

**WAC 458-61A-111 Easements, development rights, water rights, and air rights.** (1) **Easements.** The real estate excise tax applies to the conveyance of an easement for the use of real property in return for valuable consideration. The real estate excise tax affidavit is required only if the transfer is taxable.

(2) **Development rights, water rights, and air rights.**

(a) The real estate excise tax applies to the sale of development rights, water rights, and air rights. The measure of the tax is the total consideration received in exchange for the transfer of the right. The real estate excise tax affidavit must be completed for the transfer of development rights, water rights, and air rights regardless of whether a taxable sale has occurred.

(b) **"Development rights"** means transferable rights to the unused development on a parcel of land measured by the difference between the existing development density on the parcel and the density allowed by applicable zoning laws.

(c) **"Water rights"** means transferable rights to the diversion, extraction or use of water arising by virtue of the ownership of land located contiguous to surface water, a water right claim, or the possession of a water right permit or certificate issued by the department of ecology.

(d) **"Air rights"** means the exclusive undisturbed use and control of a designated air space within the perimeter of a stated land area and within stated elevations.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. WSR 05-23-093, § 458-61A-111, filed 11/16/05, effective 12/17/05.]