

King County
Department of Natural Resources and Parks
Water and Land Resources Division
Open Space Acquisitions Unit
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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

July 22, 2011

Department: **DNRP/WLRD Open Space Acquisitions Unit**

Parties: **City of Sammamish**
King County

Project: **Transfer of Development Rights Program**

**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 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, hereafter "Agreement," is hereby entered into by King County, a political subdivision 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," and collectively as the "Parties."

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 ("TDR") program which authorizes incorporated areas to receive development rights transferred from rural and resource unincorporated areas; and

WHEREAS, by Sammamish Ordinance 02008-232 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, O2011-297, 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 2007 Budget, Ordinance 15652, 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 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 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 Puget Sound 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.

AGREEMENT

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

I. PURPOSE

The County and the City agree to implement a program through this Agreement to transfer development rights from unincorporated rural sending areas in the County (hereafter "TDR Credits"), as depicted in Exhibit A, into the Town Center Sub Area in the City (hereafter the "Receiving Site"), as depicted in Exhibit B, according to the provisions described below and pursuant to K.C.C. 21A.37. Furthermore, this Agreement seeks to establish a marketplace for TDR Credits in order to preserve rural and resource lands deemed important to the City on an ongoing basis, while investing in City amenities, using the King County TDR Bank (hereafter the "Bank").

II. RESPONSIBILITIES AND POWERS OF THE CITY OF SAMMAMISH

A. City Ordinances

The City has adopted ordinances, the Town Center regulations (O2010-293) and Transfer of Development Rights regulations (O2011-297), to implement this Agreement. The ordinances provide the following:

1. Amended the Sammamish Municipal Code ("SMC") 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 SMC to include chapter 21A.80, which provides for the transfer of development rights from sending sites within unincorporated King County;
3. Allowed for the TC-A, TC-B, and TC-C zones in the Town Center, shown in Exhibit B, to act as receiving areas for TDR Credits that originate from sending sites located in the County's unincorporated rural and resource areas under the terms of this Agreement;
4. Established the Town Center Additional Residential Density and Commercial Development Capacity Provisions which allow development projects to

- increase residential density and commercial development capacity with the use of TDR Credits within the Town Center Receiving Site; and
5. Established and modified development standards and provisions for public amenities.

B. TDR Sending Site Area

1. The City has identified the following "Sending Site Area," described below and depicted in Exhibit A, from which TDR Credits may be used for increased residential density and commercial development capacity in the Town Center Receiving Site. Properties within the Sending Site Area shall provide a public benefit to the City and adhere to the requirements of K.C.C. 21A.37. The Sending Site Area is described as follows:

The Sending Site Area is located within the area adjacent to the City that is south of State Route 202, north of SE Issaquah Fall City Road and west of 308th Avenue SE as extended and depicted in Exhibit A. Properties within this area that possess recreational trail opportunities, or possess significant ecological value, or are used for forest or farm land purposes that benefit the City and its residents should be considered priorities.

2. Properties qualifying for transfer of development rights within the Sending Site Area shall have an identified public benefit to the City. Property is deemed to have a public benefit if the site is:
 - a. Open space adjacent to, or connected with, City park, other publicly owned open space lands, or privately owned protected lands; or
 - b. Located such that preservation will provide passive recreational trail opportunities; or
 - c. Open space adjacent to, or connected with wildlife habitat for threatened and/or endangered species listed by the federal government or the State of Washington; or
 - d. Located such that preservation will provide additional protection for sensitive sub-basins or environmentally critical areas; or
 - e. Farmland; or
 - f. Forestland.

C. TDR Credit Limit and TDR Receiving Site Incentives

1. Up to seventy-five (75) TDR Credits may be used for increased residential density or commercial development capacity in the Town Center Receiving Site pursuant to the TDR conversion ratios established in the Receiving Site Incentive Table codified in SMC 21A.080.090, and attached as Exhibit C and incorporated herein. The TDR conversion ratios established in the Receiving Site Incentive Table attached hereto, shall only be changed or modified by mutual agreement of the Parties and amendment of this Agreement and

Exhibit C. The term "TDR Credit" refers to the number of transferable development rights within the Sending Site Area, as determined pursuant to K.C.C. 21A.37.040, which has been calculated to be seventy-five (75).

2. Upon approval by the City of a building permit using TDR Credits in the Town Center Receiving Site, and prior to its issuance, the City shall execute and deliver to the County TDR extinguishment documentation in a form acceptable to the County in its reasonable discretion.

D. King County TDR Bank

1. The City agrees that the Bank will play an important role in facilitating the City-County TDR Credit market by: (1) buying TDR Credits from willing landowners in the Sending Site Area, (2) holding the TDR Credits, and (3) selling the TDR Credits when willing buyers of increased residential density or commercial development capacity in the Town Center Receiving Site are available.
2. To the extent the Bank is successful in purchasing TDR Credits from within the Sending Site Area, the City agrees to allow the first twenty (20) development rights used by developers for additional residential and commercial development capacity in the Town Center Receiving Site be those purchased by the Bank from the Sending Site Area prior to allowing development rights transferred in any other manner and from any other sending site.
3. In the event that TDR Credits are not purchased by the Bank from the Sending Site Area for sale into the Town Center Receiving Site in sufficient number to fulfill the twenty (20) credit priority requirement provided in Section D.4 (above) by July 1, 2016, the City shall accept transfer of the balance of the twenty (20) TDR Credit requirement from any other credits held by the Bank at that time into the Town Center Receiving Site prior to accepting transfer in any other manner or from any other sending site.
4. Nothing herein shall be construed to require the County to deviate from the valuation, purchase, and sale process and procedures required in K.C.C. 21A.37.130 for sales of TDR Credits from the Bank.

E. Notification Process

The City, in consultation with the County, shall develop a process to notify the County when it has approved the use of TDR Credits in specific development projects in the Town Center Receiving Site. For purposes of this Agreement, the City has "approved" the use of TDR Credits upon the earlier occurrence of: (a) issuance by the City's Community Development Department of a building permit for a project using TDR Credits; or (b) when the City has entered into a contract

or agreement which includes the use of TDR Credits in the Town Center Receiving Site.

F. Reporting

1. The City shall report to the County within thirty (30) days after the end of each calendar quarter the number of TDR Credits that have been approved by the City for transfer into the Town Center Receiving Site, 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 below.
2. The City shall reasonably track and record the Phase I and Phase II Amenity Investments described in this Agreement using generally accepted municipal accounting procedures.

III. RESPONSIBILITIES AND POWERS OF KING COUNTY

A. Program Administration

The County has adopted polices, regulations and administrative procedures to implement this Agreement to facilitate the purchase and sale of TDR Credits from the Sending Site Area. The County's obligations hereunder shall include:

1. In accordance with K.C.C. 21A.37, as hereafter amended, facilitate and promote the qualification and certification of properties located in the Sending Site Area;
2. Establish procedures to facilitate the sale of TDR Credits from private landowners and the Bank for transfer into the Town Center Receiving Site;
3. Require the recording of a conservation easement on properties within the Sending Site Area as part of the process for transfer of development rights into the Town Center Receiving Site consistent with the provisions of K.C.C. 21A.37, as hereafter amended.

B. Operation of the TDR Bank

1. The County shall work cooperatively with the City to identify, appraise, and purchase TDR Credits from potential properties in the Sending Site Area, except that the decision to appraise and purchase development rights shall be at the sole and absolute discretion of the County. The County shall provide the City with values and prices of TDR Credits that the County has appraised and/or purchased in a timely manner, or upon request of the City.

2. The County shall provide the City with funding for certain amenities as defined in K.C.C. 21A.37.150 and as provided herein for the purpose of mitigating and facilitating the increased development density in the Town Center Receiving site contemplated in this Agreement.
3. Phase I and Phase II Amenity Investments shall be paid by the County to the City as provided in Section IV below.
4. Following Phase II Amenity Investment payments by the Bank to the City as provided in Section IV.E.2 below, revenue the Bank receives from the sales of TDR Credits for use in the Town Center Receiving Site shall be used to buy TDR credits from properties within the Sending Site Area in accordance with K.C.C. 21A.37.130.
5. Nothing herein shall be construed to require the County to deviate from the valuation, purchase, and sale process and procedures required in K.C.C. 21A.37.130, as hereafter amended, for sales of TDR Credits from the Bank.

C. Program Evaluation

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

D. Public Amenity Investments

The County shall provide amenity 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 TDR Credits it has qualified and certified in the Sending Site Area identified in Subsection II. B.

IV. PUBLIC AMENITY INVESTMENTS

The amenity funding shall be disbursed in two phases defined herein as Phase I and Phase II Amenity Investments. Attached as Exhibit D is an anticipated scope of work, work schedule, and budget for the use of amenity funds, which is subject to modification by the Parties by mutual written agreement.

A. Phase I Amenity Investment

Consistent with adopted County appropriations and statutory provisions, the County shall provide amenity funds as a Phase I Amenity Investment in the amount of Three Hundred Seventy-Five Thousand Dollars (\$375,000) to the City for the creation and acquisition of public open space and parks for the purpose of mitigating a portion of the impacts associated with transferred density and to facilitate increased density in the Town Center Receiving Site, and in accordance with Exhibit D. The Phase I Amenity Investment shall be disbursed according to Subsection IV.E below.

B. County Fund Sources; Contracting

The Phase I Amenity Investment is authorized in King County's 2007 Budget, Ordinance 15652. The Phase I Amenity Investment shall only be used by the City as provided in Section IV.D below. Unless otherwise required by statutory restrictions on such funds and only where applicable, City contracting procedures shall be used for projects and acquisitions utilizing the Phase I Amenity Investment.

C. Phase II Amenity Investment

To further mitigate a portion of the impacts associated with transferred density and to facilitate increased density in the Town Center Receiving Site, the County shall provide a Phase II Amenity Investment to the City through the TDR Bank, consistent with adopted County appropriations and statutory provisions. The Phase II Amenity Investment shall only be used for the creation and/or acquisition of public amenities consistent with Subsection IV.D. The Phase II Amenity Investment shall be disbursed according to Subsection IV.E. Unless otherwise required by statutory restrictions on such funds and only where applicable, City contracting procedures shall be used for projects and acquisitions utilizing the Phase II Amenity Investment.

D. Eligible Amenities

Consistent with statutory restrictions provided in K.C.C. 26.12, Conservation Futures Tax (CFT) Levy for the expenditure of CFT funds, the City shall only use Phase I and II Amenity Investments for the creation and/or acquisition of amenities by satisfying one or more of the following criteria, as provided in K.C.C. 26.12.025, attached as Exhibit E and incorporated herein:

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 Investment. Thirty (30) days prior to the County's disbursement of funds, the City shall provide the County with an executed purchase and sale agreement provided by the City; upon receipt of the purchase and sale agreement, 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, unless such purchase fails to meet the requirements of Section IV.D 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. As a Phase II Amenity investment by the County in the City, the Bank shall provide the City with funds equivalent to 25% of the sale price of each TDR Credit the Bank sells for increased residential or commercial development capacity in the Town Center Receiving Site, as provided in K.C.C. 21A.37.110(F). This method will create a stream of smaller amenity payments to the City as TDR Credits are sold. The funds will be provided by the Bank to the City within sixty (60) days of closing of TDR Credit sales, or by December 31 of the Calendar year in which the transaction closed, whichever is earlier. As a condition precedent to payment from the Bank to the City as a Phase II Amenity Investment, the City shall allow the Bank to sell TDR Credits for development in the Town Center Receiving Site as provided in SMC Chapter 21.B.25.
3. *For example, if the Bank purchased 20 TDR Credits in 2011 for the appraised price of \$80,000 each, and later sold 15 of these TDR Credits to a Town Center Receiving Site developer in 2013 for \$80,000 each, the Bank shall pay the City \$300,000 within sixty days of the close of the sale, or by December 31 of the Calendar year in which the transaction closed, whichever is earlier.*
3. Other Funding. In addition to the provisions for public amenities under this Subsection IV, the County shall, while this Agreement is in effect, consider funding additional amenity projects, including funding from other sources within the Town Center Sub Area by engaging the City in discussions.

F. 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, grant, commitment, or program.

G. Funding Limitations

However, notwithstanding any provision in this Agreement to the contrary, nothing

herein shall be construed as a commitment by the County to provide additional amenity funding, nor shall any amenity payment exceed existing appropriation of the King County Council. To the extent the funds provided by the County in the Phase I and Phase II Amenity Investments remain unspent by the City on the required improvements and acquisitions contemplated in this Agreement after five (5) years from the date of the transfer of such funds, those funds plus interest shall be returned to the County, unless the Parties have otherwise agreed in writing to direct the funds to alternate amenities.

V. DURATION

A. Duration

This Agreement shall become effective on the date it has been approved by the legislative authorities of both Parties and has been executed and delivered by the Parties and shall continue until such time as seventy-five (75) TDR Credits have been transferred into the Town Center Receiving Site plus an additional twelve (12) months in accordance with Sammamish Municipal Code Chapter 21.B.25 for the Transfer of Development Rights (TDR) program in Town Center, 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 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 commence to cure such default within thirty (30) days' notice after such party's receipt of written notice thereof from the City or County, and prosecute such cure to successful completion as the case may be. Any termination of this Agreement shall affect the use of TDR Credits previously certified by the County for use in 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 municipal code and/or land use regulations in a manner that prohibits or effectively prohibits the use of TDR Credits consistent with the Agreement, and the Phase I Amenity Investment as provided in Section IV(E)(1) has been disbursed to the City, the City shall refund to the County a percentage of the Phase I Amenity Investment equal to a percentage of the amount of TDR Credits available for transfer into the Town Center Receiving Sites that have not been transferred.

C. Extension and Future Funding Negotiations

1. 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 SMC Chapter 21.A.80 for the Transfer of Development Rights (TDR) program in Town Center.
2. 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.
3. To extend this Agreement, the City or the County shall make a written request to the other within the twelve (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 this Agreement will automatically terminate on the date specified in Section V.A. 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.
4. Use of Future Amenity Funding. Additional funds provided by the County, if any, 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 Center Sub Area Plan. Any additional amenity funding is contingent on appropriation by ordinance of the King County Council at its sole and absolute discretion.
5. 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 TDR Credits bought and sold by the TDR Bank;
3. The number and price of 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 TDR Credits;
5. The effect of conservation easements in preserving the rural 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 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), if any.

The County shall provide information pertaining to numbers 1 through 5 above; 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, with counsel acceptable to the City, 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, with counsel acceptable to the County, 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.

17126

E. **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 22nd day of July, 2011.

KING COUNTY

By: 
Dow Constantine, King County Executive

Approved as to Form:

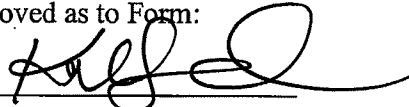
By: 
Tim Barnes,
Senior Deputy Prosecuting Attorney

Pursuant to Ordinance 17126

THE CITY SAMMAMISH

By: 
Ben Yazici, City Manager

Approved as to Form:

By: 

Pursuant to City Council adoption of
Agenda Bill #5 January 18, 2011

EXHIBIT A

Sending Site Area

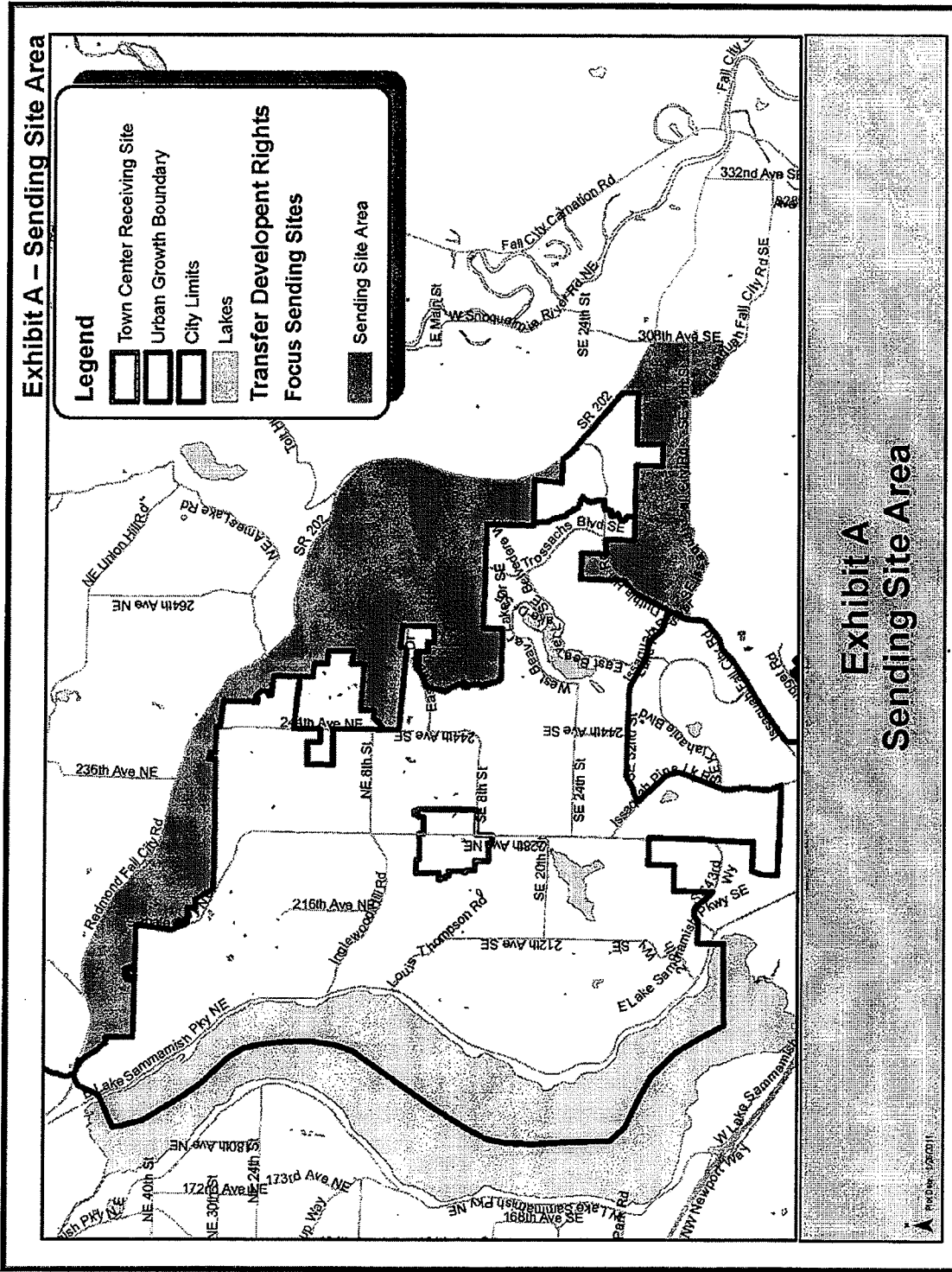


EXHIBIT B

City Sammamish Town Center Zoning Map

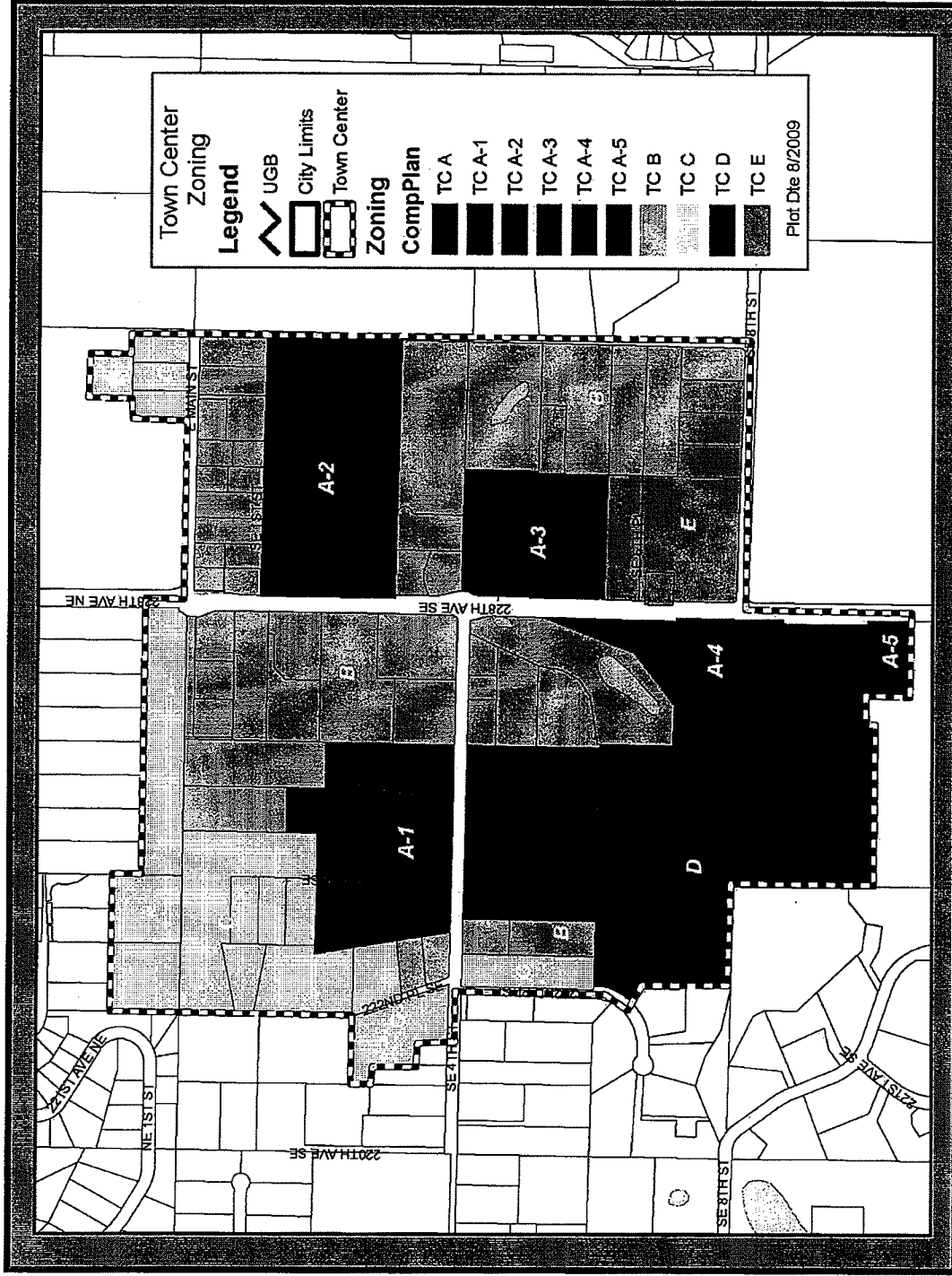


EXHIBIT C

Receiving site incentive table (Table A – from SMC 21A.80.090)

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

EXHIBIT D**City of Sammamish Anticipated scope of work, work schedule, and budget for the use of amenity funds****Phase I Amenity Funds: \$375,000**

Scope of Work: Creation and acquisition of public open space and/or parks inside the City of Sammamish for the purpose of mitigating a portion of the impacts associated with transferred density and to facilitate increased density in the Town Center Receiving Site. This may include the City's acquisition of fee simple interest to a specific property, or a less than fee simple interest acquisition associated with certain properties. A less than fee simple interest acquisition may include a conservation easement and development right acquisitions from in-City sending sites as identified in the City's TDR program.

Work Schedule:

- July 2011 – February 2012: The City's Parks and Community Development Departments will together identify two or three priority open space or park properties, owned by potential willing sellers, to apply the Phase I Amenity funds towards. The City will ensure the identified properties adhere to the eligibility criteria in Section IV.D and Exhibit E, and inform the County as to the specific properties it is pursuing.
- February 2012 – April 2012: The City will complete due diligence and inspections on one or more of these properties.
- April 2012 – July 2012: The City will make offers to one or more of the landowners of one or more of these properties for a fee simple interest acquisition or less than fee simple interest acquisition.
- July 2012 – September 2012: The City will negotiate offer(s), execute purchase and sale agreement(s), enter escrow and close on acquisition(s) that encompass the use of the \$375,000 Amenity Funds. Thirty (30) days prior to the County's disbursement of funds, the City shall provide the County with an executed purchase and sale agreement(s); upon receipt of the purchase and sale agreement, the County will wire funds to an escrow account established for the acquisition at time of closing.
- The dates established within this work schedule may be modified with the consensus of the County and the City. It is understood that the intent of this schedule is to provide for a timely expenditure of the phase 1 amenity funds. If the City is actively pursuing negotiation on acquisition, it is expected that the County will provide additional flexibility on timing.

Budget: \$375,000

Phase II Amenity Funds: Total amount is to be determined, and provided to the City as the Bank sells TDR credits for increased residential or commercial development capacity in the Town Center Receiving Site. The Phase II Amenity funding amount shall be equivalent to 25% of the sale price of each TDR Credit sold by the Bank.

The Phase II Amenity funds will be provided by the Bank to the City within sixty (60) days of closing of TDR Credit sales, or by December 31 of the Calendar year in which the transaction closed, whichever is earlier. This method will create a stream of smaller amenity payments from the County to the City as TDR Credits are sold.

Scope of Work: Creation and acquisition of public open space and/or parks inside the City of Sammamish for the purpose of mitigating a portion of the impacts associated with transferred density and to facilitate increased density in the Town Center Receiving Site. This may include the City's acquisition of fee simple interest to a specific property, or a less than fee simple interest acquisition associated with certain properties. A less than fee simple interest acquisition may include a conservation easement and development right acquisitions from in-City sending sites as identified in the City's TDR program.

Work Schedule:

- Once the first TDR credit(s) is/are sold by the Bank into Town Center, the City's Parks and Community Development Departments will together identify priority open space or park properties, owned by potential willing sellers, to apply the current and future stream of Phase II Amenity funds towards. The City will ensure the identified properties adhere to the eligibility criteria in Section IV.D and Exhibit E of the TDR Interlocal Agreement.
- Following identification of these properties the City will complete the following acquisition steps in a timely manner:
 - due diligence and inspections of properties;
 - make offers to one or more of the landowners of these properties for a fee simple interest acquisition or less than fee simple interest acquisition;
 - negotiate offer(s), execute purchase and sale agreement(s), enter escrow and close on acquisition(s) that encompass the use of the Phase II Amenity Funds.

Budget: To Be Determined

EXHIBIT E

K.C.C. 26.12.025 – Conservation Futures Tax (CFT) Open Space Criteria

K.C.C. Chapter 26.12

26.12.025 Open space criteria. In making an annual allocation of conservation futures tax levy funds, the county shall consider the following criteria: wildlife habitat or rare plant reserve; salmon habitat and aquatic resources; scenic resources; community separator; historic or cultural resources; urban passive-use natural area or greenbelt; park or open space system addition; and transfer of development rights program implementation. Additional criteria may include: passive recreation; education/interpretive opportunity; threat of loss of open space resources; ownership complexity; partnerships; stewardship and maintenance; and any other criteria consistent with RCW 84.34.020. (Ord. 13717 § 4, 2000).

17126

Fund: 3151

Project Number(s): 315620, and 315600

Project Name: Urban TDR Open Space Acquisition

Project Description: This programmatic project is intended for the purchase of open space in a city or cities that participate in the King County Transfer of Development Rights (TDR) Program. This project would not require additional matching funds on the part of the city, as the benefits of the match are captured in the preservation of rural open space that does not need to be purchased with CFT or other funds.

Amount of Disbursement to City of Sammamish: \$375,000