



Stoel Rives_{LLP}

Portland FAR Transfers - Tree Preservation

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Introduction

- Typical Client for FAR Transfer:
 - Buyer - Entitlement stage of development, exploring options to obtain density
 - Buyer - In for building permit; FAR deficiency discovered
 - Seller – Longer-term marketing for sale

FAR Transfer Mechanics

- Unused floor area available for transfer (based on existing development and preserved tree size)
- Limit of 1:1 FAR transfer (based on buyer's site size)
- Covenant recorded on buyer and seller sites (runs with the land)
 - Amendable only with City agreement
 - Restricts tree removal for 50 years on seller site

Attorney Roles

- Usually 3 Attorneys Involved:
 - Buyer and Seller Transactional Attorneys
 - Negotiate and Execute Purchase Agreement
 - Land Use Attorney (Often Buyer Side)
 - Code Compliance Advice, Covenant Approval

Transaction Side

- Negotiate price and purchase terms
- Obtain title insurance for the FAR
- Lender release of FAR (Seller/tree site)
- Close deal and record

Land Use Side

- Zoning Evaluation and Confirm FAR Available and Transferrable
- Negotiate Covenant with City
 - During or prior to building permit application
 - City Form Covenants – work in progress
- Obtain Other City Approvals
 - Arborist review

Other Strategic Considerations

- Timing: 3-4 months +
- Pricing (supply and demand of FAR)
- Transaction carrying costs for transfers
- Incentive to include desirable amenities