



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

December 8, 2015

Ordinance 18185

Proposed No. 2015-0432.2

Sponsors Phillips

1 AN ORDINANCE authorizing the executive to amend the
2 2007 interlocal agreement implementing a transfer of
3 development rights program between King County and the
4 city of Issaquah.

5 STATEMENT OF FACTS:

- 6 1. The Washington state Growth Management Act, codified at chapter
7 36.70A RCW, establishes a policy of directing growth and development
8 into urban areas, protecting rural and resource land, and encouraging the
9 use of innovative tools like transfer of development rights to accomplish
10 these outcomes.
- 11 2. The Growth Management Act encourages the conservation of
12 productive agricultural and forest lands and the retention of rural open
13 space to conserve fish and wildlife habitat and enhance recreational
14 opportunities.
- 15 3. King County adopted a transfer of development rights program in 2001
16 to permanently preserve rural and resource lands by transferring rural
17 development potential into existing urban areas. Since 2001, the King
18 County transfer of development rights program has helped to protect
19 142,586 acres of rural and resource lands in unincorporated King County.

20 4. In 2007, King County and the city of Issaquah entered into a transfer of
21 development rights interlocal agreement to permanently protect salmon
22 habitat and open space in the rural portions of the Issaquah creek
23 watershed. This interlocal agreement was authorized through Ordinance
24 15693 and city of Issaquah Ordinance 2434. The interlocal agreement
25 allows the transfer of seventy-five rural development rights from the rural
26 portions of the Issaquah creek basin for increased residential and
27 commercial density within designated transfer of development right
28 receiving areas within the Issaquah city limits. In exchange for the city
29 accepting additional density via transfers of rural development rights,
30 King County provided the city with two hundred thousand dollars of
31 conservation futures tax funds to acquire 2.4 acres of in-city open space
32 along Issaquah creek, as authorized by Ordinance 15083.

33 5. Since 2007, King County has protected three hundred eighty-seven
34 acres of rural land in the Issaquah creek basin through purchase of seventy
35 rural development rights, yet only one rural development right has been
36 transferred to the city.

37 6. Since 2011, King County has worked with the city to include rural
38 transfer of development rights into the city's eleven-hundred-acre Central
39 Issaquah Plan Area and simultaneously strengthen the transfer of
40 development rights interlocal agreement to increase the likelihood of in-
41 city developers purchasing rural development rights from the rural
42 portions of the Issaquah creek watershed.

43 7. In 2012, the city of Issaquah rezoned the Central Issaquah Plan Area in
44 order to accommodate seven thousand new housing units and nineteen
45 thousand new jobs by the year 2031. Rural transfer of development rights
46 was included as density incentive in the development regulations in the
47 Central Issaquah Plan Area.

48 8. In accordance with the provisions of the interlocal agreement, King
49 County and the city of Issaquah extended the term of the interlocal
50 agreement until July 1, 2019.

51 9. On June 25, 2015, the Puget Sound Regional Council officially
52 designated the city's Central Issaquah Plan Area a Puget Sound Regional
53 Council regional growth center.

54 10. On July 6, 2015, the Issaquah city council passed Ordinance 6904
55 authorizing the mayor of Issaquah to amend the transfer of development
56 right interlocal agreement as provided in Attachment A to this ordinance.

57 11. King County and the city are authorized to enter into an interlocal
58 agreement pursuant to chapter 39.34 RCW, the Interlocal Cooperation
59 Act.

60 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

61 SECTION 1. The executive is hereby authorized to amend the interlocal
62 agreement with the city of Issaquah, containing language substantially similar to that
63 provided in Attachment A to this ordinance, to thereby establish a more effective

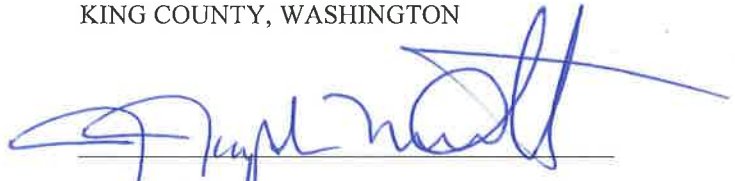
64 program to transfer development rights from lands in King County's designated rural
65 areas into the city of Issaquah.

66


Ordinance 18185 was introduced on 10/26/2015 and passed by the Metropolitan King County Council on 12/7/2015, by the following vote:

Yes: 8 - Mr. von Reichbauer, Mr. Gossett, Ms. Hague, Ms. Lambert,
Mr. Dunn, Mr. McDermott, Mr. Dembowski and Mr. Upthegrove
No: 0
Excused: 1 - Mr. Phillips

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Larry Phillips, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 16 day of DECEMBER 2015.



Dow Constantine, County Executive

RECEIVED
2015 DEC 17 PM 3:04
CLERK
KING COUNTY COUNCIL

Attachments: A. First Amendment to the Interlocal Agreement Implementing a Transfer of Development Rights Program Between Unincorporated King County and the City of Issaquah

FIRST AMENDMENT TO THE INTERLOCAL AGREEMENT IMPLEMENTING
A TRANSFER OF DEVELOPMENT RIGHTS PROGRAM
BETWEEN
UNINCORPORATED KING COUNTY AND THE CITY OF ISSAQUAH

RECITALS

- A. In 2007, King County and the city of Issaquah (“City”), jointly referred to as the “Parties,” entered into a Transfer of Development Rights (“TDR”) Interlocal Agreement (“Agreement”) to permanently protect salmon habitat and open space in the Rural portions of the Issaquah Creek watershed. This Agreement was authorized through King County Ordinance 15693 and city of Issaquah Ordinance 2434.
- B. The Agreement allows the transfer of 75 rural development rights from the Rural portions of the Issaquah Creek basin for increased residential and commercial density within designated TDR receiving areas within the Issaquah city limits. In exchange for the City accepting additional density via Rural TDR, King County provided the City with \$200,000 of Conservation Futures Tax (CFT) funds to acquire 2.4 acres of in-city open space along Issaquah Creek, as authorized by King County Ordinance 14797.
- C. Since 2007, King County has protected 387 acres of rural land in the Issaquah Creek basin through the purchase of 70 rural development rights, yet only 1 rural development right has been transferred into the City.
- D. Since 2011, King County has been working with the City to include Rural TDR in the City’s 1,100 acre “Central Issaquah Plan Area” and simultaneously strengthen the Agreement to increase the likelihood of in-city developers purchasing rural development rights from the rural portions of the Issaquah Creek watershed.
- E. In 2012, the City re-zoned the Central Issaquah Plan Area to accommodate 7,000 new housing units and 19,000 new jobs by the year 2031; Rural TDR was included as density incentive in the development regulations in the Central Issaquah Plan Area.
- F. On June 25, 2015, the Puget Sound Regional Council (PSRC) officially designated the City’s Central Issaquah Plan Area a PSRC “Regional Growth Center.”

NOW, THEREFORE, pursuant to Section VII. E of the Agreement, the Parties agree to amend the Agreement as follows:

1. The 8th, 11th, and 12th recitals are deleted in their entirety and replaced by the following with deleted language appearing in strikethrough type ~~like this~~ and new language appearing in bold underlined text **like this**.

WHEREAS, the City ~~is in the process of establishing~~ **has** a Transfer of Development Rights Program; and

WHEREAS, the County, pursuant to County Ordinance ~~15693 2006-0571~~, ~~has~~ authorized the Executive to execute an interlocal agreement with the City of Issaquah to transfer rural development rights into the City and provide Conservation Futures funding for the acquisition of open space inside the City; and

WHEREAS, the City, pursuant to City Ordinance 2434, ~~has~~ authorized the transfer of development rights **(“TDR”)** from privately owned rural and resource lands in **designated locations** ~~the Issaquah Creek Basin~~ in King County to receiving sites in the City of Issaquah.

2. Sections I. thru V. are deleted in their entirety and replaced by the following with deleted language appearing in strikethrough type ~~like this~~ and new language appearing in bold underlined text **like this**.

I. PURPOSE

The County and the City agree to implement a program (hereafter the “Program”) for the transfer of development rights from privately-owned unincorporated King County rural and resource lands **located** in the Issaquah Creek Basin **and on portions of Squak Mountain** (“Rural Development Rights”) into the City according to the provisions described below. The ~~County~~ Rural Development Rights accepted by the City of Issaquah shall not exceed **125 75-Transferable Development Rights (“Rural TDRs”), as defined in King County Code 21A.37.**

II. RESPONSIBILITIES AND POWERS OF THE CITY OF ISSAQUAH

A. The City of Issaquah ~~has~~ developed a Transfer of Development Rights **TDR** Program to provide incentives to protect selected Sending Site properties inside and outside the City while authorizing additional residential density, commercial square footage and other uses at selected Receiving Sites ~~Areas~~ inside the City.

B. The City enacted appropriate TDR legislation, attached, **as amended**, herein as City Code 18.10.~~2005 – 2090~~ 240 in Exhibit **BA**, ~~as a precondition for which~~ **accommodates** receiving Rural Development Rights **TDRs** from the County ~~per King County Code 21A.37.140A.~~

C. **The City has identified the following “Sending Site Area” from which Rural Development Rights may be used for increased residential and commercial development capacity in the City’s designated Receiving Areas. Properties within the Sending Site Area shall provide a public benefit to the City, such as public recreational trail access, ecological value, habitat for salmon recovery, forest or farm land, and shall adhere to the requirements of K.C.C. 21A.37. The Sending Site Area includes private properties tributary to Issaquah waterways, as identified in Exhibit A, attached to and incorporated into this Agreement by this reference.**

D. ~~C.~~ The City shall ~~continue to permit~~ the use of **one hundred twenty-five (125) Rural Development Rights TDRs from King County the Sending Site Area for increased residential and commercial development capacity in the City's designated Receiving Areas pursuant to** Receiving Sites in the City during the term of this Agreement. Rural Development Rights shall be from priority Sending Sites within the Issaquah Creek Basin in conformity with King County Code 21A.37.020 and City Code 18.10.2005- 2090 and **King County Code 21A.3740. Pursuant to the City's TDR Code, each Rural TDR used shall provide,** as designated in the King County Comprehensive Plan or a functional plan, unless other Sending Sites are mutually agreed to by the City and County. **the following on properties located within the City's identified Receiving Areas:**

- i. 3,600 square feet of commercial (retail, or office) space; or**
- ii. 5.4 residential units, or equivalent residential square footage.**

These TDR conversion ratios shall only be changed or modified by mutual administrative agreement of the Parties.

D. The City, per King County Code 21A.37.040F and 21A.37.140C, shall work with the County to mutually agree upon the conversion ratio for Rural Development Rights that are transferred into the City. The City may modify the terms and conditions upon which Rural Development Rights may be used at the Receiving Sites in the City after consulting with the County.

E. The City shall notify the County when it has approved the use of Rural Development Rights **TDRs** that were purchased from the King County TDR Bank or private parties in a specific project and shall execute a transfer of development rights extinguishment document in conformance with the King County Code 21A.37.140B.

III. RESPONSIBILITIES AND POWERS OF KING COUNTY

- A. The County adopted polices, regulations and administrative procedures under K.C.C. 21A.37 to implement the Program, which promotes and facilitates the purchase and sale of Rural Development Rights. These policies:
- a.) establish criteria and procedures for the certification of sending sites;
 - b.) facilitate and promote certification of sites;
 - c.) establish procedures to facilitate the sale of Rural Development Rights;
 - d.) seek priority sites within the Issaquah Creek Basin for future purchase of development rights by the County's Transfer of Development Rights Bank;
 - e.) establish procedures to require, maintain and enforce deed restrictions on sending sites from which development rights are bought, in order to prohibit those sites from being developed in violation of the deed restrictions and shall provide a copy of the Deed Restrictions/ Conservation Easement to the City before final approval.
- B. ~~The County shall work with the City, per City Code 18.10.240 and King County Code 21A.37, to mutually agree upon the conversion ratio for Rural Development~~

~~Rights that are transferred into the City.~~

C. **B.** Funding.

1. The County ~~shall provide~~ **provided** \$200,000 for the **City's** acquisition of open space land selected by the City of Issaquah in a manner that is consistent with the provisions governing allocation of conservation future tax levy funds in K.C.C. Ch. 26.12, ~~and which would require the City to enter into an interlocal agreement in substantially the form attached hereto as Exhibit B.~~ **The City used this funding in 2007 to acquire in-city open space along Issaquah Creek.**
2. Contingent on approval from the Metropolitan King County Council, the County through the King County Executive, and the City through the Mayor of Issaquah, will negotiate in good faith to determine the amount, if any, of future amenity funds to be provided by the County to the City. In negotiating this issue, the County will seek to provide to the City additional amenity funds in amounts not to exceed the dollar amounts of rural development rights purchased from the King County ~~Transfer of Development Rights~~ **TDR** Bank or private parties used inside the City.
3. Any amenity funding will be consistent with County revenue statutory restrictions and shall be based on a written scope of work, budget, and schedule provided by the City.
4. Any project or activity for which amenity funding is provided by the County to the City, or the portion thereof funded by the County, must be completed within five years of the receipt of the funds by the City. If any such project or activity is not completed within five years, then any funds provided for such project or activity by the County, not yet expended on costs of such project or activity, must be returned to the County with interest earned (at market rates mutually agreeable to both parties) by the City and not yet expended for such costs.

IV. **EVALUATION AND MONITORING**

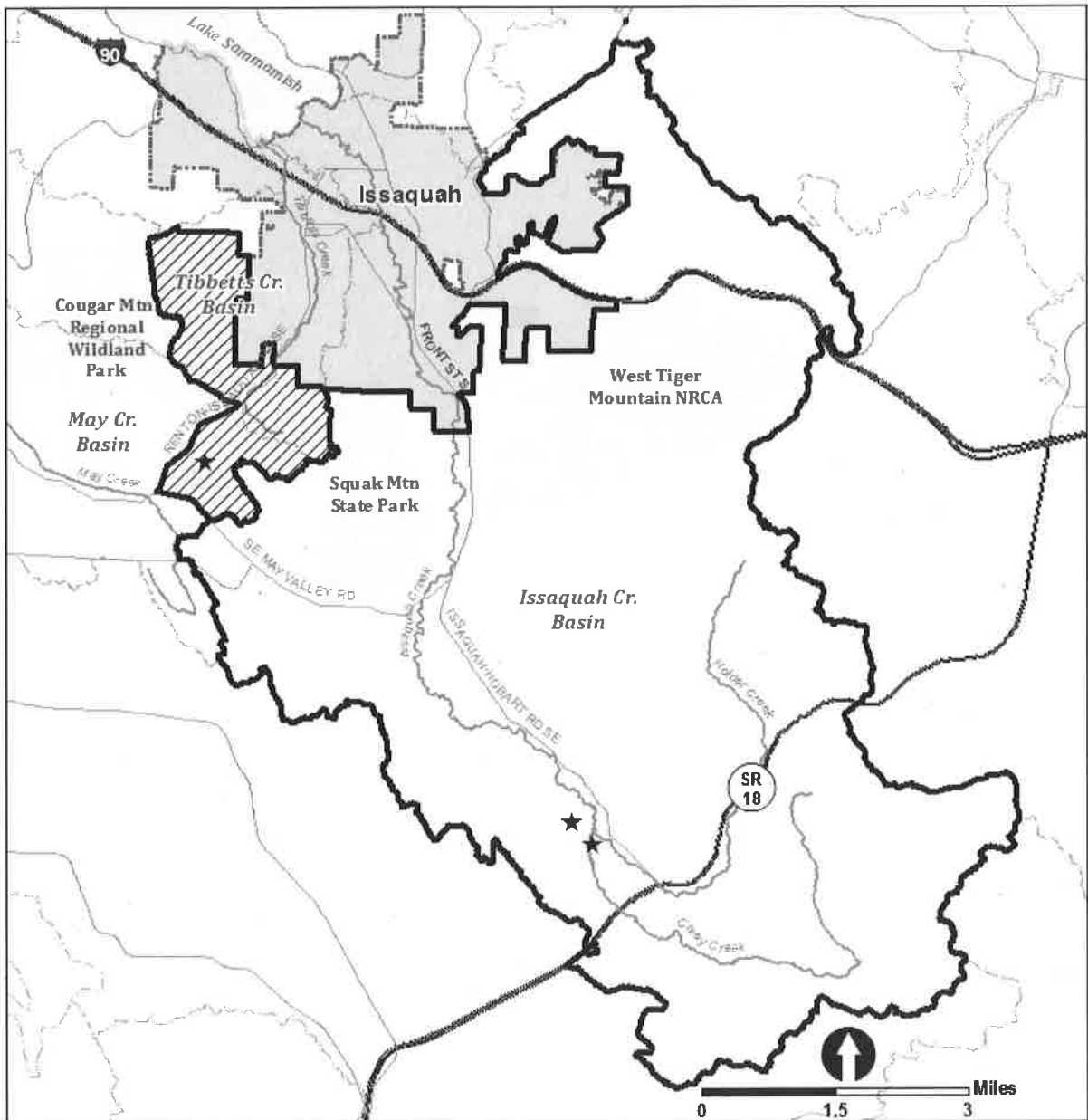
- A. The records and documents with respect to all matters covered by this Agreement shall be subject to inspection, review, or audit by the City or County as requested by each jurisdiction during the applicable records retention period specified by or pursuant to law.
- B. The City and County shall periodically publish a joint report evaluating the progress of the Program. The evaluation shall include at a minimum an analysis of the number of Sending Sites certified in the Issaquah Creek Basin as identified in Exhibits **A and B**, the number of Receiving Sites in the City that used Rural Development Rights, and the number and value of Rural Development Rights bought and sold by the TDR Bank or private parties for use in the Program.

V. DURATION






- A. Duration. This Agreement shall become effective on the date it is signed by all parties and shall continue until **all 125 Rural TDRs have been permitted into development inside the City** July 1, 2014.
- B. ~~Extension.~~ Pursuant to a mutual written agreement between the County Executive and City Mayor, this Agreement may be extended for a maximum of five (5) years from the effective date of the extension. To extend the Agreement, the City or the County shall make a written request to the other not less than sixty (60) days prior to the end of this Agreement. The request shall specify the proposed term of the extension. The parties must agree to the extension in writing by the termination date or the agreement will lapse.

3. Exhibit A is deleted in its entirety and replaced by the following new Exhibit A:

Exhibit A



ISSAQUAH - KING COUNTY TDR SENDING AREAS

-  Existing TDR Sending Area
-  Expanded TDR Sending Area
-  Existing TDR Sending Sites
-  City of Issaquah
-  Basin boundaries

ABOUT THIS MAP: This map shows areas of rural, unincorporated King County that are both existing eligible "Sending Areas" and expansion TDR Sending Areas from which rural development rights could be transferred into City of Issaquah TDR Receiving Areas.

The existing Sending Area includes all of the Issaquah Cr. drainage basin. The expanded area adds areas in the foothills of Cougar and Squak Mountains in the rural portions of the Tibbetts Creek and May Creek basins.

4. A new Exhibit B is included as follows, with new language in underline text:

Exhibit B

City of Issaquah Transfer of Development Rights Program

Transfer of Development Rights (TDR)

18.10.2005 Purpose and intent of the transfer of development rights program.

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

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

B. Increase the opportunities for providing parks.

C. Promote design and development consistent with the City's vision as established in the Comprehensive Plan; Olde Town Design Standards; Urban Villages; and, the Central Issaquah Plan.

D. Allow the transfer of development rights:

1. Between parties, through direct sale of development rights from a qualified sending site property owner to a qualified receiving site property owner; and

2. Between the City and a sending or receiving site property owner where the City may act as a TDR bank for development rights by purchasing TDRs from qualified sending sites and/or by pre-selling them to an applicant for use on a qualified receiving site. (Ord. 2510 § 1, 2007); and,

3. Between King County's TDR Bank and a City Receiving Site, as authorized through an Interlocal TDR Agreement.

18.10.2010 State enabling legislation.

This chapter is adopted pursuant to RCW 36.70A.090, Comprehensive plans – Innovative techniques, which states, "A comprehensive plan should provide for innovative land use management techniques, including, but not limited to, density bonuses, cluster housing, planned unit developments, and the transfer of development rights." (Ord. 2510 § 1, 2007).

18.10.2020 Definitions.*

Following are specific definitions for certain words, terms and phrases used in this section of the Issaquah Land Use Code. Where any of these definitions conflict with definitions used in other titles of the Municipal Code, the definitions herein shall prevail when used in the context of this chapter. Other terms used in this section may be defined in Chapter 18.02 IMC.

Bank: see TDR Bank

CIP: Central Issaquah Plan.

Creek side restoration: A project approved by the City for the restoration of creek side areas for the benefit of anadromous fish habitat.

Designated Official: The designee of the Administration empowered by the Mayor to administer this chapter.

Designated property: Those parcels shown as TDR sending or receiving sites on the TDR Sending and Receiving Sites Map. The sending site development rights are required to become certified by the City before TDRs may be sold or transferred. (See IMC 18.10.2040(B), TDR Certification.)

Easement, conservation: A voluntary, publicly recorded restriction, in a form approved by the Designated Official, in order to protect resources such as agricultural lands, historic structures, open space and wildlife habitat. The easement may include all or part of a parcel. In perpetuity, no new development shall take place within the areas covered by the easement. However, the construction and maintenance of a soft-surface, natural trail could be allowed, if part of a City-approved plan.

Equivalent Residential Units (ERUs): One ERU is equal to either one residential unit (single-family or multi-family), or 1,200 square feet of non-residential entitlement.

Exchange Rate: a transfer ratio or multiplier, determined by the Designated Official or King County's TDR Official, as appropriate, to correct for the market imbalance in value between development rights in sending and receiving sites.

Extinguishment document, quit claim deed: When a development right is purchased and then used, the right to build a dwelling unit on the sending site is "extinguished." It is used up and cannot be used again in any other location. The quit claim deed and extinguishment document records the sale and use of the development right on both the sending site and the receiving site and states how the development rights are applied.

King County TDR Bank: an entity authorized by King County to:

- (1) Facilitate the private TDR market by bridging the time gap between willing sellers and buyers of TDRs;

- (2) Act as a revolving fund for continued land protection through buying, holding, and selling TDRs(proceeds from TDR sales are used for future land protection); and,
- (3) Catalyze city-county TDR agreements by strategically acquiring development rights from high priority conservation rural/resource lands in the County that are of compelling interest for specific cities to see protected.

Letter of intent, TDR certification: A signed letter provided by the City documenting availability of development rights for sale from a sending site. For those sending sites outside the City limits, this letter will be provided by King County.

Park: land acquired for public use for active or passive recreational use.

Public Open Space: Property owned by the City of Issaquah, King County or State Departments of Parks and Recreation and Natural Resources that is set aside to serve the purposes of protecting and conserving critical areas and natural systems.

Stewardship plan: A comprehensive plan for the long-term protection and use of property (open space or park) protected through the TDR Program, developed by the property owner, monitored and enforced by the City of Issaquah. If prepared for privately-held property, the plan must be approved by the City. Regardless, the plan must include:

1. A course of action that prevents degradation of the values, structure and functions of the natural resources and open space and includes enhancements, as necessary, to improve the open space qualities of the property;
2. An inventory of the existing conditions as well as all critical areas and their buffers;
3. A plan showing any existing or proposed park improvements, protected natural areas and proposed enhancements;
4. A timeline for implementing any enhancements and follow up monitoring and maintenance; and
5. A funding plan including personnel, capital and surety for implementation of the stewardship plan.

TDR bank: The TDR bank ("Bank") is operated by the City for the purpose of buying, selling and holding development rights. The City may act in its capacity as a buyer and seller of development rights pursuant to IMC 18.10.2035, TDR bank – Purpose.

TDR base density: The developable units on a residentially zoned property calculated per IMC 18.10.450, Density calculations in critical areas. For commercial and retail zoned property, unless otherwise defined in an approved development agreement or in the CIP, TDR base density shall be calculated based on the maximum square footage of the buildable area of the site divided by twelve hundred (1,200) square feet.

TDR certificate: A recorded document, issued by the City or King County (and authorized by the City), showing the number of development rights available from a sending site to be used at a TDR receiving site.

TDR receiving site: Property in the City limits where existing urban services and infrastructure can accommodate additional development. TDR receiving sites are designated on the TDR Sending and Receiving Sites Map.

TDR sending site: Property in the City limits that has been designated as a Sending Site on the TDR Sending and Receiving Sites Map. Sending sites also include property in the King County Rural or Resource Zones of the Issaquah Creek Basin as described in the King County Water Resource Inventory Area (WRIA) 8 Issaquah Creek Subarea and containing environmentally critical areas as defined in the King County Interlocal Agreement; and, properties located in the CIP area designated for park improvements.

18.10.2030 Designation of sending and receiving sites.

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

A. TDR Sending and Receiving Sites Map: TDR sending and receiving sites are designated by the City on the TDR Sending and Receiving Sites Map.

B. Designation Criteria – Sending Sites:

1. Inside City Limits: The site is privately or publicly owned, and not zoned Tradition Plateau-Natural Resource Conservation Area (TP-NRCA), Conservancy-Recreation (C-Rec), Community Facilities-Facilities (CF-F), Community Facilities-Recreation (CF-R), Community Facilities-Open Space (CF-OS), Conservancy-Residential (C-Res) and meets one (1) or more of the following criteria:

a. The site includes at least thirty (30) percent critical areas and/or required critical area buffers; or

b. The site is contiguous with existing public open space; or

c. Retention of all or part of the site in permanent open space will achieve one (1) or more of the goals and policies adopted in the Comprehensive Plan; or

d. The site has limited access for vehicular ingress/egress due to critical areas, excessive grade or adjacent property configuration; or, reasonable access to wet utility connections; or

e. The site is located adjacent to a creek side restoration site; or

f. The site has been identified as a potential park site.

2. Outside City Limits: Through an interlocal agreement with King County, the City will set criteria for privately owned TDR sending sites outside the City limits, consistent with the provisions of an Interlocal TDR Agreement.

C. Designation Criteria – Receiving Sites: Parcels with more than fifty (50) percent critical area and/or their associated buffers are not eligible to be receiving sites, except for those sites that are over fifty (50) percent in the critical aquifer recharge area. Properties accessing 229th Avenue SE cannot be receiving sites because of requirements established for the 229th traffic signal. Receiving sites meet one (1) or more of the following criteria:

1. The parcel is within three quarters (0.75) of a mile from the Issaquah Transit Center, south of I-90 and is zoned Multifamily-High, Mixed Use Residential, Retail, Intensive Commercial or Professional Office; or

2. The parcel is within one quarter (0.25) mile of a transit stop and zoned Retail, Intensive Commercial, Professional Office, or Multifamily-High within the Olde Town Subarea and the site's primary access and street frontage are located on "major streets" as defined as: Gilman Boulevard east of SR 900, Front Street, Newport Way, Sunset Way, SR 900, NW Sammamish Road, NW Maple Street, East Lake Sammamish Parkway (ELSP), SE 56th Street to one thousand two hundred (1,200) feet east of ELSP, Issaquah-Fall City Road, or Issaquah-Pine Lake Road SE; or

3. The parcel is a CBD or multifamily zoned property within the Olde Town Design Standards area or located within the Central Issaquah Plan area; or

4. The parcel is within the existing development area or established expansion areas of an urban village. Transfer of TDR's into a UV project subject to a development agreement shall be subject to the following:

- a. The TDRs shall be in addition to and not as a substitute for the development rights as specified in the development agreement.
- b. The TDR's shall not cause any of the existing or planned infrastructure to fall below the infrastructure's capacity to handle the maximum density as set forth in the development agreement.
- c. The property owner seeking the TDRs shall, as determined by the Master Developer, reimburse the Master Developer 1) a pro rata share of the costs of installed or required infrastructure and paid mitigations; and, 2) a pro rata share of the costs for entitlement allocation.
- d. The property owner seeking the TDRs shall mitigate all other increased adverse environmental and other impacts of the additional TDRs

D. TDR Map Amendments:

1. Adding a Sending Site: A proposal to add a sending site to the TDR Sending and Receiving Sites Map shall be reviewed as a land use code amendment, Level 1 Review (IMC 18.04.330-360). Review and decisions shall be made based on the proposal's ability to meet the criteria established in this chapter.

2. Adding a Receiving Site: a proposal to add a receiving site to the TDR Sending and Receiving Sites Map shall be reviewed as a land use code amendment, Level 3 Review (IMC 18.04.410-450). Reviews and decisions shall be made based on the proposal's ability to meet the criteria established in this chapter.

18.10.2035 TDR bank – Purpose and authorization.

The purpose of establishing the City TDR bank ("Bank") is to 1) facilitate the purchase and sale of development rights; 2) purchase privately-held TDR Certificates; and, 3) acquire open space and park lands, as directed by the City Council.

A. The Bank may acquire development rights from any designated sending site as identified in IMC 18.10.2030, Designation of sending and receiving sites.

B. The Bank may collect funds or other donations from any designated TDR sending or receiving site, as identified in IMC 18.10.2030, Designation of sending and receiving sites.

C. The Bank may purchase and hold title to existing TDR certificates.

D. The Bank may sell TDR Certificates in advance of property acquisition and use the funds to fulfill the purpose of this chapter including the purchase of land for open space or parks.

E. Development rights purchased by the Bank through the outright purchase of a sending site property, or through the purchase of only the development rights from a sending site property, may be retained by the Bank indefinitely.

F. Transferred development rights must be certified by the City and may be purchased by an applicant for a land use development project within the City for immediate use; or, an applicant may purchase TDRs to hold for future use without expiration; or, TDRs may be sold or transferred to another party.

18.10.2037 Administration of TDR Bank.

A. The Designated Official is authorized to administer the TDR bank, including but not limited to:

1. Managing the activities of the Bank;

2. Authorizing and monitoring the availability of TDR Certificates;

3. Monitoring compliance with the Interlocal TDR Agreement executed with King County;

3. Administering development rights purchases, sales and issuance of letters of intent and certifications;

4. Providing periodic summary reports of the Bank activity to the City Council; and,

5. Setting the value of Bank-issued TDR Certificates.

B. The Designated Official shall keep records of the dates, amounts and locations of development rights that have been:

1. Issued a letter of intent;

2. Purchased and certified; and

3. Sold and extinguished. (Ord. 2510 § 1, 2007).

C. The Bank shall dispose of revenues, as directed by the City Council for the following purposes:

1. Purchasing development rights from and acquisition of open space properties;

2. Purchasing development rights from and acquisition of park properties;

3. Purchasing existing privately-held TDR Certificates; or,

4. The Bank may use a limited portion of the funds collected by the Bank to facilitate the implementation of this chapter. These expenditures (not to exceed 5% without City Council approval) may include, but are not limited to, establishing and maintaining Internet web pages, marketing the TDR program, legal expenses, procuring title reports and appraisals and reimbursing the costs incurred by City departments for administering the Bank fund and executing development rights purchases and sales.

18.10.2040 Sending TDRs: Certification, application and procedures.

A. Qualifying a Sending Site for the Transfer of Development Rights:

1. Eligibility: In order to sell or transfer development rights, the property owner must receive certification from either the City, or King County consistent with the provisions of the City's TDR Interlocal Agreement.

2. Calculation of TDRs:

a. Inside City Limits: The Designated Official shall review the application and calculate the allowable number of development rights for the sending site.

i. For residentially zoned sending sites, the TDR base density shall be calculated as defined in IMC 18.10.450, Density calculations in critical areas. Developable units on a subject property equal the property's TDR base density. For parcels zoned SF-E (1.24 du/acre), the TDR base density shall be calculated beginning with four (4) dwelling units per acre and then calculated as defined in IMC 18.10.450, Density calculations in critical areas.

ii. For non-residentially zoned properties, the TDR base density shall be calculated based on the maximum buildable square footage of the buildable area on the site divided by twelve hundred (1,200) square feet.

b. Outside City Limits:

i. The maximum transferable number of development rights by a sending site outside of the City limits shall be established through the King County certification process as required by the Issaquah/King County Interlocal Agreement. Each TDR unit certified by King County in this manner may be used by an Issaquah receiving site with the same process and requirements of an "Inside City Limits" sending site TDR unit.

3. TDR Certificate Letter of Intent: When located in the City, the Designated Official shall prepare and issue a TDR certificate letter of intent for the sending site which documents the available development rights on said sending site. When any of these development rights are certified, the letter of intent shall also be reissued to reflect the new amount of remaining development rights.

4. TDR Certificate Letter of Intent Revision Request: The applicant may request, in writing, that the Designated Official revise the TDR certificate within ninety (90) days of the issuance of the TDR certification letter of intent when:

a. The development rights have not been sold; and

b. The applicant demonstrates that the TDR rights were improperly calculated; or

c. The applicant provides additional studies, data or other information demonstrating that an adjustment of the TDR rights would be appropriate.

B. TDR Certification:

1. Certifying TDRs:

a. Inside City Limits: The Designated Official shall certify the transferrable development rights from a sending site, as required in subsection (B)(2) of this section, TDR Certificate Content. After the sale or transfer of all or a portion of a sending sites TDRs, and the designation of the specific area(s) of the property as permanent open space as required in subsection (B)(3) of this section is completed, the TDR certificate may be issued.

b. Outside City Limits: TDR certification on sending sites outside the City limits within King County shall be as required by Chapter 21A.37 KCC.

c. Prior to the release of building permits, the receiving site applicant shall deliver the TDR certificate(s) to the City and a quit claim deed and extinguishment document shall be recorded on the sending site(s) and receiving site after approval of the receiving site project.

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

a. The number of transferred rights or ERUs; and

b. The number of peak hour trips; and

c. The amount of impervious surface transferable to a TDR receiving site or the additional square footage of gross floor area (above the base building height or maximum building height established in IMC 18.07.360, District standards table, for the underlying zoning district of the TDR receiving site) transferable to a TDR receiving site.

3. Preservation of Open Space or dedication of park land resulting from TDR Conversion: As part of the development rights transfer and prior to the issuance of the TDR certificate, the sending site property owner is required to document that the site, or portion of the site, is no longer developable and shall be preserved to fulfill the intent of this chapter in one (1) of the following ways, as determined by the Designated Official:

a. By Deed: The sending site property owner shall deed the ownership of the property to the City subject to dedicating the property as public open space or public park land. The dedication shall include a restriction on future development and on the installation of new utilities except:

i. To allow any third party with right under an existing ingress, egress, utility, or similar easement that was established or recorded prior to the effective date of said easement to exercise such rights; and

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

b. By Conservation Easement: For open space properties only, the sending site property may retain title to the property by recording a conservation easement in perpetuity over the parcel. The conservation easement shall be to the benefit of the City, publicly recorded with King County, on a form approved by the City; and, include the preparation and implementation of a stewardship plan to ensure the property is maintained for the benefit and protection of the natural resources, including wildlife, scenic corridors, and water quality. All conservation

easements shall allow City access to the property to ensure compliance with the conservation easement. The conservation easement shall include:

i. All of the critical area and associated buffer; and

ii. That portion of the developable site area equal to the percentage of TDRs sold and certified.

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

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

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

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

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

3. Calculating Any Remaining Density on the Sending Site: If only a portion of the TDR units from a sending site are sold and transferred, the number of dwelling units or, in the case of commercially zoned land, the buildable square footage permitted on the remainder property, shall be determined in accordance with the conservation easement and provisions of IMC 18.10.450, Density calculations in critical areas, based on the percentage of critical area on the site. (Ord. 2560 § 5 (Exh. A4), 2009; Ord. 2525 §§ 4, 7, 2008; Ord. 2510 § 1, 2007).

18.10.2050 Receiving TDRs: Standards, applications and procedures.

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

1. Applicability: Receiving sites may use the purchased TDRs to meet the provisions of an approved development agreement or to exceed the allowable development for new development or modification to existing development, in accordance with this chapter; provided, that all development and design standards required by the underlying zoning district shall be met, unless the standards are adjusted through IMC 18.07.250, Administrative adjustment of standards.

2. Residential Dwelling Units: Additional residential density may be approved through a Level 3 (IMC 4.10-4.50) review based on the following residential density limits in the following table:

<u>Table 18.10.2050(A)(2): Residential Density</u>	
TDR Value: 1 TDR = one dwelling unit up to the following limits:	
<u>Receiving Site Zone</u> (underlying zoning)	<u>Density Limits (Increase of 25%)</u>
<u>MF-M & MUR (14.52 dwelling units per acre)</u>	<u>18 dwelling units per acre</u>
<u>MF-H (29 dwelling units per acre)</u>	<u>36 dwelling units per acre</u>
<u>Other Zones</u>	<u>36 dwelling units per acre; or, as specifically allowed through a development agreement or the CIP.</u>

3. Building Height and/or Gross Floor Area: The maximum building height for all zoning districts is established in IMC 18.07.360, District standards table. Through transfer of development rights, a receiving site may propose additional square footage of gross floor area above the base building height or maximum building height as established in the following table:

<u>Table 18.10.2050(A)(3)</u>		
<u>Process and Conditions for Maximum Building Heights for Receiving Sites^{1,5}</u>		
<u>Receiving Site Zoning District</u>	<u>Maximum building height allowed in underlying zoning district in IMC 18.07.360, District standards table</u>	<u>Process and Conditions for Maximum Building Height with Purchase of TDRs</u>
		<u>Administrative Adjustment of Standards²</u>
TDR Value:	<u>NA</u>	<u>1 TDR = 1,200 sq. ft.⁶</u>
<u>MF-M</u>	<u>50 ft.</u>	<u>65 ft.</u>

<u>MF-H³</u>	<u>65 ft.</u>	<u>65 ft.</u>
<u>PO</u>	<u>65 ft.</u>	<u>80 ft.</u>
<u>R</u>	<u>65 ft.</u>	<u>80 ft.</u>
<u>IC</u>	<u>65 ft.</u>	<u>80 ft.</u>
<u>CBD⁴</u>	<u>65 ft.</u>	<u>80 ft.</u>
<u>CF-F</u>	<u>Determined by the most restrictive contiguous zoning</u>	
<u>CF-R</u>	<u>Determined by the most restrictive contiguous zoning</u>	
<u>UV</u>	<u>Determined by the development agreement</u>	

¹ Maximum height for structures in shoreline jurisdictions is thirty-five (35) feet (Issaquah Shoreline Master Program).

² The complete receiving site proposal is processed as established in IMC 18.06.130, Table of Permitted Land Uses, based on the review process for the proposed land use in the underlying zoning district.

³ Receiving site parcels zoned MF-H (along Sunset Way) are not permitted additional height above the maximum building height due to their small lot size. Other MF-H receiving sites (on South Front Street) are not permitted additional height to be consistent with the other MF-H receiving sites.

⁴ All projects in the CBD are required to meet the Olde Town Design Standards.

⁵ For properties located in the Central Issaquah Plan area, refer to that document for allowed heights.

⁶ Purchased TDRs from sending sites may be subject to an Exchange Rate, as determined by the Designated Official or through King County's TDR Bank, as appropriate.

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

<p><u>Table 18.10.2050(A)(4)</u> <u>Process and Conditions for Impervious Surface Ratio Limits in Receiving Sites</u></p>
<p><u>TDR value: 1 TDR = 1,200 sq. ft⁵</u></p>

<u>Receiving Site Zoning District</u>	<u>Impervious Surface Ratio allowed in underlying zoning district</u> <u>IMC 18.07.360, District standards table</u>	<u>Process and Conditions for Impervious Surface Ratio Limit with purchase of TDRs</u>	
		<u>Administrative Adjustment of Standards²</u>	<u>Development Agreement reviewed and approved through a Level 3 Review</u>
		<u>Conditions: meet the conditions established in IMC 18.07.350, Other standards not identified</u>	<u>Conditions: Commercial and Mixed Use (commercial and residential) projects are required to meet Olde Town Design Standards for CBD³</u>
<u>MF-M Multifamily – Medium</u>	<u>50%</u>	<u>65%</u>	<u>75%</u>
<u>MF-H Multifamily – High</u>	<u>50%</u>	<u>65%</u>	<u>75%</u>
<u>PO Professional Office</u>	<u>65%</u>	<u>80%</u>	<u>90%</u>
<u>R Retail</u>	<u>65%</u>	<u>80%</u>	<u>90%</u>
<u>IC Intensive Commercial</u>	<u>65%</u>	<u>80%</u>	<u>90%</u>
<u>CBD Cultural and Business District⁴</u>	<u>85%</u>	<u>95%⁴</u>	<u>N/A</u>
<u>UV</u>	<u>Determined through the provisions of the development agreement</u>		
<u>CIP zones</u>	<u>Refer to the Central Issaquah Plan for standards</u>		

¹ The critical aquifer recharge area is identified on maps in the Permit Center and includes wellhead protection areas based on one (1), five (5) and ten (10) year capture zones.

² The complete receiving site proposal is processed as established in IMC 18.06.130, Table of Permitted Land Uses, based on the review process for the proposed land use in the underlying zoning district.

³ Multifamily projects are required to meet Olde Town Design Standards for MF-M and MF-H Districts.

⁴ All projects in the CBD are required to meet the Olde Town Design Standards.

⁵ Purchased TDRs from sending sites may be subject to an Exchange Rate, as determined by the Designated Official or through King County’s TDR Bank, as appropriate.

5. Transportation Concurrency: The proposal, with TDRs, must meet the City's Transportation Concurrency requirements (IMC 18.15.260).

6. The City may, in its sole discretion, elect not to accept conveyance of the property if intended as open space, and require the property owner to retain the property and record a permanent conservation easement thereon in accordance with IMC 18.10.2040(B)(3)(b), Preservation of Open Space Resulting from TDR Conversion.

7. Procedures:

a. Using Certified TDRs: The total number of development rights from a sending site may be transferred to one (1) or more designated receiving sites.

b. Impact Fees: Unless otherwise provided for in a development agreement, all impact fees shall be based on the final number of residential units and the total (base + TDRs) commercial/retail square footage in the receiving site proposal.

c. Conditions of Approval: The conditions of approval shall include: (1) requirement of developer to purchase, record and certify the TDRs prior to release of building permits; (2) issuance, by the Designated Official, of an updated TDR certificate and/or letter of intent for the sending site(s); and (3) the extinguishment document for sending and receiving site to be recorded by receiving site property owner before building permit issuance.

d. Notice of Decision: Notice of decision shall be provided in accordance with IMC 18.04.240, Notice of decision. A notice of decision for the project shall clearly state: (1) the number of TDRs transferred to the receiving site; and (2) the incorporation of TDRs into the approved project through the total density, peak trips, square footage, impervious surface, height and other related standards.

e. TDR Development Rights: TDR development rights once used for a land use application are valid only for the specified parcel for which they were originally approved for use and may not be transferred to a different parcel unless the original parcel is subdivided in accordance with subsection (D) of this section, Subdivision of TDR Receiving Sites, or if the original proposal has been withdrawn by the property owner.

f. Quit Claim Deed and Extinguishment Document with TDR Certificate: A TDR certificate is required to document the use of TDRs on all sending sites and receiving sites that have sold or incorporated additional development rights on their property through the TDR process. A quit claim deed and extinguishment document with the attached TDR certificate shall be recorded on the sending site and the receiving site parcels describing:

i. How the TDR rights are used on the receiving site per IMC 18.10.2040(B), TDR Certification; and

ii. The number of TDRs used; and

iii. The source of the TDRs.

C. Requirements Prior to the Release of Building Permits for Receiving Site Projects Using TDRs:

Following building permit approval, and prior to building permit issuance, the receiving site applicant shall deliver the TDR certificates and proof of the transaction showing the purchase of the development rights by the applicant for use at a receiving site to the City. The development rights must be purchased and a TDR quit claim deed and extinguishment document must be recorded on the sending site and receiving site parcels conveying transferable development rights (TDRs) as defined in IMC 18.10.2040(B), TDR Certification.

D. Subdivision of TDR Receiving Sites:

1. Plat Application: TDR receiving sites may be subdivided in accordance with the requirements of Chapter 18.13 IMC, Subdivisions. The preliminary plat or short plat application shall include a pro rata portion of the development rights transferred to the original parcel to each parcel created by the subdivision. At time of application, the applicant shall provide a signed option letter indicating the buyer, seller, sending and receiving site tax parcel number(s) and the number of development rights to be acquired. The pro rata assignment of transferred development rights shall only be in whole units. Individual TDRs may not be divided and the individual uses of a TDR may not be assigned to a new parcel.

2. Plat Modifications: The Hearing Examiner's decision on a preliminary plat and the Designated Official's decision on a short plat may modify the assignment of TDRs proposed by the applicant when such modification is necessary to comply with the provisions of subsection (B) of this section, Application, Process and Procedures for Using TDRs, or the objectives of IMC 18.13.010, Purpose.

3. Plat Approval: Upon plat approval, the new assignment of the TDRs shall be shown on the face of the short plat or final plat approved by the City and shall be recorded with King County. Final plat approval shall be contingent on the applicant providing TDR certificates with the equivalent number of additional development rights necessary within the plat as approved by the City. (Ord. 2510 § 1, 2007).

18.10.2060 Appeals.

A. Any decision under this section will not be subject to appeal except as part of an appeal of the entire project. An appeal of a TDR determination may be incorporated under a project appeal under IMC 18.04.250, Administrative appeals.

B. Decisions by the Hearing Examiner regarding the transfer of development rights may be appealed to Superior Court in accordance with IMC 18.04.258, Judicial or Growth Management Hearings Board appeals. (Ord. 2510 § 1, 2007).

18.10.2070 Monitoring TDR certificates.

A. The Designated Official shall keep records and monitor both the issuance and transfer of TDR certificates and related conservation easements, and the development they represent.

B. An annual status report on the issuance and transfer of TDRs and related stewardship plans, number of TDR transactions, properties preserved, and revenue managed by the Bank shall be made. (Ord. 2510 § 1, 2007).

18.10.2080 Repeal.

If this chapter of the IMC is repealed by the City Council, the density of all sending sites not transferred as TDRs shall be the density allowed by IMC 18.07.070, Density. If some, but not all, of the development rights from one (1) sending site were sold, the remainder of the property shall be developed as allowed in the conservation easement or covenant and by IMC 18.07.070, Density, unless an agreement with the City Council was approved prior to the repeal of this chapter. Any projects built per IMC 18.10.2005 through 18.10.2090 shall not be considered a nonconforming use as defined in IMC 18.02.160, Definitions – N, Nonconforming situation. (Ord. 2510 § 1, 2007).

18.10.2090 Other authority.

Nothing in this chapter is intended to limit the City's authority under the State Environmental Policy Act or any other source. The Planning Department shall be responsible for administering this code as established in IMC 18.01.050, Authority and vested rights. (Ord. 2510 § 1, 2007).

IN WITNESSOF, the Parties hereto have executed this Amendment

KING COUNTY

CITY OF ISSAQUAH

Dow Constantine
King County Executive

Fred Butler
Mayor

Date: _____

Date: _____