- **In Section 2.4**, we use a hypothetical case study to demonstrate the likely method of selection by a user of land preservation mechanisms.

2.1. Methodology

As noted above, this report is based on a review of existing literature, interviews with stakeholders, and legal and economic analysis. However, before conducting our analysis, several preliminary steps were necessary.

2.1.1 Identify Land Preservation Mechanisms

First, we categorized the tools that are commonly characterized as land preservation mechanisms, including the following:

- Methods of acquisition, such as fair market value sale, bargain sale, exchange, donation¹ and bequest;
- Financial incentives, such as preferential tax assessments and income tax deductions;
- Regulatory mechanisms, such as zoning ordinances, including market-based approaches like transfer of development rights (TDR) programs; and
- Property interests and/or contract rights.

¹ This report focuses on the fair market value purchase and sale of interests in land and contract rights. Thus, it does not consider the wide-ranging tax implications of donations, which are discussed in detail in existing literature.

The mechanisms listed in SHB 1957 fall into the category of property interests and/or contract rights. Based on the Legislature’s intent to evaluate that category of tools, and in consultation with RCO staff, we selected four additional mechanisms from that category for analysis: restrictive covenants, fee simple / leaseback transactions, deferred purchase mechanisms, and voluntary conservation registries.

2.1.2 Identify Land Preservation Goals

Next, we identified the conservation goals of state natural resource agencies, as defined in relevant state statutes. While this report includes information that is relevant to the needs of both public and private preservation entities, our analysis focuses on the use of land preservation mechanisms to achieve the conservation goals of state natural resource agencies through grant funding and property acquisition.

State agencies actively involved in land preservation include the Parks and Recreation Commission, the Department of Natural Resources (“DNR”), the Department of Fish and Wildlife (“DFW”), and RCO. The following statutes address the land preservation goals of these agencies:

- **Chapter 79A.05 RCW, Parks and Recreation Commission.** One of the duties of the Parks and Recreation Commission is to “select and purchase or obtain options upon, lease, or otherwise acquire for and in the name of the state such tracts of land, including shore and tide lands, for park and parkway purposes as it deems proper.”²
- **Chapter 79.70 RCW, Natural Area Preserves.** In the Natural Area Preserves Act, the Legislature adopted a policy “to secure for the people of present and future generations the benefit of an enduring resource of natural areas by establishing a system of natural area preserves, and to provide for the protection of these natural areas.”³ To achieve this policy, the Legislature authorized DNR to “acquire . . . the fee or any lesser right or interest in real property which shall be held and managed as a natural area.”⁴
- **Chapter 79.71 RCW, Natural Resources Conservation Areas.** In the Natural Resources Conservation Areas Act, the Legislature identified “an increasing and continuing need by the people of Washington for certain areas of the state to be conserved, in rural as well as urban settings, for the benefit of present and future

² RCW 79A.05.030(7).

³ RCW 79.70.010.

⁴ RCW 79.70.030(3).

generations,” and found that “such areas are worthy of conservation for their outstanding scenic and ecological values and provide opportunities for low-impact public use.”⁵ To meet this need, the Legislature authorized DNR to “acquire property or less than fee interests in property, as defined by RCW 64.04.130, by all means, except eminent domain, for creating natural resources conservation areas, where acquisition is the best way to achieve the purposes of this chapter.”⁶

- **RCW 76.13.120, Forestry Riparian Easement Program.** When the Legislature passed the Forests and Fish law in 1999 in response to the federal Endangered Species Act listing of several salmonid species, it authorized DNR to acquire 50-year term conservation easements to compensate small forest landowners for income lost as a result of larger riparian buffer requirements. This is one of only a few state programs that uses temporary land preservation mechanisms.
- **Chapter 77.04 RCW, Department of Fish and Wildlife.** DFW’s broad mandate is to “preserve, protect, perpetuate, and manage the wildlife and food fish, game fish, and shellfish in state waters and offshore waters.”⁷ Based on scientific evidence indicating that land preservation is an effective method of preserving fish and wildlife, DFW has interpreted this mandate to include land preservation, and it uses the acquisition of property rights as a tool to accomplish its mandate.
- **Chapter 79A.25 RCW, Recreation and Conservation Funding Board.** RCO is responsible for administering the programs and activities of the Recreation and Conservation Funding Board and the Salmon Recovery Funding Board, including a number of grant programs that provide funding for land preservation.

For example, the Washington Wildlife and Recreation Program (“WWRP”) is a grant program funded by the legislature in the state’s capital construction budget. The WWRP provides funds in several different accounts to protect habitat, preserve working farms, and create new local and state parks:

- The Habitat Conservation Account provides funding for “acquisition and development of critical habitat”; “acquisition and development of natural areas”; “acquisition and development of urban wildlife habitat”; and “restoration and enhancement projects on state lands.”⁸

⁵ RCW 79.71.010.

⁶ RCW 79.71.040.

⁷ RCW 77.04.012

⁸ RCW 79A.15.040(1).

- The Outdoor Recreation Account provides funding for “acquisition and development of state parks”; “acquisition, development, and renovation of local parks”; “acquisition, renovation, or development of trails”; “acquisition, renovation, or development of water access sites”; and “development and renovation projects on state recreation lands.”⁹
- The Riparian Protection Account provides funding for “acquisition or enhancement or restoration of riparian habitat.”¹⁰
- The Farmlands Preservation Account provides funding for “the acquisition and preservation of farmlands in order to maintain the opportunity for agricultural activity upon these lands,” including “(i) the fee simple or less than fee simple acquisition of farmlands; (ii) the enhancement or restoration of ecological functions on those properties; or (iii) both.”¹¹

Based on this statutory guidance provided by the Legislature to state agencies, in consultation with RCO staff and stakeholders, we next identified three categories of conservation goals for evaluation in this report:

- Ecological preservation;
- Preservation of working landscapes, such as farms, ranches, and timberland; and
- Preservation of lands with recreational, open space, scenic, historical or cultural values.



⁹ RCW 79A.15.050(1).

¹⁰ RCW 79A.15.120(2).

¹¹ RCW 79A.15.130(1)-(2).

2.1.3 Identify Evaluation Criteria

Next, we identified six criteria for evaluating and comparing land preservation mechanisms. SHB 1957 included the following evaluation criteria:

- **Costs.** SHB 1957 directed RCO to compare the relative costs of each mechanism. In particular, RCO requested a comparison of the relative costs of each mechanism over time. Based on our research, feedback from interviewees, and discussions with RCO, we identified the following categories of land preservation costs:
 - Capital costs (the purchase price for the property or contract right acquired);
 - Transaction costs (such as legal fees, due diligence and closing costs);
 - Third-party monitoring and enforcement costs (such as the cost to monitor and enforce perpetual and term conservation easements);
 - Ownership and management costs (costs normally associated with the ownership of property, including taxes, insurance, and property management costs); and
 - Pre-transaction administrative costs (pre-transaction costs incurred by preservation entities in administering land preservation grant funding and acquisition programs, such as the cost of staff time needed to process applications from interested landowners and to prioritize and select properties to be funded or acquired).

- **Ability to Respond to Changes.** SHB 1957 directed RCO to evaluate the ability of each mechanism “to respond to future economic, social, and environmental changes.” Such changes include, for example, changes associated with cycles of economic expansion and contraction and the effect of such cycles on the budgets of state and local government; demographic changes affecting development pressures and the demand for recreation; and climate change.

We also identified several additional criteria not listed in SHB 1957 and, in consultation with RCO staff, we selected the following criteria for evaluation:

- **Ability to Achieve Conservation Goals.** This criterion evaluates the ability of each mechanism to achieve the land preservation goals identified above.

- **Impact on Landowner’s Continued Use of the Land.** This criterion evaluates the impact of each mechanism on the landowner’s continued use of the land.

- **Ability to Combine with Other Mechanisms.** This criterion evaluates the ability of each mechanism to be combined with other land preservation mechanisms.
- **Grant Funding Constraints.** This criterion evaluates the grant funding constraints associated with each mechanism.

2.1.4 Conduct Analysis

After completing these preliminary steps, we turned to our analysis of the eight selected land preservation mechanisms and the six selected evaluation criteria. Our analysis included a review of existing literature discussing the use of land preservation mechanisms generally, as well as literature specifically addressing several of the mechanisms and evaluation criteria listed above. We also conducted interviews with several staff members from natural resource agencies and land trusts and incorporated their comments into our analysis.

Next, we created a matrix listing the selected land preservation mechanisms in columns and the evaluation criteria in rows, and then drafted a summary discussion applying each criterion to each mechanism. Finally, we incorporated the summary analysis in the matrix, comments from stakeholders, and our research into a draft report, which was circulated to stakeholders for comments on November 25, 2009. We received comments from five reviewers and have incorporated responses to these reviewers' comments into this final report.

Our draft report included an "analysis by mechanism" section that applied each evaluation criterion to each land preservation mechanism in turn, as well as an "analysis by criterion" section that considered each evaluation criterion broadly by comparing all mechanisms under each criterion in turn. This final report revises and adds to these sections.

This final report also adds a hypothetical case study illustrating how a preservation entity can use the report's framework and conclusions to evaluate, compare, and select land preservation mechanisms under particular circumstances, as well as a brief conclusion.

The following table summarizes the methodology used in this report:

Summary of Methodology	
Step 1:	Identify Land Preservation Mechanisms – four mechanisms listed in SHB 1957 (2009), Sec. 7: Fee Simple Acquisitions, Perpetual Conservation Easements, Term Conservation Easements, and Leases.
Step 2:	Identify Land Preservation Mechanisms – four additional mechanisms selected in consultation with RCO: Restrictive Covenants, Fee Simple / Leaseback Transactions, Deferred Purchase Mechanisms, and Voluntary Conservation Registries.
Step 3:	Identify Land Preservation Goals – from statutory authorities of state agencies and interviews with stakeholders: (1) Ecological preservation; (2) Preservation of working landscapes, such as farms, ranches, and timberland; and (3) Preservation of lands with recreational, open space, scenic, historical or cultural values.
Step 4:	Identify Evaluation Criteria – from SHB 1957 and additional criteria through interviews with stakeholders: (1) Ability to Achieve Conservation Goals, (2) Impact on Landowner’s Continued Use, (3) Costs Over Time, (4) Ability to Respond to Future Changes, (5) Ability to Combine with Other Mechanisms, and (6) Funding Constraints.
Step 5:	Analysis by Mechanism: Conduct analysis of each land preservation mechanism by applying each evaluation criterion to each mechanism in turn.
Step 6:	Analysis by Criterion: Conduct analysis of each criterion broadly by comparing all mechanisms under each criterion in turn.
Step 7:	Case Study: Demonstrate analysis through a hypothetical case study showing how a preservation entity can use this report’s framework to select land preservation mechanisms under particular circumstances.

2.2 Analysis By Mechanism

In the following sections, we analyze each of the selected land preservation mechanisms in turn. Our analysis of each mechanism begins with a description of the mechanism and a discussion of the duration of the mechanism, the rights acquired by the preservation entity, and any rights retained by the landowner. The analysis then turns to the application of each evaluation criterion.

2.2.1 MECHANISM: Fee Simple Acquisitions

When a preservation entity acquires a fee simple interest, it acquires all of the rights that make up full ownership of the land. In a typical fee simple acquisition, the seller does not reserve any rights. However, as discussed below, fee simple acquisitions can be paired with other mechanisms such as leases, allowing the landowner to retain a possessory interest in the land.

“Fee simple acquisitions” means acquisitions of fee simple absolute title, as distinguished from “less than fee simple” acquisitions such as conservation easements or leases. Fee simple absolute is the greatest interest in land known to law, and is of indefinite duration.

2.2.1.1 Ability of Fee Simple Acquisitions to Achieve Conservation Goals

In general, fee simple acquisitions have a high potential for achieving conservation goals. Because the preservation entity acquires all rights to ownership and possession, the entity has full control over development and management of the land. Fee simple ownership gives the entity discretion to limit new development and manage the land in a way that best achieves the conservation goal. In addition, because fee simple interests are potentially indefinite in duration, they have a high potential to achieve long-term conservation goals.

However, fee simple acquisitions are more limited in their ability to target portions of a parcel with the most conservation value, such as a trail, a riparian buffer or a migration corridor. While a conservation easement can be drafted to impose restrictions only in certain targeted areas of the property, in the case of a fee simple acquisition, a legal subdivision or boundary line adjustment may be required in order to target the parcel’s most valuable portions.

The effectiveness of fee simple acquisitions in achieving conservation goals depends, in part, on whether the preservation entity's goal is ecological preservation, preservation of working lands, or preservation of other values such as recreational, open space, scenic, historic, and cultural values.

- **Ecological Preservation.** Fee simple acquisitions have a high potential to achieve ecological goals that require control over an entire parcel of land. Because there are no other parties who hold competing interests in the land and the preservation entity has full control over the property, the preservation entity is in the best position to prevent uses that are inconsistent with the property's ecological values. However, as noted above, if the entity's ecological goal can be achieved by controlling only a portion of the property, a conservation easement may be more appropriate because that portion of the property can more easily be targeted for protection.
- **Preservation of Working Lands.** Fee simple acquisitions have a high potential to achieve the goal of preserving working lands. However, there is general consensus among preservation entities that most privately owned working lands should remain in private management, even if a government agency or land trust acquires an interest in the land. For this reason, working lands are rarely protected by acquiring fee simple title alone. Instead, working lands are typically protected (i) by acquiring a fee simple interest and leasing the property back to the original owner or another party who is responsible for managing the land ("fee simple / leaseback transactions"); (ii) by acquiring a fee simple interest, placing a conservation easement on the property, and re-selling the land to another party who will manage the land, or to a "conservation buyer" who wants to own the land and lease it to another party who will manage the land; or (iii) by simply acquiring a conservation easement that allows the original landowner to continue to work the land. Conservation easements and fee simple / leaseback transactions are discussed below.
- **Preservation of Recreational, Open Space, Scenic, Historic, and Cultural Values.** Fee simple acquisitions have a high potential to achieve preservation of recreational, open space, scenic, historic, and cultural values. Fee simple acquisition is particularly appropriate when the goal is to use the land for intensive public recreation, such as a state park or a Natural Resources Conservation Area, because fee simple ownership gives the preservation entity maximum control over public access and use of the land. Fee simple acquisitions can effectively protect open space, scenic, historic, and cultural values, but in many cases, a less-than-fee acquisition such as a conservation easement can be equally effective in protecting these types of values. For example, if the sole conservation goal is to protect the scenic and open space values associated with an agricultural property, a conservation easement can be used to protect these values.

2.2.1.2 Impact of Fee Simple Acquisitions on Landowner's Continued Use

Fee simple acquisitions preclude continued use of the property by the original landowner unless the acquisition is paired with another mechanism such as a lease.

2.2.1.3 Costs of Fee Simple Acquisitions Over Time

- **Capital Costs.** Fee simple acquisitions typically require a large initial capital investment in acquiring the property. Generally speaking, the capital cost of fee simple acquisitions is directly proportional to the development potential of the land, with increased capital costs for land with greater development potential. This is a one-time cost for fee simple acquisitions.
- **Transaction Costs.** The transaction costs associated with fee simple acquisitions are generally low because the conveyance of fee simple title is relatively simple and does not require negotiation and documentation of a complex legal instrument like a conservation easement. Instead, a typical fee simple transaction will require only a purchase agreement with the landowner and a deed to convey title. Additional transaction costs for fee simple acquisitions include appraisal costs, which are generally lower than appraisal costs for conservation easements, as well as due diligence and closing costs, which are generally comparable to the due diligence and closing costs for conservation easements, although due diligence costs can vary widely depending on the complexity of the transaction and the property's history. Transaction costs are one-time costs for fee simple acquisitions.
- **Third-Party Monitoring and Enforcement Costs.** If the preservation entity acquires and retains a fee simple interest, there are no third-party monitoring and enforcement costs. Instead, the entity's ownership and management costs will include the cost of any monitoring and enforcement efforts.
- **Ownership and Management Costs.** The ownership and management costs associated with fee simple acquisitions are relatively high. Depending on the management needs of the property, fee simple acquisitions can require substantial investments in the ongoing management of the property. In particular, properties acquired for restoration projects often require long-term investments in adaptive management and monitoring. In most cases, conservation lands owned by preservation entities are exempt from property tax, although for political reasons some land trusts choose to pay taxes on certain properties even when they are exempt. State and local agencies are generally self-insured, but private land preservation entities may incur additional ownership costs in obtaining property liability insurance. Management costs

for fee simple acquisitions have the potential to increase in the future, such as if climate change requires more active management of the mix of native and invasive species on the property.

According to one interviewee, fee simple acquisition often requires ownership and management costs ranging from \$16 to \$30 per acre per year, with higher costs for properties with higher levels of public use and more intensive management needs. This estimate is generally consistent with other estimates in existing literature. For example, based on 2006 budget figures for the National Wildlife Refuge System, one report estimated that the average management costs for fee simple ownership are about \$22.10 per acre per year nationwide.¹²

- **Pre-Transaction Administrative Costs.** The administrative costs associated with fee simple acquisitions are relatively low. Like all land preservation programs, programs utilizing fee simple acquisitions require preservation entities to invest in the cost of staff time needed to identify and prioritize lands for preservation. However, the administrative costs associated with fee simple acquisitions are usually one-time costs. If the preservation entity retains a fee simple interest in a particular property, this is a one-time cost and few additional administrative costs will be required to administer grant programs associated with the acquisition of the property.

2.2.1.4 Ability of Fee Simple Acquisitions to Respond to Future Changes

Fee simple acquisitions generally have a high potential to respond to future social and environmental changes because they provide the preservation entity with maximum control of the property. For example, if future social or environmental changes require a different approach to land management, the entity can simply alter its management techniques. If changes render the property unsuitable for the desired conservation goal, the entity can attempt to sell the property and reinvest the proceeds in land that is more suitable, subject to the potential restrictions of a particular grant program. In either case, the entity can respond to future changes without the need to consult the landowner or amend the terms of restrictive instruments such as conservation easements. Fee simple acquisitions also have a relatively high potential to respond to future economic changes. Unlike acquisitions of temporary interests such as leases and term conservation easements, fee simple acquisitions do not depend on the availability of continued funding to provide continued protection.

¹² *The Cost of a Comprehensive National Wildlife Conservation System: A Project Completion Report for the Wildlife Habitat Policy Research Program*, Defenders of Wildlife, Conservation Economics Program (2008), available at: http://www.ddcf.org/doris_duke_files/download_files/Cost%20National%20Wildlife%20Habitat%20System.pdf.

2.2.1.5 Ability to Combine Fee Simple Acquisitions with Other Mechanisms

Fee simple acquisitions can be combined with several other land preservation mechanisms, such as leases (e.g., in a fee simple / leaseback transaction) and conservation easements (e.g., in a transaction involving fee simple acquisition and sale of the property subject to a conservation easement). Fee simple interests can also be acquired using various deferred purchase mechanisms, such as options and rights of first refusal.

2.2.1.6 Grant Funding Constraints on Fee Simple Acquisitions

Most grant programs used by preservation entities allow the use of fee simple acquisitions. However, a preservation entity's ability to use fee simple acquisitions is sometimes limited in practice by particular grant requirements, such as when a grant program requires that all acreage acquired must advance a single conservation goal.

For example, one interviewee noted a requirement in the Critical Habitat category of WWRP's Habitat Conservation Account that each acre of land protected by funds from that category must serve a habitat purpose, and commented that this requirement limited the entity's use of fee simple acquisitions and fee simple / leaseback transactions to protect rangeland that contains habitat corridors. According to this interviewee, preservation entities would have more flexibility if this requirement were modified or another grant program created to allow the acquisition of rangeland that contains both habitat corridors and non-habitat areas. In commenting on our draft report, one reviewer called this "a critical hurdle to overcome," noting that "many good projects could be moved forward for implementation to accomplish multiple goals."

2.2.2 MECHANISM: Perpetual Conservation Easements

Perpetual conservation easements, like fee simple acquisitions, are indefinite in duration. The respective rights acquired by the preservation entity and reserved by the landowner depend on the terms of the conservation easement, which are tailored in each transaction to meet the needs of the preservation entity, the landowner, and the land.

A "**perpetual conservation easement**" is an instrument that creates a real property interest restricting the uses and activities on the property "in perpetuity."

In a typical perpetual conservation easement transaction, the preservation entity will acquire some or all of the property's development rights (which are either held by the entity or transferred to another property) and the right to enforce certain restrictions, while the landowner will retain the right to use the land in ways that are consistent with the restrictions.

Conservation easements have been described as "statutorily authorized negative servitudes in gross."¹³ Unlike other negative servitudes such as restrictive covenants, conservation easements are specifically authorized by state statutes (called "enabling acts"), which allow conservation easement holders to avoid several potential problems associated with negative servitudes under the common law.¹⁴

2.2.2.1 Ability of Perpetual Conservation Easements to Achieve Conservation Goals

Perpetual conservation easements have a high potential for achieving conservation goals. Perpetual easements allow preservation entities to prevent conversion by acquiring development rights and often give entities the right to enforce use restrictions tailored to the conservation goal and the property's characteristics without assuming full management responsibility over the property.

As discussed above, conservation easements can be used to target the most valuable portions of a property more easily than fee simple acquisitions. However, if the conservation goal requires intensive public access or management of a sensitive resource, perpetual conservation easements may be less effective in achieving the goal because the landowner's continued use of the land may conflict with those uses.

- **Ecological Preservation.** The ability of perpetual conservation easements to achieve ecological goals depends on the extent to which the landowner's continued use of the land may conflict with the ecological resource. In some cases, the potential for such conflict can be addressed in the terms of the conservation easement. For example, an easement might physically segregate potentially conflicting uses by defining a "conservation zone" within which uses are strictly limited and other zones within which the landowner has more flexibility to use and manage the land, such as building envelopes and management zones.

¹³ Andrew Dana & Michael Ramsey, *Conservation Easements and the Common Law*, 8 STAN. ENVTL. L.J. 2 (1989).

¹⁴ See RCW 84.34.210; RCW 64.04.130; see also Duncan Greene, *Comment, Dynamic Conservation Easements: Facing the Problem of Perpetuity in Land Conservation*, 28 SEATTLE UNIV. L. REV. 883, 885 (2005), available at: <http://www.gordonderr.com/images/stories/attorneys/dynamic%20conservation%20easements.pdf>.

- **Preservation of Working Lands.** Perpetual conservation easements have a high potential to achieve preservation of working lands. A perpetual easement provides permanent protection against conversion of the property and typically allows the preservation entity some management oversight to prevent activities that are inconsistent with the entity's goals, while also allowing the owners of farms, ranches, and timberlands to continue to hold fee title and manage the land.
- **Preservation of Recreational, Open Space, Scenic, Historic, and Cultural Values.** Perpetual conservation easements have a relatively low ability to achieve purely recreational goals. As noted above, there is a high potential for conflict between public access and the landowner's continued use of the land, and many of the conservation easements used by RCO explicitly preclude any public access. The landowner's continued use may also conflict with the protection of historic and cultural values. However, perpetual conservation easements have a higher ability to achieve goals involving open space and scenic values because the landowner's continued use is less likely to conflict with these values. For example, a farm may provide open space and scenic values even when the landowner is actively engaged in farming the land, and perpetual conservation easements can be used to keep the farm in open space by preventing its conversion to incompatible uses.

2.2.2.2 Impact of Perpetual Conservation Easements on Landowner's Continued Use

Perpetual conservation easements typically have a low to moderate impact on the landowner's continued use of the property. Most perpetual easements allow continued use by the landowner, but the extent of the impact depends on the easement's terms. For example, a perpetual conservation easement on farmland could simply prohibit subdivision and conversion of the property to residential use, while a more complex easement could include restrictions on particular farming practices.

2.2.2.3 Costs of Perpetual Conservation Easements Over Time

- **Capital Costs.** Perpetual conservation easement transactions require a relatively high initial capital investment in acquiring the easement, although the cost is lower than the cost of a fee simple acquisition. The capital costs of perpetual conservation easements typically range from 25 to 85 percent of the fee simple value.¹⁵

¹⁵ See Laurie Fowler, et al., *Protecting Farmland in Developing Communities: A Case Study of the Tax Implications Of Agricultural Conservation Easements*, The University of Georgia Institute of Ecology (2001), available at: http://www.rivercenter.uga.edu/service/tools/farmland_study/nelsonweb.pdf.

The cost of a perpetual conservation easement is typically determined by preparing a “before-and-after” appraisal that compares (1) the fee simple value of the property “before” the easement is imposed; with (2) the remaining value of the property “after” the easement is imposed. The value of the easement is the difference between these “before” and “after” values and is typically directly proportional to the development rights purchased with the easement.¹⁶ In other words, the cost of a conservation easement essentially “equals the fee simple value of the property times the percentage of development rights purchased.”¹⁷ This is a one-time cost for perpetual conservation easements.

- **Transaction Costs.** The transaction costs associated with perpetual conservation easements are relatively high. In addition to the normal transaction costs associated with a fee simple acquisition, conservation easements require more time and expense to negotiate the easement and often require substantial legal fees in drafting complex easement language. The cost of an appraisal for a conservation easement is also typically higher (as much as 50% higher, according to one commenter) than an appraisal for a fee simple acquisition. Conservation easements that include land management restrictions may be particularly complex and lengthy. Transaction costs are one-time costs for perpetual conservation easements.
- **Third-Party Monitoring and Enforcement Costs.** Perpetual conservation easements require an investment in monitoring and enforcement of the easement’s restrictions. These costs may include the cost of staff time to conduct annual monitoring visits, to communicate with and maintain the preservation entity’s relationship with the landowner, and to resolve any conflicts that may arise. If conflicts cannot be resolved in discussions with the landowner, enforcement costs may include the cost of seeking a court order enjoining certain uses of the property or requiring the landowner to restore the land to its former condition. Land trusts usually create a “stewardship endowment” for each conservation easement that is dedicated to these types of costs, while state agencies typically rely on existing funding for monitoring and enforcement. The Land Trust Alliance (LTA) is currently exploring a possible conservation defense insurance program that would allow land trusts to manage the risk associated with the enforcement of conservation easements more effectively than through self-insurance alone.¹⁸

¹⁶ See Dennis Canty, et al., *A Primer on Habitat Project Costs*, Prepared for the Puget Sound Shared Strategy by Evergreen Funding Consultants (2003), available at: <http://www.sharedsalmonstrategy.org/files/PrimeronHabitatProjectCosts.pdf>.

¹⁷ *A Primer on Habitat Project Costs*, supra.

¹⁸ See “Exploring Conservation Defense Insurance: Considerations for Board Members,” Land Trust Alliance, Conservation Defense Initiative (2009), available at:

The normal expenses associated with monitoring the property and maintaining landowner relations are fairly easy to predict, and preservation entities can plan for these expenses by estimating and including them in a stewardship endowment or some other dedicated funding source. One interviewee estimated that the average ongoing cost associated with conservation easements is \$6 per acre per year. However, this estimate does not include the potential cost of litigation to address a major violation or to defend the easement against a challenge by a landowner seeking its termination. These costs are more difficult to predict. The cost of litigation to enforce a conservation easement, and the risk that litigation will be required, can vary widely. In several examples of legal challenges compiled by LTA, the cost of a single event requiring litigation to enforce a conservation easement ranged from \$35,000 to \$500,000.¹⁹ In light of the uncertainty about the cost and likelihood of litigation, preservation entities must make assumptions about the acceptable level of risk.

For example, an entity could assume that the average cost of litigation will be \$50,000 and that such an event can be expected to occur once every 30 years. Under this assumption, a preservation entity would need to create a stewardship endowment that could provide \$50,000 for litigation costs every 30 years. An initial endowment of approximately \$35,000 that grew at 3 percent annually would reach \$85,000 in year 30. If litigation were required, \$50,000 could be withdrawn to cover litigation costs, leaving a balance of \$35,000, which would then reach \$85,000 in year 60, and so on.

In reality, however, it is unlikely that the same conservation easement would be repeatedly challenged every 30 years in perpetuity. A more realistic assumption is that each conservation easement is likely to face a major challenge only once or twice during its existence. Under this assumption, a preservation entity could invest an initial endowment of approximately \$20,000, which would reach \$50,000 in 30 years with a 3 percent interest rate. The EPCAT model uses this assumption for perpetual conservation easements and allows the reader to modify the desired endowment amount and the interest rate to determine the initial investment that would be required to create a stewardship endowment covering easement defense costs.

The long-term costs of monitoring and enforcing perpetual conservation easements and managing fee simple acquisitions are variable and could increase in the future. For example, the cost of monitoring and enforcing a conservation easement may increase as a result of increased violations and challenges by future landowners who were not parties to the original transaction. Likewise, the cost of managing a fee simple acquisition may

<http://www.landtrustalliance.org/about-us/programs/conservation-defense/documents/Board%20member%20handout%20-%20insurance%20proposal.doc>.

¹⁹ "Exploring Conservation Defense Insurance," supra.

increase as a result of climate change. On the other hand, these costs could be moderated through efficiencies gained from long-term experience with monitoring and enforcing conservation easements or with adaptive management of lands in response to climate change.

The reader can explore the outcomes of these assumptions under a variety of scenarios using the Excel spreadsheet included with this report, which allows the user to compare the relative costs of conservation easements and fee simple acquisitions (and other mechanisms) using different assumptions about the enforcement costs of conservation easements and the management costs of fee simple acquisitions.

- **Ownership and Management Costs.** Most perpetual conservation easements do not require ownership and management costs because the landowner remains responsible for taxes, insurance, and ongoing management costs. In some cases, the preservation entity may incur management costs by assuming certain management responsibilities such as implementing restoration projects or providing technical assistance to the landowner.
- **Pre-Transaction Administrative Costs.** The administrative costs associated with perpetual conservation easements are relatively low because, as in the case of fee simple acquisitions, they are one-time costs. If the preservation entity retains the conservation easement, no additional administrative costs will be required.

2.2.2.4 Ability of Perpetual Conservation Easements to Respond to Future Changes

Conservation easements are inherently flexible instruments that can be drafted with terms tailored to a wide variety of circumstances. However, the ability of a perpetual conservation easement to respond to future changes depends primarily on the terms of the easement instrument.

Conservation easements can be classified as either “static conservation easements” that generally do not change over time or as “dynamic conservation easements” that are designed to anticipate and respond to certain changes.²⁰

²⁰ See *Dynamic Conservation Easements*, supra.

Static Conservation Easements

Perpetual conservation easements have traditionally been drafted with inflexible terms intended primarily to resist change. Such “static” conservation easements can be amended in response to future changes, but both parties must agree to any amendment and amendments may be costly to implement.

Traditional static conservation easements often include provisions stating that the easement can be terminated only if future circumstances render the easement’s purpose “impossible,” and only in court. Some state agencies have included such termination language in model conservation easement instruments for their grant or acquisition programs. However, the precise terms of static conservation easements vary widely, and other agencies have included more flexible termination clauses in their static conservation easements.

Dynamic Conservation Easements

Perpetual conservation easements can also be drafted as “dynamic” instruments that include mechanisms designed to respond to changes over time, without the need for an amendment.

Dynamic easements can adapt to future changes, for example, by modifying land management practices. Perpetual working forest conservation easements (“WFCEs”) are often drafted to anticipate changes in forestry practices by including a clause that provides for adaptive management of the property (rather than prescribing a specific, static set of forestry practices).

Perpetual conservation easements can also be made dynamic by including a mechanism in the easement instrument that allows the easement to be terminated under certain limited circumstances. For example, an easement could be drafted to allow termination at the discretion of the preservation entity, sometimes without the need for judicial oversight. Alternatively, the easement could allow the landowner to repurchase certain development rights if a neutral arbitrator determines that changed circumstances are imposing economic hardship on the landowner. For example, a WFCE can be drafted to anticipate potential economic or environmental changes by including a clause allowing the landowner to repurchase development rights in response to such changes.²¹

²¹ See *Conserving Washington’s Working Forests: Cascade Agency Strategies for Conserving Working Forest Land in the Central Cascades*, a report created for the University of Washington, College of Forest Resources, by Cascade Land Conservancy (2007), Attachment N, available at: <http://cascadeland.org/files/web-postings/CLC%202006-2007%20FINAL%20UW%20CONVERSION%20STUDY%20REPORT.pdf>.

Easements with such dynamic termination provisions should include language allowing the easement holder to recapture the easement's appreciated value for reinvestment in other property. Several of the "model" conservation easement templates used by state agencies and land trusts in drafting perpetual conservation easements include language requiring the landowner to reimburse the agency for the value of the easement from the proceeds of any future sale of the property after the easement is terminated. The value of the easement is often determined in relation to the fair market value of the property at the time of termination.

For example, the model conservation easement used by RCO for the Farmland Preservation Program requires the landowner to reimburse funding agencies for the value of the conservation easement. This value is determined by multiplying:

(a) the *then* fair market value of the Protected Property unencumbered by the Easement (minus any increase in value attributable to improvements on the Protected Property), *at the time of termination or extinguishment*, as determined by an appraisal that meets RCO requirements for appraisals, by

(b) the ratio of the value of the Easement at the time of this grant to the value of the Protected Property, unencumbered by the Easement, at the time of this grant.²²

This language allows funding agencies such as RCO to capture and reinvest not only the original amount of grant funds invested in the conservation easement, but the full appreciated value of the easement.

2.2.2.5 Ability to Combine Perpetual Conservation Easements with Other Mechanisms

Perpetual conservation easements can be combined with fee simple acquisitions, although preservation entities generally use this combination only when the fee simple interest is sold to another landowner. If the fee simple interest is sold to a conservation buyer who does not want management responsibilities, the entity could combine a conservation easement with a lease to another party who wants to assume management responsibility. Like fee simple interests, conservation easements can be acquired using various deferred purchase mechanisms, including options and rights of first refusal.

²² See "Annotated Model Agricultural Conservation Easement for Farmland Preservation Program, RCW 79A.15.130(1)" (emphasis added), available at: http://www.rco.wa.gov/documents/Manuals&Forms/model_agcons_easement_co-grantee.pdf.

In addition, perpetual conservation easements can be combined with the acquisition of a remainder interest, with the landowner reserving a life estate. As discussed below, in such “reserved life estate” transactions, the landowner essentially retains all rights associated with the property until he or she dies, and the preservation entity’s remainder interest becomes a fee simple interest after the landowner dies. In such cases, the entity may also use a perpetual conservation easement to secure development rights and impose restrictions on the landowner’s use of the land.

2.2.2.6 Grant Funding Constraints on Perpetual Conservation Easements

Most grant programs used by preservation entities allow the use of perpetual conservation easements. However, a preservation entity’s ability to use conservation easements may nevertheless be limited by particular grant constraints. For example, while many grant programs allow the acquisition of less-than-fee interests such as conservation easements, most grant programs do not provide funding for monitoring and enforcement of the easement. If the proposed easement holder is a state or local agency, the agency’s ability to monitor and enforce the easement may be limited by a lack of funding in the future. If the proposed easement holder is a land trust and the land trust is unable to secure the necessary funds to create a stewardship endowment for monitoring and enforcement, it may choose not to pursue the easement transaction.

2.2.3 MECHANISM: Term Conservation Easements

With a term conservation easement, as with perpetual conservation easements, the respective rights acquired by the preservation entity and reserved by the landowner depend on the terms of the easement. A term conservation easement can be used to acquire a property’s development rights for a period of time. This type of transaction is sometimes referred to as a “lease of development rights,” even when a term conservation easement is used to implement the transaction.

The primary differences between leases of development rights and term conservation easements are that (i) leases of development rights are usually paid in rental payments over time, while term conservation easements are typically purchased in a lump-sum payment; and (ii) leases of

A “**term conservation easement**” is a conservation easement that expires under its own terms after a fixed term. The duration of a term conservation easement is negotiated by the parties to the easement. Theoretically, the easement term could be as short as one month (or shorter) or as long as 10,000 years (or longer), but in practice most term conservation easements last from 10-50 years. Term conservation easements can be used to implement a “**lease of development rights.**”

development rights, unlike conservation easements, generally do not include management restrictions. Given the similarity between leases of development rights and term conservation easements, this report does not separately analyze leases of development rights.

2.2.3.1 Ability of Term Conservation Easements to Achieve Conservation Goals

In general, term conservation easements have a low potential for achieving conservation goals unless the goal is temporary.

Because term conservation easements provide only temporary protection, achievement of permanent preservation would require the preservation entity either to repeat the process of acquiring a term conservation easement at the end of each easement term or to use a permanent mechanism such as a fee simple acquisition or a perpetual conservation easement. When an entity uses a term conservation easement, it assumes the risk that additional public funds may be required to secure long-term preservation and that, if additional funds are not available or the landowner is not interested in continued participation in the program, the land may be converted after the easement term expires. In such cases, the entity's investment in the term conservation easement would be wasted.

Thus, because of their temporary nature, in most cases term conservation easements have a limited ability to achieve conservation goals. In unique cases, a preservation entity may decide that there are compelling reasons to use a term conservation easement, such as when a high-value property is at imminent risk of conversion and acquisition of a fee simple interest or a perpetual conservation easement is impossible. For example, the entity may lack sufficient funds to use a perpetual mechanism, or a landowner may not be interested in selling a fee simple interest or a perpetual conservation easement. In such cases, a term conservation easement could be used to "buy time" to allow the entity to secure additional funds or to allow the landowner time and experience with the entity before deciding whether to part with a perpetual interest in the land. As discussed below, preservation entities should consider coupling any term easements with an option to purchase a fee simple interest or a perpetual conservation easement, thus preserving the opportunity for permanent protection.

2.2.3.2 Impact of Term Conservation Easements on Landowner's Continued Use

Term conservation easements, like perpetual conservation easements, typically have a low to moderate impact on the landowner's continued use of the property, depending on the terms of the conservation easement. As noted above, in a lease of development rights

program, a term conservation easement may be used simply to temporarily acquire development rights, which would have a minimal impact on the landowner's continued use. In most cases, however, a term conservation easement will include management restrictions in addition to securing the development rights to the property, and the impact on the landowner's continued use will also depend on the terms defining the extent of the management restrictions.

2.2.3.3 Costs of Term Conservation Easements Over Time

The precise costs of term conservation easements over time depend on a wide variety of variables, which are discussed in detail in our analysis of costs in Section 2.3.3 below. In general, however, the long-term costs of most term conservation easements can be expected to exceed the costs of perpetual conservation easements within a period of 50 years.

One report discussing the possibility of leasing development rights on working forestland concluded that the total cost of lease payments for a 30-year "lease of development rights" on property with high development potential would come close to 70% of the total fee simple value of the property.²³ Another report addressing wildlife habitat conservation similarly concluded that "[a]t the 40-year mark, [perpetual] easements become more efficient than land rental/leases."²⁴ These results are generally consistent with the Excel spreadsheet model included with this report and the detailed analysis of costs in Section 2.3.3. The reader can use the model to compare the long-term capital costs of term conservation easements with other mechanisms under a wide variety of assumptions.

- **Capital Costs.** The capital costs of term conservation easements depend on factors such as the length of the easement term and the reduction in value associated with the development rights purchased and other restrictions included in the easement. For term conservation easements, unlike perpetual conservation easements, capital costs are not one-time costs unless the goal is truly temporary. At the end of the easement term, if continued preservation of a property is desired by the landowner and the preservation entity, the entity will incur additional capital costs.

²³ See *Conserving Washington's Working Forests*, supra. By comparison, this report concluded that lease payments for a 30-year lease of development rights on land with more speculative development potential would total about 20% of the fee simple value.

²⁴ *The Cost of a Comprehensive National Wildlife Conservation System*, supra.

- **Transaction Costs.** The transaction costs associated with term conservation easements are relatively high. Like perpetual conservation easements, term conservation easements can be time-consuming and costly to negotiate and draft. Transaction costs, like capital costs, are not one-time costs for term conservation easements unless the goal is temporary. In most cases, at the end of the easement's term, continued protection of the land will require additional transaction costs.
- **Third-Party Monitoring and Enforcement Costs.** Term conservation easements require an investment in monitoring and enforcement of the easement's restrictions. Such costs are generally low because they are limited by the length of the easement's term. However, continued preservation of the property beyond the easement's term will require additional monitoring and enforcement costs.
- **Ownership and Management Costs.** Most term conservation easements do not require ownership and management costs unless the preservation entity chooses to assume management responsibilities or provide technical assistance.
- **Pre-Transaction Administrative Costs.** The administrative costs associated with term conservation easements are not one-time costs unless the goal is temporary. If the preservation entity wants to ensure protection of the land after the easement term, it will incur additional costs in program administration, such as staff time required to prioritize and pursue actions to continue protection of the land after each easement term has expired.

2.2.3.4 Ability of Term Conservation Easements to Respond to Future Changes

Because they automatically expire after a term of years, term conservation easements have a relatively low ability to respond to future changes. The automatic expiration of term conservation easements could be viewed as a sort of "response" to future changes. Rather than a response, however, automatic expiration is more accurately seen as a decision to take a short-term approach to preservation.

If a term conservation easement results in short-term preservation but the land is later converted, certain costs may be avoided but the investment in land preservation will be lost. The only benefit gained by preservation entities from automatic expiration is the potential avoidance of certain costs that may be associated with future changes, such as the cost to amend a static perpetual easement, the cost to implement "dynamic" terms that allow a perpetual easement to adapt to changes, or the cost to terminate a perpetual easement and

reinvest proceeds in other properties. These costs can be minimized with a perpetual conservation easement that is properly drafted with broad conservation goals and with dynamic terms allowing the easement to adapt to changes. If a perpetual conservation easement includes broad conservation goals rather than targeting only the protection of a particular species, for example, the easement may provide continued conservation benefits even if a particular species is no longer present on the property. Likewise, if a perpetual conservation easement includes dynamic terms that allow the easement to adapt to future changes, the preservation entity can achieve continued protection in spite of those changes.

Finally, a properly drafted perpetual conservation easement gives the preservation entity the opportunity to capture the appreciated value of the easement upon termination. Because term conservation easements create no equity, they do not provide this opportunity.

2.2.3.5 Ability to Combine Term Conservation Easements with Other Mechanisms

Term conservation easements are not usually combined with other mechanisms. However, term easements can and should be combined with deferred purchase mechanisms when possible. For example, a term easement could include an option that gives the preservation entity the option, at the end of the easement's term, to renew the term, to purchase a perpetual conservation easement, or to purchase fee simple title. If the landowner is reluctant to enter into a transaction involving a perpetual mechanism in the first place, however, it may be difficult to obtain an option to purchase a perpetual interest. A term conservation easement could also be combined with a reserved life estate transaction, allowing the land trust to ensure protection of a property's conservation values during the landowner's lifetime.

2.2.3.6 Grant Funding Constraints on Term Conservation Easements

Only a few grant programs allow the use of term conservation easements, while other programs prohibit the use of such temporary mechanisms. For example, the Farmland Preservation Program ("FPP") allows the acquisition of less-than-fee interests, and RCO has adopted policies recognizing that funds may be used to acquire term conservation easements. However, RCO has also adopted policies that give priority to acquisition of perpetual conservation easements and require the length of term easements to be at least 25 years. To date, no term easements have been funded or proposed under the FPP. By contrast, Salmon Recovery Fund grants may not be used for term conservation easements because less-than-fee acquisitions under that program must be perpetual.

2.2.4 MECHANISM: Conservation Leases

The term “leases” can have a variety of meanings, including the following:

- “Leases” can refer to traditional lease instruments granting rights to tenants who temporarily occupy and use the land, such as an agricultural lease to a farmer. These types of leases are used by preservation entities in conjunction with land preservation mechanisms for a variety of purposes but are not separately analyzed in this report.
- “Leases” can also refer to “leases of development rights.” This term is typically used to refer to easement or lease instruments that temporarily limit development but do not restrict the landowner’s normal use of the land, such as a lease of development rights on agricultural land that prohibits new residential development but does not restrict farming practices.
- Finally, “leases” can refer to the lease and contract instruments used in certain voluntary conservation programs that pay landowners to temporarily restrict their use of the land or take land out of production (or “conservation leases”).

In this report, the term “leases” as used in SHB 1957 is treated primarily as a reference to “conservation leases” that temporarily restrict the landowner’s use of the land or take land out of production, and sometimes impose affirmative management obligations, in exchange for payments to the landowner. In most cases, such conservation leases will effectively include a “lease of development rights” because they will preclude new development on the property during the lease term in addition to imposing management restrictions.

The duration of a conservation lease and the respective rights acquired by the preservation entity and reserved by the landowner depend on the terms of the lease instrument, which are negotiated on a case-by-case basis.

2.2.4.1 Ability of Leases to Achieve Conservation Goals

The ability of conservation leases to achieve conservation goals is generally limited by the temporary nature of such leases. As with other temporary mechanisms, leases provide only short-term benefits during the lease term and require preservation entities to acquire additional rights after the term expires in order to maintain the benefits.

Some federal conservation programs, like the Conservation Reserve Program (“CRP”), use 10- and 15-year contracts that function like conservation leases. CRP provides annual rental payments to farmers in exchange for removing land from production and establishing a cover crop that protects soil and other natural resources. Congress has invested tens of billions of dollars in CRP, which has provided a number of benefits to soil, water, wildlife, and other

natural resources.²⁵ However, the U.S. General Accounting Office has stated that “CRP is an expensive way to reduce the environmental problems linked to agricultural production” and that “CRP postpones rather than resolves” these problems.²⁶ CRP is unique in that it also serves non-conservation objectives, such as curbing the production of surplus crops. These objectives may provide independent justification for the high cost of the program. Nevertheless, the federal government’s experience with CRP illustrates the inherent limitations of conservation leases in achieving long-term conservation goals.

2.2.4.2 Impact of Leases on Landowner’s Continued Use

The impact of conservation leases on the landowner’s continued use depends on the terms of the lease. Conservation lease programs like CRP have a high impact on the landowner’s continued use of the land because they require the land to be taken out of production. However, a lease program could be designed to provide temporary protection for certain conservation values while allowing the landowner to continue using the land.

For example, the leasing of “ecosystem services,” such as wildlife habitat or water quality benefits provided by a working forest, has been proposed as a way of compensating landowners for services provided by their properties.²⁷ Conceptually, these services could be leased while allowing continued timber management and harvest. However, most funding entities would require management restrictions that provide an increase in ecosystem services above the level already required by current regulations (referred to as “additionality”), and many landowners would be reluctant to incur the cost of implementing such restrictions in exchange for the relatively modest payments associated with leasing ecosystem services.²⁸

2.2.4.3 Costs of Leases Over Time

- **Capital Costs.** The capital costs associated with conservation leases depend on several factors, such as the length of the lease term and the reduction in value associated with the development rights leased. Because most conservation leases will effectively include a lease of development rights, the analysis of the long-term costs of leases of

²⁵ See *Conservation Reserve Program (CRP) Program Assessment*, Soil & Water Conservation Society and Environmental Defense Fund (2008), available at: http://www.swcs.org/documents/filelibrary/CRPassessmentssummary_5E81D3A060B32.pdf.

²⁶ *Conservation Reserve Program: Cost-Effectiveness is Uncertain*, United States General Accounting Office (1992), available at: <http://archive.gao.gov/d44t15/148906.pdf>.

²⁷ See generally *Washington Conservation Markets Study: Final Report*, Prepared for the Washington State Conservation Commission by Evergreen Funding Consultants (2009), available at: <http://ofp.scc.wa.gov/wp-content/uploads/2009/02/cons-mkts-study-report-v1-25-09.pdf>.

²⁸ See *Conserving Washington’s Working Forests*, supra.

development rights discussed above would apply to a typical conservation lease transaction. According to this analysis, the total cost of lease payments under a conservation lease of property with high development potential can be expected to approach 70% of the full fee simple value of the property within 30 years. Capital costs are repeatedly incurred with each lease renewal.

- **Transaction Costs.** The transaction costs associated with conservation leases are relatively high. Conservation leases are often complex legal instruments and may require as much time and cost to draft as conservation easements. Transaction costs are incurred with each lease renewal.
- **Third-Party Monitoring and Enforcement Costs.** In order to ensure management of the property in accordance with the terms of a conservation lease, the preservation entity would need to monitor the property and, if necessary, take action to enforce the lease terms. Monitoring and enforcement costs are limited by the length of the lease's term. If the lease is renewed, however, these costs will continue to accrue.
- **Ownership and Management Costs.** A typical conservation lease would not require ownership and management costs unless the preservation entity assumed management responsibilities.
- **Pre-Transaction Administrative Costs.** The administrative costs associated with conservation leases are not one-time costs unless the goal is temporary. Some additional administrative costs will be incurred with each lease renewal or other action taken to continue protection of the land after the lease term has expired.

2.2.4.4 Ability of Leases to Respond to Future Changes

Conservation leases, like term conservation easements, can be seen as responsive to future changes in the sense that they automatically terminate, allowing the preservation entity to re-evaluate the need for preservation of a particular property at the end of the lease term. However, the potential benefits associated with the automatic termination of a conservation lease are outweighed by the fact that conservation leases generally do not provide any equity, thus limiting the preservation entity's options in responding to change. A typical conservation lease instrument would not include dynamic mechanisms allowing the lease to adapt to future changes.

2.2.4.5 Ability to Combine Leases with Other Mechanisms

Conservation leases are typically not combined with other mechanisms, but they can be combined with deferred purchase mechanisms and reserved life estate transactions.

2.2.4.6 Grant Funding Constraints on Leases

As noted above, most grant programs used by state conservation agencies require that less-than-fee acquisitions be perpetual, and grant programs that do allow non-perpetual acquisitions tend to give preference to perpetual acquisitions. For example, RCO allows cities and counties to acquire leases under the Farmland Preservation Program but requires that leases must be for at least 25 years and may not be revocable at will.

2.2.5 MECHANISM: Restrictive Covenants

While restrictive covenants can be drafted to terminate after a term of years or upon the occurrence of a particular event, more often covenants are intended to “run with the land” in perpetuity and bind future owners of the property.²⁹

A **restrictive covenant**, commonly referred to as a “deed restriction,” is essentially a promise by a landowner to refrain from doing something regarding the use of land. Restrictive covenants are often used by developers to impose use restrictions in residential subdivisions.

Between the original parties to the covenant (the “covenantor” and “covenantee”), enforcement is a matter of contract law.³⁰ However, between successors to the original parties, enforcement is a matter of real property law in a subject area commonly referred to as “running covenants.” Because the law of running covenants is rooted in ancient English “common law” dating back to the 14th century or earlier, it is a murky area of the law that presents many pitfalls and is difficult to predict.

Restrictive covenants will run with the land only if they meet certain technical requirements derived from the common law. In order for a covenant to run with the land, for instance, courts have held that the obligation imposed by the covenant must “touch and concern” both the land to be burdened and the land to be benefited by the covenant.³¹ In other words, the

²⁹ The courts have stated that a covenant “has an indefinite life, subject to termination by conduct of the parties or a change in circumstances which renders its purpose useless.” *Thayer v. Thompson*, 36 Wn. App. 794, 797, 677 P.2d 787 (1984).

³⁰ William B. Stoebuck, John W. Weaver, 17 *Washington Practice: Real Estate: Property Law*, §3.1 (2nd Ed. 2004).

³¹ *1515--1519 Lakeview Boulevard Condominium Ass'n v. Apartment Sales Corp.*, 146 Wn.2d 194, 203, 43 P.3d 1233 (2002) (stating that the distinctions between real covenants and equitable servitudes “have largely vanished from our law”). See also *Hollis v. Garwall, Inc.*, 137 Wn.2d 683, 691, 974 P.2d 836 (1999) (“Washington cases have

restriction must relate both to the conserved property owned by the covenantor and another property owned by the original covenantee, typically an adjacent or nearby parcel that derives some benefit from the restriction imposed on the burdened parcel. It is often difficult to meet each of these requirements in drafting a restrictive covenant for conservation purposes.

Moreover, restrictive covenants may be subject to common law doctrines that disfavor “negative” covenants (covenants that restrict the use of land) and covenants “in gross” (covenants that are not “appurtenant” to nearby land).³² In some cases, these doctrines allow courts to terminate covenants based on factors such as economic hardship. In contrast, because conservation easements are authorized by state statutes that provide protection against certain common law doctrines, there is much less uncertainty regarding their enforceability.

2.2.5.1 Ability of Restrictive Covenants to Achieve Conservation Goals

Because the law of running covenants is difficult to predict, restrictive covenants have a limited ability to achieve perpetual conservation goals. If the goal is permanent, a conservation easement can provide much more certainty than a restrictive covenant.

All but one of our interviewees viewed restrictive covenants unfavorably because of questions about their enforcement. One land trust staff member, however, reported that his land trust had used covenants as a tool in phased projects. For example, in transactions where the land trust has acquired a single parcel and plans to acquire other parcels with the ultimate goal of bringing the properties under a single fee simple owner or a conservation easement, the land trust might use a restrictive covenant to create interim certainty until the project is completed.

2.2.5.2 Impact of Restrictive Covenants on Landowner’s Continued Use

The impact of a restrictive covenant on the landowner’s continued use depends on the terms of the covenant. A covenant could theoretically be drafted to preclude all use by the landowner, but most covenants allow some continued use by the landowner and have a low to moderate impact on continued use.

generally not distinguished between the two kinds of covenants”). However, the courts have continued to apply two different tests in determining whether real covenants and equitable servitudes run with the land. See *Lake Limerick Country Club v. Hunt Mfg. Homes, Inc.*, 120 Wn. App. 246, 254, 84 P.3d 295 (2004).

³² See *Dynamic Conservation Easements*, supra.

2.2.5.3 Costs of Restrictive Covenants Over Time

- **Capital Costs.** The capital costs of restrictive covenants depend on the reduction in value associated with the restrictions included in the covenant instrument. If the covenant is successfully drafted to run with the land in perpetuity, this is a one-time cost. However, if the covenant fails to run with the land, the preservation entity may be forced to invest additional funds in protection of the same property.
- **Transaction Costs.** The transaction costs of restrictive covenants are low. Covenants are relatively simple legal instruments and can be drafted with little cost. However, if the covenant fails to run with the land, the preservation entity may incur additional transaction costs.
- **Third-Party Monitoring and Enforcement Costs.** Traditional restrictive covenants do not include provisions allowing the covenantee and successors to monitor and enforce the covenant's terms, although it may be possible to draft a covenant that includes such provisions. Most covenants are not monitored regularly and are enforced on an ad hoc basis in response to obvious violations. If the preservation entity chose to engage in regular monitoring or were required to take enforcement action, the costs of such monitoring and enforcement would be comparable to the monitoring and enforcement costs of conservation easements.
- **Ownership and Management Costs.** Restrictive covenants do not require ownership and management costs.
- **Pre-Transaction Administrative Costs.** The administrative costs associated with restrictive covenants are low because their primary use is likely to be opportunistic rather than programmatic. However, if the covenant fails to run with the land, the preservation entity may incur additional administrative costs.

2.2.5.4 Ability of Restrictive Covenants to Respond to Future Changes

Restrictive covenants have a relatively low ability to respond to future changes. It is unlikely that covenants could be drafted to include dynamic terms that effectively adapt to changes over time. Moreover, termination of a restrictive covenant in court can be costly due to the unpredictable nature of the law of running covenants and the highly fact-specific nature of the court's inquiry.

2.2.5.5 Ability to Combine Restrictive Covenants with Other Mechanisms

As noted above, restrictive covenants can be combined with fee simple acquisitions and conservation easements in phased transactions to provide interim certainty while the preservation entity completes the project.

2.2.5.6 Grant Funding Constraints on Restrictive Covenants

Although several grant programs used by preservation entities allow less-than-fee acquisitions, most funding entities have not interpreted the relevant statutes to allow the acquisition of restrictive covenants. For example, while RCO policy for the Farmland Preservation Program allows the use of perpetual conservation easements, term conservation easements, and leases, it does not allow the use of restrictive covenants.

2.2.6 MECHANISM: Fee Simple / Leaseback Transactions

In a fee simple / leaseback transaction, the preservation entity is the landowner and landlord (or “lessor”) and the former owner or another party becomes the tenant (or “lessee”). The duration of the entity’s fee simple ownership is indefinite, and the duration of the lease is negotiated by the parties. The entity retains all property rights except those conveyed to the lessee in the lease instrument, which may contain management restrictions.

As the name implies, a “**fee simple / leaseback**” transaction involves the purchase of a fee simple interest and a subsequent lease of the property back to the former owner or to another tenant.

Fee simple / leaseback transactions are specifically authorized by one of the statutes authorizing conservation easements,³³ and this mechanism is listed in the Department of Commerce’s administrative guidelines for the Growth Management Act as an appropriate technique to conserve and protect agricultural lands, forest lands, and mineral resource lands.³⁴ However, as discussed below, the use of fee simple / leaseback transactions for publicly-funded projects may be limited by the purpose of a particular grant program and requirements associated with tax-exempt bonds that fund the program.

³³ RCW 84.34.210 (providing that eligible entities may acquire property “for the purpose of conveying or leasing the property back to its original owner or other person under such covenants or other contractual arrangements as will limit the future use of the property”).

³⁴ WAC 365-190-040(11).

2.2.6.1 Ability of Fee Simple / Leaseback Transactions to Achieve Conservation Goals

Fee simple / leaseback transactions are most appropriate when the preservation entity's goal is to preserve working lands such as farms and ranches. The purpose of the "leaseback" is to allow parties with expertise and local knowledge – farmers and ranchers – to continue to manage the land. If the goal is ecological preservation, in most cases the preservation entity will have the most expertise. If the goal is to preserve recreational, cultural, or historical values, management by the entity is often necessary to prevent conflicts between those values and a potential lessee's use of the land. There may be particular cases in which fee simple / leaseback is appropriate to protect open space and scenic values. However, the majority of fee simple / leaseback transactions involve working lands.

Interviewees offered differing opinions about the ability of fee simple / leaseback transactions to preserve working lands. One interviewee stated that fee simple / leaseback is a valuable alternative to reserved life estates, reverse mortgages and charitable remainder trusts for farmers approaching retirement, noting a large number of farmers in Eastern Washington without heirs who want to continue farming but need immediate access to the value of their land. Another interviewee indicated a desire for funding entities to allow greater use of fee simple / leaseback transactions for grazing lands. According to this interviewee, mid-sized ranches (ranging from approximately 800-3,800 acres) represent the state's last opportunity to protect major tracts of land in private, non-timber ownership, and fee simple / leaseback transactions offer a potential balance between allowing continued livestock grazing by ranchers and continued economic opportunity on the land while also protecting habitat corridors through the terms of the lease.

In contrast to these supportive comments, however, another interviewee expressed concerns about fee simple / leaseback transactions of ranch land. This interviewee stated that state agencies lack sufficient staff to oversee ranching practices and that lessees tend not to care for the land as well as owners. The practice of livestock grazing on leased DFW lands is controversial, and its impacts were recently analyzed in an Environmental Impact Statement ("EIS") prepared by DFW.³⁵ The EIS outlined several measures designed to reduce the environmental impacts of livestock grazing, including monitoring and adaptive management of vegetation and riparian and wetlands areas. Such measures could be incorporated into the terms of a leaseback on grazing lands.

³⁵ See *Final Environmental Impact Statement for Livestock Grazing Management on the Washington Department of Fish and Wildlife's Quilomene and Whiskey Dick Wildlife Areas in Kittitas County*, Washington Department of Fish and Wildlife (2009), available at: <http://wdfw.wa.gov/hab/sepa/09082eis.pdf>.

2.2.6.2 Impact of Fee Simple / Leaseback Transactions on Landowner's Continued Use

The impact of fee simple / leaseback transactions on the landowner's continued use of the land depends on the terms of the lease. In a typical fee simple / leaseback transaction, the former owner becomes the lessee and continues to manage the land as a farm or ranch consistent with historic practices. If the preservation entity wants to achieve other conservation goals in addition to preventing conversion of the farm or ranch, the entity might try to negotiate additional management restrictions with the former owner and incorporate those restrictions into the lease.

2.2.6.3 Costs of Fee Simple / Leaseback Transactions Over Time

- **Capital Costs.** The capital costs associated with fee simple / leaseback transactions are the same as with fee simple acquisitions, except that the lease payments from the lessee allow the preservation entity to recoup some of the cost of the fee acquisition.
- **Transaction Costs.** The transaction costs associated with fee simple / leaseback transactions are moderate to high, depending on the complexity of the lease instrument. If the lease contains management restrictions similar to those found in a conservation easement, the cost to negotiate and draft the lease could be high. If the lease contains no management restrictions, the cost will be lower.
- **Third-Party Monitoring and Enforcement Costs.** Monitoring and enforcement costs for fee simple / leaseback transactions also depend on whether the lease includes management restrictions that must be monitored by the preservation entity. If so, the entity will incur monitoring costs and may incur enforcement costs. These costs could be substantial. For example, regular monitoring of grazing practices and impacts and adaptive management of grazing lands, as outlined in the EIS noted above, could be costly.
- **Ownership and Management Costs.** Most fee simple / leaseback transactions do not require ownership and management costs, although in some cases the preservation entity may choose to provide technical assistance to the lessee or pursue restoration projects on the property.
- **Pre-Transaction Administrative Costs.** The administrative costs associated with fee simple / leaseback transactions are comparable to the administrative costs associated with fee simple acquisitions. The addition of a lease does not add significant pre-transaction administrative costs.

2.2.6.4 Ability of Fee Simple / Leaseback Transactions to Respond to Future Changes

Fee simple / leaseback transactions, like fee simple acquisitions, have a high ability to respond to future changes because fee simple ownership gives the preservation entity maximum control. The entity's ability to respond to future changes with fee simple / leaseback transactions may be subject to potential grant funding constraints and the terms of the lease itself.

2.2.6.5 Ability to Combine Fee Simple / Leaseback Transactions with Other Mechanisms

Fee simple / leaseback transactions are not usually combined with other mechanisms because the preservation entity's fee simple ownership ensures adequate control of the property. However, a fee simple / leaseback transaction could be combined with certain deferred purchase mechanisms.

2.2.6.6 Grant Funding Constraints on Fee Simple / Leaseback Transactions

Fee simple acquisitions and lease transactions are generally allowed by most grant programs. However, as noted above, fee simple / leaseback transactions for intensive, income-producing activities like ranching could require a determination that the uses allowed and the income provided by the lease are consistent with the purpose of the grant program and the requirements associated with tax-exempt bonds that fund the program. If these features of fee simple / leaseback transactions are determined to be consistent with applicable funding constraints, this mechanism could become a useful alternative to perpetual conservation easements for preserving working landscapes.

In commenting on our draft report, one reviewer noted that the threat of lawsuits opposing grazing activity on ecologically less-valuable portions of fee simple lands acquired by DFW could increase the costs of such acquisitions. This reviewer also argued that "serving multiple purposes is desired," and suggested that the Coordinated Resource Management (CRM) process could assist preservation entities and landowners in balancing multiple conservation goals and the needs of landowners. For example, the CRM process has been successfully used in Okanogan County to address resource issues ranging from livestock grazing management and fish passage to irrigation water management and cultural plants.³⁶

³⁶ See "Examples of Successful CRM Planning," CRM Washington, available at: http://www.crmwashington.org/success_story_examples#okanogan.

It may be possible to incorporate this type of process into a grant program for fee simple / leaseback transactions and/or into a lease instrument for such a program.

2.2.7 MECHANISM: Deferred Purchase Mechanisms

“Deferred purchase mechanisms” include mechanisms such as installment land contracts, options to purchase, rights of first refusal, rights of first negotiation, and rights of first offer. So-called “reserved life estate” transactions are also discussed in this section, although such acquisitions actually involve the immediate purchase of a remainder interest.

A brief description of each deferred purchase mechanism is provided below.

- **Installment Land Contracts / Lease Purchase Contracts.** Under a typical installment land contract, the seller provides financing for an agreed purchase price and the buyer repays the loan in installments, with the buyer taking immediate possession and the seller retaining title until the loan is repaid. Private preservation entities are free to enter into installment land contracts, but the use of traditional installment contracts by state agencies would likely run afoul of the debt limitation provision in article 8, section 1 of the state constitution, which limits the state’s ability to bind future legislatures.

However, state law provides specific authority for agencies to use a similar mechanism, called a “lease purchase contract,” to acquire real estate, and the courts have upheld the constitutionality of this mechanism.³⁷ A lease purchase contract is essentially a conditional agreement to pay principal and interest, subject to annual legislative appropriation. Payments under lease purchase contracts must be made “from currently appropriated funds or funds not constituting ‘general state revenues’” and the term of such contracts may not exceed 30 years. Lease / purchase contracts for real estate must be specifically approved by the Legislature and the State Finance Committee and require extensive legal documentation.

Because lease purchase contracts are complex and would be unattractive to many landowners, it may be necessary for public agencies to partner with land trusts or other private entities in structuring a lease purchase transaction. This model has been used in Florida, where the Trust for Public Land acquired a property scheduled for bankruptcy sale and entered into a lease purchase agreement with the county, which had passed a tax to acquire the land but had not yet accumulated sufficient funding.

³⁷ See Chapter 39.94 RCW; *Department of Ecology v. State Finance Committee*, 116 Wn.2d 246, 804 P.2d 1241 (1991).

- **Option to Purchase.** In exchange for an immediate payment to the landowner, an option to purchase gives the optionee the right, but not the obligation, to purchase a fee simple or lesser interest in the future. Options set forth the purchase price, timeframe and other terms for the optionee's exercise of the option. An option can be included in another instrument such as a lease or drafted as a stand-alone option contract. The Parks and Recreation Commission is specifically authorized to "select and purchase *or obtain options upon*, lease, or otherwise acquire" land for park and parkway purposes.³⁸
- **Right of First Refusal.** A right of first refusal ("ROFR") gives the holder the right to purchase or lease property for the same price and on the same terms that the landowner is willing to accept from a third party. Some landowners may be reluctant to grant a ROFR because ROFRs are seen as having a chilling effect on the property's marketability. Voluntary agricultural districts, which do not yet exist in Washington State, sometimes require participating landowners, in exchange for receiving certain incentives, to grant a right of first refusal to a public entity.
- **Right of First Negotiation.** A right of first negotiation ("ROFN") gives the holder the right to receive notice if the landowner intends to sell or lease the property and the exclusive right to negotiate a mutually acceptable deal within a specified period of time. If the exclusive negotiation period expires before the parties can reach agreement, the landowner is free to pursue other deals with third parties. Because the negotiation period ends before the landowner negotiates a deal with a third party, a ROFN avoids any chilling effect that may be associated with rights of first refusal.
- **Right of First Offer.** A right of first offer ("ROFO") gives the holder the right to make an offer before the owner can sell the property to a third party. The landowner can reject the offer but typically cannot accept a lower price.
- **Reserved Life Estate Transactions.** In a reserved life estate transaction, the landowner sells a remainder interest in the land while reserving a life estate, allowing the landowner to continue to possess and use the property for the duration of his or her life. At the time of the landowner's death, fee simple title vests in the holder of the remainder interest. Reserved life estate transactions can be particularly appealing to owners of farm and ranch land who are approaching retirement, want to continue to live on the land, but need immediate access to the value of the property, which is often seen as the primary source of retirement income for farmers and ranchers.

³⁸ RCW 79A.05.030(7) (emphasis added).

2.2.7.1 Ability of Deferred Purchase Mechanisms to Achieve Conservation Goals

Most deferred purchase mechanisms do not directly achieve conservation goals, but they can be paired with another land preservation mechanism to “buy time” when the immediate purchase of a particular property with high conservation value is not possible. For example, if a landowner needs more time to evaluate options before making a long-term commitment, the preservation entity could purchase a ROFR, ROFN, or a ROFO.

Alternatively, if the landowner is willing to sell but adequate funding is not available to purchase a fee simple interest or a conservation easement, the preservation entity could obtain an option to purchase, providing short-term certainty that the land will not be developed. This approach was used by the Lancaster Farmland Trust, which acquired an option to purchase a conservation easement on the farm where the movie “Witness” was filmed before ultimately acquiring the conservation easement.

Lease purchase contracts have some potential to achieve conservation goals, but this potential is realized only if future legislatures continue to appropriate funding to complete the transaction. If so, the preservation entity will acquire a property interest, typically a fee simple interest. If not, the lease will terminate and the entity will have lost its investment in lease purchase payments to date. The effect of such a failed lease purchase transaction would be similar to a lease of development rights or a conservation lease that is not renewed.

In contrast, reserved life estate transactions have a high ability to achieve conservation goals, particularly on working lands. As with fee simple / leaseback transactions, reserved life estate transactions allow the preservation entity to immediately acquire an interest in the land while the landowner continues to live on and/or manage the land. However, because the entity’s remainder interest in reserved life estate transactions is a *future* interest, it does not give the entity any control over use of the land during the landowner’s lifetime. For this reason, as discussed below, reserved life estate transactions are often paired with other mechanisms such as conservation easements.

2.2.7.2 Impact of Deferred Purchase Mechanisms on Landowner’s Continued Use

Most deferred purchase mechanisms have no direct impact on the landowner’s continued use of the land unless they are paired with another mechanism that impacts continued use. The impact of a lease purchase agreement on the landowner’s continued use depends on the terms of the lease.

2.2.7.3 Costs of Deferred Purchase Mechanisms Over Time

- **Capital Costs.**
 - Lease Purchase Agreements. The capital costs of completed lease purchase agreements are somewhat higher than the capital costs for fee simple acquisitions because, in addition to paying for the fee simple title, the preservation entity is paying interest over time. If the parties fail to complete the lease purchase agreement, the cost is lower, but the conservation benefit is not retained.
 - Options. The capital costs of options depend on several factors, such as the value of the property and the duration of the option. For most options, capital costs are relatively low, representing a small percentage of the property's value paid to the landowner in exchange for granting a short-term option.
 - ROFRs/ROFNs/ROFOs. The capital costs of ROFRs, ROFNs, and ROFOs are relatively low. In general, ROFRs are more costly because they are unattractive to many landowners and because they could be valuable if the property value exceeds the price set forth in the option before it is exercised by the optionee.
 - Reserved Life Estate Transactions. The capital costs of reserved life estate transactions depend primarily on the age of the landowner. As the landowner's age increases, the value of the remainder interest purchased by the preservation entity increases and approaches 100% of the property's fee simple value.
- **Transaction Costs.** The transaction costs of options, ROFRs, ROFNs, and ROFOs, which require relatively simple documentation, are low. In contrast, the transaction costs of lease purchase agreements are high. As noted above, lease purchase agreements must be documented with complex legal instruments and approved by the State Finance Committee. The transaction costs of reserved life estate transactions may also be high if the conservation goal requires the preservation entity to combine the acquisition of a remainder interest with another mechanism such as a lease or a conservation easement.
- **Third-Party Monitoring and Enforcement Costs.** Deferred purchase mechanisms do not require any third-party monitoring and enforcement costs except when paired with another mechanism such as a conservation easement.
- **Ownership and Management Costs.** Deferred purchase mechanisms do not require any ownership and management costs except when paired with another mechanism such as a fee simple acquisition.

- **Pre-Transaction Administrative Costs.** The administrative costs of deferred purchase mechanisms are low. In most cases, these mechanisms would be used in unique circumstances rather than on a programmatic level and would require few administrative costs. Lease purchase agreements, however, may require additional administrative costs due to their complexity.

2.2.7.4 Ability of Deferred Purchase Mechanisms to Respond to Future Changes

Some deferred purchase mechanisms can be used to anticipate and respond to future changes. As discussed above, such mechanisms can be used in a variety of situations to “buy time” or to provide short-term assurance that a property will not be converted to incompatible uses.

2.2.7.5 Ability to Combine Deferred Purchase Mechanisms with Other Mechanisms

Options, ROFRs, ROFNs, and ROFOs, if exercised successfully, would typically be combined with a subsequent fee simple acquisition or purchase of a conservation easement.

Like fee simple acquisitions, lease purchase agreements resulting in fee simple ownership may be combined with leases (such as in a fee simple / leaseback transaction) and conservation easements (such as in a transaction involving fee simple acquisition and resale of the property subject to a conservation easement).

Reserved life estate transactions can be combined with term conservation easements, leases of development rights, and conservation leases during the landowner’s lifetime. After the landowner’s death, the entity may choose to combine its fee simple title with other mechanisms.

2.2.7.6 Grant Funding Constraints on Deferred Purchase Mechanisms

The funding constraints on deferred purchase mechanisms are not entirely clear, but it is generally more difficult to obtain funding for deferred purchase mechanisms. Most of the grant programs used by preservation entities allow the acquisition of fee simple or lesser property interests but do not appear to allow the acquisition of contract rights such as options to purchase, ROFRs, ROFNs, or ROFOs. RCO is not aware of any grant programs that have been used to fund the purchase of an option, ROFR, ROFN, or ROFO.

There is also some uncertainty regarding whether grant programs could be used to fund lease purchase contracts or reserved life estate transactions. A lease purchase contract involves the immediate acquisition of a lease and the potential acquisition of a fee simple interest, but the fee simple acquisition is subject to continued legislative appropriation. While the lease portion of the transaction may be allowable as a “less than fee” acquisition, the use of funds for a conditional agreement to purchase a fee simple could be problematic. Finally, while a remainder interest could be considered a “less than fee” acquisition, it is unclear whether the acquisition of future interests in land (such as remainder interests) would be allowed under existing grant programs.

2.2.8 MECHANISM: Voluntary Conservation Registries

A conservation registry is a non-binding agreement that reflects a landowner’s voluntary commitment to protect a property’s conservation values and, in some cases, to provide notice to the agency of certain changes, such as planned ownership transfers or changes in land use. In exchange for this commitment, the agency provides low-cost benefits such as technical assistance, newsletter subscriptions, and yard signs and certificates stating that the property is officially enrolled in the registry. Conservation registry programs may include occasional site visits by agency representatives to conduct monitoring of the property’s condition and provide on-site advice and assistance to the landowner.

Conservation registries are potentially indefinite in duration, although the landowner is free to withdraw at any time without penalty. No rights are acquired by the preservation entity.

Conservation registries have been successfully used in Washington State to provide some degree of preservation on certain types of properties that do not merit acquisition. For example, DNR’s Natural Areas Registry program was used to assist an owner of property adjacent to a Natural Areas Preserve (“NAP”) in managing the property consistent with DNR’s management plans for the NAP. The Natural Areas Registry program included a partnership with the Nature Conservancy to conduct monitoring. At one time, nearly 100 sites were enrolled in the program. Due to budget constraints, however, this program has been relatively inactive in recent years. DFW’s “Backyard Sanctuary” program is currently active and provides information and advice to landowners, including a newsletter discussing topics ranging from invasive species management to coyotes in urban areas.³⁹

³⁹ See “Backyard Wildlife Sanctuary,” Washington Department of Fish and Wildlife, available at: <http://wdfw.wa.gov/wlm/backyard/>.

2.2.8.1 Ability of Voluntary Conservation Registries to Achieve Conservation Goals

Due to their non-binding nature, conservation registries have a limited ability to achieve conservation goals. When landowners are enrolled and actively participating in registry programs, certain conservation benefits are derived from the owner's commitment to manage the property for conservation. However, because registries are not binding and landowners can withdraw at any time, preservation entities have no assurance that conservation goals will continue to be achieved.

2.2.8.2 Impact of Voluntary Conservation Registries on Landowner's Continued Use

Conservation registries have a low impact on the landowner's continued use of the land, and any impact is based on the owner's voluntary choices regarding land management. Typical land management techniques encouraged by registries include implementation of a landscape plan under which the landowner will "garden for wildlife and protect habitat."⁴⁰

2.2.8.3 Costs of Voluntary Conservation Registries Over Time

Because preservation entities do not incur capital or transaction costs when a landowner enrolls in a conservation registry, the costs of registry programs are relatively low. The only potential costs associated with registries are the administrative costs needed to run the registry program and the cost of any monitoring efforts or technical assistance provided to landowners.

2.2.8.4 Ability of Voluntary Conservation Registries to Respond to Future Changes

Voluntary conservation registry programs are highly responsive to future changes in the sense that landowners and preservation entities are free to terminate a property's enrollment in the program at any time. However, this types of responsiveness is primarily a disadvantage to preservation entities because a landowner could choose to withdraw from the program even though the property is providing continued conservation benefits.

⁴⁰ See "Certified Wildlife Habitat Partners," National Wildlife Federation, available at: <https://secure.nwf.org/backyardwildlifehabitat/certify/dspPartners.cfm>.

2.2.8.5 Ability to Combine Voluntary Conservation Registries with Other Mechanisms

Conservation registries are rarely combined with other land preservation mechanisms. However, in unique circumstances, a preservation entity may decide to combine registry enrollment with the use of a deferred purchase mechanism like an option, such as when a particular property with high conservation value is currently at low risk of conversion but has a greater potential for conversion in the near future.

2.2.8.6 Grant Funding Constraints on Voluntary Conservation Registries

Because conservation registries do not provide any payments to landowners, grant programs used by state agencies in acquisition projects do not constrain the use of registry programs. However, as noted above, budget constraints have limited the use of registry programs by agencies like DNR.



2.3 Analysis By Criterion

The following analysis addresses each evaluation criterion in turn, with emphasis on the choice between perpetual and temporary mechanisms.

2.3.1 CRITERION: Ability to Achieve Conservation Goals

The primary factor affecting the ability of a land preservation mechanism to achieve conservation goals over time is the mechanism's intended duration. In general, because perpetual mechanisms have a potentially infinite duration, they have a greater potential than temporary mechanisms to achieve the conservation goals of state natural resource agencies.

There are both legal and practical reasons why preservation entities should, in most cases, favor perpetual land preservation mechanisms over temporary mechanisms.

2.3.1.1 Statutory Framework for Land Preservation

As a matter of law, the statutory framework that defines the land preservation goals of state natural resource agencies and the legislative intent of conservation grant programs uses language that favors a perpetual approach to land conservation. Several examples of such language are quoted below.

- The Parks and Recreation Commission is responsible for managing parks and parkways “acquired or *set aside* by the state,” and the Legislature has stated its intent to “reverse the decline in operating support to its state parks, stabilize the system's level of general fund support, and inspire system employees and park visitors to enhance these *irreplaceable resources* and *ensure their continuing availability to current and future state citizens and visitors.*”⁴¹
- Under the Natural Areas Preserve Act, DNR is charged with achieving the legislatively declared “public policy of the state of Washington to *secure* for the people of present *and future generations* the benefit of an *enduring* resource of natural areas by establishing a system of natural area preserves, and to provide for the protection of these natural

⁴¹ See RCW 79A.05.030(1); see also note following RCW 79A.05.070 (“Findings -- Intent -- 1995 c 211”) (emphasis added).

areas.”⁴² Real property interests acquired by DNR must be “*held* and managed as a natural area.”⁴³

- Similarly, under the Natural Resource Conservation Areas Act, DNR is charged with meeting the “increasing and *continuing* need by the people of Washington for certain areas of the state to be conserved, in rural as well as urban settings, for the benefit of present *and future generations*.”⁴⁴
- DFW’s statutory mandate is to “preserve, protect, *perpetuate*, and manage the wildlife and food fish, game fish, and shellfish in state waters and offshore waters.”⁴⁵ Because the statute does not include a definition for “perpetuate,” the term is given its plain and ordinary meaning, which can be determined by reference to a dictionary. Webster’s defines “perpetuate” as “to make perpetual or *cause to last indefinitely* <perpetuate the species>.”⁴⁶
- RCO’s mandate is guided by legislative findings and a policy declaration that strongly favor perpetual preservation:
 - “[P]ublic acquisition and development programs have not kept pace with the state’s expanding population”;
 - “[I]f current trends continue, some wildlife species and rare ecosystems will be lost in the state forever and public recreational lands will not be adequate to meet public demands”;
 - “[T]here is accordingly a need for the people of the state to reserve certain areas of the state, in rural as well as urban settings, for the benefit of present and future generations”; and
 - “It is therefore the policy of the state to acquire as soon as possible the most significant lands for wildlife conservation and outdoor recreation purposes before they are converted to other uses, and to develop existing public recreational land and facilities to meet the needs of present and future generations.”⁴⁷

⁴² RCW 79.70.010 (emphasis added).

⁴³ RCW 79.70.030(3) (emphasis added).

⁴⁴ RCW 79.71.010 (emphasis added).

⁴⁵ RCW 77.04.012 (emphasis added).

⁴⁶ Merriam-Webster OnLine, available at: <http://www.merriam-webster.com/dictionary/PERPETUATE>.

⁴⁷ RCW 79A.15.005 (emphasis added).

Similar language is found in state statutes addressing the taxation of working landscapes such as forestland, open space, and agricultural lands:

- “It is this state's policy to encourage forestry and restocking and reforestation of such forests so that present *and future generations* will enjoy the benefits which forest areas provide in enhancing water supply, in minimizing soil erosion, storm and flood damage to persons or property, in providing a habitat for wild game, in providing scenic and recreational spaces, in *maintaining* land areas whose forests contribute to the natural ecological equilibrium, and in providing employment and profits to its citizens and raw materials for products needed by everyone.”⁴⁸
- “The legislature hereby declares that it is in the best interest of the state to maintain, preserve, conserve and otherwise *continue in existence* adequate open space lands for the production of food, fiber and forest crops, and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the state and its citizens. The legislature further declares that assessment practices must be so designed as to permit the *continued availability* of open space lands for these purposes, and it is the intent of this chapter so to provide.”⁴⁹

2.3.1.2 The Permanency of Conversion to Incompatible Uses

Moreover, as a practical matter, preservation entities should favor the use of perpetual mechanisms because temporary mechanisms do not prevent the conversion of land to other uses. While temporary mechanisms can delay conversion during the term of the mechanism, they provide no assurance that conversion will not occur after the term expires.

Once a property is converted to another use, its conservation value may be lost forever. With rare exceptions, the conversion of land is essentially permanent, and the future cost of restoring a property to its natural state would almost certainly exceed the current cost of preservation. The National Academy of Sciences has called the conversion of land “the most permanent and often irreversible effect that humans can have on the natural landscape.”⁵⁰

As noted above, the potentially permanent nature of conversion is reflected in the Legislature’s finding that “[i]f current trends continue, some wildlife species and rare ecosystems will be lost in the state *forever*” and the legislatively declared policy to “acquire

⁴⁸ RCW 84.33.010(1).

⁴⁹ RCW 84.34.010.

⁵⁰ NATIONAL ACADEMY OF SCIENCES, GROWING POPULATIONS, CHANGING LANDSCAPES: STUDIES FROM INDIA, CHINA, & THE UNITED STATES 2 (2001), available at <http://www.nap.edu/execsumm/0309075548.html>.

as soon as possible the most significant lands for wildlife conservation and outdoor recreation purposes *before they are converted to other uses.*⁵¹

2.3.1.3 Conservation Equity

In economic terms, the primary advantage of perpetual land preservation mechanisms in achieving the state's conservation goals is that perpetual interests provide a form of "conservation equity," which can be retained by the preservation entity as long as the property provides conservation benefits and liquidated if the entity determines that the property no longer serves a conservation purpose. For example, if future changes render a property unsuitable for conservation, the preservation entity can attempt to sell its fee simple interest or terminate its conservation easement (depending on its terms) and re-invest the appreciated value of the entity's interest in another property.⁵²

The wide range of perpetual property interests held by the state, including millions of acres of fee simple lands and conservation easements, can be seen as a portfolio of conservation equity. From this perspective, the state can seek to manage the risk associated with future changes by diversifying its conservation portfolio. Diversification in this context would include acquiring interests in a diversity of property types (such as farms, forests, and open space) and using a diversity of perpetual mechanisms (including fee simple acquisitions, static and dynamic conservation easements, and acquisitions of remainder interests).

Consistent with this portfolio approach, author James Olmstead argues that best use of conservation easements for biodiversity is for preservation entities to acquire a "multiplicity of preserves":

[N]o single acquisition, even a large one, can capture all the species or the "interspecific [sic] interactions" of a target plant or animal. As Professor Brewer explains, "[a] stand or a preserve is a sample that catches some of the traits and not others, as a dipperful of water fails to catch everything living in a pond." Another reason for having a multiplicity of preserves of a particular biotic community is to lower the likelihood of regional extinctions. By having a multiplicity of preserves, if a small population of a species goes extinct, that preserve may nevertheless be re-populated by members of that species harbored in a nearby, protected preserve. Following this strategy, "[e]ach trust working in its own area can provide preserves in which it tries to capture the whole variety of local habitats available." As explained by Professor Brewer, "[w]hen species are

⁵¹ RCW 79A.15.005 (emphasis added).

⁵² A preservation entity's ability to terminate a conservation easement and capture its appreciated value will depend on how the easement instrument is drafted.

eventually lost from its region, the land trust will have provided an array of habitats available for immigration by other native species that now find the climate to their liking.”⁵³

Olmstead categorizes conservation easements as either “Park Easements” (traditional static easements without dynamic termination provisions) or “Ark Easements” (dynamic easements that are “terminable at the easement holder’s option”).⁵⁴ Olmstead also describes how so-called “Carbon Sequestering Easements” could be drafted to recognize the potential value of conservation easements in emerging carbon markets:

If protocols, such as those developed in California, are adopted by major national and international carbon trading markets, holders of newly minted conservation easements encumbering qualifying forest lands that would have been deforested but for the conservation easement may be able to tap into these markets to achieve additional sources of funding for conservation easement acquisition and stewardship.⁵⁵

Thus, properly drafted “Carbon Sequestering Easements” could provide additional conservation equity and add diversity to the state’s conservation portfolio.

A preservation entity’s decision regarding whether to retain or liquidate a property interest may depend on limitations associated with funding sources for the original acquisition. For example, RCO has adopted a “Conversion Policy” for property interests acquired with RCO assistance. Under this policy, before RCO approves the conversion of a property to another use, all practical alternatives to conversion must be evaluated and rejected and another “substitute” property of equal current fair market value and “of reasonably equivalent recreation or habitat utility and location to that being converted” must be provided.⁵⁶ While these limitations may impose some constraints on an entity’s ability to liquidate conservation equity created by perpetual mechanisms, liquidation would simply not be an option with a temporary mechanism because they provide no equity.

⁵³ James L. Olmsted, *Climate Surfing: A Conceptual Guide to Drafting Conservation Easements in the Age of Global Warming*, 23 ST. JOHN’S J. LEGAL COMMENT, 765, 795 (2008), available at: <http://www.landprotect.com/files/34156068.pdf>.

⁵⁴ While Olmstead refers to such “Ark” easements as a “non-perpetual,” in this report “Ark” easements are treated as perpetual easements with dynamic termination clauses. Because Ark easements are terminable at the easement holder’s option but do not terminate automatically, they are of potentially indefinite duration and are therefore “perpetual.”

⁵⁵ *Climate Surfing*, supra.

⁵⁶ *RCFB-SRFB Manual 7, Funded Projects: Policies and the Project Agreement*, Recreation and Conservation Office (2009), available at http://www.rco.wa.gov/documents/Manuals&Forms/Manual_7.pdf.

Because temporary mechanisms fail to provide conservation equity, their ability to achieve long-term preservation goals is limited. As a general rule, preservation entities should consider using temporary mechanisms only if permanent mechanisms are unavailable (due to funding constraints, landowner reluctance, or other factors), a high-value property is in imminent danger of conversion, and the entity has a reasonable expectation that the risk of conversion will pass before the mechanism's term expires.

2.3.1.4 Ability to Achieve Particular Land Preservation Goals

Each conservation project is unique, and the particular land preservation goal for each property must be considered in selecting the appropriate mechanism.

- **Ecological Values.** Perpetual mechanisms have a high potential to achieve ecological land preservation goals because they give the preservation entity the ability to ensure that the property's ecological values will continue to be available in the future. By contrast, temporary mechanisms have a low ability to achieve ecological preservation. Once a temporary mechanism's term has expired, the preservation entity has no control over the continued availability of the property's ecological benefits. In selecting a perpetual mechanism to protect ecological values, a primary consideration is the sensitivity of the ecological resource to be protected. If the resource is highly sensitive to conflicting uses on the same parcel, fee simple acquisition may be appropriate because of the control afforded by fee simple ownership. Alternatively, if the resource can be physically segregated from conflicting on-site uses, it may be possible to reduce the cost of the acquisition by using a perpetual conservation easement to restrict activities only in targeted sensitive areas while allowing more intensive uses in other areas of the property.
- **Working Landscapes.** In selecting a mechanism to protect working landscapes, a primary consideration is the mechanism's ability to keep the land in long-term production. The central goal of working landscapes preservation is to preserve the continued opportunity for agriculture, ranching, or forestry by preventing conversion of the land to an incompatible use. For example, Farmland Preservation Program grant funds "must be distributed for the acquisition and preservation of farmlands *in order to maintain the opportunity for agricultural activity* upon these lands."⁵⁷ Perpetual mechanisms that allow working landscapes to remain in private management, such as conservation easements, fee simple / leaseback transactions, and reserved life estate transactions, are particularly effective in achieving this goal. Temporary mechanisms, on the other hand, only delay

⁵⁷ RCW 79A.15.130 (emphasis added).

the risk of conversion of working lands, while subsidizing the landowner's holding costs and potentially enabling the landowner to finance development of the property after the mechanism's term expires. Once working lands are converted, their conservation values are lost.

- **Recreational, Open Space, Scenic, Historical or Cultural Values.** In selecting a mechanism to protect recreational values or to provide access to sites with open space, scenic, historical and cultural values, a primary consideration is the potential for conflict between public access and continued use by the landowner. In most cases, fee simple ownership is the best choice when the conservation goal requires public access. When public access is not desired, a perpetual conservation easement can be used to protect open space, scenic, historic and cultural values. If the site contains especially sensitive resources, however, fee simple ownership may be needed to ensure their protection. Temporary mechanisms could be considered in special cases to provide temporary recreational access (such as access to a fishing site that may not be productive in the future), although public expectations regarding continued recreational access weigh against such an approach.

2.3.2 CRITERION: Impact on Landowner's Continued Use

A preservation entity's choice of land preservation mechanism is also related to the mechanism's impact on the landowner's continued use of the land. The application of this criterion typically depends on the particular conservation goal and/or the landowner's needs.

- In some cases, the choice of mechanism will be driven primarily by the state's need to limit the owner's continued use in order to achieve a particular conservation goal. As noted above, if a resource is particularly sensitive or extensive public access is required, fee simple acquisition is probably most appropriate because it eliminates any potential for conflicting use by the landowner. Fee simple acquisition is often necessary for complex restoration projects, which may require removing a dike or reconnecting estuary functions.
- In other cases, the choice of mechanism will instead be driven by the landowner's desire to continue use of the land. For example, a conservation easement or life estate is often appropriate when the landowner wants to continue living or working on the land.
- Finally, continued use of the land is essential to the preservation of working landscapes. The mechanisms best suited to this need include perpetual conservation easements, fee simple / leaseback transactions, and reserved life estate transactions.

2.3.3 CRITERION: Cost Over Time

In selecting a land preservation mechanism, preservation entities must also consider the relative costs of different land preservation mechanisms over time.

In this section, we compare the costs of the four land preservation mechanisms listed in SHB 1957 (fee simple acquisitions, perpetual conservation easements, term conservation easements, and leases) under the assumption that only a single property is under consideration. This assumption allows for a direct comparison of the relative costs of the four mechanisms and demonstrates how a preservation entity's choice of mechanism can be influenced by other factors such as the features of each mechanism, tradeoffs between long-term and short-term priorities, and the uncertainty of future events.

This approach does not consider the many economic benefits of land preservation, including the provision of environmental goods and services, reduced infrastructure costs, and the economic value of retaining active working landscapes in the local economy, which are discussed in detail in existing literature.⁵⁸ Similarly, our analysis does not consider the indirect costs that can result from land preservation, such as a reduced tax base, a loss of permitting fees, or a loss of economic activity that would otherwise be fostered by development. Instead, our analysis considers only the direct costs of using each land preservation mechanism.

Because the application of this criterion depends on a number of different variables, we have included as an appendix to this report an interactive Excel spreadsheet model, called the *ENTRIX Preservation Cost Assessment Tool* ("EPCAT"). The EPCAT model allows the reader to experiment with these variables and view different economic outcomes on line and bar graphs. The line and bar graphs shown below provide examples of snapshots taken from the EPCAT model using various assumptions. For details about how these examples were developed, please see Appendix B, EPCAT Assumptions and Description, below.

⁵⁸ See, e.g., *The Economic Benefits of Land Conservation*, The Trust for Public Land (2007), available at: http://www.tpl.org/tier3_cd.cfm?content_item_id=21251&folder_id=188; *Conservation: An Investment that Pays*, The Trust for Public Land (2009), available at: http://www.tpl.org/tier3_cd.cfm?content_item_id=23056&folder_id=188; *Interim Final Benefit-Cost Analysis for the Farm and Ranch Land Protection Program*, U.S. Department of Agriculture (2009), available at: http://www.nrcs.usda.gov/farmbill/bca-cria/FRPP_BCanalysisInterimFinal_01-09-2009.pdf.

2.3.3.1 Economic Approach

The economic approach to analyzing the cost of land preservation mechanisms over time begins with an itemization of all of the costs of each mechanism throughout a defined planning horizon. These costs can be calculated on an annual basis, beginning with the present year and progressing as far into the future as is relevant to the analysis.

The costs of land preservation include both startup costs and annual costs:

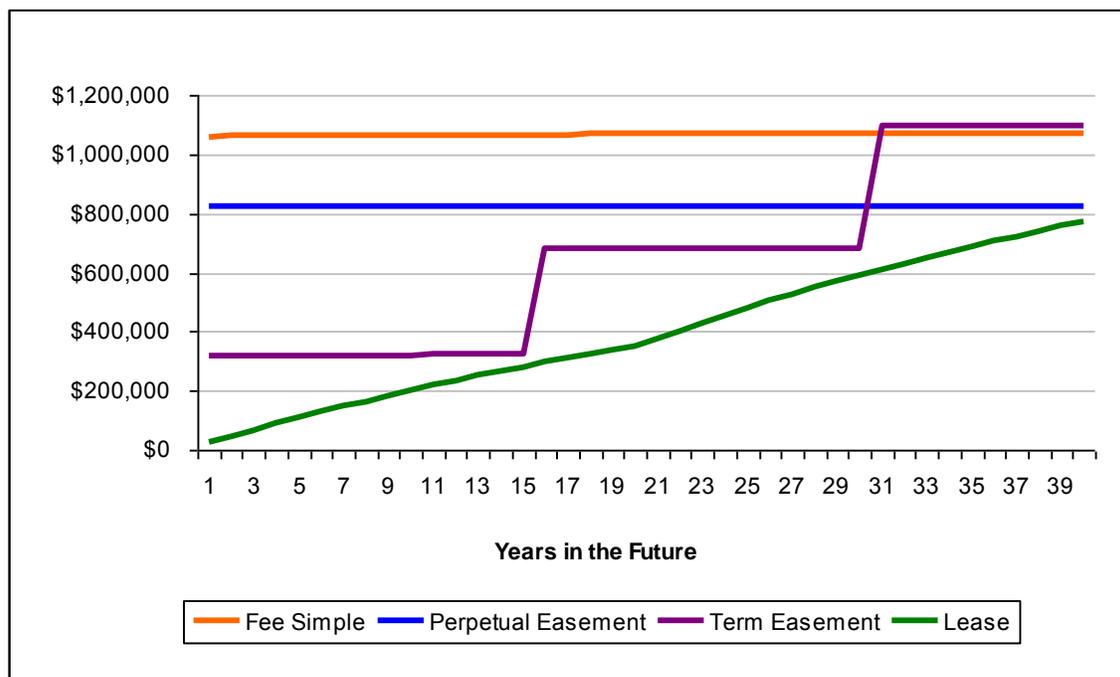
- **Startup costs** include the capital cost of purchasing property or contract rights, as well as transaction costs such as legal fees, due diligence and closing costs. In some cases, preservation entities will treat monitoring and enforcement costs for perpetual conservation easements as startup costs, such as when a land trust creates a stewardship endowment. The EPCAT model assumes that a stewardship endowment will be used for perpetual conservation easements.
- **Annual costs** include ownership and management costs and pre-transactional administrative costs such as staff time required to administer preservation programs. If a stewardship endowment is not created for a conservation easement, the costs of monitoring and enforcing the conservation easement will be incurred as annual costs.

Different mechanisms require different mixes of startup and annual costs. For example, fee simple acquisitions generally require a much higher startup capital cost than perpetual conservation easements. Other mechanisms may require repeated startup costs. For example, if a preservation entity acquires a 30-year term easement in 2010 and decides to renew the easement's term in 2040, it will incur repeated startup costs.

Costs can be compared over a period of time or at a moment in time. The EPCAT model allows the reader to make both of these comparisons by including a line graph that compares the total cumulative costs of each mechanism over a period of time and a bar graph that compares the total cumulative costs of each mechanism at a moment in time. The figures shown below provide examples of both types of graphs.

Figure 1 demonstrates how the costs of each mechanism can be compared over time in a line graph. The horizontal axis of the graph represents time, beginning with year 1 when the transaction is closed and continuing 40 years into the future. The vertical axis represents the cumulative costs of each mechanism. The colored lines represent the four different mechanisms and show how the cumulative costs of each mechanism increase over time.

Figure 1: Total Accumulated Costs* of Sample Land Preservation Mechanisms Over Time



* Line graphs show the sum of all costs, including startup and annual costs, as these are expected to accumulate over time.

- For **fee simple transactions** (shown in orange), the startup costs are high, but total costs do not increase much on an annual basis.
- For **perpetual conservation easements** (shown in blue), the startup costs are lower than for fee simple transactions because the capital cost of a conservation easement is a fraction of the fee simple value. Because the model treats monitoring and enforcement costs as startup costs to be included in a stewardship endowment, the costs of perpetual conservation easements do not increase over time.

- For **term conservation easements** (shown in purple), the startup costs are lower than for perpetual conservation easements. After the easement term expires, the costs increase as the preservation entity renews the easement and incurs additional startup costs. If land values have increased during the easement's term, the capital cost of the easement will be higher. In Figure 1, we assume that land values will continue to increase at an annual rate of four percent, which represents a medium to high threat of conversion.
- For **leases** (shown in green), the startup costs are low, but the total costs increase steadily each year. After the lease term expires, the cost increases again as the preservation entity renews the lease and incurs additional startup costs.

Figures 2 and 3 demonstrate how the accumulated costs of each mechanism can also be compared at a moment in time. These bar graphs collapse the value of all costs into a single net present value. Figure 2 shows accumulated costs after 30 years, while Figure 3 shows accumulated costs after 40 years.

Figure 2: Net Present Value of Costs* of Sample Land Preservation Mechanisms After 30 Years

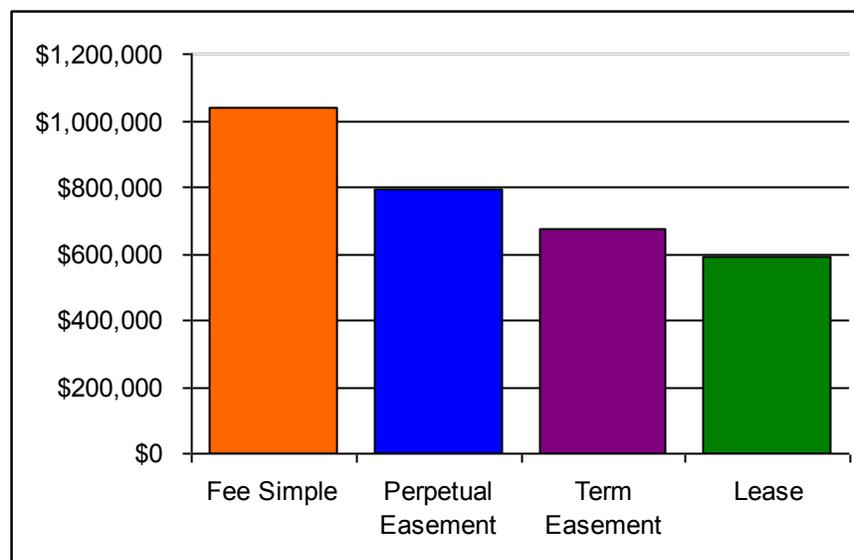
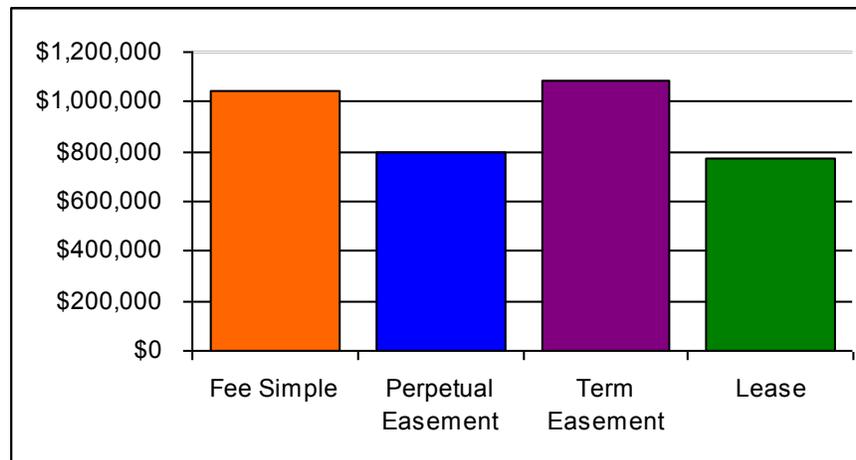


Figure 3: Net Present Value of Costs* of Sample Land Preservation Mechanisms After 40 Years



* Bar graphs show the sum of all costs, including startup and annual costs, at a moment in time.

These figures show future costs in present-day dollar value equivalents (the “present value”) by using a discount rate, which is described in more detail below. This approach allows decision makers to consider how decisions might change depending upon the relevant policy time frame. For example, the fee simple option appears to be the most costly over time if a 30-year net present value is considered, but once the time horizon is shifted to 40 years, the term easement might end up being more costly (as shown in Figure 3).

2.3.3.2 Land Conversion Pressures

A key variable affecting the cost of land preservation mechanisms over time is the conversion pressure on a particular property. This variable is represented by the rate at which land increases in value, or the “growth factor.”

Figures 4 and 5 demonstrate how the relative costs of mechanisms over time change with higher and lower growth factors, signifying greater and lesser threats of conversion respectively.

Figure 4: Total Accumulated Costs of Sample Land Preservation Mechanisms Over Time with a High Threat of Conversion

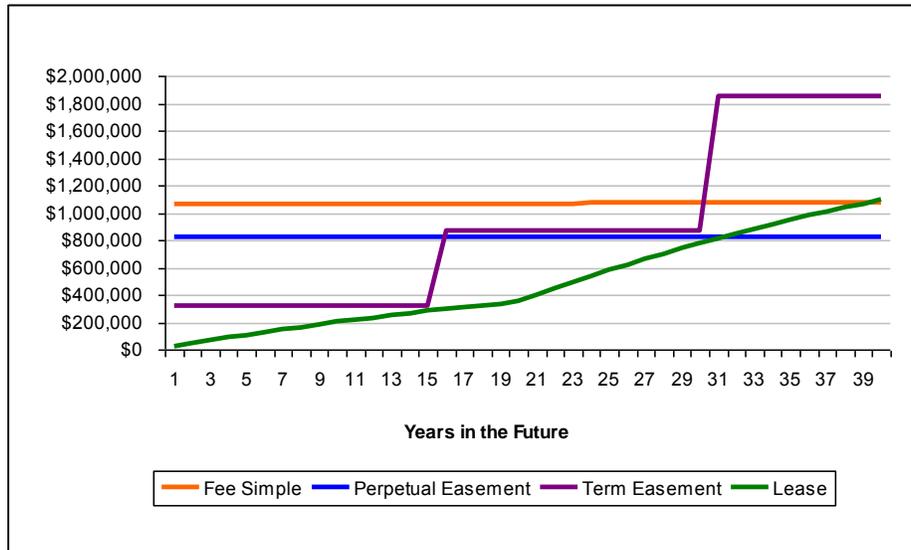


Figure 5: Total Accumulated Costs of Sample Land Preservation Mechanisms Over Time with a Low Threat of Conversion

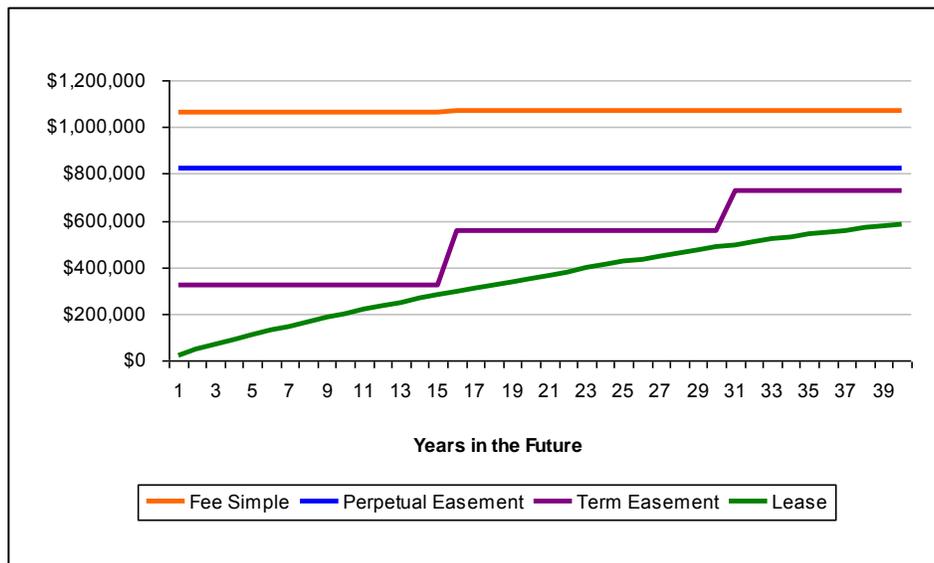


Figure 4, which assumes a high risk of conversion, shows that the costs of temporary mechanisms over time could outstrip the costs of the perpetual mechanisms after 40 years. In contrast, Figure 5, which assumes a low risk of conversion, shows that the costs of perpetual mechanisms over time would likely remain higher than the costs of temporary mechanisms over a 40-year horizon. However, even when they are less costly, temporary mechanisms are diminishing assets that do not provide long-term equity.

The EPCAT model allows the reader to view the effect of different levels of conversion pressure on the long-term costs of different mechanisms by adjusting the “growth factor” cell in the assumptions section of the spreadsheet.

2.3.3.3 Discount Rate

Within the economic framework, future costs and benefits can be compared with present costs and benefits by using a “discount rate.” A discount rate provides an economic expression for the fact that people often view present costs and benefits as more important than future costs and benefits. For example, a gift of \$1,000 today is generally preferred over the same gift next year, and a cost of \$100 is generally more odious today than the same cost next year.

In each case, the discount rate represents the degree to which the present-year value must be discounted to be equal to the subsequent year value. For example, at a ten percent discount rate, a person would feel ambivalent about the choice between a gift of \$1,000 this year or a gift of \$1,100 next year. Similarly, the same person would feel ambivalent about paying a cost of \$600 this year or \$660 next year. Societal discount rates are often associated with interest rates, which can be used as indicators of the time value of money. Interest rates usually include both expected inflation and expected return on investment. Discount rates can either include or exclude an estimate of inflation. In this example, we assume dollar values denominated in 2009 dollars and therefore no estimate of inflation is included. Instead, the discount rate incorporates the concept of the expected return on investment, elements of uncertainty, and the general societal preference for the present over the future.

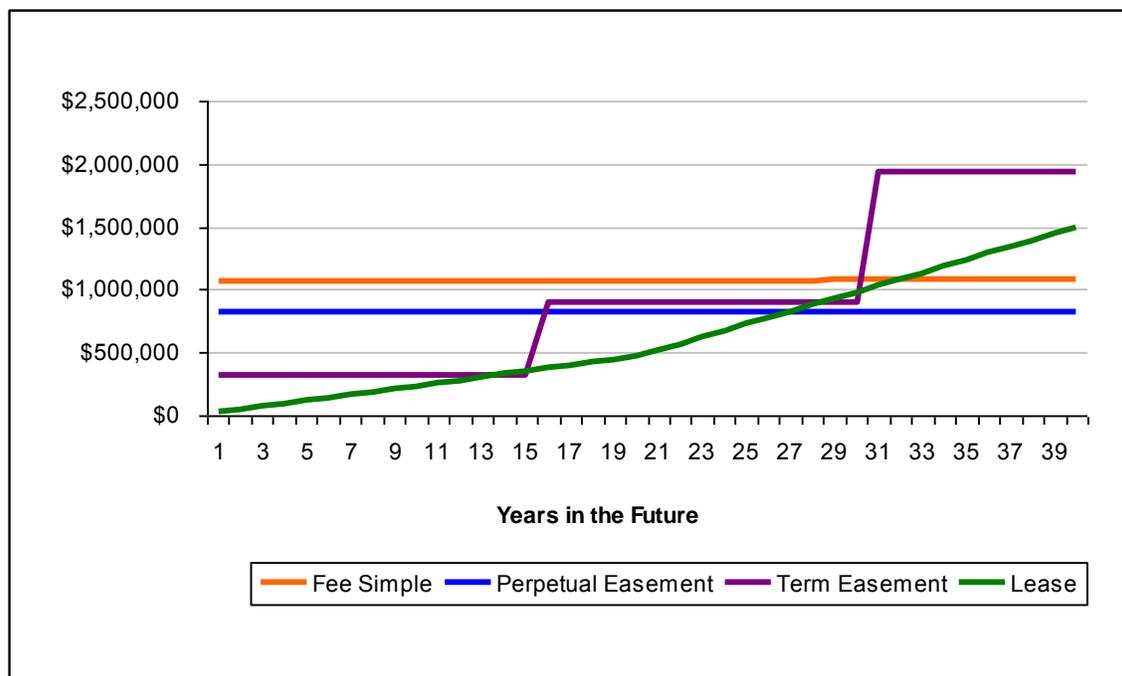
Discount rates can vary widely because different societies have different preferences, and within a community, different people have different personal preferences. However, a rate of three percent is often used as a general representation of uncertainty, expected return on investment (or foregone return, if the money is used for a nonmonetary investment purpose), and the social rate of time preference.

2.3.3.4 Discounting for Preservation

A discount rate can be used as a tool to explore how investment decisions might change under different circumstances. In the EPCAT model, modifying the discount rate can help readers compare how long-term preservation mechanism costs will be different depending on a preservation entity’s economic and philosophical preferences. For example, if a preservation entity wanted to place a greater value on future benefits and costs than present benefits and costs, it would use a lower discount rate.

Figure 6, which includes a 0% discount rate, shows that the relative costs of temporary mechanisms are higher when compared to scenarios using a 3% discount rate because a 0% rate essentially puts a greater emphasis on future costs. This is because future costs are treated as equivalent to present costs. A lower discount rate does not affect the cost of perpetual mechanisms as dramatically because perpetual mechanisms require high startup costs but relatively low annual (future) costs.

Figure 6: Total Accumulated Costs of Sample Land Preservation Mechanisms Over Time with a Zero Discount Rate

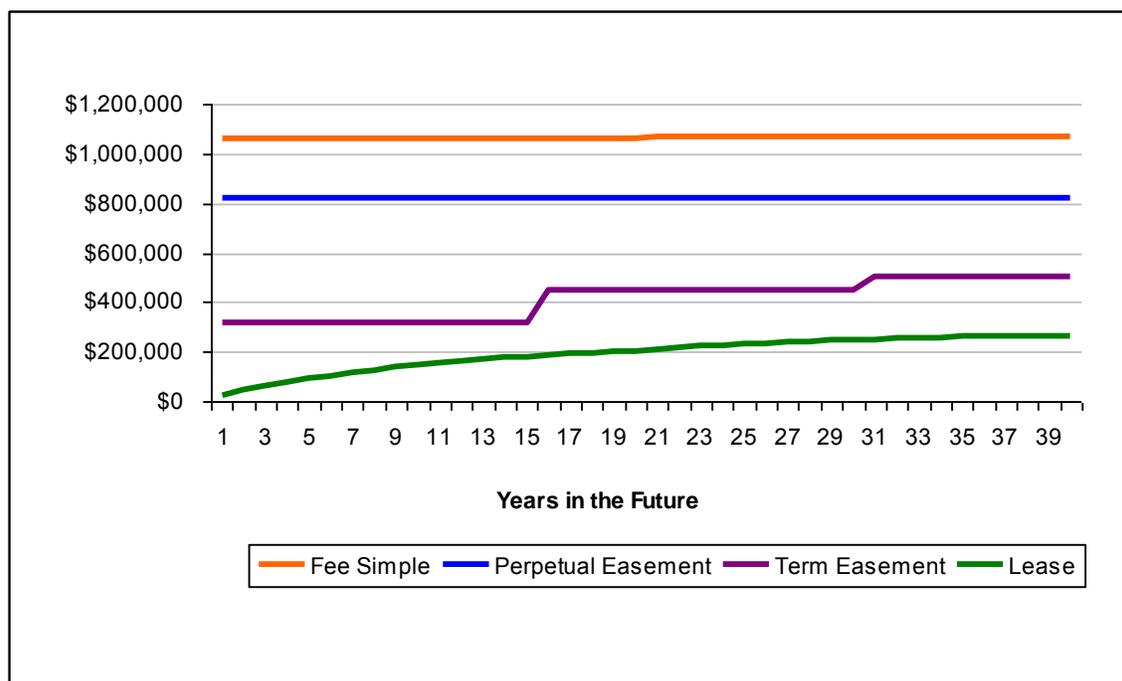


2.3.3.5 Discounting for Uncertainty

A discount rate can also be used to account for uncertainty about future events. With less certainty, society will generally want to place less emphasis on estimates of future costs and benefits.

Figure 7, which assumes a ten percent discount rate, shows that in the face of great uncertainty, temporary mechanisms may be seen as having a relatively lower cost. Under this assumption, the fact that temporary mechanisms may require future costs is relatively less important than it was with the zero discount rate (as assumed in Figure 6).

Figure7: Total Accumulated Costs of Sample Land Preservation Mechanisms Over Time with a 10 % Discount Rate



2.3.3.6 Summary of Economic Analysis

Thus, the relative costs of different land preservation mechanisms depend on a number of factors, including the degree of conversion pressure facing the land in question, views about preferences for future costs and benefits as compared with present ones, and the degree of uncertainty about the future. The EPCAT model allows preservation entities to explore different assumptions about these factors in the context of particular conservation goals, grant programs, and properties.

In general, our analysis shows that the long-term costs of perpetual mechanisms tend to be lower than the costs of temporary mechanisms when there is high conversion threat and when we assume a high value is placed on the more distant future. Temporary mechanisms may be seen as less costly when there is low conversion pressure or there is a great deal of uncertainty about the future. However, even when they are less costly, temporary mechanisms are diminishing assets that do not provide equity.

2.3.4 CRITERION: Ability to Respond to Future Changes

In general, permanent mechanisms provide the most flexibility in responding to such changes because, as discussed above, they create conservation equity that the preservation entity can retain or liquidate. Fee simple acquisitions provide the most flexibility because they give the entity maximum control over the property. While traditional “static” conservation easements are not well suited to respond to changes, perpetual conservation easements can be drafted to include “dynamic” provisions that provide some flexibility in responding to future changes. In some cases, a preservation entity may choose to anticipate change by using “Ark” easements that can be terminated at the entity’s option in response to certain changes, or dynamic easements that allow the landowner to repurchase some development rights if certain conditions are met. Temporary mechanisms, rather than anticipating and adapting to change, are ultimately unable to respond to the reality of change and result in fewer options in the long run.

2.3.4.1 Economic Changes

Economic changes affecting the use of land preservation mechanisms include cycles of economic boom and bust, which can impact real estate values and the availability of funding for land preservation. Because perpetual mechanisms provide conservation equity and are not dependent upon the continued availability of funding, they generally have a greater ability than temporary mechanisms to respond to such economic changes.

As discussed above, legislatively declared findings and policies regarding land preservation presume that development pressures will remain relatively constant and that the need for land preservation will continue into the foreseeable future regardless of economic changes. Moreover, even if this presumption proves false, the equity provided by permanent mechanisms gives the state flexibility in determining whether to retain or liquidate such assets.

Temporary mechanisms may have limited utility in targeting specific geographic areas within which data indicates development pressures will be reduced in the near future. If a decision is made to use temporary mechanisms in such circumstances, the EPCAT model discussed

above could be utilized to determine the most cost effective application of temporary mechanisms.

2.3.4.2 Social Changes

Social changes affecting land preservation efforts include demographic changes that could affect development pressures and the demand for recreation.

As outlined above, the state's policy to acquire the most significant lands "as soon as possible" is based on a finding that population growth has outpaced the demand for recreation and is destroying ecological values, as well as a presumption that current trends may continue, resulting in a deficit of recreation lands and the loss of species and ecosystems "forever." Thus, the current statutory framework favoring perpetual mechanisms is based in part on a legislative finding that the urgency of conversion pressures today outweighs any risks associated with the possibility that demographic changes may reduce the need for perpetual preservation in the future.

However, if population projections or other evidence indicated that development pressures would alleviate significantly or the demand for recreation would decline in the near future, the Legislature could choose to revisit its findings and policy declarations favoring permanent preservation. Under such conditions, temporary mechanisms could become useful in preventing conversion or providing recreation until such demographic changes occurred, and the EPCAT model could be used to determine whether a temporary mechanism would be cost effective. Nevertheless, there are still risks associated with such an approach. Population projections could be wrong. In addition, a preservation entity could learn, after the expiration of a temporary mechanism's term, that other reasons supported the continued preservation of the property. The equity provided by perpetual mechanisms mitigates these risks by giving preservation entities more choices in the future.

2.3.4.3 Environmental Changes

The primary environmental change likely to affect land preservation efforts in the future is climate change. By anticipating and preparing to respond to climate change, preservation entities can prepare for other types of environmental changes.

The State's Climate Action Team has determined that long-term adaptive management is needed to reduce Greenhouse Gas ("GHG") emissions and adjust to climate impacts:

Reducing GHG emissions and adjusting to the impacts of climate change will be a long-term effort, and Washington needs to have an adaptive management attitude coupled with a long term commitment in order to continue learning about what still needs to be done, to increase understanding from what has previously been implemented, and to change direction or programs as necessary to achieve substantive results.⁵⁹

This adaptive approach supports the use of perpetual land preservation mechanisms. Fee simple acquisitions and dynamic conservation easements offer the best method of allowing long-term adaptive management of lands because they give the state a portfolio of conservation equity, which can be retained or liquidated and re-invested as part of an overall adaptive management approach.

The use of temporary mechanisms in anticipating and adapting to climate change and other environmental changes should generally be limited to unique circumstances where preservation entities have specific reasons to believe that a property's ecological values require protection only in the short term. The EPCAT model could be used to fine-tune such an approach.

2.3.5 CRITERION: Ability to Combine with Other Mechanisms

The decision whether to use a combination of land preservation mechanisms must be made on a case-by-base basis, depending on the unique circumstances surrounding the transaction.

Mechanisms can be combined for a variety of reasons, such as to implement restrictions, to meet a landowner's needs, or to buy time if immediate acquisition is not possible. The most commonly used combinations of land preservation mechanisms include: (i) fee simple acquisition and re-sale of the property subject to a conservation easement; (ii) fee simple / leaseback transactions; (iii) reserved life estate transactions followed by re-sale of the property subject to a conservation easement after the owner's death; and (iv) combinations of deferred purchase mechanisms with perpetual or temporary acquisition mechanisms. Grant funding constraints may limit the use of these combinations.

⁵⁹ *Leading the Way: A Comprehensive Approach to Reducing Greenhouse Gases in Washington State*, Recommendations of the Washington Climate Advisory Team (2008), available at http://www.ecy.wa.gov/climatechange/CATdocs/020708_InterimCATreport_final.pdf.

As noted above, if a preservation entity chooses to use a temporary mechanism, it should seek to preserve the opportunity for perpetual preservation by combining the temporary mechanism with a deferred purchase mechanism such as an option.

2.3.6 CRITERION: Grant Funding Constraints

A preservation entity's choice of land preservation mechanism is also influenced by statutory grant funding constraints and agency policies interpreting the relevant statutes.

2.3.6.1 Constraints on Particular Mechanisms

Some grant funding constraints directly limit the use of particular land preservation mechanisms. For example, while most grant programs allow the use of perpetual preservation mechanisms, few allow the use of temporary mechanisms or deferred purchase mechanisms.

Our interviewees took opposing positions on the merits of such funding constraints. Some interviewees felt that funding constraints should be loosened in order to provide preservation entities with additional flexibility in selecting land preservation mechanisms. According to this view, conservation practitioners can better achieve their goals with a wide range of conservation tools at their disposal. Other interviewees took a more conservative approach, arguing that funding constraints are valuable because they limit the risk that a conservation practitioner will make a poor choice in selecting a land preservation mechanism. According to this view, while certain tools like options to purchase may have value for privately-funded projects, public funds should not be used with such tools because of the risk that funds will be wasted. This risk could be mitigated to some extent by training negotiators how to make appropriate choices and adopting guidelines to prevent the inappropriate use of such tools.

2.3.6.2 Constraints on Activities Associated with Mechanisms

Grant funding constraints may also indirectly limit the use of certain land preservation mechanisms by limiting the types of activities that may be allowed on the land. For example, as discussed above, the use of fee simple / leaseback acquisitions may be limited by the grazing activities allowed and the income produced by such transactions, which could be inconsistent with the purposes of some grant programs or the bonds that fund them. However, it may be possible for preservation entities to resolve such potential inconsistencies by using a process like adaptive management or Coordinated Resource Management to balance multiple uses and goals over time.

2.4. Hypothetical Case Study

In this section, we present a brief hypothetical case study that illustrates how preservation entities can use this report's analytical framework in selecting land preservation mechanisms. The people and property described in this case study are fictional but were inspired by true stories of successful efforts to preserve working landscapes.⁶⁰

2.4.1 The Ford Ranch

The 800-acre Ford Ranch in Eastern Washington is comprised of approximately 600 acres of grazing lands and 200 acres of forestland in multiple parcels. The ranch supports 300 head of cattle, a variety of birdlife, a migratory route for elk, natural springs and a branch of the Little Bell Creek. A historic hiking trail cuts through one corner of the ranch. The property has easy access to highways, spectacular views of the surrounding mountains, and plenty of privacy and flat ground.

Art Ford, the owner of the ranch, was planning for his retirement. Art had spent his whole life working on the cattle ranch, which he inherited from his father. Art's two sons worked with him on the ranch when they were younger, but both have pursued other careers and were not interested in ranching. Art was a widower and wanted to live out the rest of his years on the ranch. However, he realized that would need help with the heavy work as he approached retirement and eventually wanted to see another rancher take over management of the ranch. Because all of Art's wealth was tied up in the ranch, he also needed immediate access to some of the property's value for medical bills and other expenses. Art also wanted to leave a substantial inheritance to his sons.

Art had been approached by developers and was considering whether to subdivide the ranch and develop approximately 400 acres into 20 residential home sites. The developers told Art that 20-acre home sites would probably sell for around \$10,000/acre, for a total value of \$4,000,000.

⁶⁰ Certain details in this case study, such as property values, development costs, and appraisal methods, are simplified for the sake of brevity and storytelling.

Lloyd Fletcher, the executive director of a local land trust, also contacted Art about the possibility of preserving the ranch. Art explained that he did not like the idea of developing the ranch and having that many new neighbors, but he was also wary of the idea of a perpetual conservation easement. “Forever is a long time,” Art told Lloyd, “and I don’t want to be cursed by future generations for a wrong-headed decision I may make today.”⁶¹ The land trust was not in a position to offer \$4,000,000 and needed to develop a strategy that matched the conservation values of the land and Art’s needs with potential funding sources. After his initial meeting with Art, Lloyd returned to his office to evaluate the available options.

2.4.2 Identifying a Land Preservation Strategy for the Ford Ranch

The land trust’s preservation strategy began with its conservation goals for the land. The Ford Ranch featured several different types of conservation values, including values associated with working ranch lands, ecological values (including a migratory corridor for elk, bird habitat, and water quality benefits from the springs and creek), and recreational and open space values. While the land trust’s ultimate goal was to protect each of these values, its highest priorities were to prevent conversion of the ranch to residential development and to protect the elk corridor, which served as a critical link between the winter range and the mountains.

Based on his assessment of the property’s working ranchland, ecological, and recreational values, Lloyd considered several perpetual mechanisms that could be used to achieve the land trust’s conservation goals while also meeting Art’s needs:

- *Perpetual conservation easement over the entire ranch:* The land trust could use a perpetual conservation easement to protect the entire Ford Ranch, with easement provisions restricting uses in sensitive areas of the property (such as the migratory corridor and Little Bell Creek) while allowing continued ranching in other areas, consistent with a ranch management plan. The easement could also be drafted to allow Art to retain some of the land’s development potential by reserving the right to develop a limited number of home sites in less sensitive areas of the property.

⁶¹ This is an actual quote from B.W. Cox, the owner of the 32,000-acre Montosa Ranch in New Mexico, who eventually decided to place 27,000 acres under a conservation easement while reserving the right to sell seven 640-acre lots. See *Preserving Critical Lands in New Mexico*, Anthony Anella and John Wright, published by the State of New Mexico Department of Finance and Administration (2008), available at: http://www.emnrd.state.nm.us/ecmd/Multimedia/documents/preservingcriticallands8_14.pdf.

- *Perpetual conservation easement over certain portions of the ranch:* Alternatively, the easement could be drafted to protect only certain portions of the ranch – such as the migratory corridor, the springs, the creek, and the trail – while allowing unrestricted use of the rest of the property for ranching and/or development. By targeting the areas of the property with the most ecological conservation value, the land trust could reduce the cost of preserving those values. However, this approach would not protect the conservation values associated with working ranchland because it would not prevent conversion of the bulk of the ranch to residential use.
- *Fee simple / leaseback transaction:* Using a fee simple / leaseback transaction, the land trust could acquire fee simple title to the entire ranch and lease it back to Art. The lease instrument could be drafted to include protections for sensitive areas and to require consistency with a ranch management plan. By leasing the land back to Art, the land trust could leave management of the ranch in Art's hands while recovering some of the cost of fee simple acquisition over time through lease payments.
- *Reserved life estate transaction:* Alternatively, the land trust could purchase a remainder interest in the entire ranch, allowing Art to continue living on the land for the duration of his life estate. In order to protect the property's conservation values during Art's life, a reserved life estate transaction could be combined with another mechanism such as a perpetual conservation easement.
- *Option / Right of first offer.* If the land trust lacked sufficient funds to protect the entire ranch, it could purchase an option or a right of first offer on certain parcels to provide some assurance that the land trust would have the ability to purchase those parcels in the future.

Due to the high cost of a fee simple / leaseback transaction or a reserved life estate transaction, as well as potential grant funding constraints on the use of these mechanisms, Lloyd ruled these options out. The remaining options were: a perpetual conservation easement over the entire property, a perpetual conservation easement over certain portions of the ranch, and/or an option or a right of first offer on certain parcels.

Lloyd then approached Art again to determine whether any of these remaining options could be tailored to meet Art's needs while also achieving the land trust's conservation goals and matching the grant funding opportunities.

2.4.3 Balancing Conservation Values with Art Ford's Needs

Lloyd worked with Art to educate him about his options. Art asked whether funding was available for a temporary mechanism, like a lease or a term conservation easement, which would allow him to keep his options open in the future. Lloyd explained that, while temporary options are understandably more attractive to landowners, they do not provide long-term protection for the property's conservation values. As a result, there is little funding available for such temporary options. Due to the high transactional costs and the uncertainty of long-term conservation benefits, Lloyd explained, funding agencies are reluctant to grant funds for temporary land preservation mechanisms.

Turning to perpetual options, Art and Lloyd discussed the possibility of placing a perpetual conservation easement on only a small portion of the ranch that included the migratory corridor, the springs and the creek. However, because it would encumber a portion of the property without providing sufficient funds for Art's immediate needs or his estate planning, this option was not attractive to Art. Lloyd also wanted to find an option that would protect not only the property's ecological values but also its working rangeland values.

Finally, Lloyd told Art how a perpetual conservation easement could be drafted to allow him to retain some development rights so that he could pursue limited development in less sensitive areas of the property while still protecting the remainder of the ranch. This approach would provide Art with immediate funds from the sale of the conservation easement while also allowing him to pursue development in the future. Art liked the idea of delaying his development plans because he thought the housing market would recover and his property values would increase within a few years. The idea also appealed to Lloyd because Art's reservation of development rights would reduce the cost of a perpetual conservation easement, potentially allowing the land trust to protect the bulk of the ranch rather than only a small portion.

Once Lloyd and Art agreed on this initial strategy, they began the process of designing the conservation easement and pursuing grant funding for the project. Land trust staff used a design process called "sieve mapping" to synthesize ecological, topographical, and other data to map the areas of the ranch that were appropriate for conservation and development.⁶² They identified the property's conservation areas, designated four new 40-acre home sites in less sensitive areas with views of the mountains, designed roads, and drew lot lines for the new home sites.

⁶² See *Preserving Critical Lands in New Mexico*, supra.

The land trust also hired an appraiser, who prepared a “before-and-after” comparison of the property’s current fair market value and its likely value after a conservation easement is granted to the land trust. The appraiser determined that the current value of the ranch was \$4,400,000, which included \$4,000,000 for the 20-acre home sites (at \$10,000/acre) and \$400,000 for the remaining 400 acres, which were largely undevelopable. The appraiser then determined that the value of the ranch after the conservation easement was granted would be \$3,600,000, which included \$3,200,000 for the four 40-acre home sites (at \$30,000/acre) and \$400,000 for the remaining 400 acres. The appraiser reasoned that the per-acre value of the 40-acre home sites would be twice the per-acre value of the 20-acre home sites because the privacy and views afforded by the new design would make them more attractive to buyers. The difference between the “before” and “after” costs – \$800,000 – represented the value of the conservation easement.

After determining the easement’s value, the land trust applied for state and federal grants that provided funding for protection of working rangeland, ecological, recreational and open space conservation values. Using a combination of grant funds and a private donation from an anonymous philanthropist, the land trust was able to secure \$800,000 to purchase a perpetual conservation easement over the Ford Ranch.

However, the grant funds and the donation did not cover the long-term costs of the land trust’s obligation to monitor and enforce the conservation easement in perpetuity. No grant programs were available to provide funding for monitoring and enforcement, so Lloyd and Art discussed other options for covering these costs. The land trust could try to raise funds from private donors, but fundraising would take time and was especially difficult during the recession. Lloyd also described how the conservation easement could be drafted to require a small percentage of the future sale of home sites, or the future sale of the ranch, to be paid into the land trust’s stewardship endowment for the conservation easement. Ultimately, Art agreed to simply make an up-front donation to the land trust to cover its monitoring and enforcement costs rather than deferring these costs into the future.

The conservation easement protected the migratory corridor, creek, forest, and hiking trail while allowing continued ranching and development of the four home sites. The easement was drafted to include certain “dynamic” provisions, which gave Art and the land trust some flexibility in responding to future changes. For example, the easement provided that the management plan would use an adaptive management approach to monitor the activities and conservation values on the ranch in the context of environmental changes and use that information to refine management practices over time. The conservation easement also included a provision allowing the land trust to recover the appreciated value of the purchased development rights if the easement were ever terminated.

Art received an immediate payment of \$800,000 and retained the ability to develop up to four home sites on the ranch, which were valued at \$3,200,000 at the time the easement was granted. Art used some of the funds from the sale of the conservation easement to develop one of the home sites immediately, but decided not to develop the remaining home sites until after the housing market recovered.

In the meantime, Art hired an energetic young rancher who took over operations of the ranch and talked about buying it one day. Because the conservation easement substantially reduced the remaining value of the ranch outside of the 40-acre home sites, the young rancher's dreams could become a reality. And Art can retire with peace of mind, confident that his retirement and his sons' inheritance are secure and that the Ford Ranch will remain a ranch for future generations.

Chapter 3 CONCLUSION

This report provides a framework for evaluating and comparing land preservation mechanisms and offers general conclusions about their relative merits. The framework and our conclusions are described in detail in the Executive Summary. By applying this report's framework and conclusions to refine their use of land preservation mechanisms, preservation entities can improve the effectiveness and efficiency of their conservation programs over time.

Our conclusions also suggest possible next steps by state agencies and other preservation entities, including the following:

- Educating conservation practitioners and landowners about the public and private benefits of perpetual land preservation mechanisms and the limitations of temporary mechanisms;
- Identifying more reliable funding sources for long-term costs, such as monitoring and enforcement of perpetual conservation easements and management of fee simple acquisitions; and
- Seeking to resolve unanswered questions about potential grant funding constraints on (i) projects designed to protect multiple conservation values; and (ii) mechanisms such as fee simple / leaseback transactions, reserved life estate transactions, and deferred purchase mechanisms.

Appendix A: EPCAT Assumptions and Description

The ENTRIX Preservation Cost Analysis Tool (“EPCAT”) allows the user to compare the costs of land preservation mechanisms over time (30- and 40-year timeframes), under a variety of assumptions and future events. The modeled mechanisms include fee simple acquisitions, perpetual conservation easements, term conservation easements, and leases. The Excel file “APPENDIX B - EPCAT.xls” is the location for the working cost model.

In the Excel file, the worksheet titled “Assumptions” contains both the adjustable assumptions that are used in the model and the graphical output of the model results. The main line graph shows the present value of accumulated costs of land preservation mechanisms over time. In other words, this graph displays what the 2009 value of the combined acquisition, transaction, and other annual costs would be for each preservation mechanism. In contrast, the two bar graphs show accumulated costs at a moment in time after 30 years and 40 years.

The first set of assumptions in the model are pertinent to all mechanisms modeled. These assumptions include property size, current land value, annual growth rate of land value, and discount rate. All of these assumptions can be changed by the user, and the results in the graph will adjust immediately according to the user’s changes. Currently, these assumptions are set at the following values:

	Assumptions	<i>quantity</i>	<i>unit</i>
Property Size		20	acres
Land Value		\$50,000	acre
	<i>growth factor</i>	1.04	
Discount Rate Land		3%	annual %

Following these general assumptions are assumptions specific to each mechanism modeled. The first set refers to assumptions for fee simple acquisitions. The model includes adjustable assumptions for capital cost, transaction cost, and other annual costs. Both capital and transaction costs are defined as a percent of property value. Other annual costs are characterized by a dollar value per acre per year. Assumptions for fee simple acquisitions are currently set at the following values:

Fee Simple

Capital Cost	100%	% of Value
Transaction Cost	6%	% of Value
Monitoring & Enforcement Cost	\$0	per acre per year
Ownership & Management Cost	\$26	per acre per year

Similar cost assumptions are used for perpetual conservation easements, except that the model assumes a stewardship endowment will be established to cover monitoring and enforcement costs. The endowment represents the expected costs over 30 years and will grow at a user defined interest rate (currently set at 3 percent). The up-front endowment cost is calculated in the model as the present value that would be required to achieve the endowment cost in thirty years, at the user defined interest rate. Assumptions for perpetual conservation easements are currently set at the following values:

Perpetual Easement

Capital Cost	70%	% of Value
Transaction Cost	10%	% of Value
Endowment (Monitoring & Enforcement)	\$50,000	Total value in 30 years Annual Percentage Yield
Interest Rate for Endowment	3%	(APY)
Up-front Endowment Cost	\$20,599	Costs to establish in Yr. 1
Ownership & Management Cost	\$0	per acre per year

The gray highlighted cell for up-front endowment cost is not adjustable; instead, the user adjusts the desired endowment amount after 30 years and the expected interest rate and the model calculates the up-front endowment cost.

For term conservation easements, the model uses a per-acre per-year figure rather than a stewardship endowment for monitoring and enforcement costs. An assumption for term length is also included. The model assumes that once the easement's term has expired, the easement will be re-negotiated under the conditions at the time. Assumptions for term conservation easements are currently set at the following values:

Term Easement

Term Length	15	years % of Value after 30
Capital Cost	20%	years
Transaction Cost	12%	% of Value
Monitoring & Enforcement Cost	\$6	per acre per year
Ownership & Management Cost	\$0	per acre per year

Similar assumptions are used for leases, except that the model assumes the capital cost of leases will be paid on an annual basis (while the capital costs of term conservation easements are paid up front in a one-time payment). Assumptions for leases are currently set at the following values:

Lease	
Lease term	20 years % of Value after 30
Capital Cost	70% years
Annual Cost	\$1,167 per acre per year
Monitoring & Enforcement Cost	\$6 per acre per year
Ownership & Management Cost	\$0 per acre per year

The gray highlighted cell for annual cost per acre per year is the only assumption that is not adjustable in the assumptions page.

There are also two “uncertainty” events that can be run with this model. In order for these events to function, it may be necessary for the user to select “enable macros” if prompted when opening the workbook.

The first uncertainty event, titled “Uncertainty Event A,” depicts a situation where property values increase at the modeled rate (currently at 4 percent annually) until year 16, when the property values plateau and continue unchanged from year 16 through 40.

The second uncertainty event, titled “Uncertainty Event B,” depicts a situation where property values plateau in year 16 (as in “A”), but in addition to values leveling off, the development pressure is essentially eliminated. In response to this event, the term easement and lease mechanisms are not renewed after year 16.

In order to run either of these model events, the user can simply click on the red button corresponding to the desired event. In order to return the model to the current state, where property values increase annually, the user must click on the green button titled “life as normal.”

BIBLIOGRAPHY

Andrew Dana & Michael Ramsey, *Conservation Easements and the Common Law*, 8 STAN. ENVTL. L.J. 2 (1989).

“Annotated Model Agricultural Conservation Easement for Farmland Preservation Program, RCW 79A.15.130(1)” (emphasis added), available at:
http://www.rco.wa.gov/documents/Manuals&Forms/model_agcons_easement_co-grantee.pdf.

“Backyard Wildlife Sanctuary,” Washington Department of Fish and Wildlife, available at:
<http://wdfw.wa.gov/wlm/backyard/>.

“Certified Wildlife Habitat Partners,” National Wildlife Federation, available at:
<https://secure.nwf.org/backyardwildlifehabitat/certify/dspPartners.cfm>.

Conservation: An Investment that Pays, The Trust for Public Land (2009), available at:
http://www.tpl.org/tier3_cd.cfm?content_item_id=23056&folder_id=188.

Conservation Reserve Program (CRP) Program Assessment, Soil & Water Conservation Society and Environmental Defense Fund (2008), available at:
http://www.swcs.org/documents/filelibrary/CRPassessmentssummary_5E81D3A060B32.pdf.

Conservation Reserve Program: Cost-Effectiveness is Uncertain, United States General Accounting Office (1992), available at: <http://archive.gao.gov/d44t15/148906.pdf>.

Conserving Washington’s Working Forests: Cascade Agency Strategies for Conserving Working Forest Land in the Central Cascades, a report created for the University of Washington, College of Forest Resources, by Cascade Land Conservancy (2007), Attachment N, available at: <http://cascadeland.org/files/web-postings/CLC%202006-2007%20FINAL%20UW%20CONVERSION%20STUDY%20REPORT.pdf>.

The Cost of a Comprehensive National Wildlife Conservation System: A Project Completion Report for the Wildlife Habitat Policy Research Program, Defenders of Wildlife, Conservation Economics Program (2008), available at: http://www.ddcf.org/doris_duke_files/download_files/Cost%20National%20Wildlife%20Habitat%20System.pdf.

Dennis Canty, et al., *A Primer on Habitat Project Costs*, Prepared for the Puget Sound Shared Strategy by Evergreen Funding Consultants (2003), available at:
<http://www.sharedsalmonstrategy.org/files/PrimeronHabitatProjectCosts.pdf>.

Duncan Greene, *Comment, Dynamic Conservation Easements: Facing the Problem of Perpetuity in Land Conservation*, 28 SEATTLE UNIV. L. REV. 883, 885 (2005), available at:
<http://www.gordonderr.com/images/stories/attorneys/dynamic%20conservation%20easements.pdf>.

The Economic Benefits of Land Conservation, The Trust for Public Land (2007), available at:
http://www.tpl.org/tier3_cd.cfm?content_item_id=21251&folder_id=188.

“Examples of Successful CRM Planning,” CRM Washington, available at:
http://www.crmwashington.org/success_story_examples#okanogan.

“Exploring Conservation Defense Insurance: Considerations for Board Members,” Land Trust Alliance, Conservation Defense Initiative (2009), available at:

<http://www.landtrustalliance.org/about-us/programs/conservation-defense/documents/Board%20member%20handout%20-%20insurance%20proposal.doc>.

Final Environmental Impact Statement for Livestock Grazing Management on the Washington Department of Fish and Wildlife’s Quilomene and Whiskey Dick Wildlife Areas in Kittitas County, Washington Department of Fish and Wildlife (2009), available at: <http://wdfw.wa.gov/hab/sepa/09082eis.pdf>.

Interim Final Benefit-Cost Analysis for the Farm and Ranch Land Protection Program, U.S. Department of Agriculture (2009), available at:

http://www.nrcs.usda.gov/farmbill/bca-cria/FRPP_BCanalysisInterimFinal_01-09-2009.pdf.

Laurie Fowler, et al., *Protecting Farmland in Developing Communities: A Case Study of the Tax Implications Of Agricultural Conservation Easements*, The University of Georgia Institute of Ecology (2001), available at:

http://www.rivercenter.uga.edu/service/tools/farmland_study/nelsonweb.pdf.

Leading the Way: A Comprehensive Approach to Reducing Greenhouse Gases in Washington State, Recommendations of the Washington Climate Advisory Team (2008), available at

http://www.ecy.wa.gov/climatechange/CATdocs/020708_InterimCATreport_final.pdf.

NATIONAL ACADEMY OF SCIENCES, *GROWING POPULATIONS, CHANGING LANDSCAPES: STUDIES FROM INDIA, CHINA, & THE UNITED STATES 2* (2001), available at <http://www.nap.edu/execsumm/0309075548.html>.

James L. Olmsted, *Climate Surfing: A Conceptual Guide to Drafting Conservation Easements in the Age of Global Warming*, 23 ST. JOHN'S J. LEGAL COMMENT, 765, 795 (2008), available at:

<http://www.landprotect.com/files/34156068.pdf>.

Preserving Critical Lands in New Mexico, Anthony Anella and John Wright, published by the State of New Mexico Department of Finance and Administration (2008), available at:

http://www.emnrd.state.nm.us/ecmd/Multimedia/documents/preservingcriticallands8_14.pdf.

RCFB-SRFB Manual 7, Funded Projects: Policies and the Project Agreement, Recreation and Conservation Office (2009), available at http://www.rco.wa.gov/documents/Manuals&Forms/Manual_7.pdf.

Washington Conservation Markets Study: Final Report, Prepared for the Washington State Conservation Commission by Evergreen Funding Consultants (2009), available at: <http://ofp.scc.wa.gov/wp-content/uploads/2009/02/cons-mkts-study-report-v1-25-09.pdf>.

William B. Stoebuck, John W. Weaver, 17 *Washington Practice: Real Estate: Property Law*, §3.1 (2nd Ed. 2004).

Photo Credits



- Cover Page:** *Tahoma Farms, part of the Orting Valley Farm project, funded by RCO through the Farmland Preservation Program of the WWRP. This project used perpetual conservation easements to preserve a 100-acre farm in Pierce County. Photo courtesy of PCC Farmland Trust and Keenan May, PCC Farmland Trust volunteer.*
- Table of Contents, p. ii:** *Alpine Lakes Wilderness Area. Photo by Duncan Greene.*
- Chapter 1, p. 1-2:** *Dockton Park, improvements funded in part by RCO. Photo by Duncan Greene.*
- Chapter 2, p. 2-4:**
1. *Hazel Wolf Wetlands Preserve. Photo by Duncan Greene.*
 2. *Tahoma Farms. Photo courtesy of PCC Farmland Trust.*
 3. *Hardscrabble Peak. Photo by Duncan Greene.*
- Chapter 2, p. 2-42:** *Seal and Sail Rocks, Strait of Juan de Fuca. Photo by Duncan Greene.*
- Photo Credits, p. P-1:** *Fuller Mountain, Snoqualmie Tree Farm. King County, in partnership with Cascade Land Conservancy, used a perpetual conservation easement to preserve more than 90,000 acres of the Tree Farm. Photo by Duncan Greene.*

STUDY

of

**TRANSFER
OF
DEVELOPMENT RIGHTS
PROGRAM**

City of Sammamish

as of

March 18, 2008

Prepared for

Skip Swenson
TDR Project Manager
Cascade Land Conservancy
615 Second Avenue
Seattle, WA 98104

Prepared by

Anthony Gibbons, MAI, CRE

RE•SOLVE
GIBBONS & RIELY, PLLC
Real Estate Appraisal & Counseling and Mediation
261 Madison Avenue South, Suite 102
Bainbridge Island, Washington 98110-2579

Ref. 7173

RE•SOLVE

GIBBONS & RIELY, PLLC

Real Estate Appraisal, Counseling & Mediation
261 Madison Avenue South, Suite 102
Bainbridge, Washington 98110-2579
206-842-4887

TeleFax: 206-842-5082

Seattle CBD Location: College Club, 505 Madison, Seattle WA 98104

Anthony Gibbons, MAI, CRE
Direct Dial 206 842-4887
Email: agibbons@realestatesolve.com

March 18, 2008

Skip Swenson
TDR Program Manager
Cascade Land Conservancy
615 Second Avenue, Suite 600
Seattle, WA 98104

RE: TDR Program
City of Sammamish

Dear Mr. Swenson:

At your request, I have prepared an analysis of the presently contemplated TDR program for the city of Sammamish. The program calls for the evaluation of sending and receiving rights in and around the city of Sammamish. Specifically the program seeks to establish the value of sending rights in selected areas, and the demand for such rights in the form of density credits over and above an as yet un-established zoning base. Receiving areas are presently limited to commercially zoned property (retail and office).

Our study concludes that commercial demand for high density may not be in place for a number of years, and consequently the benefits of a TDR program linked to upper-story commercial development may not yield a significant level of TDR demand in the early stages of the Town Center Development. Upper-story mixed-use development represents perhaps a better candidate for TDR demand, pending study of how such a program could avoid competition with policy goals associated with affordable housing.

Development of infrastructure for Town Center represents a significant financial burden, the funding sources for which remain to be identified with precision. If infrastructure is funded through development of land, it will impact both the pricing of land in Town Center, project feasibility and therefore revenues available for TDR acquisitions. These and other issues are discussed in the attached report.

Respectfully submitted,



Anthony Gibbons, MAI, CRE

CERTIFICATION AND LIMITING CONDITIONS

I certify that, to the best of my knowledge and belief:

- ◆ The statements of fact contained in this study are true and correct;
- ◆ The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conclusions, and are my personal, unbiased professional analyses, opinions, and conclusions;
- ◆ I have no present or prospective interest in the property that is the subject of this study, and I have no personal interest or bias with respect to the parties involved;
- ◆ My engagement in this assignment was not contingent upon developing or reporting predetermined results. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the obtainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this study.
- ◆ My analyses, opinions, and conclusions were developed, and this study has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice and the Uniform Appraisal Standards for Federal Land Acquisitions;
- ◆ I have made a personal inspection of the property that is the subject of this report.
- ◆ Persons providing significant professional assistance to the persons signing this report are identified below.
 - Adam Brenneman has assisted in the collection of land sales information presented herein.
- ◆ I have disregarded any increase in Market Value caused by the proposed public improvement or its likelihood prior to the date of valuation. I have disregarded any decrease in Market Value caused by the proposed public improvement or its likelihood prior to the date of valuation, except physical deterioration within the reasonable control of the owner;
- ◆ This study has been made in conformity with the appropriate State and Federal laws and requirements, and complies with the contract between the agency and the appraiser;
- ◆ I certify that the use of this report is subject to the requirements of the Appraisal Institute relating to review by authorized representatives.
- ◆ As of the date of this report, I have completed the requirements under the continuing education program of the Appraisal Institute.

RESTRICTION UPON DISCLOSURE & USE:

Disclosure of the contents of this study report is governed by the By-Laws & Regulations of the Appraisal Institute.

Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraiser or the firm with which (s)he is connected, or any reference to the Appraisal Institute or to the MAI designation) shall be disseminated to the public through advertising media, public relations media, news media, sales media or any other public means of communication without the prior written consent and approval of the undersigned. No part of this report or any of the conclusions may be included in any offering statement, memorandum, prospectus or registration without the prior written consent of the appraiser.

Name: Anthony Gibbons, MAI, CRE

WS Cert # 1100854

Signature: 

Date Signed: 3/16/08

TABLE OF CONTENTS

Letter of Transmittal	i
Appraiser's Certification	ii
Table of Contents	iii
Introduction	1
Purpose of Study	1
Study Area.....	1
Scope of Work	1
Date of Study	2
SENDING AREA ANALYSIS	3
Sending Areas	3
Sales Data Analyzed	8
Residential Unit Values.....	10
Concluded Sending Right Value	11
RECEIVING AREA ANALYSIS	12
Receiving Areas	12
Commercial Development Areas.....	12
Demand Analysis	12
Density Demand Analysis	13
Building Economics.....	13
Pricing of Land & Development Rights	14
Infrastructure Cost.....	16
Projected TDR demand and Pricing.....	16
Commercial TDR Conclusions	17
Additional Considerations	18
CONCLUSION.....	22
<i>ADDENDUM</i>	
<i>Appraiser's Experience Data</i>	

TDR Program – City of Sammamish

Introduction

The city of Sammamish is presently contemplating the development of a TDR program that will simultaneously preserve targeted areas and promote high-density commercial construction in a new town center. The basic tenet of the TDR program calls for the transfer of residential development rights into a newly developed Town Center, and their conversion for use as commercial development credit.

Specific sending areas have been identified, and in some cases include sensitive areas impacted by wetlands or slopes. The city is specifically targeting land with erosion hazard and near sensitive water bodies, and has identified as many as 1,000 potentially transferable rights, with 411 of these located in the top two sending areas. The study here values allowable transfer rights based on a variety of different zonings, as may be encountered, and as a general concept assumes the rights acquired are usable (and therefore valuable), thereby preserving the amount of land required for their generation under current zoning.

As concerns receiving areas, some 120,000sf of land in the Town Center plan is being set aside for office construction, which is the one commercial component most likely to require upper level (high-density) development. As presently contemplated, transferred rights will be restricted to commercial use. Base zoning allowances have yet to be identified and thus this study makes assumptions about what level of development will serve as a base above which TDR allowances will be required.

Purpose of Study

The purpose of this study is to identify the following components:

- The approximate value of sending rights;
- The approximate value of received rights,
- A recommended transfer ratio from residential to commercial use;
- A forecast of the demand for transferred rights
- A forecast of the likely success of the program based on the parameters identified.

Study Area

The study area is essentially confined to the city of Sammamish, although the city is contemplating allowing for the transfer of development rights from outside the immediate city boundaries. From a study perspective our analysis concentrates on residential values within the city limits.

Scope of Work

The scope of our work has included the following:

- This study includes an examination of residential land values across a variety of different zonings within the city limits.

Exhibit 4

- In terms of demand projections, we have relied upon the work performed for the city by Community Attributes. We have discussed this work in detail with author Chris Mefford.
- In terms of our assessment of achievable rental values, land values and potential commercial density achievement, we have both used the Community Attributes study and drawn on our own work within already established town centers including Woodinville, Bothell, Kenmore, Issaquah, Kirkland, Redmond, and suburban Bellevue. We also have recent appraisal experience in emerging Town Centers including Burien, Kenmore, Bothell, University Place, Sumner, and Tacoma.

Date of Study

Work for this study was performed in December of 2007, and January, February and March of 2008.

SENDING AREA ANALYSIS

Sending Areas

Maps of the intended sending areas are included within the following pages. Sending areas identified include some areas of sensitive lands, and/or lands considered imminently threatened by development. The priority for sending sites is the Thompson Sub-basin sending area, lands with erosion hazard and located near sensitive water bodies (EHNSWB), and wetland management areas. Sending areas also include properties within the jurisdiction of King County.

Transferable Rights

Transferable development rights have been calculated by the city of Sammamish and King County for a number of proposed sending areas, these basically numbering about 1,000-units over all. All of the sending areas have residential zoning, mostly R-1, but including zoning up to R-8. The King County properties include parcels with zoning as low density as RA-2.5, RA-5 and RA-10. At this time the method of calculation for development rights to be transferred out of Sammamish sending areas is based on a straight application of zoning, less development rights already in place. King County sending sites will require a separate calculation to equate the attractiveness of these sites and those within Sammamish.¹

Sensitive Areas

In the case of land already development-restricted due to the presence of sensitive lands and slopes, development may actually be difficult or costly to achieve, this in essence lowering the probability of development and likely decreasing the value of any development rights present, and/or reducing the number of rights available. The scope of this study has not allowed for site specific studies on property with heavy development constraints, and thus we are unable to provide for definitive development right values for specific instances where development may be difficult or costly to achieve.

However the scope of our analysis has included the examination of development right values across a broad range of zoning designations, with the result that we can identify the value of rights that come with a certain quantity of developable land. For property with development constraints the value of individual achievable rights tends to be reduced in much the same manner as they are reduced with allowable land area available for development. In this manner the value of such rights may be compared to the value of rights in higher density zones, these also possessing less development land per right.

Sammamish Calculation of Sending Rights

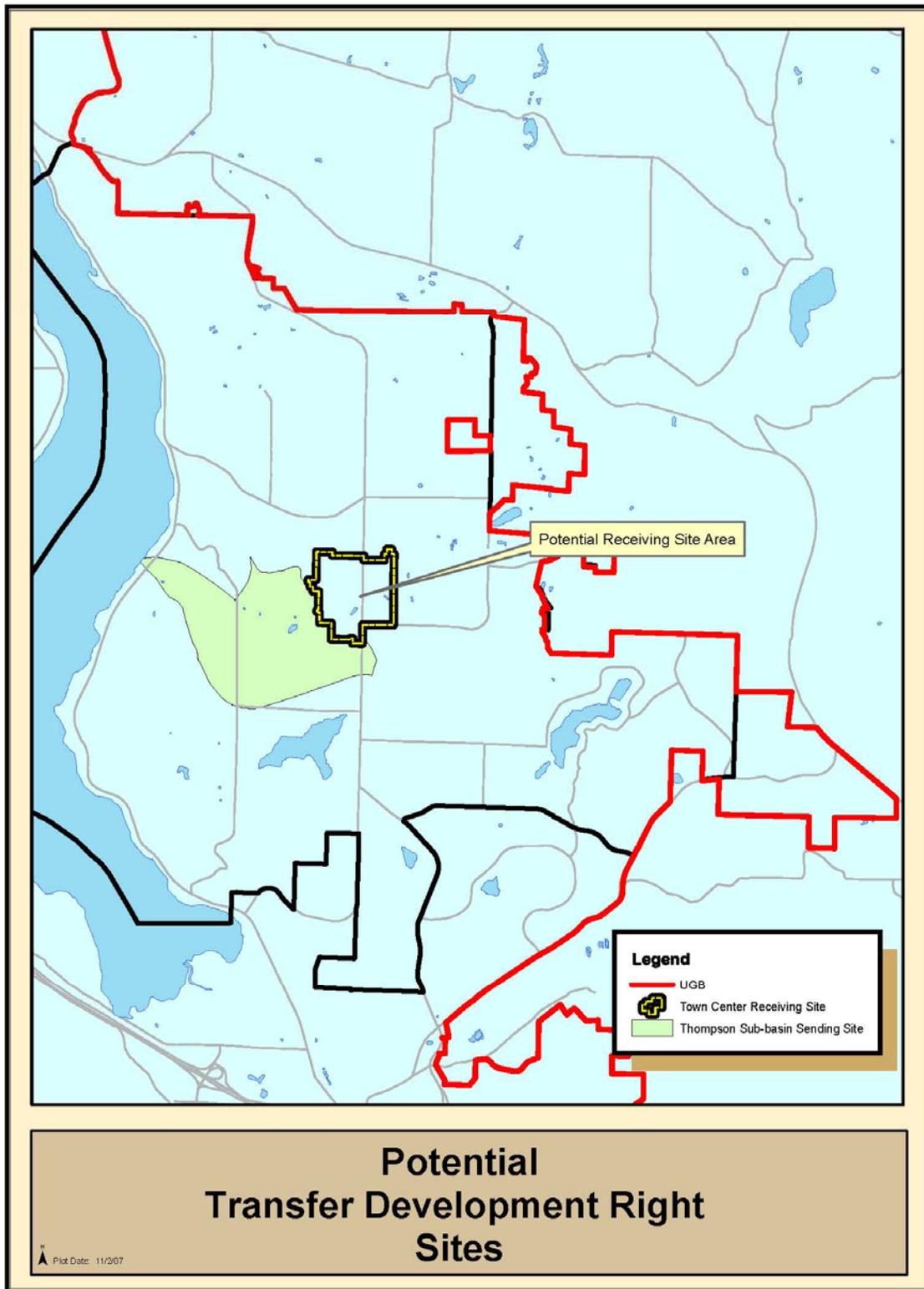
- Thompson Sub-Basin: 118
- Erosion Hazard Areas Near Sensitive Water Bodies: 283

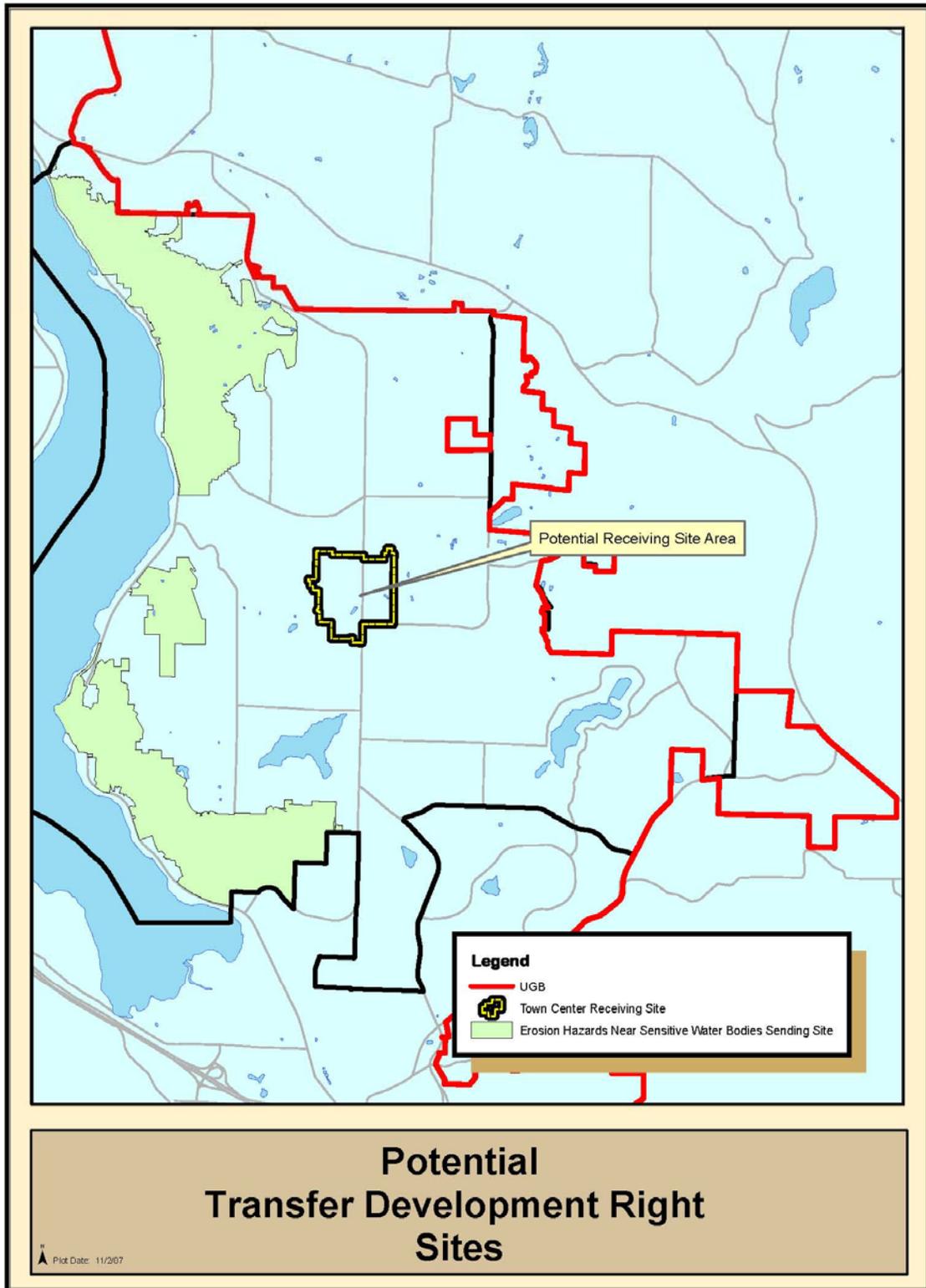
¹ This calculation is pending a finalization of TDR program parameters and a committed interest by Sammamish to enter into an interlocal agreement with King County.

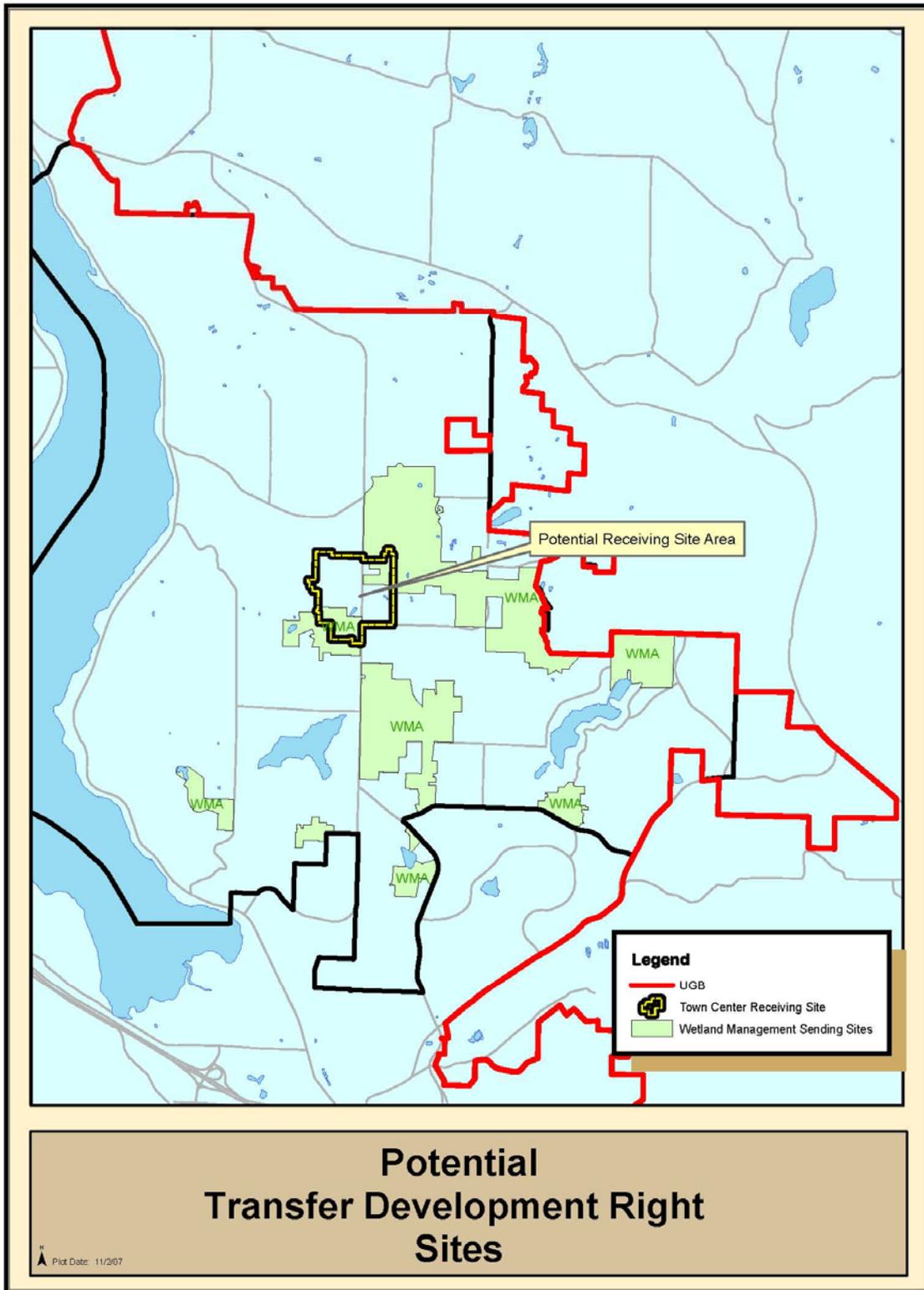
Exhibit 4

- Wetland Management Areas: 423
- King County Potential Rural Area Sending Rights: 196
- Total: **1,020**

King County Potential Rural TDR Sending Sites				
Zoning	# Parcels	Acreage	Remaining Development Capacity	# Potential TDRs
RA-10	56	749	37	71
RA-5	66	601	81	116
RA-2.5	4	28	8	9
Totals	126	1378	126	196







Sales Data Analyzed

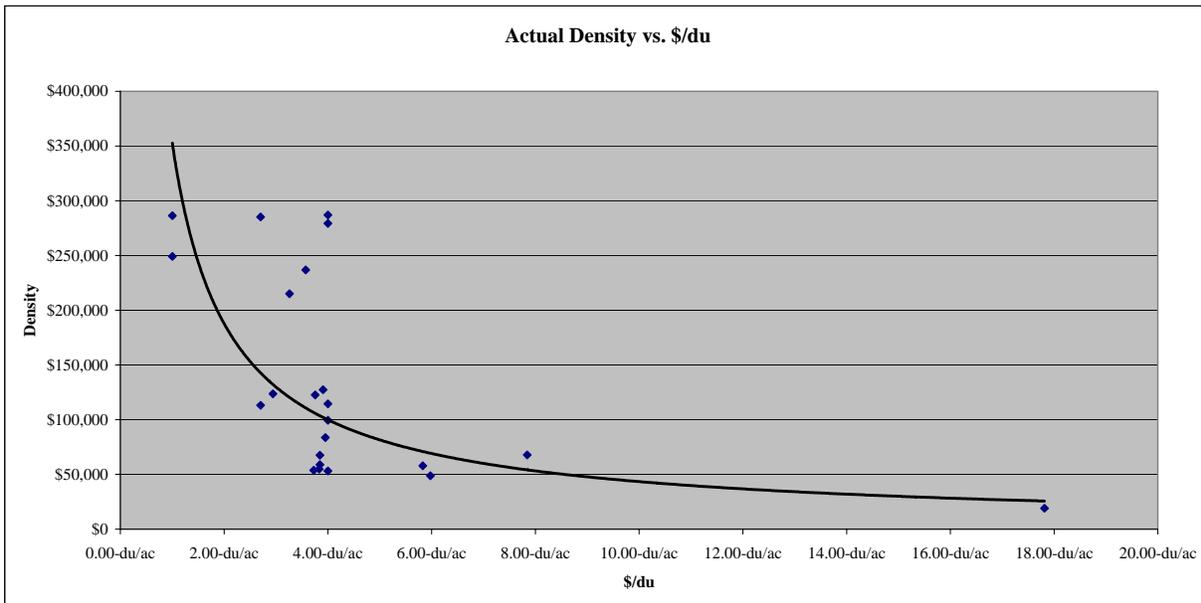
Our sending rights valuation analysis is based on a survey of recent land sales in the city of Sammamish. In order to collect as large an inventory of sales as possible, and across a wide range of zonings, our search for land sales extends to all parts of the city. A summary of this sales information is presented on the following page. The properties have been analyzed on a per unit basis. A corresponding map of the sales comparables appears below.



LAND SALES COMPARISON SUMMARY TABLE																
No.	Owner Location	Parcel No.	Lot Characteristics		Sales Data, Time Adjustment and Value Analysis							Potential DU's of Property	Zoning Density	Actual Density DU/ac	Average Size of DU	\$/DU
			Zoning	Size	Ass'd \$ @ Sale % of sale	Sale Date	Price	Time 2004-2007 5% 5%	\$/sf \$/ac							
R1 SO Zoned Parcels																
L-1	no address	0124069006	R1 PSO	675,616sf 15.51ac	0%	4/6/07	\$1,200,000	1.039	\$1,247,264	\$1.85/sf \$80,417/ac	15-du	1.00-du/ac	0.97-du/ac	1.03ac	\$83,151	
L-2	no address	0524069002	R1 PSO	681,278sf 15.64ac	27%	5/22/07	\$2,375,000	1.033	\$2,453,412	\$3.60/sf \$156,868/ac	15-du	1.00-du/ac	0.96-du/ac	1.04ac	\$163,561	
L-3	no address	0524069034	R1 PSO	683,021sf 15.68ac	34%	6/30/06	\$2,000,000	1.079	\$2,158,053	\$3.16/sf \$137,631/ac	15-du	1.00-du/ac	0.96-du/ac	1.05ac	\$143,870	
L-4	no address	0824069170	R1 PSO	49,223sf 1.13ac	64%	11/3/05	\$280,000	1.114	\$311,935	\$6.34/sf \$276,049/ac	1-du	1.00-du/ac	0.88-du/ac	1.13ac	\$311,935	
L-5	no address	0824069212	R1 PSO	53,579sf 1.23ac	27%	6/29/07	\$630,000	1.028	\$647,502	\$12.09/sf \$526,425/ac	1-du	1.00-du/ac	0.81-du/ac	1.23ac	\$647,502	
L-6	211 SE42nd St	1724069087	R1 PSO	76,666sf 1.76ac	75%	8/11/06	\$631,000	1.073	\$677,054	\$8.83/sf \$384,690/ac	1-du	1.00-du/ac	0.57-du/ac	1.76ac	\$677,054	
L-7	no address	7384700190	R1 PSO	7,405sf 0.17ac	0%	12/1/06	\$1,380,000	1.057	\$1,458,717	\$196.99/sf \$8,580,688/ac	1-du	1.00-du/ac	5.88-du/ac	0.17ac	\$1,458,717	
L-8	3409 207th Ave SE	7384700230	R1 PSO	7,841sf 0.18ac	0%	8/28/06	\$1,323,000	1.071	\$1,416,338	\$180.64/sf \$7,868,543/ac	1-du	1.00-du/ac	5.56-du/ac	0.18ac	\$1,416,338	
R4 SO Zoned Parcels																
L-1	no address	0124069053	R4 SO	65,340sf 1.50ac	0%	4/6/07	\$1,200,000	1.039	\$1,247,264	\$19.09/sf \$831,510/ac	6-du	4.00-du/ac	4.00-du/ac	0.25ac	\$207,877	
L-2	no address	0624069119	R4 SO	7,405sf 0.17ac	53%	9/1/06	\$375,000	1.070	\$401,242	\$54.18/sf \$2,360,245/ac	1-du	4.00-du/ac	5.88-du/ac	0.17ac	\$401,242	
L-3	no address	0624069120	R4 SO	6,970sf 0.16ac	53%	7/20/06	\$375,000	1.076	\$403,555	\$57.90/sf \$2,522,216/ac	1-du	4.00-du/ac	6.25-du/ac	0.16ac	\$403,555	
L-4	no address	0824069076	R4 SO	675,616sf 15.51ac	28%	7/25/06	\$1,500,000	1.075	\$1,613,140	\$2.39/sf \$104,006/ac	62-du	4.00-du/ac	4.00-du/ac	0.25ac	\$216,018	
L-5	no address	0924069168	R4 SO	200,376sf 4.60ac	31%	4/16/07	\$1,480,000	1.038	\$1,536,238	\$7.67/sf \$333,965/ac	18-du	4.00-du/ac	3.91-du/ac	0.26ac	\$85,347	
L-6	no address	0924069192	R4 SO	88,862sf 2.04ac	41%	9/30/05	\$600,000	1.119	\$671,478	\$7.56/sf \$329,157/ac	8-du	4.00-du/ac	3.92-du/ac	0.25ac	\$83,935	
L-7	no address	1725069122	R4 SO	99,317sf 2.28ac	36%	6/15/07	\$560,000	1.030	\$576,636	\$5.81/sf \$252,910/ac	9-du	4.00-du/ac	3.95-du/ac	0.25ac	\$64,071	
L-8	800 206th Ave NE	3575301340	R4 SO	14,810sf 0.34ac	35%	4/14/06	\$120,000	1.090	\$130,823	\$8.83/sf \$384,723/ac	1-du	4.00-du/ac	2.94-du/ac	0.34ac	\$130,823	
L-9	1218 206th PI NE	3575301970	R4 SO	12,197sf 0.28ac	26%	8/8/06	\$515,000	1.073	\$552,809	\$45.32/sf \$1,974,319/ac	1-du	4.00-du/ac	3.57-du/ac	0.28ac	\$552,809	
L-10	15-xx NE 207th Ave	3575302275	R4 SO	10,019sf 0.23ac	17%	4/27/05	\$520,000	1.143	\$594,210	\$59.31/sf \$2,583,523/ac	1-du	4.00-du/ac	4.35-du/ac	0.23ac	\$594,210	
L-11	14 NE 207th Ave	3575302394	R4 SO	4,792sf 0.11ac	4%	3/14/07	\$177,000	1.043	\$184,538	\$38.51/sf \$1,677,618/ac	1-du	4.00-du/ac	9.09-du/ac	0.11ac	\$184,538	
L-12	15 NE 208th Ave	3575303065	R4 SO	20,909sf 0.48ac	19%	4/28/05	\$235,000	1.143	\$268,501	\$12.84/sf \$559,378/ac	3-du	4.00-du/ac	6.25-du/ac	0.16ac	\$89,500	
L-13	1322 208th Ave	3575303069	R4 SO	10,019sf 0.23ac	78%	7/6/07	\$140,000	1.027	\$143,755	\$14.35/sf \$625,021/ac	1-du	4.00-du/ac	4.35-du/ac	0.23ac	\$143,755	
L-14	14 211th PI NE	3575304870	R4 SO	4,792sf 0.11ac	3%	11/5/07	\$165,000	1.010	\$166,685	\$34.79/sf \$1,515,316/ac	1-du	4.00-du/ac	9.09-du/ac	0.11ac	\$166,685	
L-15	13 210th PI NE	3575304995	R4 SO	12,197sf 0.28ac	13%	3/2/06	\$67,500	1.096	\$74,012	\$6.07/sf \$264,329/ac	2-du	4.00-du/ac	7.14-du/ac	0.14ac	\$37,006	
L-16	14 210th PI NE	3575305027	R4 SO	9,583sf 0.22ac	150%	3/1/06	\$80,000	1.097	\$87,730	\$9.15/sf \$398,771/ac	2-du	4.00-du/ac	9.09-du/ac	0.11ac	\$43,865	
L-17	14 211th PI NE	357305475	R4 SO	16,553sf 0.38ac	94%	7/1/05	\$65,000	1.133	\$73,634	\$4.45/sf \$193,272/ac	2-du	4.00-du/ac	5.26-du/ac	0.19ac	\$36,817	
L-18	1515 212th Ave NE	3575305510	R4 SO	7,405sf 0.17ac	3%	2/9/07	\$695,500	1.047	\$728,325	\$98.35/sf \$4,284,266/ac	1-du	4.00-du/ac	5.88-du/ac	0.17ac	\$728,325	
L-19	2526 Sahalee Dr W	7504000825	R4 SO	6,098sf 0.14ac	15%	1/31/07	\$681,700	1.048	\$714,733	\$117.20/sf \$5,105,238/ac	1-du	4.00-du/ac	7.14-du/ac	0.14ac	\$714,733	
L-20	2417 Sahalee Dr W	7504000950	R4 SO	6,098sf 0.14ac	2%	8/7/06	\$590,000	1.074	\$633,400	\$103.86/sf \$4,524,286/ac	1-du	4.00-du/ac	7.14-du/ac	0.14ac	\$633,400	
L-21	2127 192nd Ave SE	8920100029	R4 SO	10,890sf 0.25ac	19%	8/10/05	\$940,000	1.127	\$1,059,178	\$97.26/sf \$4,236,713/ac	1-du	4.00-du/ac	4.00-du/ac	0.25ac	\$1,059,178	
L-22	no address	3201000080	R4 SO	6,970sf 0.16ac	68%	7/31/07	\$280,000	1.023	\$286,551	\$41.11/sf \$1,700,941/ac	1-du	4.00-du/ac	6.25-du/ac	0.16ac	\$286,551	
L-23	19825 SE 29th St	9201000560	R4 SO	23,087sf 0.53ac	6%	9/25/06	\$999,000	1.067	\$1,065,484	\$46.15/sf \$2,010,347/ac	2-du	4.00-du/ac	3.77-du/ac	0.27ac	\$532,742	
L-24	no address	9201000580	R4 SO	10,454sf 0.24ac	42%	3/28/07	\$359,000	1.041	\$373,589	\$35.74/sf \$1,556,621/ac	1-du	4.00-du/ac	4.17-du/ac	0.24ac	\$373,589	
R1 Zoned Parcels																
L-1	no address	0824069115	R1 P	20,909sf 0.48ac	59%	7/1/05	\$220,000	1.133	\$249,222	\$11.92/sf \$519,212/ac	1-du	1.00-du/ac	1.00-du/ac	0.48ac	\$249,222	
L-2	24138 Ne 1st PI	2327000100	R1 P	26,572sf 0.61ac	54%	7/23/07	\$279,500	1.024	\$286,345	\$10.78/sf \$469,418/ac	1-du	1.00-du/ac	1.00-du/ac	0.61ac	\$286,345	
R4 Zoned Parcels																
L-1	no address	0224069066	R4	176,418sf 4.05ac	38%	11/1/05	\$1,200,000	1.114	\$1,337,224	\$7.58/sf \$330,179/ac	16-du	4.00-du/ac	3.95-du/ac	0.25ac	\$83,576	
L-3	no address	0224069196	R4	43,560sf 1.00ac	67%	10/2/06	\$430,000	1.066	\$458,188	\$10.52/sf \$458,188/ac	4-du	4.00-du/ac	4.00-du/ac	0.25ac	\$114,547	
L-4	no address	0424069241	R4	16,117sf 0.37ac	121%	6/22/07	\$110,000	1.029	\$113,162	\$7.02/sf \$305,843/ac	1-du	4.00-du/ac	2.70-du/ac	0.37ac	\$113,162	
L-5	1900 202nd PI SE	0524069012	R4	79,279sf 1.82ac	64%	12/8/06	\$390,000	1.056	\$411,861	\$5.20/sf \$26,297/ac	7-du	4.00-du/ac	3.85-du/ac	0.26ac	\$58,837	
L-6	no address	0524069113	R4	79,279sf 1.82ac	57%	7/31/06	\$440,000	1.075	\$472,808	\$5.96/sf \$259,785/ac	7-du	4.00-du/ac	3.85-du/ac	0.26ac	\$67,544	
L-7	1812 E Lake Sammamish P	0624069104	R4	102,366sf 2.35ac	27%	4/26/07	\$475,000	1.037	\$492,391	\$4.81/sf \$209,528/ac	9-du	4.00-du/ac	3.83-du/ac	0.26ac	\$54,710	
L-10	21928 SE 28th St	0924069032	R4	92,783sf 2.13ac	29%	9/30/05	\$877,000	1.119	\$981,477	\$10.58/sf \$460,787/ac	8-du	4.00-du/ac	3.76-du/ac	0.27ac	\$122,685	
L-11	3519 228th Ave SE	0924069089	R4	40,075sf 0.92ac	10%	11/15/06	\$609,000	1.059	\$645,116	\$16.10/sf \$701,213/ac	3-du	4.00-du/ac	3.26-du/ac	0.31ac	\$215,039	
L-12	no address	1024069158	R4	55,757sf 1.28ac	33%	12/28/07	\$635,000	1.003	\$636,955	\$11.42/sf \$497,621/ac	5-du	4.00-du/ac	3.91-du/ac	0.26ac	\$127,391	
L-13	3200 228th Ave SE	1024069212	R4	315,810sf 7.25ac	0%	4/29/05	\$1,350,000	1.142	\$1,542,249	\$4.88/sf \$212,724/ac	29-du	4.00-du/ac	4.00-du/ac	0.25ac	\$53,181	
L-15	3228 E Lake Sammamish	2025069135	R4 P	5,663sf 0.13ac	161%	11/13/07	\$98,500	1.009	\$99,399	\$17.55/sf \$764,611/ac	1-du	4.00-du/ac	4.00-du/ac	0.13ac	\$99,399	
L-18	2 SE 223rd PI	3325069177	R4	16,117sf 0.37ac	53%	7/21/06	\$265,000	1.076	\$285,140	\$17.69/sf \$770,650/ac	1-du	4.00-du/ac	2.70-du/ac	0.37ac	\$285,140	
L-20	1900 215th PI SE	5726500030	R4	14,810sf 0.34ac	130%	8/26/05	\$110,000	1.124	\$123,682	\$8.35/sf \$36,769/ac	1-du	4.00-du/ac	2.94-du/ac	0.34ac	\$123,682	
L-21	no address	899800700	R4	70,132sf 1.61ac	50%	3/20/07	\$310,000	1.042	\$322,943	\$4.60/sf \$200,586/ac	6-du	4.00-du/ac	3.73-du/ac	0.27ac	\$53,824	
L-22	37 210th PI NE	856290480	R4	12,197sf 0.28ac	59%	2/6/05	\$205,000	1.155	\$236,774	\$19.41/sf \$845,623/ac	1-du	4.00-du/ac	3.57-du/ac	0.28ac	\$236,774	
L-24	410 209th Ave NE	8562901880	R4	10,890sf 0.25ac	41%	8/25/06	\$268,000	1.071	\$287,022	\$26.36/sf \$1,148,090/ac	1-du	4.00-du/ac	4.00-du/ac	0.25ac	\$287,022	
L-25	NE 209th Ave	8562901920	R4	10,890sf 0.25ac	42%	8/1/06	\$260,000	1.074	\$279,349	\$25.65/sf \$1,117,398/ac	1-du	4.00-du/ac	4.00-du/ac	0.25ac	\$279,349	
R6 Zoned Parcels																
L-1	no address	0224069066	R6	109,336sf 2.51ac	40%	3/7/07	\$700,000	1.044	\$730,494	\$6.68/sf \$291,034/ac	15-du	6.00-du/ac	5.98-du/ac	0.17ac	\$48,700	
L-4	no address	0824069066	R6	231,739sf 5.32ac	20%	12/1/06	\$1,700,000	1.057	\$1,796,970	\$7.75/sf \$337,776/ac	31-du	6.00-du/ac	5.83-du/ac	0.17ac	\$57,967	
R8 Zoned Parcels																
L-1	4617 Issaquah Pine Lake R	1524069040	R8	111,078sf 2.55ac	22%	5/22/06	\$1,250,000	1.085	\$1,355,833	\$12.21/sf \$531,699/ac	20-du	8.00-du/ac	7.84-du/ac	0.13ac	\$67,792	
R18 Zoned Parcels																
L-1	23117 NE 8th PI	3425069018	R8 SO	215,186sf 4.94ac	67%	1/19/07	\$1,600,000	1.050	\$1,680,225	\$7.81/sf \$340,126/ac	88-du	18.00-du/ac	17.81-du/ac	0.06ac	\$19,093	

Residential Unit Values

In order to allow for better visualization of unit pricing and how it changes with site density, the following graph is presented.



Using this data to extract an overall development right value is not easy. As the chart indicates, values of development rights vary across a wide range of different circumstances, with the most important controlling variables being the number of rights and the density of achievable development.

At one extreme we have low density property with zoning of at least 1-unit per acre, and a property size of less than five acres. The value of a right extracted out of this kind of property is probably likely to exceed \$200,000 per right, and will be higher than this if the decision is made to transfer all rights leaving an un-developable property. As the graph illustrates, because the value of rights climbs as the density decreases, significant economies of scale are involved in the acquisition or use of “marginal” rights. Thus at the other extreme, were we selling a single right from a high density property capable of accommodating more than say 18-units over a couple of acres, the expectation would be that the right could be acquired for somewhere in the \$25,000 range.

Since the value of remainder rights increases as density decreases, selling marginal rights can make economic sense for many developers. It particularly makes sense if the rights are difficult or expensive to use – but by the same token, though, acquiring them may result in the protection of relatively little property, or property that is already heavily protected through environmental regulation (thereby providing only modest additional preservation of open space).

Exhibit 4

Much of the issue associated with the valuation of rights, is what kind of conservation easement is to be placed on the remainder land. If a developer/farmer with one acre of land and 4-rights can sell three of those rights, and keep the entire site as privately held for the benefit of that remaining right, we can reason that the before property might sell for \$400,000, and the after property for \$250,000. Under those circumstances, the 3 rights could be acquired for \$50,000 each; and effectively they would have resulted in the “protection” of three-quarters of an acre, but land now constituting the private estate of the remainder right.

If the after property is to be protected in a more public spirited manner – say as passive open space the alteration of which is highly regulated – it may be that more will need to be paid for the rights. The various situations are myriad, and the value of rights will also vary with the volume of rights acquired.

For the purposes of this analysis, we have assumed an average development right value of \$100,000, with the recognition that this figure would vary based on density, from a low of around \$25,000 to a high of \$250,000. On average the expectation is that the acquisition of 1-right would protect between a half and one acre of land.

Concluded Sending Right Value

Based on the research undertaken, the following TDR study accepts as a general premise that rights can be acquired for an average of around \$100,000 per right, and the acquisition of such would be expected to result in the protection of between a half acre and 1-acre of land. As with all averages these figures will be too high for many situations and too low for others.

RECEIVING AREA ANALYSIS

Receiving Areas

The area maps previously presented reveal the location of the receiving area: the newly conceptualized Sammamish Town Center. The city has elected to allow for the transfer of credits to only commercial property within the Town Center. Since there is no market for high-density retail development in suburban communities – as a general rule – the restriction to commercial use essentially requires that the TDRs be used for upper-story office development over and above that permitted by zoning.

Since zoning allowances have yet to be developed, this study provides a recommendation as to where zoning allowances should be set in order to provide for some incentive to acquire additional rights.

Commercial Development Areas

In assessing the potential for commercial development – both in terms of supply and demand – we have relied upon the conclusions developed within the Community Attributes study.

In terms of supply, Community Attributes has identified approximately 250,000sf of land will be set-aside for retail use and 120,000sf of land will be set-aside for office use. Since retail development outside of well-established regional economic centers is almost exclusively low-density and single-story, development right *density* demand, if restricted in application to commercial use, has to come from the office sector – and perhaps the odd hotel. Thus our study is focused on the demand for “upper level” or high-density office development in Sammamish Town Center.

Demand Analysis

Community Attributes suggests there may be demand for nearly 400,000sf of commercial space by 2030, assuming a moderate increase in local trade capture from their estimates of 10% up to 15% of trade area spending. They note that the amount of office space to be expected is unknown, but that if their formula for “office using employment” were applied to regional employment forecasts, then office demand would reach 400,000sf. However in predicting a reasonable probability of this coming to pass, they also acknowledge “the forecasts are almost certainly wrong”. They note that if the “office using employment” formula they use to generate the forecast were applied to 2005 data, there “should be” over 365,000sf of office; in practice there are three identifiable buildings, two of which are medical in orientation and single-story and one of which is a three-story bank branch. If the demand calculations are accurate, what the study illustrates is that the city is presently suffering leakage in that demand to surrounding centers, such as Issaquah, Woodinville and Redmond.

The preferred alternative adopted by the City includes more than 400,000sf of commercial space, including both office and retail and not differentiating between office and retail at present. With an established Town Center in place, some of this leakage will stop. However with Sammamish Town Center not being on a major arterial or state route, it will likely represent a less attractive economic

Exhibit 4

location for office development, aside from small-practitioner office, than the more established urban centers that surround it. Thus our analysis assumes an overall office demand between now and 2030 of 100,000 to 130,000sf. According to Chris Mefford of Community Attributes, this amount of office demand would be consistent with and represent a part of the overall commercial development demand shown in the preferred alternative.

Density Demand Analysis

With approximately 120,000sf of land, and potential demand for an estimated 120,000sf of space, we can project that were Town Center to be built out over the next 22-years, the average density of development would approximate a floor area ratio (FAR) of 1.0 – 1 part of building for every 1 part of land.

Conceivably we can envision that in the initial development of office space in Town Center, this density would not be achieved or desired. A greater density is unlikely given the supply of land and the low level of overall demand. However as time goes on, and the available land gets scarce, the probability of increased density would become apparent, and reasonably one could predict that properties would be redeveloped and remaining parcels would achieve higher density.

Building Economics

In the prototypical development of an office building at a density of 1.0, we can envision a 20,000sf office building on a 20,000sf lot. A building of this size typically generates a parking demand of 80-cars, these consuming about 28,000sf of area. If the building is to be of two stories, and covering half the site, it will typically require two levels of parking at this density, including allowing for surface parking on the half of the site not used for the building. Decreasing the building footprint requires more stories, and calls for a generally less efficient floor plate, and potentially more floors of parking, but does allow for more on-site parking.

Critical economics come into play when parking goes underground. With an underground stall costing around \$30,000, and providing parking demand for 250sf of office space, the office rent (or rent inclusive of parking costs) typically needs to be increased \$8/sf per year to accommodate the cost, if all is underground, and around \$5/sf in the example above, with just two thirds of the office below grade. It is for these reasons that the preferential suburban office density is around 0.5, typically requiring no underground parking. The importance of this issue with regard to the feasibility of upper-story development is that rents have to be at levels that support the cost of underground parking, if the greater density is to be considered of value.

Whether the economics will be in place to support demand at a density of 1.0 or more is impossible to say at this point; except we can note that office rents in Sammamish and yet to be established suburban communities like it are not at this level presently. If the demand projections are there, we can forecast that the economics will potentially also be at some point. That remains an important assumption of this analysis.

Pricing of Land & Development Rights

Community Attributes considers the economics of development in the examination of the amount of value available for land acquisition, and in typical “development-speak”, they have expressed this conclusion on a building area basis. They have forecast the value of an office building at around \$343/sf, and with \$267/sf attributed to the cost of development (excluding land) their economic model assumes some \$75/sf of building area is available for land acquisition². Please see the insert below.

		Office
Commercial market values		
Lease rate (gross), s.f./yr.		\$ 35.00
Vacancy loss		5%
Operating costs		33%
Net operating income (NOI)		\$ 22.28
Cap rate		6.500%
Residential market values (net sales price per s.f.)		
Commercial market values		
Value per s.f. of building		\$ 342.73
<i>Less development costs</i>		
	Assumed s.f./DU	
		1,000
Construction hard costs		\$ 148.00
Parking ratio (per 1000 s.f. cml, per unit res.)		3.00
Parking ratio (pkg s.f. per bldg s.f.)	350	1.05
Structured parking %	\$ 25.00	0%
Surface parking %	\$ 6.00	100%
Parking costs = weighted avg. of str., s.f.c.:	\$ 21.20	\$ 6.30
Total hard costs		<u>\$ 154.30</u>
Soft costs (% of hard costs)	33%	\$ 50.92
Impact Fees (current policy basis)		\$ 39.15
Developer fees (% of total costs)	10%	\$ 22.80
<u>Total costs</u>		<u>\$ 267.17</u>
Available for land & infrastructure per s.f. of building		\$ 75.56

Source Community Attributes

The latter figure seems reasonable to us, but of course will vary from area to area and situation to situation (location, time and size of project). The Community Attributes study has some slightly different assumptions than our prototypical model above, including for instance parking demand at 1-stall for 350sf of office area, versus our calculation of 1-stall for every 250sf of office. (If the former is to prove accurate, good public transportation will need to be in place.) The cost calculation does though assume

² One way to express the value of land is in the form of how much is being paid per square foot of building product constructed on the property. Thus if \$35/sf is paid for a property that is to be developed at an FAR of 0.5, the price per FAR or building foot is \$70/sf. As density increases, the land price per square foot of land typically goes up, while the land price per square foot of building typically goes down. This relationship reflects the increasing cost of development as density increases, and the associated economies of scale.

Exhibit 4

no underground parking, and thus this value would apply typically only at 0.5-density development in the suburban markets – thus indicating a base land value of around \$35 to \$40/sf. In more established urban markets, better value economics exist and the FAR value can vary from a low of \$30/sf to a high of \$70 in major regional centers.

If we assume underground parking is needed, the land pricing on a building foot basis (i.e. the amount of money available for purchase of land, divided by the building size) drops to under \$50/sf. Underground parking costs are highly variable, depending both on the number of floors below grade and the size of the lot. Thus the parking burden could increase above the level indicated in the Community Attributes study. Putting this issue aside for the moment³, use of a \$50/sf of FAR value for 1.0-FAR land in Sammamish suggests land there would sell for around \$50/sf, which would not be an unreasonable projection for an emerging Town Center. The calculation follows, based on Community Attributes figures.

		Office
Commercial market values		
Lease rate (gross), s.f./yr.		\$ 35.00
Vacancy loss		5%
Operating costs		33%
Net operating income (NOI)		\$ 22.28
Cap rate		6.500%
Residential market values (net sales price per s.f.)		
Commercial market values		
Value per s.f. of building		\$ 342.73
<i>Less development costs</i>		
	Assumed s.f./DU	1,000
Construction hard costs		\$ 148.00
Parking ratio (per 1000 s.f. cml, per unit res.)		3.00
Parking ratio (pkg s.f. per bldg s.f.)	350	1.05
Structured parking %	\$ 25.00	100%
Surface parking %	\$ 6.00	0%
Parking costs = weighted avg. of str., s.f.c.:	\$ 21.20	\$ 26.25
Total hard costs		\$ 174.25
Soft costs (% of hard costs)	33%	\$ 57.50
Impact Fees (current policy basis)		\$ 39.15
Developer fees (% of total costs)	10%	\$ 25.75
Total costs		\$ 296.65
Available for land & infrastructure per s.f. of building		\$ 46.08

Source Community Attributes

The fact that, for a given set of circumstances, a site with higher density is worth less on an FAR area basis but more on a land area basis is important in terms of projecting the amount a developer will pay for a site with higher density allowances – and therefore how much they will pay to acquire TDRs to achieve

³ We can perhaps assume some improvement in rental value with structured parking, and this adjustment could also be made to the Community Attributes figures.

Exhibit 4

that density. In this situation, which we regard as quite typical, the first 0.5-FAR and land comes at a cost of \$75/sf of FAR; the next 0.5-FAR and no land comes at a cost of a third of this or \$25/sf per FAR. The combined property with a 1.0-FAR and land is worth \$50/sf of FAR.

In this economic model then, a developer with a site zoned for just 0.5-FAR would pay \$25/sf for each additional square footage of FAR up to 1.0. If greater density were demanded, the price for each additional square foot would continue to fall due to the higher cost associated with higher density. In addition denser projects are usually larger projects and thus come with more development risk.

Infrastructure Cost

The city's current plan is to pass onto developers, or development land, the cost of infrastructure. Community Attributes has computed the Commercial share at \$73/sf of land. Thus the expectation would be that a developer would pay this burden and also pay for land. As the above economic analysis illustrates, this requirement will significantly impact the achievable price of land within the Town Center. Land in most competitive urban centers is priced in the \$30 to \$75/sf range and comes with both infrastructure and land. In addition, the cost of infrastructure also has important implications for TDR feasibility — namely it adds to the overall cost of the project and potentially limits a developer's ability to pay for additional density. Our model here assumes land pricing at \$37.50/sf with an FAR of 0.5 (which is \$75/sf of building area per Community Attributes calculation), and \$50/sf with an FAR of 1.0, and no infrastructure cost (or at least the latter is implied in the acquisition of the site).

Given this issue, the remainder analysis focuses on the value of development rights assuming no infrastructure cost is part of the equation.

Projected TDR Demand and Pricing

The following analysis relies upon the economic model just presented, but assumes a land pricing model which has infrastructure cost included. For every \$1 of infrastructure burden, land value will decrease a \$1, and the cost of land cannot decrease below the value of land without any infrastructure in place.

We also have to make an assumption of base zoning in order to project monies that might prove available for acquisition of TDRs. I have assumed a base zoning allowance of 0.5, which is a suburban as opposed to more of an urban density, and thus represents an acceptable development option in the absence of development rights. With an assumed overall density projection of 1.0-FAR, our model assumes that half of the total 120,000sf of development demand of commercial space may potentially prove to represent TDR demand.

Thus the projection calls for 60,000sf of TDR commercial development demand, and at assumed pricing of \$25/sf of TDR, the total monies potentially generated in 2008 dollars amounts to \$1,500,000. To equate this figure to residential units we can divide the total by \$100,000 for protection of potentially 15-units and no more than 15-acres of development land. More land of lesser development quality could be projected by this TDR demand, and the reverse is true. Note that the transfer rate of housing units to square footage of office space - which is presented here as an average of 1-unit for 4,000sf of space -

should be modified depending upon the zoning used for transfer (see chart at the end of this section). Units coming out of denser zoning will be worth less, and by the same token protect less land⁴.

It is worth noting that the demand projection of 60,000sf is over a period of 22-years, and historical development patterns suggest that lower density projects tend to precede higher density demand due to the immaturity and uncertainty of a yet to be established market. In the meantime should residential values grow faster than commercial values, which traditionally has been the case, the relative value of the TDRs may become eroded over time. Finally the analysis assumes we have a pricing environment suitable to support dense office development in the new town center.

Commercial TDR Conclusion

Our modeling of the potential for commercial TDRs suggests the following findings:

- Near-term office projections call for perhaps 60,000sf of upper level office demand between now and 2030, which would then be potentially available to fund a TDR program.
- Demand for higher density will be gradual and back-end loaded. A TDR study aimed at capturing some of the value of upper level commercial development must wait for such development to be feasible.
- Use of ratios to convert housing values to office values must be sensitive to the zoning of sending sites. We recommend that the ratio of units to square feet be modified to reflect the lower value of residential units coming out of higher density sites. In this manner a consistent area of land will be protected for every square foot of commercial TDR acquired. A discussion of that ratio is presented below.
- The cost of infrastructure to be passed onto developers cannot exceed the value of Town Center land with infrastructure in place less the value of land without such infrastructure. Our current projection of Town Center land pricing with no infrastructure cost is in a range of \$35 to \$75/sf depending on where the base zoning is set and the cost of TDRs. Thus the infrastructure burden plus the current value of land in the proposed Town Center area is capped at this level.

⁴ *Office Receiving Multipliers*

The FAR cost of office is expected to be similar to that of residential units at densities in excess of 30-units per acre (\$20,000 per unit with an average unit size of 800sf provides for a square foot cost of \$25/sf). Thus the ratio analysis presented in the following mixed-use section should be applied assuming a receiving density of 30-units per acre, and one unit equaling 800sf. A landowner transferring units out of land with a density of 4-units per acre should receive a multiplier of 4.45 x 800sf, or a total of 3,560sf of office FAR per unit. Please see the residential transfer analysis presented under “Additional Considerations”.

Additional Considerations

In an effort to explore other possible alternatives, we have also considered the possibility of extracting TDR value out of:

- Pure retail space
- Mixed-use space (commercial and multifamily residential combined)

Retail use in town center communities is traditionally found in mixed-use projects, and typically is not the most significant economic driver in such projects. Often retail use may not contribute significantly to the bottom line of the project, and in land pricing is traditionally considered either equivalent to a residential unit in value, or worth less than this. Combined with the fact that retail development in town center communities is by nature single story, there is little potential for using TDR as an incentive for additional retail density. TDR *could* be used by Sammamish as policy tool to guide the type of retail preferred — for example, by requiring that retail development beyond a maximum allowable square footage require TDR. In this scenario, Sammamish would need to make a policy decision regarding the maximum level of allowable square footage for retail; this decision would be based in policy as opposed to market economics, and it therefore is beyond the scope of this analysis.

There is another opportunity to extend the TDR program to mixed-use development: housing. Here the economics indicate that it is the demand for *housing* density that will drive the demand for overall project density and therefore potential TDR use.⁵ The following exercise illustrates the potential for TDR were Sammamish to base the program on multi-use residential versus commercial development (i.e. the present program design).

TDR Based on Upper-story Residential

Disclaimer: This exercise is to illustrate the potential for TDR in mixed-use developments. It is not to determine how TDR can be implemented in conjunction with affordable housing incentives. Such analysis is beyond the scope of this document.

Should the decision be made to use upper-story residential development to fund TDRs, many of the issues associated with the commercial element will factor. This said, the sector is stronger than commercial for a variety of reasons, and traditionally Town Centers have proven very successful in attracting significant housing density. The combination of a living environment with public transportation and good services (restaurants, shopping etc) has proven to be an attractive, cost-effective alternative to the traditional suburban house, yard and two-car garage.

Community Attributes has demonstrated demand for a preferred alternative of 1,570-units of multifamily residential demand on an area of 75.8-acres. The gross density calculation, assuming all acreage would be used, is 20-units per acre. Realistically, because pedestrian travel times are so critical for residents, it can be expected that the true core of the center will attract higher densities than this – which at 20-units

⁵ A TDR program based on residential mixed-use development must be well-coordinated with Sammamish' affordable housing goals and plans.

Exhibit 4

per acre is a very mid-range garden-court style apartment complex density with no structured parking. Typically Town Centers have been successful at attracting projects with densities of 50-units to potentially as high as 100-units per acre.

In the prototypical development of a mixed-use building, we can envision a 4-story structure on a 20,000sf lot. Assuming coverage of 65%, a building of this size can accommodate about 40-units at a net saleable or rentable average of 800sf per unit, and will require around 1.5-cars per unit. This would be a floor and a half of parking. The overall FAR would be around 2.3.

Proto-typical Mixed-Use Development																					
Area Calculation																					
Lot Size		E-W		N-S		Area															
		140		140		19,600															
Zoning: 45 foot height																					
Areas						Units		Parking													
Lot size		Lot coverage		Gross		Net at 85%		Floors		Total		Ave		Units		SF/Stall		Area		Floors	
Residential		19,600		19,600.00		12,740		10,829		3		32,487		800		40.6		1.5		61	
Retail				14,700		14,700		12,495		1		12,495				0					
Total net Rentable						44,982						2.295 FAR									
Total parking required												61		350							
P1 parking																16,660		0.9			
P2 parking																4,660		0.2			
Fully below grade parking																-		0.0			
		FI-FL		Ceiling Ht		Floors		Total Ht				90.25 units per acre									
		3.33		2.66		3		10													
		15.00		14.33		1		15													
Retail								15													
total Ht								45													
		Residential						8		↑											
		Residential						8		↓											
		Residential						8		↓											
		Retail		Parking				15		↓											
		Parking						15		↓											

Actually development within Town Centers tends to range from 1 to 3 FAR, and will exceed this level in the most economically viable markets – some town centers are looking for true mid-rise development opportunities, with heights above 60-feet.

In Sammamish’s case, the near term expectation would be for initial development at an FAR of 1.0 to perhaps 1.5, based on our experience in other similar Town Center communities - and thus setting the FAR cap for base zoning at 0.5 would allow for the most reasonable opportunity for capturing some of the development value associated with greater density allotments.⁶

The Community Attributes analysis in their market study suggests plausible scenarios with long-term housing demand exceeding the 1,570 units in the City’s preferred alternative, suggesting potentially strong demand for residential in mixed-use development. At this point we do not have a projection of

⁶ Deciding where this line should be drawn is a policy decision. This FAR is based on the author’s experience in other town center projects and is used for purposes of illustration.

realizable density beyond the Community Attributes preferred alternative between now and 2030 (in other words the Community Attributes analysis does not differentiate between demand for high-density as opposed to low density product) and thus we cannot project what demand there will be from mixed-use development. If the 2030 projection were to be accommodated on a third of the property available, the average density would be around 60-units per acre, which would be an approximate FAR of 1.6 – reasonable for an emerging Town Center. Under that scenario, and assuming a base of 0.5, 1.1-FAR would be available for TDR-based development. This would translate into about 40/units an acre over 25-acres, or about 1,000-units, which may prove to be optimistic to assume such could be in place by 2030. The speed with which infrastructure gets developed (and who pays for it) will be a key ingredient to promoting development as will regional and economic trends, and the success of other Town Center communities (which will provide both competition as well as excitement for a Town Center in Sammamish).

Based on the research we have performed on land values, reasonably these additional units might be worth \$20,000 to \$25,000 per unit – which is equivalent to about \$20 to \$25/FAR. The ratio of sending values to receiving values will need to be on the order of 10 or more if say transferring out of a zone with a density of significantly less than 1-unit per acre into Town Center (with TDR values at say a premium of \$250,000); and 4 to 5 if we can assume an average sending TDR value of \$100,000, which would potentially call for a sending density of above 1-unit per acre. On the following page a transfer ratio chart is presented.

Applying the sending site analysis figures from the commercial analysis to this scenario, we estimate the acquisition of a right for \$100,000 would preserve between a half and one acre of land. If we have \$25,000,000 of potential TDR value (assuming NO affordable housing for purposes of this calculation), and an average development right value of \$100,000, a TDR program could result in the protection of 125 to 250-acres of development land.⁷

Opposite I have developed a preliminary ratio chart which will allow the conversion of residential sending units into receiving units.

Residential Receiving Multipliers

Assuming a density of 1 unit per 5 acres (0.2 units per acre) and a receiving density of more than 30-units per acre (i.e. the density of the receiving site exceeds 30-units per acre with the additional TDRs), the transfer ratio would be 12.5 – the highest proposed.

If the sending site possesses a density of 4-units per acre, and the receiving area has a final density of 25-units per acre, the ratio is that for the 25-unit site (11.11) divided by that for 4-units per acre (2.81) for a calculated sending density multiplier of approximately 4.0. Thus in this case if the developer were transferring 3-units out of the R-4 site he would receive 12-units at the “R-25” location.

⁷ This calculation assumes numerous variables – including the speed of infrastructure development, the pricing of land in Sammamish Town Center, changing demand and supply factors and the success/failure of competing locations. Also, as in the commercial analysis, it is important to note the calculation assumes no infrastructure cost will be passed through to the developer (for an explanation, see the section titled “Infrastructure Cost” on page 16).

Sending-Receiving Ratios

Sending Density	Multiplier	S/du	Sending Site Density	Multiplier	S/du	Sending Site Density	Multiplier	S/du
			10	5.668	\$44,107	20	10.000	\$25,000
			10.1	5.714	\$43,756	20.1	10.022	\$24,945
			10.2	5.759	\$43,409	20.2	10.044	\$24,889
			10.3	5.805	\$43,069	20.3	10.067	\$24,834
			10.4	5.850	\$42,734	20.4	10.089	\$24,780
			10.5	5.896	\$42,403	20.5	10.111	\$24,725
			10.6	5.941	\$42,078	20.6	10.133	\$24,671
			10.7	5.987	\$41,758	20.7	10.156	\$24,617
			10.8	6.032	\$41,443	20.8	10.178	\$24,563
			10.9	6.078	\$41,132	20.9	10.200	\$24,510
1	1.296	\$192,857	11	6.123	\$40,826	21	10.222	\$24,457
1.1	1.333	\$187,500	11.1	6.169	\$40,525	21.1	10.244	\$24,403
1.2	1.370	\$182,432	11.2	6.215	\$40,228	21.2	10.267	\$24,351
1.3	1.407	\$177,632	11.3	6.260	\$39,935	21.3	10.289	\$24,298
1.4	1.444	\$173,077	11.4	6.306	\$39,647	21.4	10.311	\$24,246
1.5	1.481	\$168,750	11.5	6.351	\$39,363	21.5	10.333	\$24,194
1.6	1.519	\$164,634	11.6	6.397	\$39,082	21.6	10.356	\$24,142
1.7	1.556	\$160,714	11.7	6.442	\$38,806	21.7	10.378	\$24,090
1.8	1.593	\$156,977	11.8	6.488	\$38,534	21.8	10.400	\$24,038
1.9	1.630	\$153,409	11.9	6.533	\$38,265	21.9	10.422	\$23,987
2	1.667	\$150,000	12	6.579	\$38,000	22	10.444	\$23,936
2.1	1.724	\$145,030	12.1	6.620	\$37,764	22.1	10.467	\$23,885
2.2	1.781	\$140,379	12.2	6.661	\$37,531	22.2	10.489	\$23,835
2.3	1.838	\$136,016	12.3	6.702	\$37,301	22.3	10.511	\$23,784
2.4	1.895	\$131,917	12.4	6.743	\$37,073	22.4	10.533	\$23,734
2.5	1.952	\$128,058	12.5	6.785	\$36,848	22.5	10.556	\$23,684
2.6	2.009	\$124,418	12.6	6.826	\$36,627	22.6	10.578	\$23,634
2.7	2.066	\$120,979	12.7	6.867	\$36,407	22.7	10.600	\$23,585
2.8	2.124	\$117,725	12.8	6.908	\$36,190	22.8	10.622	\$23,536
2.9	2.181	\$114,641	12.9	6.949	\$35,976	22.9	10.644	\$23,486
3	2.238	\$111,715	13	6.990	\$35,765	23	10.667	\$23,438
3.1	2.295	\$108,935	13.1	7.031	\$35,556	23.1	10.689	\$23,389
3.2	2.352	\$106,290	13.2	7.072	\$35,349	23.2	10.711	\$23,340
3.3	2.409	\$103,770	13.3	7.113	\$35,145	23.3	10.733	\$23,292
3.4	2.466	\$101,367	13.4	7.155	\$34,943	23.4	10.756	\$23,244
3.5	2.523	\$99,072	13.5	7.196	\$34,743	23.5	10.778	\$23,196
3.6	2.581	\$96,880	13.6	7.237	\$34,545	23.6	10.800	\$23,148
3.7	2.638	\$94,782	13.7	7.278	\$34,350	23.7	10.822	\$23,101
3.8	2.695	\$92,773	13.8	7.319	\$34,157	23.8	10.844	\$23,053
3.9	2.752	\$90,847	13.9	7.360	\$33,966	23.9	10.867	\$23,006
4	2.809	\$89,000	14	7.401	\$33,778	24	10.889	\$22,959
4.1	2.863	\$87,306	14.1	7.442	\$33,591	24.1	10.911	\$22,912
4.2	2.918	\$85,676	14.2	7.484	\$33,407	24.2	10.933	\$22,866
4.3	2.972	\$84,106	14.3	7.525	\$33,224	24.3	10.956	\$22,819
4.4	3.027	\$82,592	14.4	7.566	\$33,043	24.4	10.978	\$22,773
4.5	3.081	\$81,131	14.5	7.607	\$32,865	24.5	11.000	\$22,727
4.6	3.136	\$79,722	14.6	7.648	\$32,688	24.6	11.022	\$22,681
4.7	3.190	\$78,360	14.7	7.689	\$32,513	24.7	11.044	\$22,636
4.8	3.245	\$77,044	14.8	7.730	\$32,340	24.8	11.067	\$22,590
4.9	3.299	\$75,772	14.9	7.771	\$32,169	24.9	11.089	\$22,545
5	3.354	\$74,541	15	7.813	\$32,000	25	11.111	\$22,500
5.1	3.408	\$73,349	15.1	7.856	\$31,822	25.1	11.139	\$22,444
5.2	3.463	\$72,195	15.2	7.900	\$31,646	25.2	11.167	\$22,388
5.3	3.517	\$71,077	15.3	7.944	\$31,471	25.3	11.194	\$22,333
5.4	3.572	\$69,993	15.4	7.988	\$31,299	25.4	11.222	\$22,277
5.5	3.626	\$68,941	15.5	8.031	\$31,128	25.5	11.250	\$22,222
5.6	3.681	\$67,920	15.6	8.075	\$30,960	25.6	11.278	\$22,167
5.7	3.735	\$66,930	15.7	8.119	\$30,793	25.7	11.306	\$22,113
5.8	3.790	\$65,967	15.8	8.162	\$30,628	25.8	11.333	\$22,059
5.9	3.844	\$65,032	15.9	8.206	\$30,465	25.9	11.361	\$22,005
6	3.846	\$65,000	16	8.250	\$30,303	26	11.389	\$21,951
6.1	3.892	\$64,239	16.1	8.294	\$30,143	26.1	11.417	\$21,898
6.2	3.937	\$63,496	16.2	8.337	\$29,985	26.2	11.444	\$21,845
6.3	3.983	\$62,770	16.3	8.381	\$29,828	26.3	11.472	\$21,792
6.4	4.028	\$62,060	16.4	8.425	\$29,674	26.4	11.500	\$21,739
6.5	4.074	\$61,366	16.5	8.469	\$29,520	26.5	11.528	\$21,687
6.6	4.119	\$60,688	16.6	8.512	\$29,369	26.6	11.556	\$21,635
6.7	4.165	\$60,024	16.7	8.556	\$29,218	26.7	11.583	\$21,583
6.8	4.211	\$59,375	16.8	8.600	\$29,070	26.8	11.611	\$21,531
6.9	4.256	\$58,740	16.9	8.644	\$28,923	26.9	11.639	\$21,480
7	4.302	\$58,118	17	8.687	\$28,777	27	11.667	\$21,429
7.1	4.347	\$57,509	17.1	8.731	\$28,633	27.1	11.694	\$21,378
7.2	4.393	\$56,912	17.2	8.775	\$28,490	27.2	11.722	\$21,327
7.3	4.438	\$56,328	17.3	8.819	\$28,349	27.3	11.750	\$21,277
7.4	4.484	\$55,756	17.4	8.862	\$28,209	27.4	11.778	\$21,226
7.5	4.529	\$55,196	17.5	8.906	\$28,070	27.5	11.806	\$21,176
7.6	4.575	\$54,646	17.6	8.950	\$27,933	27.6	11.833	\$21,127
7.7	4.620	\$54,107	17.7	8.994	\$27,797	27.7	11.861	\$21,077
7.8	4.666	\$53,579	17.8	9.037	\$27,663	27.8	11.889	\$21,028
7.9	4.712	\$53,061	17.9	9.081	\$27,529	27.9	11.917	\$20,979
8	4.757	\$52,553	18	9.125	\$27,397	28	11.944	\$20,930
8.1	4.803	\$52,055	18.1	9.169	\$27,267	28.1	11.972	\$20,882
8.2	4.848	\$51,566	18.2	9.212	\$27,137	28.2	12.000	\$20,833
8.3	4.894	\$51,086	18.3	9.256	\$27,009	28.3	12.028	\$20,785
8.4	4.939	\$50,615	18.4	9.300	\$26,882	28.4	12.056	\$20,737
8.5	4.985	\$50,152	18.5	9.344	\$26,756	28.5	12.083	\$20,690
8.6	5.030	\$49,698	18.6	9.387	\$26,631	28.6	12.111	\$20,642
8.7	5.076	\$49,252	18.7	9.431	\$26,508	28.7	12.139	\$20,595
8.8	5.121	\$48,814	18.8	9.475	\$26,385	28.8	12.167	\$20,548
8.9	5.167	\$48,384	18.9	9.519	\$26,264	28.9	12.194	\$20,501
9	5.213	\$47,961	19	9.562	\$26,144	29	12.222	\$20,455
9.1	5.258	\$47,546	19.1	9.606	\$26,025	29.1	12.250	\$20,408
9.2	5.304	\$47,137	19.2	9.650	\$25,907	29.2	12.278	\$20,362
9.3	5.349	\$46,736	19.3	9.694	\$25,790	29.3	12.306	\$20,316
9.4	5.395	\$46,341	19.4	9.737	\$25,674	29.4	12.333	\$20,270
9.5	5.440	\$45,953	19.5	9.781	\$25,559	29.5	12.361	\$20,225
9.6	5.486	\$45,572	19.6	9.825	\$25,445	29.6	12.389	\$20,179
9.7	5.531	\$45,197	19.7	9.869	\$25,332	29.7	12.417	\$20,134
9.8	5.577	\$44,828	19.8	9.912	\$25,221	29.8	12.444	\$20,089
9.9	5.622	\$44,464	19.9	9.956	\$25,110	29.9	12.472	\$20,045
10	5.668	\$44,107	20	10.000	\$25,000	30	12.500	\$20,000

CONCLUSION

Our study concludes with the following statistics:

- Our recommended base zoning is 0.5-FAR for office development, with higher density allowances to be based on achieving bonuses. For calculation purposes, our study assumes all bonus rights may be acquired from a TDR program, and typical land values with infrastructure assumed to be in place and paid for.
- A commercial TDR program will yield a fairly modest level of land protection (estimated at no more than 15-acres by 2030, using average sending site development right pricing) based on the expected demand for high-density office combined with the high cost of residential sending rights and the relatively low value of high-density receiving credits
- Upper-story mixed-use residential development could result in potentially significant land protection (in excess of 125-acres) by 2030, before consideration of affordable housing goals.
- Sending and Receiving ratios have been developed for commercial and residential space. A residential unit is considered equivalent to 800sf of commercial space. Sending rights multipliers vary from a high of 12.5 for transfer from 1-unit per five acre site to the highest density sites, to around 4.0 for transferring from sites of 4 to 5-units per acre.
- The decision to have developers fund infrastructure should be weighed against the consequences of impacting the economics of TDR funding, affordable housing goals, and sellers' expectations as to the value of Town Center Land. Presently infrastructure burdens are noted to exceed the likely value of land in Sammamish Town Center.

ADDENDUM

Appraiser's Experience Data

RE•SOLVE

Real Estate Appraisal, Counseling & Mediation

ANTHONY GIBBONS, MAI, CRE

Mr. Gibbons graduated from King's College, University of London with a Bachelor Degree in Geography in July 1982. He graduated top of his Geography class, with a First Class Honors degree, and a diploma in Religion and Medical Ethics. At University, Mr. Gibbons was awarded the 1980 Barry Prize for top score in his class for Religion/Medical Ethics finals; the 1981 Leathes Prize for second highest score in Religion/Medical Ethics finals; the Stamford Geographical Prize in 1981 for the most promising geography student; and the Geoid Prize, also in 1981, by the *London School of Economics–King's College Joint School of Geography Association* for his work on behalf of the Association.

Mr. Gibbons entered private appraisal practice with the firm of Shorett & Riely in January of 1983 and formed the company of Wronsky Gibbons & Riely in December 1994. With his partners retiring in 1998 and 1999, in July of 1999 Mr. Gibbons formed **RE•SOLVE** – a company providing real estate appraisal, counseling, mediation and arbitration services.

Completed American Institute of Real Estate Appraisers Courses 1A-1, Real Estate Principles and 1A-2, Basic Valuation Procedures in May of 1983. Completed Courses 1B-A and 1B-B, Capitalization Theory & Techniques in June of 1984. Completed Course 2-1, Case Studies in Real Estate Valuation, and 2-2, Valuation Analysis and Report Writing in March of 1985. Completed Course 2-3, Standards of Professional Practice, in April of 1986. Received credit for Demonstration Appraisal Report in August of 1987, and a passing grade on the Comprehensive Examination in September of 1987. Awarded the MAI designation by the American Institute of Real Estate Appraisers (AIREA) on June 14, 1988, Member Number 7857.

Mr. Gibbons was elected President of the Seattle Chapter, in 1999, and served on the Chapter Board for eight years. He is past Chairman of the local chapter Education Committee. He serves as the Regional Member for Region One for the Ethics and Counseling Division of the Appraisal Institute. In that capacity he oversees ethics and counseling issues for Institute members in 8 Northwest states and British Columbia. His term of office expires in 2008. For this work, Mr. Gibbons was awarded the Robert L. Foreman Award in 1999, in recognition of "*his excellence and dedication to the enforcement of ethics and standards*".

As of the date of this report, Mr. Gibbons has completed the requirements of the continuing education program of the Appraisal Institute, and is certified through 12/31/2007. He is licensed as a certified real estate appraiser, general classification, by the State of Washington, license no. 270-11 GI-BB-OA-P404Q6.

Mr. Gibbons was invited to join The Counselors of Real Estate in December of 1997. Membership in the Counselors is by invitation based on an individual's reputation for knowledge, integrity, experience and judgment in rendering advice on real estate matters. The approximate 1,000 or so individuals holding the

Exhibit 4

CRE designation have pledged to maintain the highest standards of professional conduct and service in the field of real estate counseling.

A partial list of clients is presented on the page following.

Prudential Insurance Company	Wright Runstad & Company
Teachers Insurance & Annuity Association	NANA Development Corporation
Equitable Real Estate	Swedish Hospital Medical Center
Citicorp	Group Health
American Marine Bank	Fred Hutchinson Cancer Research Center
Banker's Trust	Tousley Brain Stephens
Washington Mortgage Corporation	Foster, Pepper & Shefelman
Frontier Bank	Witherspoon, Kelley, Davenport & Toole
Key Bank	Hornsby & Whisenand
Washington Mutual Savings Bank	Culp Guterson & Grader
Wells Fargo Bank	Williams, Kastner & Gibbs
First Bank of Alaska	Riddell Williams Bullitt & Walkinshaw
Allied Shopping Centers, Northwest	Davis Wright Tremaine
Cadillac Fairview US Western Region	Lane Powell Spears Lubersky
Sabey Corporation	Perkins Coie
Pope Resources	Preston Gates & Ellis
Urbis Partners	Miller Nash
Seattle Marina, Inc.	Heller Ehrman
Kennedy Associates	Rodgers Deutsch & Turner
Bellevue Square Managers, Inc.	University of Washington
Ocean Crest Resort	Seattle Pacific University
The Boeing Company	Bainbridge Island School District
Weyerhaeuser Company	Mercer Island School District
Weyerhaeuser Venture Co.	Bellevue School District
Washington Transit Authority	City of Seattle
Pfizer, Inc.	City of Kirkland
King County	City of Bainbridge Island
Pierce County	City of Woodinville
Kitsap County	Washington State Liquor Board
Snohomish County	Washington State Department of Transportation
Thurston County	Washington State Dept of Natural Resources
Lawyers Title	Port of Seattle
First American Title	Port of Grays Harbor
Commonwealth Title	Port of Everett
Pacific Northwest Title	Port of Olympia
United States Postal Service	Port of Allyn
Federal Deposit Insurance Corporation	Port of Shelton
Pine Street Development	Port of Edmonds
Vulcan	

Court Experience:

King Co., Washington Superior Court
Snohomish Co., Washington Superior Court
Pierce Co., Washington Superior Court
Kitsap County Superior Court
Federal Court
US Bankruptcy Court



Exhibit 5

CASCADE LAND CONSERVANCY

CONSERVING GREAT LANDS
CREATING GREAT COMMUNITIES

This table summarizes select Transfer of Development Rights programs located in King County. The variability of this data highlights the differences in program design and the affect on acres conserved. The table is a snap shot of TDR market activity to date and the data available at this time.

Jurisdiction	Total Transactions	Total credits from Sending Areas	Total Acres Conserved	Interlocal Agreement?
Issaquah – 2005	1	25	2.25 ¹ 10 ²	Yes, King County
Redmond – 1995	29	857	415	No
Seattle – 1985	17	1,833,815 SF	1,833,815 SF ³ 883 Acres ⁴	Yes, King County
King County - 1999	65	2,284	141,500	Yes, King County

¹ Conserved as a result of City of Issaquah’s program

² Land Issaquah conserved with the King County TDR program (ILA)

³ Landmark preservation as a result of Seattle TDR program

⁴ Land Seattle conserved with the King County TDR program (ILA)



Exhibit 5

CASCADE LAND CONSERVANCY

CONSERVING GREAT LANDS
CREATING GREAT COMMUNITIES

This table summarizes select Transfer of Development Rights programs located in King County. The variability of this data highlights the differences in program design and the affect on acres conserved. The table is a snap shot of TDR market activity to date and the data available at this time.

Jurisdiction	Total Transactions	Total credits from Sending Areas	Total Acres Conserved	Interlocal Agreement?
Issaquah – 2005	1	25	2.25 ¹ 10 ²	Yes, King County
Redmond – 1995	29	857	415	No
Seattle – 1985	17	1,833,815 SF	1,833,815 SF ³ 883 Acres ⁴	Yes, King County
King County - 1999	65	2,284	141,500	Yes, King County

¹ Conserved as a result of City of Issaquah’s program

² Land Issaquah conserved with the King County TDR program (ILA)

³ Landmark preservation as a result of Seattle TDR program

⁴ Land Seattle conserved with the King County TDR program (ILA)



City Council Agenda Bill

Meeting Date: January 18, 2011

Date Submitted: January 11, 2011

Originating Department: Community Development

Clearances:

<input checked="" type="checkbox"/> City Manager	<input checked="" type="checkbox"/> Community Development	<input type="checkbox"/> Parks & Recreation
<input checked="" type="checkbox"/> Attorney	<input checked="" type="checkbox"/> Finance & IT	<input type="checkbox"/> Police
<input type="checkbox"/> Admin Services	<input type="checkbox"/> Fire	<input type="checkbox"/> Public Works

Subject: Transfer of Development Rights – Interlocal Agreement with King County

Action Required: Authorize City Manager to Sign Interlocal Agreement

Exhibits: 1. DRAFT Transfer of Development Rights Interlocal Agreement With King County

Budget: N/A

Summary Statement:

The Interlocal Agreement with King County would authorize the Transfer of Development Rights (TDR) from unincorporated King County into the Town Center and is designed to integrate with the adopted Town Center regulations.

Background:

The City Council unanimously adopted the Town Center plan on June 9, 2008. The Town Center plan provided policy direction that the Town Center should: *“...incorporate a TDR [Transfer of Development Rights] system to use market forces to better protect ecological resources and open space with public benefits”*.

The City Council has previously discussed the Interlocal Agreement as part of the TDR program discussions with the City Council on April 13, 2010 and November 9, 2010. The City Council and Planning Commission also discussed the TDR program, including aspects of an inter-jurisdictional program, as part of the Town Center development regulation adoption process, from October of 2008 to October of 2010. The proposed Interlocal Agreement is consistent with City Council direction.

On December 14, 2010, the City Council continued its review of the proposed Interlocal Agreement, and requested a couple of minor modifications. The attached draft Interlocal Agreement reflects provisions for allowing sending sites that are part of the regional trail system and sending sites that provide other public benefits to the City of Sammamish (e.g. farmland in King County that provides produce for the Sammamish Farmer’s Market).



City Council Agenda Bill

Financial Impact: N/A

Recommended Motions:

Authorize the City Manager to sign the Transfer of Development Rights Interlocal Agreement with King County (as amended), and make any minor edits that may be required by King County or the City pending final legal review, to allow for successful implementation.

**AN INTERLOCAL AGREEMENT FOR THE IMPLEMENTATION OF A
REGIONAL PROGRAM TO TRANSFER DEVELOPMENT RIGHTS FROM
RURAL UNINCORPORATED KING COUNTY TO THE TOWN CENTER SUB
AREA IN THE CITY OF SAMMAMISH**

This Agreement is hereby entered into by King County, a home rule charter county of the State of Washington, herein after referred as the “County,” and The City of Sammamish, a municipal corporation of the State of Washington, herein referred to as the “City.”

RECITALS

WHEREAS, the Washington State Growth Management Act (GMA), RCW 36.70A, directs development into urban areas and discourages inappropriate conversion of undeveloped rural land into sprawling, low-density development; and

WHEREAS, the GMA encourages the conservation of productive forest and agricultural lands and the retention of open space to conserve fish and wildlife habitat and enhance recreational opportunities; and

WHEREAS, the GMA requires counties to adopt county-wide planning policies in cooperation with cities within the County; and

WHEREAS, by Interlocal Agreement, the County, Suburban Cities and the City, adopted and ratified the Countywide Planning Policies for King County; and

WHEREAS, the Countywide Planning Policies direct jurisdictions in the County to implement programs and regulations to protect and maintain the rural character of rural, farm and forest lands, and to direct growth to cities and urban centers; and

WHEREAS, the County’s rural and resource areas are recognized by both the City and the County as containing important countywide public benefits such as forestry, agricultural, wildlife habitat and scenic resources and recreational opportunities; and

WHEREAS, the City has identified rural and resource lands in King County as preservation priorities; and

WHEREAS, the County has in King County Code 21A.37 adopted a Transfer of Development Rights Program which authorizes incorporated areas to receive development rights transferred from rural and resource unincorporated areas; and

WHEREAS, by Sammamish Ordinance O2008-232 the City adopted the Town Center Plan which encourages the incorporation of a Transfer of Development Rights

system to use market forces to better protect ecological resources and open space with public benefits; and

WHEREAS, the Town Center Plan calls for increased public amenities to improve the pedestrian, park, and transit pattern in Town Center; and

WHEREAS, by Sammamish Ordinance 02010-293 the City adopted the Town Center Regulations as Title 21B of the Sammamish Municipal Code to implement the Town Center Plan; and

WHEREAS, the Town Center Regulations provides for additional (additional) residential density or commercial development capacity for Town Center, and permits the use of a Transfer of Development Rights program to increase residential and commercial development capacity in Town Center under conditions described in this Agreement; and

WHEREAS, by Sammamish Ordinance, O2011-XXX, the City adopted a Transfer of Development Rights ordinance as Chapter 80 of Title 21A; the Transfer of Development Rights ordinance authorizes and prioritizes sending sites from unincorporated King County for use in the Town Center; and

WHEREAS, the County in its xxxx Budget, Ordinance xxxx, appropriated funding to provide cities with amenity payments which enter into interlocal TDR agreements with the County; and

WHEREAS, the City and the County share an interest in creating an effective, cooperative development right transfer system to achieve: the City's goals for the Town Center Sub Area, the County's goals in the King County Comprehensive Plan, and goals inherent to the Countywide Planning Policies and the GMA; and

WHEREAS, this shared interest is manifested through this ongoing Regional Transfer of Development Rights (TDR) Agreement in which the City agrees to accept additional development to preserve rural and resource land and the County invests in receiving area amenities; and

WHEREAS, the Washington State Legislature recently affirmed the value of Regional TDR programs by adopting SSHB 1172; and

WHEREAS, the City and the County seek to make this Regional TDR Agreement applicable to Regional TDR legislation that the Washington State Legislature may adopt in the future; and

WHEREAS, an extension of this Agreement may be considered based on the availability of future County, State, or federal infrastructure funding incentives for the City; and

WHEREAS, this Agreement will act to encourage other cities in the Region to enter into similar TDR agreements with the County; and

WHEREAS, the County and the City are authorized, pursuant to RCW 39.34 and Article 11 of the Washington State Constitution, to enter into an interlocal governmental cooperation agreement to accomplish these shared goals.

DRAFT

AGREEMENT

NOW THEREFORE, in consideration of the foregoing circumstances, the County and the City herein agree:

I. PURPOSE

King County and the City of Sammamish agree to implement a program (hereafter the “Program”) to transfer development rights (hereafter “unincorporated TDR credits”) from unincorporated rural and resource sending areas of the King County, as depicted in Exhibit A, into the Town Center Sub Area in the City of Sammamish, as depicted in Exhibit B, according to the provisions described below. Furthermore, the Program seeks to establish a marketplace for unincorporated TDR credits to generate on-going preservation of rural and resource lands deemed important to the City, while investing in City amenities, using the King County TDR Bank.

II. RESPONSIBILITIES AND POWERS OF THE CITY OF SAMMAMISH

A. City Ordinances

The City has adopted the Town Center regulations (O2010-293) and Transfer of Development Rights regulations (O2011-XXX) to implement the Program. These regulations have, among other provisions:

1. Amended the Sammamish Municipal Code to include chapter 21B.25 of the Town Center regulations, which establish development regulations, standards, and design guidelines for development within the Town Center;
2. Amended the Sammamish Municipal Code to include chapter 21A.80, which provides for the transfer of development rights from sending sites within the City of Sammamish and unincorporated King County;
3. Allowed for the TC-A, TC-B, and TC-C zones in the Town Center described in Exhibit B, to act as receiving areas for unincorporated TDR credits that originate from sending sites located in King County’s unincorporated rural and resource areas under the terms of this Program;
4. Established the Town Center Additional Residential Density and Commercial Development Capacity Provisions, attached as Exhibit C, which allows Town Center development projects to increase residential density and commercial development capacity with the use of unincorporated TDR credits;
5. Established and modified development standards and provisions for public amenities.

B. TDR Sending Site Areas

The City has identified the following “Focus Sending Site Areas,” described below and depicted in Exhibit A, from which unincorporated TDR credits may be used for additional residential density and commercial development capacity in the Town Center. Properties within these focus sending

site areas must contain a public benefit to Sammamish, be “qualified” and then “certified” in accordance with the County’s TDR Program (K.C.C. 21A.37).

1. The “Proximate” focus area which is generally described as properties with an identified public benefit, located within the area adjacent to the City that is south of State Route 202, north of Interstate 90, and west of 308th Avenue SE extended (attached as exhibit 1).
2. The “Sammamish resource land” focus area which is generally described as properties within unincorporated King County that are used for forest or farm land purposes that directly benefit Sammamish (e.g. farm land that produces agricultural products for the Sammamish Farmer’s Market).

Sending sites in these focus areas shall have an identified public benefit to the City of Sammamish. A sending site is deemed to have a defined public benefit if the site is:

- a. Open space adjacent to, or connected with, City Park or open space lands; or
- b. Wildlife habitat for threatened and/or endangered species listed by the federal government or the State of Washington; or
- c. Located such that preservation will provide additional protection for sensitive sub-basins or environmentally critical areas; or
- d. Farmland; or
- e. Forestland

C. Unincorporated TDR Credit Limit and Transfer Ratio

Up to seventy five (75) unincorporated TDR credits may be used for additional residential density or additional commercial development capacity in Town Center. Receiving site incentives for Town Center properties shall be as established in SMC 21A.080.090, provided that when modifying receiving site incentives pursuant to SMC 21A.80.090(C), the director shall consult with King County and obtain written concurrence from King County prior to modifying the incentives associated with unincorporated King County TDR credits.

E. King County TDR Bank

The City agrees that the King County TDR Bank (hereafter the “Bank”) will be used to sell unincorporated TDR credits for additional residential density or additional commercial development capacity in Town Center. The City understands the Bank will play an important role to facilitate the City-County unincorporated TDR credit market by: (1) buying development rights up-front from willing landowners in the identified Sending Site Areas, (2) holding the unincorporated TDR credits, and (3) selling the unincorporated TDR credits when willing buyers of additional residential density or additional commercial development capacity in the Town Center are available.

As a phase II Amenity Investment by the County in the City, the City will share and use the proceeds from the Bank's sales of unincorporated TDR credits in accordance with Section III B and Section IV of this Agreement. To enable the phase II Amenity Investment, the City shall allow the Bank to sell unincorporated TDR credits for development in Town Center zones per Sammamish Municipal Code Chapter 21.B.25. .

If the Bank is successful in purchasing unincorporated TDR credits from sending sites in the focus areas described in II B, the City agrees to allow the first 20 development rights used by developers for additional residential and commercial development capacity in Town Center, under Sammamish Municipal Code Chapter 21.B.25 for the Transfer of Development Rights (TDR) program, to be the 20 unincorporated TDR credits purchased by the Bank from this initial focus sending site.

Proceeds the Bank receives from the sale of unincorporated TDR credits for Town Center Development shall be used to create a revolving fund to buy development rights from focus properties in the City's designated Sending Site Focus Areas described in Section II B, after the phase II Amenity payment is made by the Bank to the City.

In the event that unincorporated TDR credits are not purchased by the Bank in the sending site focus areas for future sale into Town Center, the City shall accept XX TDR credits currently held by the Bank for additional development capacity in Town Center.

Nothing herein shall be construed to require the County to deviate from the valuation, purchase, and sale methodology required in K.C.C. 21A.37.130 for sales of TDR credits from the King County TDR Bank.

F. County Acknowledgment; Modifications

The County acknowledges that the provisions of Ordinances XXX and YYYY are consistent with the intent and purposes of the Program.

G. Notification Process

The City, in consultation with the County, shall develop a process to notify the County when it has approved the use of unincorporated TDR credits in a specific project in the Town Center. For purposes of this Agreement, "approved" occurs at the earlier of (a) issuance by the City's Development Services Department of the first building permit for a project using unincorporated TDR credits; or (b) a developer's irrevocable commitment to use the unincorporated TDR credits for a specific project.

H. Report

The City shall report to the County within thirty (30) days after the end of each calendar quarter the number of unincorporated TDR credits that have been approved by the City for projects in the Town Center, and shall identify the specific projects involved. In addition, the City shall cooperate with the County in providing the information required for the annual report as described in Section VI.

The City shall take any necessary steps to allow the City to receive and track the amenity payments described in this Agreement.

III. RESPONSIBILITIES AND POWERS OF KING COUNTY

A. Program Administration

The County has adopted polices, regulations and administrative procedures to implement the Program, which shall promote and facilitate the purchase and sale of unincorporated TDR credits. The County shall, at a minimum:

- 1) In accordance with K.C.C. 21A.37, facilitate and promote the TDR qualification and certification of properties located in Sending Site Areas;
- 2) Establish procedures to facilitate the sale of unincorporated TDR credits from private landowners and the Bank;
- 3) Establish procedures to require, maintain, and enforce deed restrictions on unincorporated and resource sending sites from which unincorporated TDR credits are bought, in order to prohibit those sites from being developed in violation of the deed restrictions.

B. Operation of the TDR Bank

The County shall make its best efforts to identify, appraise, and purchase unincorporated TDR credits primarily from identified City and County focus properties in the sending site focus areas and provide the City with values and prices of unincorporated TDR credits that the County has appraised and/or purchased.

As a phase II Amenity Investment by the County in the City, the TDR Bank shall provide the City with funds equivalent to 25% of the sale price of each unincorporated TDR credit the Bank sells for additional residential or commercial development capacity in Town Center. The County understands this will create a stream of smaller amenity payments to the City as unincorporated TDR credits are sold. The funds will be provided by the Bank to the City within sixty days of unincorporated TDR credit sales closing, or by December 31 of the Calendar year in which the transaction closed.

For example, if the TDR Bank purchased 20 unincorporated TDR credits in 2011 for the appraised price of \$80,000 each, and later sold 15 of these to a Town Center developer in 2013 for \$80,000 apiece, the TDR Bank shall pay the City

\$300,000 within sixty days of the close of the sale.

Nothing herein shall be construed to require the County to deviate from the valuation, purchase, and sale methodology required in K.C.C. 21A.37.130 for sales of TDR credits from the King County TDR Bank.

C. Program Evaluation

The County shall, jointly with the City, publish every year a report as described in Section VI.

D. Public Amenity Investments

The County shall provide funds as phase I and phase II amenity investments to the City for the creation and acquisition of public open space, and parks amenities according to the provisions in Section IV, Public Amenities Investment.

E. Notification Process

The County shall notify the City within thirty (30) days after the end of each calendar quarter the number of unincorporated TDR credits it has qualified and certified in the Sending Site Areas identified in Subsection II B.

IV. PUBLIC AMENITY INVESTMENTS

A. Phase I Amenity Investment

Consistent with adopted County appropriations and statutory restrictions, the County shall provide funds as a phase I investment in the amount of \$375,000 to the City for the creation and acquisition of public open space and parks to mitigate a portion of the impacts associated with transferred density and to encourage increased density in the Town Center. The \$375,000 will be disbursed according to Subsection IV E. The initial \$375,000 payment shall be referred to as the “phase I Amenity Funds.”

B. County Fund Sources; Contracting

The source of the phase I Amenity Funds is authorized in King County’s 20XX Budget, Ordinance XXXX. The phase I Amenity Funds shall only be spent on the creation and/or acquisition of public amenities consistent with Subsection IV D. Unless otherwise required by statutory restrictions on such funds and where applicable, City contracting procedures will be used for amenity projects utilizing the phase I Amenity Funds.

C. Phase II Amenity Investment

To further mitigate a portion of the impacts associated with transferred density and to encourage increased density in the Town Center, the County shall provide funds as a phase II investment to the City through the TDR Bank revenue share agreement described in Section III B of this Agreement, and consistent with adopted County appropriations and statutory restrictions. The phase II Amenity

Funds shall only be spent on the creation and/or acquisition of public amenities consistent with Subsection IV D. The phase II Amenity Funds will be disbursed according to Subsection IV E. Unless otherwise required by statutory restrictions on such funds and where applicable, City contracting procedures will be used for amenity projects utilizing the phase II Amenity Funds.

D. Eligible Amenities.

The City shall only spend Phase I and II Amenity Funds for the creation and/or acquisition of amenities indicated in this Subsection IV D, and provided that City expenditures shall be consistent with statutory restrictions in K.C.C. 26.12 of the County Conservation Futures Tax (CFT) Levy funds. The funds may only be used for the creation and/or acquisition of amenities with the following Parks and Open Space Resource Criteria as specified by one or more of the following described below:

1. Parks, open space, gardens, or gateways;
2. Wildlife habitat;
3. Salmon habitat and aquatic resources;
4. Scenic resources;
5. Historic or Cultural Resources;
6. Urban passive-use natural area/greenbelt
7. Park, open space or natural corridor addition
8. Passive Recreation opportunity in area with unmet needs

E. Funding of Amenities

1. Phase I Amenity Funds. After adoption of this Agreement, the County shall provide \$375,000 to the City for the acquisition of open space and/or park property. Thirty days prior to the County's disbursement of funds, the City shall provide the County with: a project description, time schedule, and budget for the City's open space acquisition. The County shall disburse funds for the acquisition contingent upon a signed purchase and sale agreement provided by the City; the County shall wire funds to an escrow account established for the acquisition at time of closing. In the event the transaction does not close the funds shall be returned to the County.

The County shall not withhold or delay approval of a purchase or the concept plan and scope of work so long as such purchase or work meets the restrictions of Section IV.C above. Any disapproval by the County shall include a written statement of the grounds for disapproval and the changes deemed necessary by the County.

2. Focus for other Funding. In addition to the provisions for public amenities under this Subsection IV, the County shall, while this Program is in effect, consider granting focus to amenity projects within the Town Sub Area to receive funding from other sources to increase amenities in the area.

3. Phase II Amenity Funds. The County shall provide the City with funds equivalent to 25% of the sale price of each unincorporated TDR credit the Bank sells for additional residential or commercial development capacity in Town Center. The funds will be provided by the Bank to the City within sixty days of unincorporated TDR credit sale closing, or by December 31 of the Calendar year in which the transaction closed. The County shall wire funds to a City account dedicated to uses authorized for CFT and PEL funds.
3. Future Amenity Funding. The County and the City may consider future amenity fund payments to extend the Program according to Section V.C.

E. Funding is Additional

County funding under this Agreement is in addition to any funding to be provided to the City, or for amenities, under any other agreement, commitment, or program.

V. DURATION

A. Duration

This Regional TDR Agreement shall become effective on the date it is signed by all parties and shall continue until the limit of additional residential and commercial development capacity is reached plus an additional 12 months in accordance with Sammamish Municipal Code Chapter 21.B.25 for the Transfer of Development Rights (TDR) program in Town Center zones, unless earlier terminated as provided in Section V B.

B. Termination

Either party may terminate this Agreement upon 180 days' written notice to the other if: (1) the City's development regulations allowing the use of unincorporated TDR credits, or the provisions of the County's development regulations allowing transfer of development rights to cities are held invalid by any court of competent jurisdiction in a final judgment no longer subject to appeal; or (2) the other party shall materially default in the performance of its obligations herein, and shall not cure such default within thirty (30) days' notice after such party's receipt of written notice thereof from the City or County, as the case may be. Any termination of this Agreement shall affect the use of unincorporated TDR credits previously certified by the County for use in the Town Center only to the extent provided in City development regulations, as the same may be amended. Any termination of this Agreement shall not affect the City's or County's rights or duties with respect to the phase I Amenity Funds previously provided by the County under the terms hereof, nor the City's right to receive County funds for which the City shall have satisfied all conditions to disbursement prior to termination. In the event this Agreement is terminated by the County pursuant to Section V(B)(2) because the City has modified its Land Use Code in a manner that prohibits or effectively prohibits the use of unincorporated TDR credits consistent with the Program, and the Phase I Amenity

Funds provided in Section IV(E)(1) have been disbursed to the City, the City shall refund to the County a percentage of the Phase I Amenity Funds equal to a percentage of the amount of unincorporated TDR credits available for transfer into the Town Center.

C. Extension

Pursuant to a mutual written agreement between the parties, this Agreement may be extended beyond the date at which the limit of additional residential and commercial development capacity is reached in accordance with Sammamish Municipal Code Chapter 21.B.25 for the Transfer of Development Rights (TDR) program in Town Center zones.

Extension of this Agreement shall be considered contingent upon the availability of a combination of County, State, or Federal amenity funding incentives for the City.

To extend this Agreement, the City or the County shall make a written request to the other within the 12 month period established in section V A of this Agreement. The request shall specify the proposed terms of the extension. The parties must agree to the extension in writing by the termination date or the agreement will lapse. Notwithstanding anything in this Agreement to the contrary, it is acknowledged by the parties that neither party has an obligation to renew or extend this Agreement.

1. Extension - Future Amenity Funding. Subject to available budget authority, the County through the King County Executive, and the City will negotiate in good faith to determine the amount of future amenity funds, beyond any phase II Amenity Funds, to be provided by the County to the City, provided that notwithstanding any other provision of this Agreement nothing herein shall obligate the County to any funding beyond the phase I and phase II Amenity Funds, including ongoing programs or projects partially funded. The level of additional County amenity funding, above the phase I and phase II Amenity Funds authorized, shall be determined by the County in cooperation with the City based on the number and cost of unincorporated TDR credits accepted for use in permitted projects inside the Town Center during the initial term of this Agreement.

Future amenity funding from the County above the phase I and phase II Amenity Funds authorized in this Agreement shall be contingent on appropriations adopted by the Metropolitan King County Council.

2. Use of Future Amenity Funding. Additional funds provided by the County under Section V shall be expended by the City only for amenities mutually approved by the City and County. The County shall not unreasonably withhold approval of amenities consistent with County statutory restrictions and the City's Town Sub Area Plan.

Prior to distribution of any future amenity funding, the City must provide and the County must approve a concept plan and written scope of work describing the elements, estimated schedule, and estimated budget for the work to be accomplished with the funding. The City shall provide sufficient detailed scope and budget information consistent with standard engineering, public finance and auditing practices. The County shall not unreasonably withhold or delay approval of the concept plan and scope of work. Any disapproval by the County shall include a written statement of the grounds for disapproval and the changes deemed necessary by the County. The County shall approve or disapprove a concept plan and scope of work within sixty (60) days of its delivery to the County, or within twenty (20) working days of delivery to the County of revisions after any County disapproval.

VI. EVALUATION AND MONITORING

A. Records

The records and documents with respect to all matters covered by this Agreement shall be subject to inspection, review, or audit by the City or County as requested by each jurisdiction during the applicable records retention period specified by or pursuant to law.

B. Joint Report

The City and County shall cooperate to allow the County to publish a yearly report evaluating the progress of the Program. The report shall include at minimum an analysis of the factors listed below.

- 1) the number of sites qualified or certified by the County in the Sending Site Areas identified in Section II B;
- 2) the number and price of unincorporated TDR credits bought and sold by the TDR Bank;
- 3) the number and price of unincorporated TDR credits bought and sold through private transactions;
- 4) the County's marketing efforts, ease or difficulty in qualification or certification of sites and the purchasing or selling of unincorporated TDR credits;
- 5) the effect of deed restrictions in preserving the unincorporated character and conservation values of sending sites;
- 6) the amount (square feet and/or number of units) of additional residential and commercial development, outside of this Program, earned by developers using the City's additional development capacity for Town Center per City Code 21B.25;
- 7) the value and types of amenities in the Town Center, outside of this Program, funded by developers in Town Center;

- 8) the number of development projects in the Town Center using the Program, the number of unincorporated TDR credits approved, the amount (square feet and/or number of units) of additional residential and/or commercial development approved using the Program, and the ease or difficulty in permitting projects using the Program; and
- 9) the balance of the phase I and phase II Amenity Funds and the City's use of the funds (i.e. types of amenity improvements).

The County shall provide information pertaining to numbers 1 through 5; the City shall provide the County information pertaining to numbers 6 through 9. The County shall develop and distribute the yearly report to the City and may use the yearly report to the County Council as part of this evaluation.

VII. INDEMNIFICATION

A. County Negligence

The County shall indemnify and hold harmless the City and its officers, agents and employees, or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason or arising out of any negligent action or omission of the County, its officers, agents, and employees, or any of them, in performing obligations pursuant to this Agreement. In the event that any suit based upon such a claim, action, loss, or damage is brought against the City, the County shall defend the same at its sole cost and expense, provided that the City retains the right to participate in said suit if any principle of governmental or public law is involved, and if final judgment be rendered against the City and its officers, agents, and employees, or any of them, or jointly against the City and County and their respective officers, agents, and employees, or any of them, the County shall satisfy the same.

B. City Negligence

The City shall indemnify and hold harmless the County and its officers, agents and employees or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason or arising out of any negligent action or omission of the City, its officers, agents, and employees, or any of them, in performing obligations pursuant to this Agreement. In the event that any suit based upon such a claim, action, loss, or damage is brought against the County, the City shall defend the same at its sole cost and expense, provided that the County retains the right to participate in said suit if any principle of governmental or public law is involved; and if final judgment be rendered against the County and its officers, agents, employees, or any of them, or jointly against the City and County and their respective officers, agents, and employees or any of them, the City shall satisfy the same.

C. Concurrent Negligence

The City and the County acknowledge and agree that if such claims,

actions, suits, liability, loss, costs, expenses and damages are caused by or result from the concurrent negligence of the City, its agents, employees, and/or officers and the County, its agents, employees, and/or officers, this section shall be valid and enforceable only to the extent of the negligence of each party, its agents, employees and/or officers.

VIII GENERAL TERMS

A. Administration

This Agreement shall be administered for the City by the Community Development Director or his/her designee, and for the County by the Director of the Water and Lands Resources Division of the King County Department of Natural Resources and Parks, or his/her designee.

B. Severability

If any provision of this Agreement shall be held invalid, the remainder of the Agreement shall not be affected.

C. No Waiver

Waiver of any breach of any provision of this Agreement shall not be deemed to be a waiver of any prior or subsequent breach, and shall not be construed to be a modification of this Agreement.

D. No Third Party Beneficiary

This Agreement is made and entered into for the sole protection and benefit of the parties hereto. No other person or entity shall have any right of action or interest in this Agreement based upon any provision set forth herein.

Entire Agreement

This Agreement is the complete expression of the terms hereof and any oral representation or understanding not incorporated herein is excluded. Any modifications to this Agreement shall be in writing and signed by both parties.

In witness whereof, the parties have executed this Agreement as of the ____ day of _____, 2010.

KING COUNTY

Approved as to Form:

By: _____

By: _____

Senior Deputy Prosecuting Attorney

Pursuant to Ordinance _____

THE CITY SAMMAMISH

Approved as to Form:

xxxxxxxxxx, City Attorney

By: _____

By: _____

xxxxxxxxxx

City Attorney

Pursuant to Ordinance _____