

**CITY OF SAMMAMISH
WASHINGTON**

ORDINANCE NO. O2011 - 297

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

WHEREAS, the City incorporated in August of 1999;

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

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

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

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

WHEREAS, a State Environmental Policy Act (SEPA) Determination of Non Significance for the proposed Transfer of Development Rights regulations was issued on January 24, 2011; and

WHEREAS, in accordance with RCW 36.70A, a request for expedited review was received by the State of Washington Department of Commerce on December 8, 2010 and was granted expedited review on January 6, 2011; and

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

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

WHEREAS, the City Council considered the proposed Transfer of Development Rights at a City Council public hearing on January 18, 2011, which was continued on February 8, 2011; and

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

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

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

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

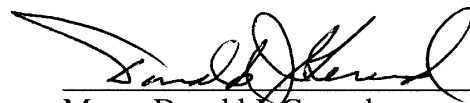
Section 3. Interpretation. The City Council authorizes the Community Development Director to administratively interpret these provisions as necessary to implement the intent of the Council.

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

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

ADOPTED BY THE CITY COUNCIL AT A SPECIAL MEETING THEREOF ON THE 8TH DAY OF FEBRUARY 2011.

CITY OF SAMMAMISH




Mayor Donald Gerend

ATTEST/AUTHENTICATED:


Melonie Anderson, City Clerk

Approved as to form:

for: 
Bruce L. Disend, City Attorney

Filed with the City Clerk:	January 1, 2011
Public Hearing:	January 18, 2011
First Reading:	January 18, 2011
Public Hearing:	February 8, 2011
Second Reading:	February 8, 2011
Passed by the City Council:	February 8, 2011
Date of Publication:	February 11, 2011
Effective Date:	February 16, 2011

- 1 **TDR Ordinance Elements:**
- 2 ▪ 21A.80 – Transfer of Development Rights (*New chapter replacing original*)
- 3 ○ 21A.80.010 Purpose
- 4 ○ 21A.80.020 Applicability
- 5 ○ 21A.80.030 Sending Sites
- 6 ○ 21A.80.040 Receiving Sites
- 7 ○ 21A.80.050 Calculation of Available Development Rights from Sending Sites
- 8 ○ 21A.80.060 Sending Site Certification
- 9 ○ 21A.80.070 Documentation of Restrictions
- 10 ○ 21A.80.080 Sending Site Development Limitations
- 11 ○ 21A.80.090 Receiving Site Incentives
- 12 ○ 21A.80.100 TDR Transfer Process
- 13
- 14 ▪ 21A.15 - Technical Terms and Land Use Definitions (*Supplemental sections*)
- 15 ○ 21A.15.XXX "Conservation easement"
- 16 ○ 21A.15.XXX "Development right"
- 17 ○ 21A.15.XXX "Interlocal agreement"
- 18 ○ 21A.15.XXX "Partially Developed"
- 19 ○ 21A.15.955 "Receiving site" (*Replaced definition*)
- 20 ○ 21A.15.XXX "Sending site"
- 21 ○ 21A.15.XXX "TDR certificate"
- 22 ○ 21A.15.XXX "TDR certificate of intent"
- 23 ○ 21A.15.XXX "TDR program"
- 24 ○ 21A.15.XXX "TDR sending site application"
- 25 ○ 21A.15.XXX "Transfer of Development Rights (TDR)"
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- 27 ▪ 20.05 – Procedures for Land Use Permit Applications, Public Notice, Hearings, and Appeals
- 28 ○ 20.05.020 Classification of land use decision processes (*Edit*)
- 29

Transfer of Development Rights

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21A.80.010	Purpose and Intent
21A.80.020	Applicability
21A.80.030	Sending Site Categories and Criteria
21A.80.040	Receiving Sites
21A.80.050	Calculation of Available Development Rights from Sending Sites
21A.80.060	Sending Site Certification
21A.80.070	Documentation of Restrictions
21A.80.080	Sending Site Development Limitations
21A.80.090	Receiving Site Incentives
21A.80.100	TDR Transfer Process

21A.80.010 Purpose and Intent.

A. The purpose of the transfer of development rights (TDR) program is to implement a market-based tool to permanently preserve partially developed or undeveloped land with important public benefits, such as farmland, forestland, open space, and wildlife habitat, through the private acquisition of the development rights on those lands (“sending sites”) and the subsequent transfer of those rights to lands more suitable for development (“receiving sites”).

B. The TDR provisions supplement land use regulations, resource protection efforts and open space acquisition programs and are intended to encourage increased residential development density or increased commercial square footage where it can best be accommodated by:

1. Providing an incentive process for property owners of partially developed property, undeveloped land, farmland, forestland, open space and wildlife habitat to preserve lands with a public benefit; and
2. Providing an administrative review process to ensure that transfers of development rights are evaluated and administered in a fair and timely manner in accordance with other City goals and policies.

21A.80.020 Applicability.

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

21A.80.030 Sending Site Categories and Criteria.

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

47
48 21A.80.040 Receiving Sites.

- 49 A. Eligible receiving sites shall be:

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

13
14 21A.80.050 Calculation of Available Development Rights from Sending Sites.

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

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

31
32 21A.80.060 Sending Site Certification

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

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- ii. An agreement by the City to issue a corresponding number of TDR certificates in conversion for an conservation easement granted by the City or the City’s designated agent; and
 - iii. A summary of the expected terms of use for the sending site established through 21A.80.070.
 - b. The sending site owner may use the TDR certificate letter of intent to market sending site development rights to potential purchasers, but the certificate letter of intent shall have no value and cannot be transferred or used to obtain increased development rights within receiving areas.
 - c. The letter of intent shall expire 10 years from the date of issuance by the City of Sammamish.
 - d. As provided by the TDR certificate letter of intent, the City shall issue serially numbered TDR certificates to the sending site owner upon acceptance of a TDR conservation easement. The City shall have 90 days from the date the conservation easement is offered by the sending site owner in which to conduct, at its discretion, a review of the sending site records and/or a site inspection.
 - e. A TDR conservation easement will not encumber a sending site until such time as a TDR certificate or certificates have been issued to sending site landowners pursuant to 21A.80.100 except by owner preference. The Director is authorized to create administrative rules to provide for phased development of a project incorporating TDRs.
- B. Sending sites located outside of Sammamish
 - 1. All development rights transferred through an interlocal agreement with another jurisdiction from sending sites located outside of the city limits of Sammamish shall be transferred into Sammamish pursuant to the terms of the interlocal TDR agreement with the relevant jurisdiction.
 - 2. All development rights that are not subject to the terms of an interlocal agreement with another jurisdiction and are transferred from sending sites located outside the city limits of Sammamish, shall be transferred into Sammamish pursuant to 21A.80.060 (A).
- C. The maximum number of sending site TDR certificates issued, and resulting in the recording of a conservation easement, shall not exceed 630.

21A.80.070 Documentation of Restrictions

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

21A.80.080 Sending Site Development Limitations

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

21A.80.090 Receiving Site Incentives

- A. Development rights may be purchased to achieve TDR-based incentive densities allowed by Sammamish development regulations on receiving sites identified in 21A.80.040.
- B. Receiving site incentives:
 - 1. Town Center
 - i. The following table outlines TDR-based incentives for eligible receiving sites with the purchase of a development right. (For example, a sending site in the R-1 zone that generates 1 TDR, will allow for the creation of 4 dwelling units at a receiving in the TC-C zone of the Town Center. Alternatively, the same site in the R-1 zone that generates 1 TDR, will allow 7,716 square feet of additional commercial development in the Town Center):

Table A – Receiving site incentive table.

		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

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- 2. [Placeholder for future receiving sites]
- C. Modification of receiving site incentives:
 - 1. The Director is authorized to recommend that the City Council adopt a revised incentive table to address changing economic conditions or to further refine the receiving site incentives. The Director is also authorized to recommend that the City Council adopt receiving site incentives for sending sites not currently identified in section "B" above. The incentive table shall not be revised more than once in a calendar year. The Director shall base the recommendation of a revised incentive table on the following economic analysis:
 - i. The expected marginal value of the receiving site incentives; and
 - ii. The prevailing cost of per square foot commercial or residential development and the impact of the acquisition of TDR's on a project marginal returns; and
 - iii. The appropriate regional costs of development per commercial square foot or residential dwelling unit; and
 - iv. Consistency with the conservation principles and purpose and intent of this chapter.
 - 2. Once adopted by the Council, the modified receiving site incentive table shall be used for calculation of receiving site incentives. Within 14 days of adopting a revised incentive table, the Director shall mail notification to property owners with an active TDR certificate letter of intent following adoption of a revised incentive table.
 - 3. If adoption of a revised incentive table is requested by a developer or private property owner, the burden of preparing the economic analysis shall be on the developer or private property owner.
 - 4. The Director shall keep a log of modified receiving site incentives and shall periodically report the modifications to the City Council.

21A.80.100 TDR Transfer Process

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

Attachment "A"

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21A.15 Technical Terms and Land Use Definitions

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

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

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

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

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

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

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

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

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

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

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

Attachment "A"

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20.05.020 Classifications of land use decision processes.

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Exhibit A

LAND USE DECISION TYPE

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