



**CITY OF BLACK DIAMOND**  
**February 28, 2019 Special Meeting Agenda**  
25510 Lawson St., Black Diamond, Washington

**5:30 P.M. – CALL TO ORDER, FLAG SALUTE, ROLL CALL**

**WORK SESSION:**

- 1) Discussion on the City's TDR Program – City Attorney David Linehan

**ADJOURNMENT:**

**RESOLUTION NO. 19-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, APPROVING THE REMOVAL OF DEVELOPMENT RIGHTS FROM CERTAIN TDR SENDING SITES; AUTHORIZING PLACEMENT OF DEVELOPMENT RIGHTS CERTIFICATES INTO TRUST WITH THE CITY'S TDR BANK; APPROVING A TDR TRUST AGREEMENT WITH CCD BLACK DIAMOND PARTNERS LLC; AND ESTABLISHING A TDR TRANSFER FEE**

**WHEREAS**, the City has adopted a program authorizing the transfer of development rights from designated sending area parcels to designated receiving area parcels pursuant to Black Diamond Municipal Code ("BDMC") Chapter 19.24 ("TDR Program"); and

**WHEREAS**, the Development Agreement for The Villages Master Planned Development ("Development Agreement") between the City and CCD Black Diamond Partners LLC ("Oakpointe") directs the City at Section 4.9 to work cooperatively with Oakpointe to create an efficient process for facilitating such TDR transactions consistent with the TDR Program; and

**WHEREAS**, Oakpointe is the owner of real property within the Ten Trails Master Planned Development (formerly known as "The Villages"), and this property ("Ten Trails Receiving Area") constitutes a portion of the properties designated by the City as "TDR Receiving Areas," to which development rights may be transferred under the TDR Program, as reflected in the TDR Program Map, attached as Exhibit 2 to City Ordinance 752; and

**WHEREAS**, the TDR Program establishes a TDR Bank to be administered by the City, and further provides that development rights certificates ("DRC") may be placed in trust in the TDR Bank, with the City acting as trustee of the DRCs, subject to the conditions set forth in BDMC 19.24.065; and

**WHEREAS**, BDMC 19.24.065 requires that certain preconditions be met before DRCs may be placed in trust in the City's TDR Bank, including a determination by the City Council that the immediate removal of development rights from specified sending areas prior to the time that such rights are transferred to a specified receiving area will further the goals and purposes of the City's comprehensive plan, the TDR Program, and the 1996 Black Diamond Urban Growth Area Agreement; and

**WHEREAS**, the City Council finds that immediate removal of development rights from each of the sending sites identified on the TDR Program Map attached as Exhibit 2 to Black Diamond Ordinance 752, dated December 26, 2003 (collectively, "Sending

Sites”), would further the goals and purposes of the City’s comprehensive plan, the TDR Program, and the 1996 Black Diamond Urban Growth Area Agreement (“BDUGAA”); and

**WHEREAS**, the City Council finds that immediate removal of development rights from the Sending Sites to facilitate future transfers of those development rights to TDR receiving areas would further the purposes and goals of the City’s comprehensive plan (including Sections 2.2, 2.3, 4.1.1, 4.2.2, 4.3.1, 5.4.1, 5.4.3, 5.6.2, 5.6.3, and 8.5.1; Policies LU-3, LU-4, LU-5, LU-7, LU-13, LU-18, LU-19, NE-10, NE-12, and CF-7; Open Space Concept, and TDR Program Guidelines) and the BDUGAA by, among other things, (i) preserving valuable in-City open space, (ii) protecting conservation values associated with the sensitive areas located on the Sending Sites, and (iii) ensuring the continuation of wildlife habitat and natural areas for future generations, including by the recording of approved conservation easements on Sending Sites by owners who agree to enter into TDR transactions with owners of TDR receiving areas; and

**WHEREAS**, the City Council finds that immediate removal of development rights from the Sending Sites would further the purposes and goals of the TDR Program and the BDUGAA by (a) facilitating the shifting of new development and density to portions of the City where necessary infrastructure and services are already being constructed (or are subject to a binding commitment for construction) and where growth has already been approved pursuant to The Villages MPD and Development Agreement; (b) making the TDR Program more effective and user-friendly because holders of DRCs may sell their development rights to owners of TDR receiving areas without having to wait for the receiving area owner to identify a specific parcel in a final plat to be assigned the development rights of the seller; and (c) and the City obtains immediate assurance, upon recording of an approved conservation easement, that the open space and conservation values associated with the Sending Site parcels will be preserved in perpetuity, thereby offsetting any corresponding loss of natural areas within the TDR receiving areas, where new development has been approved; and

**WHEREAS**, the City Council finds that immediate removal of development rights from the Sending Sites would further the purposes and goals of the BDUGAA because the BDUGAA expressly requires the use of the TDR Program to achieve planned densities within the annexation areas brought into the City (see BDUGAA Sections 6.3, 7.3, 7.4, and 5.2(a)(6), and Definitions of “In-City Open Space” and “Transfer of Development Rights Program”), and by approving the immediate removal of development rights from the designated Sending Sites, the City is implementing the objective of the BDUGAA to transfer development off of priority open space to residential areas within the annexation areas that are now designated as TDR receiving areas; and

**WHEREAS**, the City Council finds that the establishment of a trust account within the TDR Bank for purposes of holding DRCs in trust, with Oakpointe acting as Trustor and the City acting as Trustee (f/b/o Oakpointe) of the DRCs, pending approval of final plats to which DRCs may be applied as needed, would further the interests of the TDR Program and fulfill the City’s obligation under the Development Agreement to provide a

functional and efficient process for completing TDR transactions consistent with BDMC Chapter 19.24; and

**WHEREAS**, the City Council finds that TDR Trust Agreement (including the attached conservation easement and other documentation) attached to this Resolution as Exhibit 1 satisfies the requirements and intent of BDMC 19.24.065 for holding DRCs in trust within the TDR Bank and fulfills all other applicable requirements of the TDR Program; and

**WHEREAS**, the City Council finds that the TDR Trust Agreement (including the attached conservation easement and other documentation) attached to this Resolution as Exhibit 1 provides an appropriate template for other TDR Receiving Area owners in the City who may wish to utilize the TDR Bank to facilitate TDR transactions with DRC holders; and

**WHEREAS**, the City currently lacks an approved fee for processing DRC transfers pursuant to BDMC 19.24.090, and the City Council wishes to adopt such a fee to cover the City's administrative costs and burdens of updating its TDR database to reflect such DRC transfers, issuing appropriate notices to DRC holders, and re-issuing updated DRCs when necessary;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DOES RESOLVE AS FOLLOWS:**

**Section 1. Immediate Removal of Development Rights from TDR Sending Sites.** The City Council hereby determines that the immediate removal of development rights from each of the sending sites identified on the TDR Program Map attached as Exhibit 2 to Black Diamond Ordinance 752, dated December 26, 2003 (collectively, "Sending Sites"), would further the goals and purposes of the City's comprehensive plan, the TDR Program, and the 1996 Black Diamond Urban Growth Area Agreement ("BDUGAA"), for at least the reasons stated above, among others.

**Section 2. Approval of Use of TDR Bank by Oakpointe to Facilitate DRC Transfers.** The City Council hereby approves the use of the City's TDR Bank and the creation of a TDR trust account, pursuant to BDMC 19.24.065, in which DRCs associated with Sending Sites may be placed into trust f/b/o Oakpointe for future transfer to final plats within the Ten Trails Receiving Area pursuant to BDMC 19.24.100.

**Section 3. Authorization of the Mayor to Execute TDR Trust Agreement.** The Mayor is hereby authorized to enter into a TDR Trust Agreement with Oakpointe substantially in the form attached hereto as Exhibit 1, for the purpose of facilitating efficient TDR transactions between Oakpointe and owners of Sending Sites, as required under the Development Agreement previously approved by the City Council and as contemplated by the BDUGAA and the TDR Program.

**Section 4. TDR Transfer Fee.** The City Council hereby establishes a fee of three hundred twenty-four dollars (\$324.00) per transaction, regardless of the number of

development rights included in the transaction, for DRC transfers requested under BDMC 19.24.090. This fee is imposed to cover the costs and administrative burden to the City of updating its TDR database to reflect DRC transfers, issuing notices to DRC holders when appropriate, and re-issuing updated DRCs when necessary. The City Clerk is directed to update the City's fee schedule accordingly.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS \_\_\_\_ DAY OF MARCH, 2019.**

CITY OF BLACK DIAMOND:

\_\_\_\_\_  
Carol Benson, Mayor

Attest:

\_\_\_\_\_  
Brenda L. Martinez, City Clerk

## DRC Trust Agreement

THIS DRC Trust Agreement dated as of the \_\_\_ day of \_\_\_\_\_, 20\_\_\_ (this “Agreement”), is entered into by and among CCD Black Diamond Partners LLC, a Delaware limited liability company (“Trustor”) and City of Black Diamond, a non charter code city in the State of Washington, operating under the provisions of Chapter 35A RCW (“Trustee” or “City”).

### R E C I T A L S:

WHEREAS, The Villages Master Planned Development Development Agreement between Trustor and Trustee dated December 12, 2011 recorded under King County recording number 20120130000640, as amended (the “Development Agreement”), directs the Trustor and City at Section 4.9 to work cooperatively to create an efficient process for TDR transactions consistent with Black Diamond Municipal Code Ch. 19.24 (the “TDR Program”);

WHEREAS, Trustor is the owner of the real property comprising the Ten Trails Master Planned Development (formerly known as The Villages) as legally described in Exhibit B to the Development Agreement, as may be amended from time to time (the “Ten Trails Receiving Area”);

WHEREAS, the Ten Trails Receiving Area is a portion of the real property identified as “TDR Receiving Areas” by the City to which development rights can be transferred under the TDR Program, as identified on the map entitled the “TDR Program Map,” which is attached as Exhibit 2 to Ordinance 752 and is dated December 18, 2003;

WHEREAS, as set forth in Black Diamond Resolution No. \_\_\_\_\_, the Black Diamond City Council has determined that the immediate removal of development rights from any and all of the sending sites legally described on the attached Exhibit A (each a “Sending Site,” and collectively the “Sending Sites”) for future transfer to the Ten Trails Receiving Area will further the goals and purposes of the City’s Comprehensive Plan, the City’s TDR Program, and the 1996 Black Diamond urban growth area agreement;

WHEREAS, the Sending Sites were identified by the City as real property from which development rights can be transferred under the TDR Program as identified on the map entitled TDR sending area map, which is attached as Exhibit 2 to Ordinance 752 and is dated December 26, 2003;

WHEREAS, the TDR Program at Black Diamond Municipal Code (“BDMC”) Section 19.24.055(A) created the City of Black Diamond TDR bank (the “TDR Bank”) and further authorized the TDR Bank at BDMC 19.24.055(G) to place development right certificates in trust consistent with the terms of BDMC 19.24.065;

WHEREAS, Black Diamond Resolution No. \_\_\_\_\_, also specifically authorizes development right certificates from the Sending Sites to be placed into trust with the City’s TDR Bank;

WHEREAS, Trustor intends to enter into contracts to purchase (each a “Purchase Agreement”) certain development rights from the record owners of the Sending Sites (individually “Seller” and collectively the “Sellers”) and needs to use the City’s TDR Bank to facilitate the transactions (each a “Development Rights Purchase Transaction”); and

WHEREAS, BDMC 19.24.065(A)(3) requires that Trustor and Trustee execute a DRC trust agreement prior to or coincident with placing its first DRC into trust within the City’s TDR Bank.

#### A G R E E M E N T:

NOW, THEREFORE, in consideration of the mutual covenants and the other good and valuable consideration contained herein, the receipt and sufficiency of which are hereby acknowledged, Trustor and Trustee hereby agree as follows:

1. Creation of Trust. Upon mutual execution of this Agreement, Trustee agrees to (i) hold DRCs acquired by Trustor through Development Rights Purchase Transactions in trust, for the benefit of Trustor, within the City of Black Diamond’s TDR Bank and (ii) disburse the DRCs held in trust to Trustor in accordance with the terms of this Agreement.

2. Development Rights Certificate.

- a. If any Seller is not in possession of a valid development right certificate issued by the City certifying that at least the number of development rights it is under contract to sell to Trustor consistent with the Purchase Agreement are available for severance from the Sending Site, then Seller shall submit a complete application for a development right certificate to the City consistent with BDMC 19.24.060 along with any applicable application fee at least forty-five (45) day prior to the closing date set forth in the Purchase Agreement (the “Closing Date”). If the City approves the development right certificate application submitted by Seller consistent with BDMC 19.24.060(E), then the City shall issue a development right certificate for the Sending Site (the “DRC”) stating the quantity of development rights remaining thereon. Simultaneous therewith, the City shall also record a notice of issuance of the DRC with the King County’s Recorder’s Office as set forth in BDMC 19.24.060(E). Such recording cost shall be paid by Seller, who shall, at the time of application, pay a deposit of \$150.00 to the City to be applied toward recording fees.
- b. If Seller is already in possession of such a valid DRC, or following City’s issuance of the DRC as outlined in subsection (a) above, Trustor shall send a written notice to the Trustee of its intent to use the TDR Bank to facilitate the Development Rights Purchase Transaction and include in such notice both the number of development rights to be purchased from Seller and the Closing Date. Such written notice shall be received by Trustee no later than ten (10) business days prior to the Closing Date.

3. Steps to Place DRCs into Trust. Following Trustee’s receipt of the written notice from Trustor described in subsection 2(b) above, Trustor and Trustee shall perform the following steps to place DRCs into trust with the TDR Bank:

- a. Notice of Sale of DRC. The Escrow Agent identified in the Purchase Agreement shall be instructed by Trustor to deliver an original signed written notification as set forth in BDMC 19.24.090 from Seller stating the quantity of development rights associated with the DRC that Seller has conveyed to Trustor for the Ten Trails Receiving Area and that shall be held in trust by the Trustee for the benefit of Trustor in the City’s TDR Bank. Such written notification shall occur pursuant to the form attached hereto as **Exhibit B** (the “Notice of Sale of DRC”) and incorporated herein by this reference. Included within such Notice shall be Seller’s payment to the City of the applicable transfer fee as specified in the City’s adopted fee schedule. Within fifteen (15) business days of the Trustee’s receipt of the Notice of Sale of DRC, the City shall perform the following:
  - i. Send by registered mail for recording with the King County Recorder’s Office, at Trustor’s cost, notice that that the DRC holder has changed to the “City of Black Diamond, as Trustee pursuant to the terms of the DRC Trust Agreement between CCD Black Diamond Partners LLC and the City of Black Diamond dated *[fill in date of the Agreement]*” and is being held in the City’s TDR Bank for benefit of Trustor. Once this notice is recorded, the DRC shall not have an expiration date.
  - ii. If applicable, reissue a DRC to Seller indicating any remaining development rights available for sale or transfer from the Sending Site, if any.
  - iii. Update the City’s TDR Program database to identify the trust status of the DRC held in trust by the TDR Bank.
  - iv. Issue a written notice to Trustor and Seller that the TDR Program database has been updated to reflect the transfer.

The transfer fee shall be established by the City, and updated as necessary, to cover the City’s costs in completing the foregoing steps. The City shall not perform the four steps outlined above unless and until the items described in Sections 4 and 5, below, have been completed.

4. Deed of Transfer. At the closing of the Development Rights Purchase Transaction (“Closing”), Seller shall transfer the development rights from the Sending Site(s) to the Trustee for the benefit of the Trustor using the form of deed of transfer set forth in **Exhibit C** (“Deed of Transfer”). Consistent with BDMC 19.24.100, the Deed of Transfer shall specify the number of

development rights, the legal description of the Sending Site, and the legal description of the Ten Trails Receiving Area.

5. Conservation Easement. At Closing, a permanent conservation easement in a form approved by the Black Diamond City Attorney as set forth in **Exhibit D** (“Conservation Easement”) and signed by the Mayor shall be recorded on the Sending Site by the Escrow Agent and filed with the City Clerk per BDMC 19.24.080(C). It is understood by the Trustor and Trustee that unless the Deed of Transfer reflects the sale to Trustor of all of the Seller’s remaining development rights on the Sending Site as reflected in the corresponding DRC, the Conservation Easement must include a legal description specifying the portion of the Seller’s Sending Site parcel (the “Conservation Zone”) that is to be made subject to the development prohibitions and/or use restrictions set forth in the Conservation Easement.

6. Administration of Trust. Simultaneous with Trustor’s submittal of an application for: (i) final plat approval for any division of a final plat, (ii) final binding site plan approval, or (iii) site plan review approval within the Ten Trails Receiving Area requiring development rights from the TDR Bank, Trustor shall deliver a written notice to Trustee that it wishes to transfer a DRC, or a portion of the development rights evidenced by a DRC, to a specific parcel(s) within the Ten Trails Receiving Area. This notice shall include the certificate number(s) of the DRC(s) (or portion(s) thereof) being transferred to the receiving area. Thereafter, if the City approves the Trustor’s application for final plat, final binding site plan, or site plan review, Trustee shall disburse, within five (5) business days of such approval, the DRC or applicable portion thereof to Trustor by issuing a notice in recordable format that Trustor shall record at its expense simultaneous with the final plat, final binding site plan, or site plan review stating that: (i) the DRC (or a portion thereof if applicable) is now held by Trustor; and (ii) identifying the specific parcel(s) within the Ten Trails Receiving Area receiving the development right(s). Simultaneous therewith, the City shall update the TDR Program database accordingly.

7. Termination of Trust. This Agreement shall terminate upon the later of the following: (i) expiration of the Development Agreement or (ii) when all development rights evidenced by the DRCs held in TDR Bank on behalf of Trustor have been applied to a specific parcel(s) within the Ten Trails Receiving Area pursuant to the process outlined in Section 6 of this Agreement. If Trustor still has DRCs in the TDR Bank when the MPD Funding Agreement set forth in Exhibit N of the Development Agreement expires, Trustor and Trustee shall work cooperatively to revise Sections 14 and 15 herein to replace references to the terms of the Development Agreement.

8. Accounting. Trustee shall provide Trustor with quarterly statements detailing the number and status of development rights certificates it holds in trust for Trustor.

9. Dispute. In the event that a dispute shall arise as to the disposition of a DRC, Trustee shall have the right, at its option, to either hold the same or deposit the same with a court of competent jurisdiction pending decision of such court, and Trustee shall be entitled to rely upon the decision of such court.

10. Conflict with Purchase Agreement and/or Development Rights Purchase Transaction. In the event of any conflict regarding the subject matter of this Agreement and the terms and conditions of a Purchase Agreement and/or Development Rights Purchase Transaction, the terms and conditions of this Agreement shall control.

11. Trustee Liability. Trustee shall have no liability whatsoever arising out of or in connection with its activity as Trustee provided it does not act with gross negligence, in bad faith or willful disregard of the terms of this Agreement, and Trustor agrees to indemnify and hold harmless Trustee all out-of-pocket loss, cost, claim, damage, liability and expenses (including reasonable legal fees) actually incurred by Trustee by reason of its acting as trustee under the terms of this Agreement, unless caused by Trustee's gross negligence, bad faith, or willful disregard of the terms of this Agreement.

12. Reliance. Trustee shall be entitled to rely upon any judgment, certification, demand or other writing delivered to it hereunder without being required to determine the authenticity or the correctness of any fact stated therein, the propriety or validity thereof, or the jurisdiction of a court issuing any such judgment. Trustee may act in reliance upon (a) any instrument or signature believed to be genuine and duly authorized, and (b) advice of counsel in reference to any matter or matters connected therewith.

13. Prevailing Party Expenses. In the event of a dispute concerning this Agreement, the substantially prevailing party shall be entitled to be reimbursed by the other party for its reasonable legal fees actually incurred in the dispute.

14. Trustee Costs. Trustee's costs associated with performing its obligations under this Agreement (as well as the recording costs assumed by Trustor hereunder) shall be deemed MDRT Costs as defined in Exhibit N of the Development Agreement and shall be invoiced monthly by the City and paid by Trustor according to the provisions of the MPD Funding Agreement set forth in such Exhibit N. Trustee's costs of administration are expressly understood by the Parties to include administrative time and expenses associated with transferring DRCs out of the trust for final plat approval and recording, issuing notices, updating the TDR Program database, and preparing regular reports to Trustor concerning the number and status of DRCs held in trust. Notwithstanding the foregoing, Trustee acknowledges and agrees that it shall first use and apply the DRC application fee, the transfer fee, and the \$150 recording fee deposit for its costs associated with performing its obligations under this Agreement prior to invoicing Trustor for any costs in excess of these amounts.

15. Notices. Notices given under this Agreement shall be given to the parties at the addresses and in the manner set forth in Section 14 of the MPD Funding Agreement set forth in Exhibit N of the Development Agreement.

16. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, without reference to its choice-of-law rules.

17. Counterparts. This Agreement, and any amendment hereto (as evidenced by a written agreement between the parties hereto), may be executed in any number of counterparts and by each party on separate counterparts, each of which when so executed and delivered shall be deemed an original and all of which taken together shall constitute but one and the same instrument. The parties may deliver executed signature pages to this Agreement by facsimile or electronic transmission, which facsimile or electronic copy shall be deemed to be an original signature page.

18. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns.

19. Jurisdiction. ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL BE LITIGATED IN THE APPLICABLE FEDERAL DISTRICT COURT OR THE STATE COURT HAVING JURISDICTION FOR KING COUNTY, WASHINGTON (COLLECTIVELY, THE "COURTS"). BY EXECUTING AND DELIVERING THIS AGREEMENT, THE PARTIES HERETO SUBMIT TO THE NON-EXCLUSIVE PERSONAL JURISDICTION OF THE COURTS FOR ANY SUIT, ACTION OR PROCEEDING ARISING OUT OR IN RELATION TO THIS AGREEMENT.

IN WITNESS WHEREOF, the parties have executed this DRC Trust Agreement as of the date set forth above.

**TRUSTOR:**

CCD BLACK DIAMOND PARTNERS LLC, a Delaware limited liability company

By: Oakpointe LLC, a Washington limited liability company

Its: Manager

Title: Authorized Person

By: \_\_\_\_\_

Name: Brian Ross

Title: Authorized Person

**TRUSTEE:**

CITY OF BLACK DIAMOND

\_\_\_\_\_  
Carol Benson, Mayor

Attest:

\_\_\_\_\_  
Brenda Martinez, City Clerk

Approved as to Form:

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David Linehan, City Attorney

**Exhibit A**

SENDING SITE LEGAL DESCRIPTION

**Exhibit B**

FORM OF NOTICE OF SALE OF DRC

[DATE]

CITY OF BLACK DIAMOND  
ATTN: Barbara Kincaid, Community Development Director  
24301 Roberts Drive  
PO Box 588  
Black Diamond, WA 98010

Dear Ms. Kincaid:

This letter provides written notice that [NAME OF SELLER] (“DRC Holder”) has effective as of the date of this letter and pursuant to BDMC 19.24.090, conveyed the right to use [IDENTIFY NUMBER OF DEVELOPMENT RIGHTS CONVEYED] of Development Rights Certificate (DRC) [ADD SERIAL NUMBERS FROM DRC] dated [ADD DRC DATE] to City of Black Diamond, as Trustee for CCD Black Diamond Partners LLC pursuant to the terms of the DRC Trust Agreement dated \_\_\_\_\_.

Enclosed is the applicable transfer fee for the City in the amount of \$\_\_\_\_\_.

DRC Holder requests that the City enter the data into the TDR Program database; change the name of the DRC holder to “City of Black Diamond, as Trustee pursuant to the terms of the DRC Trust Agreement between CCD Black Diamond Partners LLC and the City of Black Diamond dated [fill in date of the applicable DRC Trust Agreement]”; issue a written notice to CCD Black Diamond Partners LLC and DRC Holder that the TDR Program database has been updated to reflect the transfer, and record a notice with the King County Recorder’s Office that the DRC holder has changed.

*[IF DRC HOLDER DOES NOT SELL ALL TDRS TO CCD BLACK DIAMOND PARTNERS LLC, THEN INCLUDE FOLLOWING PARAGRAPH: DRC Holder requests that the City reissue a DRC to DRC Holder indicating the remaining \_\_\_\_ development rights available for sale or transfer from the Sending Site.]*

If you have any questions regarding this written notice of DRC transfer and sale, please contact DRC Holder at \_\_\_\_\_ and CCD Black Diamond Partners LLC at 425-898-2100.

Sincerely,

[NAME OF SELLER]

**Exhibit C**

FORM OF DEED OF TRANSFER

**AFTER RECORDING RETURN TO:**

City Clerk  
City of Black Diamond  
24301 Roberts Drive  
Black Diamond, WA 98010

**DEED OF TRANSFER OF DEVELOPMENT RIGHTS**

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**Grantor:** \_\_\_\_\_

**Grantee:** \_\_\_\_\_

**Legal Description:** See Exhibit A, attached

**Abbreviated Legal:** \_\_\_\_\_

**Tax Parcel Identification Number:** \_\_\_\_\_

**Reference Numbers of Related Documents:** \_\_\_\_\_ (recording number(s))

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This DEED OF TRANSFER OF DEVELOPMENT RIGHTS (this “Deed”) is agreed to and executed by \_\_\_\_\_ (“Grantor”), and \_\_\_\_\_ (“Grantee”).

RECITALS

WHEREAS, Chapter 19.24 of the Black Diamond Municipal Code (“BDMC”) establishes a Transfer of Development Rights (TDR) Program (the "TDR Program") and sets forth required procedures for transferring transferrable development rights ("TDRs") from designated TDR sending area parcels to eligible TDR receiving area parcels, which transfers may be facilitated using the City of Black Diamond’s (the "City") TDR bank; and

WHEREAS, Grantor is the present owner of the real estate situated in the City of Black Diamond, State of Washington as legally described on the attached Exhibit A (the “Sending Site”), and the City has allocated \_\_\_\_\_ TDRs to the Sending Site as reflected in that certain development rights certificate (“DRC”) issued by the City under DRC No. \_\_\_\_\_; and

WHEREAS, Prior to the date of this Deed, Grantor has used, extinguished, or conveyed [REDACTED] of the [REDACTED] total TDRs allocated by the City to the Sending Site pursuant to the TDR Program; and

WHEREAS, pursuant to BDMC 19.24.065 and 19.24.080, Grantor has executed a conservation easement (in a form approved by the City) establishing a conservation easement on the Sending Site, and that conservation easement has been or will be recorded with the King County Recorder's Office at the same time as this Deed is recorded; and

WHEREAS, Grantee is the owner of one or more TDR receiving area parcels within the City and desires to acquire TDRs for use in the development of Grantee's property; and

WHEREAS, Grantor desires to sell [REDACTED] TDRs associated with the Sending Site and DRC No. [REDACTED] to Grantee; and

WHEREAS, BDMC 19.24.100 requires that sales of TDRs occur by deed of transfer, on a form approved by the City and specifying the number and source of development rights sold or conveyed, which must be recorded with the King County Recorder's Office;

NOW THEREFORE, Grantor and Grantee agree as follows:

#### CONVEYANCE

Grantor, for and in consideration of the sum of [REDACTED] (\$ [REDACTED]), the receipt and sufficiency of which are hereby acknowledged, hereby grants, warrants and conveys to Grantee, including its heir, successors, and assigns, all of Grantor's right, title and interest in [REDACTED] TDRs of the total [REDACTED] TDRs evidenced by DRC No. [REDACTED] for attachment to, and use in conjunction with the development of the real property situated in the City of Black Diamond, State of Washington as legally described on the attached Exhibit B (the "Receiving Site"). This Deed conveys only the aforementioned TDRs and no other interest in the Sending Site.

Grantor covenants and warrants that Grantor is the lawful owner of DRC No. [REDACTED] and has the right to transfer the number of TDRs being conveyed to Grantee by this Deed, free and clear of all other liens or encumbrances.

Grantor intends that this Deed include all applicable warranties set forth in RCW 64.04.030 as if fully set forth and incorporated herein. This Deed is binding on and shall inure to the benefit of Grantor, Grantee, and their respective heirs, successors, and assigns. The above-stated Recitals are hereby incorporated by this reference.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

Grantor: \_\_\_\_\_

Grantee: \_\_\_\_\_

Printed name: \_\_\_\_\_

Printed name: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this day personally appeared before me [redacted], to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein described.

WITNESS my hand and official seal hereto affixed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Notary Signature)

\_\_\_\_\_  
(Printed Name of Notary)

NOTARY PUBLIC in and for the State of Washington

Residing at: \_\_\_\_\_

My commission expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this day personally appeared before me [redacted], to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein described.

WITNESS my hand and official seal hereto affixed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Notary Signature)

\_\_\_\_\_  
(Printed Name of Notary)

NOTARY PUBLIC in and for the State of Washington

Residing at: \_\_\_\_\_

My commission expires: \_\_\_\_\_

EXHIBIT A

Legal Description of Sending Site

EXHIBIT B

Legal Description of Receiving Site

**Exhibit D**

FORM OF PERMANENT CONSERVATION EASEMENT

When recorded return to:

City of Black Diamond  
Attn: City Clerk  
24301 Roberts Drive  
Black Diamond, WA 98010

**CONSERVATION EASEMENT**

**Grantor:** [Redacted]

**Grantee:** The City of Sammamish

**Legal Description:** See Attached Exhibit A

**Assessor’s Tax Parcel Numbers:** [Redacted]

THIS CONSERVATION EASEMENT (hereinafter “Easement”) is made by [Redacted], having an address of [Redacted], Black Diamond, WA 98010, (“Grantor”), in favor of the City of Black Diamond, a municipal corporation organized under the laws of the State of Washington (“Grantee” or “City”) (collectively, “the Parties”).

**1. RECITALS AND DEFINITIONS**

**1.1.** Grantor is the sole owner in fee simple of real property located in the City of Black Diamond, King County, Washington, which includes one or more parcels that have been designated by the City as Transfer of Development Rights (“TDR”) Sending Area parcels as defined in Chapter 19.24 of the Black Diamond Municipal Code (“BDMC”), which property is described more specifically in Exhibit A (Parcel Legal Description) attached hereto and incorporated herein by this reference, and which is referred to throughout this Easement as the “Protected Property.”

**1.2.** The Protected Property contains natural and open-space land that possesses one or more of the following characteristics (hereafter referred to as “Conservation Values”): wetlands, riparian habitat, floodplains, fish and wildlife habitat, soil and water resources, and other natural and open space areas of ecological value and importance to Grantor, the residents of Black Diamond and King County, and the people of the State of Washington.

**1.3.** Grantors wish to create a perpetual and irrevocable conservation easement to

preserve and maintain the Conservation Values located within a designated “Conservation Zone” (defined below and depicted in Exhibit B attached hereto) on the Protected Property.

**1.4.** The conservation easement is intended to comply with and fulfill the purposes of the TDR Program set forth in Chapter 19.24, BDMC. Execution of this Easement is a condition precedent to the transfer of development rights from the Protected Property to an authorized receiving area.

**1.5.** The Parties intend that the Conservation Values of the Protected Property be preserved and maintained in perpetuity by restricting development on the Protected Property to only those uses that are consistent with the remaining development rights, if any, attached to the Protected Property, and by permitting only those land uses and development activities in the Conservation Zone on the Protected Property that do not significantly interfere with or impair its Conservation Values, as further provided in this Easement.

**1.6.** The Parties acknowledge that the City has allocated to the Protected Property a total of [REDACTED] development rights (“Total Property Development Rights”), of which Grantor has previously conveyed [REDACTED] prior to the date of this Easement. Coincident with the recording of this Easement, Grantor is conveying [REDACTED] of the remaining development rights attached to the Protected Property to a TDR Program Receiving Area. As such, Grantor has conveyed [REDACTED] development rights, representing [REDACTED] percent ([REDACTED]%) of Total Property Development Rights allocated to the Protected Property by the City. This percentage is referred to hereafter as the “Conservation Percentage.”

**1.7.** It is Grantor’s intent that the development and use restrictions of this Easement apply to the Conservation Zone described and depicted in Exhibit B (Conservation Zone Legal Description and Map) attached hereto and incorporated herein by this reference. The Conservation Zone consists of an area of the Protected Property containing [REDACTED] square feet, which is substantially equal to the total square footage of the Protected Property multiplied by the Conservation Percentage. The Conservation Zone shall be a contiguous area within the Protected Property unless the Grantor demonstrates that contiguity is impracticable without causing the size of the Conservation Zone to exceed the Conservation Percentage. The portion of the Protected Property that lies outside the Conservation Zone is hereafter referred to as the “Unrestricted Area.”

**1.8.** In the event that Grantor is conveying one hundred percent (100%) of the Total Property Development Rights associated with the Protected Property, then the Conservation Zone shall be co-extensive with the legal description of the Protected Property provided in Exhibit A, in which case the development and use restrictions provided in this Easement shall apply to the entire area of the Protected Property, and there shall be no Unrestricted Area.

**1.9.** After the effective date of this Easement, if Grantor (or its successor-in-interest) submits any land-use permit application or any other permit to develop the Unrestricted Area of the Protected Property, the City shall review the application(s) for compliance with the BDMC as of the filing date of the completed application. Development on the Unrestricted Area will be permitted only to the extent allowed by the remaining development rights attached to the

Protected Property, and only to the extent that the development does not significantly interfere with or impair the Conservation Values of the Conservation Zone, as evaluated under the City's sensitive areas ordinance and related codes.

## 2. CONVEYANCE AND CONSIDERATION

**2.1.** For and in consideration of the mutual covenants, terms, conditions, and restrictions contained in this Easement, and other good and valuable consideration provided by the Parties, Grantor hereby voluntarily grants, conveys, and quit claims to Grantee a conservation easement in perpetuity over the Conservation Zone of the Protected Property, the terms of which are as set forth in this Easement.

**2.2.** This is a conveyance of an interest in real property under the provisions of RCW 64.04.130 and constitutes a perpetual servitude upon that portion of the Protected Property described herein as the Conservation Zone. Grantor expressly intends that this Easement run with the land and that this Easement shall be binding upon Grantor's successors and assigns.

## 3. RIGHTS CONVEYED TO GRANTEE

The following rights are conveyed to Grantee by this Easement:

### 3.1. Access.

**3.1.1. With Notice.** With reasonable notice to Grantor, the Grantee or its authorized representatives may enter onto Conservation Zone of the Protected Property for purposes of inspection, monitoring, and enforcement to ensure compliance with the provisions of this Easement.

**3.1.2. Without Notice.** Without notice to Grantor, and to confirm the existence of a violation, the Grantee may enter the Conservation Zone of the Protected Property on the reasonable belief that a violation of this Easement has occurred.

**3.2. Restriction of Activities or Use.** The right to restrict use or activity within the Conservation Zone that is inconsistent with this Easement (or elsewhere on the Protected Property if such use or activity is likely to impair or significantly interfere with the Conservation Values of the Conservation Zone), as more particularly set forth in Section 5 ("Prohibited Uses and Activities"), below.

**3.3. Restoration.** The right to request or compel the restoration of such areas or features of the Conservation Zone as may be damaged by uses or activities inconsistent with the provisions of this Easement.

## 4. GRANTOR'S RESERVED RIGHTS AND OBLIGATIONS

**4.1. General Rights.** Grantor reserves for itself and its successors and assigns all rights accruing from ownership of the Protected Property that are neither inconsistent with nor

prohibited by this Easement. Grantor specifically reserves for itself and its successors and assigns, the following non-exhaustive list of uses and activities within the Conservation Zone:

**4.1.1. Recreation.** The undertaking of passive recreational activities, such as walking, picnicking, traversing and observing wildlife on the Protected Property; provided that such activities are conducted in a manner and intensity that does not adversely affect the Conservation Values of the Conservation Zone. Notwithstanding the foregoing, Grantor shall not construct improvements in furtherance of the foregoing recreational uses and activities without advance, written consent from Grantee (and upon issuance of any required City permits for such improvements).

**4.1.2. Road Maintenance.** The use, maintenance, or replacement of existing roads necessary to maintain, restore, or enhance the Conservation Values or to facilitate access within the Conservation Zone necessary for uses and activities expressly allowed in this Section (subject to generally applicable City permitting requirements, if any).

**4.1.3. Fences.** The construction and maintenance of fences within or around the Conservation Zone (subject to generally applicable City permitting requirements, if any).

**4.1.4. Habitat Stewardship, Restoration, and Enhancement.** Constructing, installing, planting, maintaining, and engaging in other activities to maintain or further restore or enhance the Conservation Values of the Conservation Zone, which may include, but are not limited to, mowing grass and weed clearing; providing temporary above-ground irrigation; incidental or minor pruning of native plants to encourage growth or for cut-flower arrangements for non-commercial purposes; and physical removal of invasive weed species.

**4.1.5. Maintenance.** Taking various actions necessary to protect the Conservation Values and other features of the Conservation Zone, such as planting or replacing native plant species, and weeding.

**4.1.6. Trails.** Constructing, installing, repairing, and maintaining trails for non-motorized, non-commercial use by Grantor and/or the public (if public access is granted) that are maintained and/or owned by, or for the benefit of, a public agency or a non-profit conservation organization, subject to generally applicable City permitting requirements.

**4.1.7. Signs.** The installation and maintenance of signs specific to the uses authorized in this Easement, provided that such installation does not adversely affect the Conservation Values, and further provided that such signs comply with applicable limitations or permitting requirements set forth in the BDMC.

**4.1.8. Protection of Health or Safety.** The undertaking of other activities necessary to protect human health or safety, or that are actively required by and subject to compulsion of any governmental agency with authority to require such activity; provided that any such activity shall be conducted so that adverse impacts on the Conservation Values are avoided, or, if avoidance is not possible, minimized to the greatest extent

possible under the circumstances. Trees that pose an imminent hazard or are determined to be hazardous by a certified arborist may be removed in compliance with applicable substantive and procedural requirements of the BDMC.

**4.1.9. Other Uses Consistent with Preservation of Conservation Values.**

With advance, written approval of the City, any other use that is generally consistent with and accessory to the preservation of Conservation Values within the Conservation Zone and that fulfills the purpose of environmental resource protection under this Easement and the BDMC.

**4.2. Applicability of BDMC and Other Laws.** The further use and development of the Unrestricted Area of the Protected Property is permanently restricted to that which is allowable by the remaining development rights, if any, attached to the Protected Property as of the effective date of this Easement, and as further restricted by the development regulations and any applicable zoning or overlays in effect at the time of filing a complete application for further use and development. None of the covenants, terms, and conditions contained in this Easement are intended to allow any use or development within the Unrestricted Area or the Conservation Zone that is not otherwise permitted by applicable federal, state, and local laws, regulations, ordinances, and adopted standards.

**4.3 Grantor's Obligations and Indemnification.**

**4.3.1. Noxious Weed Control.** Grantor shall comply with all state and local requirements for controlling noxious weeds within the Protected Property and Conservation Zone, including any laws and regulations governing pesticide and herbicide application.

**4.3.2. Structures, Facilities, and Improvements.** Grantor shall remain fully responsible for the use and maintenance of the Protected Property, including all permitted structures, facilities, and improvements associated with any activities permitted within the Conservation Zone.

**4.3.3. Indemnification.** Grantor shall indemnify the City and hold the City harmless from all damages, liabilities, and costs (including attorneys' fees, witness fees, and court costs) of every kind incurred or awarded in connection with any claims, demands, or actions for bodily injury, property damage, or other loss or injury suffered or alleged to have been suffered, by any third party that arise from or relate in any way to the condition of, use of, enjoyment of, access to, or presence on the Protected Property.

**4.4 No Right of Public Access.** This Easement is not intended, nor should it be construed, to convey to the public a right of access to, or use of, the Protected Property or Conservation Zone, unless explicitly provided elsewhere in this Easement.

## **5. PROHIBITED USES AND ACTIVITIES**

**5.1. General Prohibitions.** Grantor shall use and manage the Protected Property to assure that the Conservation Zone will be forever retained predominately in its natural and open-

space condition as a “relatively natural habitat of fish, wildlife, or plants, or similar ecosystem” (as that phrase is used in 26 U.S.C. § 170(h)(4)(A)(ii), as amended, and in regulations promulgated thereunder), and to prevent any uses of, or activities in, the Conservation Zone that may significantly impair or interfere with Conservation Values. Any use of, or activity within, the Conservation Zone that is inconsistent with the preservation of its Conservation Values is prohibited by this Easement, and Grantor acknowledges and agrees that it will not conduct, engage in, or permit any such use or activity. Without limiting the generality of the foregoing, the following uses and activities within the Conservation Zone are inconsistent with the purposes of this Easement and are prohibited:

**5.1.1. Subdivision.** The legal or “de facto” division or subdivision of the Conservation Zone, which shall include, but not be limited to, any subdivision, short subdivision, platting, binding site plan, testamentary division, or other process by which the Conservation Zone is divided into lots or prepared for residential or commercial construction. This prohibition shall not be interpreted to preclude any lot line adjustment that does not reduce the total square footage of the Conservation Zone or otherwise diminish the Conservation Values preserved by this Easement.

**5.1.2. Construction of Improvements.** The placement, installation, or construction of any buildings, structures, non-tillable surfaces, or other improvements of any kind either of a temporary or permanent nature, including, but not limited to, roads, railroads, utilities, cellular phone towers, septic systems, wells, recreational facilities, and parking lots within the Conservation Zone, except as expressly allowed in Section 4, above, or elsewhere in this Easement, and subject to generally applicable City permitting requirements. “Non-tillable surfaces” include asphalt, concrete, gravel, any other cover material not normally associated with cultivation of the soil. Notwithstanding the foregoing restrictions, nothing in this section 5.1.2 prohibits installation of approved stormwater management facilities.

**5.1.3. Alteration of Land.** The alteration of the surface of the land within the Conservation Zone, including, without limitation, the excavation or removal of soil, sand, gravel, peat, or sod, except in conjunction with a use or activity expressly allowed in Section 4, above, and subject to generally applicable City permitting requirements.

**5.1.4. Erosion or Water Pollution.** Any use or activity within the Conservation Zone that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters, unless in conjunction with a use or activity expressly allowed in Section 4, above, and only with appropriate protection or mitigation approved in advance by the City.

**5.1.5. Waste Disposal.** The disposal, storage, or Release of Hazardous Substances, rubbish, garbage, debris, unregistered vehicles, abandoned equipment, parts thereof, or other unsightly or offensive waste or material. The term “Release” means release, generation, treatment, disposal, storage, dumping, burying, or abandonment. The term “Hazardous Substances” means any substances, materials, or wastes that are hazardous, toxic, dangerous, or harmful, or are designated as, or contain components that are hazardous, toxic, dangerous, or harmful, and/or that are subject to regulation as hazardous, toxic, dangerous, or harmful or as a

pollutant by any federal, state, or local law, regulation, statute, or ordinance, including, but not limited to, petroleum or any petroleum product.

**5.1.6. Mining.** The exploration for, or development and extraction or removal of, oil, gas, coal, limestone, fossils, metals, geothermal resources, or rock of any type on or below the surface of the Protected Property.

**5.1.7. Removal of Trees and Other Vegetation.** The topping, cutting, felling, uprooting, girdling, clearing, burning, haying, or major pruning or other destruction or removal of live and dead trees and other vegetation, including removal for commercial purposes, except as expressly provided in Section 4, above, or in conjunction with a use or activity expressly allowed in Section 4, above, subject to general City permitting requirements, if any.

**5.1.8. Agricultural Activities.** The plowing, tilling, or cultivating the soils or vegetation for agricultural purposes, except as expressly provided in Section 4, above.

**5.1.9. Planting or Introduction of Non-Native Species of Plants.** The planting or purposeful introduction of nonnative plants or any invasive species of vegetation.

**5.1.10. Motorized Vehicles and Excessive Noise.** The operation of motorcycles, dune buggies, snowmobiles, or other type of off-road motorized recreational vehicles, the launching or beaching of motorized watercraft, or the operation of other sources of excessive noise pollution, except as expressly provided in Section 4, above.

**5.1.11. Signs.** The placement of signs, billboards, or other advertising material, except as expressly provided in Section 4, above.

**5.1.12. Granting or Allowing New Utility Easements or Installations.** No subsurface activities, including excavation for underground utilities, pipelines, stormwater control facilities, or other underground installations that cause permanent disruption of the surface are permitted, except for those approved by the City or required by state or federal law. Nothing in this Easement, however, prevents Grantor or his successors-in-interest, the City, and any authorized utility from installing and maintaining, in accordance with applicable laws and regulations, any water, sewer, natural gas, electric, or telecommunications lines, structures, and appurtenant facilities as allowed under recorded easements or otherwise required by law. Any temporarily disrupted soils or surfaces shall be restored in a manner consistent with the land's Conservation Values and to as good a condition as prior to the excavation or installation, to the satisfaction of Grantee, in its sole discretion.

**5.1.13. Recreational Activities.** The undertaking of recreational activities and the installation or construction of improvements in furtherance of the same, except as expressly provided in Section 4 above.

**5.1.14. Grazing of Domestic Animals.** The keeping of domestic animals, except in conjunction with a use or activity expressly allowed in Section 4, above.

**5.1.15. Hunting or Trapping.** Hunting or trapping within the Conservation Zone,

except to the extent reasonably determined by Grantor to be necessary to preserve or protect the Conservation Values or otherwise to prevent risk of harm to persons or personal property.

**5.1.16. Harvesting of Native Plants.** The gathering, picking, taking, or harvesting of native plants, except as expressly allowed in Section 4, above.

**5.1.17. Altering of Surface or Subsurface Hydrology Entering, on, or Leaving the Protected Property.** Draining, filling, dredging, ditching, diking, impounding, altering or manipulating aquatic resources of the Conservation Zone, except to the extent reasonably determined necessary by Grantor or Grantee to preserve or protect the Conservation Values of the Protected Property.

## 6. NOTICE

### 6.1. Notice.

**6.1.1. By Grantor.** When required by the terms of this Easement, Grantor shall notify Grantee in writing at the following mailing address: City of Black Diamond, Attention: Community Development Director, P.O. Box 599, Black Diamond, WA 98010.

**6.1.2. By Grantee.** Grantee shall accept written notice from Grantor either in person or by mail at the following address: [REDACTED].

## 7. ENFORCEMENT

**7.1. Grantee's Right to Enforce.** Grantee may prevent any use or activity that violates the terms of this Easement or is otherwise inconsistent with the purpose or intent of this Easement. Grantee may institute legal action to enjoin or abate any violations; to require restoration of the Conservation Zone; for specific enforcement; and/or for damages for breach of any term or condition of this Easement. Enforcement of the terms of this Easement shall be at the sole discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach by Grantor or its agents, employees, contractors, invitees, or licensees shall not constitute or be construed to be a waiver by Grantee of such term or provision or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver. Nothing in this Easement is intended, nor shall it be construed, to create a right in any third party to enforce this Easement or Grantor's obligations hereunder.

**7.2 Notice of Violation; Action.** If Grantee determines that a violation of the terms of this Easement has occurred, is occurring, or will occur imminently, Grantee shall give written notice to Grantor of the violation and demand corrective action sufficient to cure the violation within a specified period of time, and, where the violation involves injury to the Conservation Zone, to restore the portion of the Conservation Zone so injured to its prior condition in accordance with a plan approved by Grantee.

**7.2.1. Failure to Cure.** If, upon receipt of written notice of the violation,

Grantor fails to cure the violation within the time specified by Grantee or fails to respond to the notice of violation within a reasonable time as determined by the City, then the City may bring judicial action in any court of competent jurisdiction to enforce this Easement and Grantor's obligations hereunder. Grantee may also, in Grantee's sole discretion and without awaiting a judicial determination, undertake remedial action to correct the violation and restore any damage to the Conservation Zone resulting therefrom, and the City may recover the costs of such corrective action from Grantor.

**7.2.2. Right to Recover.** In any action to enforce this Easement or to establish a violation of Grantor's obligations hereunder, the prevailing party is entitled to recover damages for injury to any Conservation Values protected by this Easement and the costs of any corrective actions undertaken to remedy violations of this Easement. Without limiting Grantor's liability in any way, Grantee shall first apply any damages recovered to the cost of undertaking corrective or restoration work in the Conservation Zone.

**7.3. Emergency Enforcement.** If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, Grantee may pursue its remedies under this Section 7 without prior notice to Grantor and without waiting for the period provided for cure to expire.

**7.4. Acts Beyond Party's Control.** Grantor shall not be found in default or violation as to any obligation created by this Easement if such Party is prevented from fulfilling its obligation(s) by, or such condition fails to occur due to (a) actions by a trespasser upon the Protected Property; (b) forces beyond Grantor's reasonable control, including flood, earthquake, slide, storm, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, or act or failure to act by court, public authority, or third party, which forces by exercise of due diligence and foresight Grantor could not reasonably have expected or avoided; (c) any action deemed reasonable by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to persons, personal property, or the Conservation Zone due to forces beyond Grantor's reasonable control. In the event the terms of this Easement are violated by acts of trespassers, Grantor agrees, at Grantee's option and expense, to join in any suit, to assign its right of action to Grantee, or to appoint Grantee its attorney in fact, for the purpose of pursuing enforcement action against the responsible parties.

## 8. COSTS, LIABILITIES, TAXES

**8.1. Costs, Legal Requirements, Liabilities and Insurance.** Grantee, in approving and accepting this Easement, assumes no obligation whatsoever for the maintenance, repair, management, supervision, or enhancement of the Conservation Zone and the Protected Property. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, maintenance, repair, management, supervision, or enhancement of the Conservation Zone and the Protected Property.

**8.2. Taxes and Other Costs.** Grantor shall pay all taxes, fees, and charges assessed against the Conservation Zone and the Protected Property by governmental authority as they become due.

## 9. CONDEMNATION AND SUBSEQUENT TRANSFER

**9.1. Condemnation.** If the property subject to this Easement is taken, in the whole or in the part, by any public agency or authority exercising its power of eminent domain, Grantee shall be entitled to receive just compensation based upon the appraised value of the conservation easement or as otherwise determined by court of competent jurisdiction. Grantor may not reach a negotiated settlement with a condemning authority to determine the amount of compensation due for a taking of this Easement or all or any part of the property within the Conservation Zone without the express consent of Grantor.

**9.2. Subsequent Transfers.** Grantor agrees to:

**9.2.1.** Incorporate the terms of this Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest;

**9.2.2.** Describe this Easement in and append it to any executory contract for the transfer of any interest in the Protected Property; and

**9.2.3.** Give written notice to Grantee of the proposed transfer of any interest in all or a portion of the Protected Property at least 30 days prior to the date of such transfer. Notice shall include the name, address, and telephone number of the transferee or the transferee's representative. Such notice is necessary for the City to be able to maintain updated records in its TDR Program database. The failure of Grantor to perform any act required by this Section 9.2 shall not impair the validity of this Easement or limit its enforceability in any way.

**9.3. No Merger.** In the event that Grantee acquires the fee title to the Protected Property, it is the Parties' intention that no merger of title shall take place that would merge the restrictions of this Easement with fee title to the Protected Property and thereby eliminate them, and that the restrictions on the use of the Conservation Zone, as embodied in this Easement, shall, in the event title becomes vested in Grantee, become and remain permanent and perpetual restrictions on the use of the Conservation Zone.

## 10. AMENDMENT

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement upon mutual approval of such amendment. Any such amendment shall be recorded at Grantor's expense in the official records of King County, Washington, and any other jurisdiction in which such recording is required.

## 11. ASSIGNMENT AND SUCCESSION

**11.1. Assignment.** With Grantor's written approval, which shall not be unreasonably withheld, this Easement is transferable, but Grantee may assign its rights and obligations under

this Easement only to an organization that is authorized to acquire and hold conservation easements under applicable law (RCW 64.04.130).

**11.2. Successors and Assigns.** The covenants, terms, conditions, and restrictions of this Easement bind, and inure to the benefit of, the Parties to this Easement and their respective successors and assigns, and shall continue as a servitude running in perpetuity with the Protected Property, unless sooner terminated as expressly provided for herein. A Party's rights and obligations under this Easement terminate upon transfer of the Party's interest in the Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer survive transfer.

## 12. RECORDATION

Pursuant to BDMC 19.24.080(C), this Easement shall be recorded in the official records of King County, Washington, and a copy of the recorded document shall be filed with the City Clerk. Recording shall occur either at the time of transfer of TDRs to an eligible receiving area parcel or when placed in trust with the City's TDR Bank pursuant to BDMC 19.24.065(A)(2).

## 13. GENERAL PROVISIONS

**13.1. Controlling Law.** This Easement shall be construed, interpreted, and enforced pursuant to the laws of the State of Washington, without reference to its choice-of-law rules.

**13.2. Construction.** Any general rule of construction to the contrary notwithstanding, if any provision in this Easement is found to be ambiguous, an interpretation that gives tends to protect the Conservation Values of the Conservation Zone shall be favored over any interpretation that would reduce protection for the Conservation Values.

**13.3. Severability.** If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall remain valid and in full force and effect.

**13.4. Entire Agreement.** All prior discussions, negotiations, understandings, communications, or oral agreements between the Parties regarding this Easement have been superseded by, and are merged into, this Easement.

**13.5 Effective Date.** The effective date of this Easement is the date of recording of this Easement with King County.

## 14. SCHEDULE OF EXHIBITS

**14.1.** Exhibit A – Legal Description of Protected Property.

**14.2.** Exhibit B – Legal Description and Map of Conservation Zone.



**ACKNOWLEDGEMENT  
(Individual)**

STATE OF WASHINGTON        )  
  )  
County of King                )

I certify that I know or have satisfactory evidence that Lyman Howard, is the person who appeared before me, that said person acknowledged that he/she/they signed this Easement and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the Easement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State  
of Washington, residing at \_\_\_\_\_

My Commission Expires:\_\_\_\_\_

**EXHIBIT A**  
**Legal Description of Protected Property**

**EXHIBIT B**  
**Legal Description and Map of Conservation Zone**

ORDINANCE NO. 752

AN ORDINANCE OF THE CITY OF BLACK  
DIAMOND, KING COUNTY, WASHINGTON,  
CREATING A TRANSFERABLE DEVELOPMENT  
RIGHTS PROGRAM, AND ADDING A NEW CHAPTER  
19.24 TO THE BLACK DIAMOND MUNICIPAL CODE

WHEREAS, in 1996 King County expanded the City's urban growth area (UGA);  
and

WHEREAS, the City insisted, as part of the UGA expansion, that a program be  
created to protect property rights, while allowing development rights to be transferred  
from properties that have been determined to be of greater public benefit as open space,  
parks or community facilities; and

WHEREAS, the City's Comprehensive Plan contemplates the development of  
such a program; and

WHEREAS, prior to the expansion of the City's UGA the City entered into the  
Black Diamond Urban Growth Area Agreement that is dated December 31, 1996 with King  
County, Plum Creek Timber Company, L.P. and Palmer Coking Coal Company (the  
"Agreement"); and

WHEREAS, that Agreement required that such a program be created; and

WHEREAS, since the Agreement was executed the parties to the Agreement have  
worked cooperatively to assist the City in the development of the TDR Program by  
providing funding, input and expertise now, therefore,

THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,  
WASHINGTON DOES ORDAIN, AS FOLLOWS:

Section 1. There is hereby created a new Black Diamond Municipal Code  
Chapter 19.24 which shall be entitled Transferable Development Rights (TDR) Program.

Section 2. There is hereby added new sections to Chapter 19.24, which shall  
read as set forth in Exhibit 1 attached hereto and by reference incorporated herein.

Section 3. The City hereby adopts the TDR Program Map, attached hereto as

Exhibit 2, which identifies the TDR Sending Areas and Receiving Areas for purposes of the TDR Program. When TDR Sending Areas or Receiving Areas are established in accordance with the provisions of the TDR Program, the TDR Program Map shall automatically be amended to include the new TDR Sending Areas or Receiving Areas and the TDR Program Map shall be marked to identify the amendment date.

Section 4. Severability. If any provision of this Ordinance is determined to be invalid or unenforceable for any reason, the remaining provisions of this Ordinance shall remain in force and effect.

Section 5. Effective Date. This Ordinance shall be in full force and effect five (5) days from and after its passage, approval, posting and publication as provided by law. A summary of this ordinance may be published in lieu of publishing the Ordinance in its entirety.

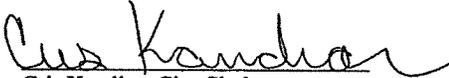
Introduced the 18<sup>th</sup> day of Dec., 2003.

Passed by the City Council on the 18<sup>th</sup> day of December 2003.

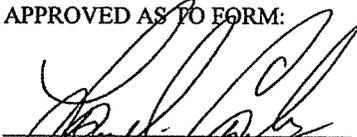
Approved by the Mayor on the 18<sup>th</sup> day of December 2003.

  
Howard Botts, Mayor

ATTEST:

  
Cris Kandior, City Clerk

APPROVED AS TO FORM:

  
Loren Combs, City Attorney

Published: 12-23-03  
Posted: 12-19-03  
Effective Date: 12-29-03

**EXHIBIT 1 to ORDINANCE 752**

**19.24 Transfer of Development Rights (TDR) Program.**

**19.24.010 Definitions.**

When used in this document, unless the context indicates otherwise, the following words when capitalized shall be defined as set forth in this paragraph.

A. DEVELOPMENT RIGHT CERTIFICATE (DRC) shall mean a document issued by the City Administrator indicating the development rights available for transfer. City DRCs shall mean DRCs that are created by the TDR Bank.

B. DRC HOLDER shall mean the person or entity who appears in the TDR Program Data Base as the person entitled to use the development rights specified in a DRC.

C. FINAL LETTER OF NOTIFICATION shall mean the official action of the City, through the City Administrator that establishes a parcel as being a TDR Sending Area

D. PRELIMINARY LETTER OF NOTIFICATION shall mean the written notice provided to parcel owners of eligible sending sites notifying them of the parcel's potential eligibility to participate in the Transfer of Development Rights Program.

E. PUBLIC BENEFIT LANDS shall mean parcels that have been or may be approved as TDR Sending Areas due to the presence of outstanding environmental, resource or recreational values, or provide significant public benefit(s) by preserving or defining the character of the City or will provide a site for necessary City facilities.

F. TDR RECEIVING AREA shall mean the real property designated by the City to which development rights can be transferred under the TDR Program. The TDR Receiving Areas are identified on the map entitled the TDR Program Map, which is attached to Ordinance 747 as Exhibit 2 and is dated the December 18, 2003. Further TDR Receiving Areas may be established pursuant to the process set forth in the TDR Program

G. TDR RECEIVING AREA PARCEL(S) shall mean the lot of record upon which the TDR Receiving Area is located.

H. TDR SENDING AREA shall mean the real property from which development rights can be transferred under the TDR Program. The initial TDR Sending Areas are identified on the map entitled TDR Sending Area Map, which is attached to Ordinance 747 as exhibit 2 and is dated the 26 day of 12, 2003. Further TDR Sending Areas may be established as set forth in the TDR Program.

I. TDR SENDING AREA PARCEL(S) shall mean the lot of record upon which the TDR Sending Area is located.

J. TRANSFERABLE DEVELOPMENT RIGHT (TDR) shall mean an interest in real property that represents the difference between the existing use of a parcel and its potential development use. This right is made severable from the parcel to which the interest is attached and transferable to another parcel for development and use under Black Diamond's TDR Program.

K. TREASURED PLACE is a Public Benefit Land that, due to its high significance for environmental, cultural, aesthetic, community or strategic City planning purposes, its immediate acquisition by the City is deemed to be of the utmost importance to the public welfare.

L. UGA AGREEMENT shall mean the Agreement between the City of Black Diamond, King County, Plum Creek Timber Company, L.P. and Palmer Coking Coal Company, dated December 31, 1996.

**19.24.020 Parcel Owner Notification.**

A. Prior to sending the Preliminary Letter of Notification the City Administrator will hold a public meeting to explain the TDR program to interested persons. Written notice of the meeting will be sent to parcel owners whose property is identified on the TDR Sending Area Map as a TDR Sending Area, to all persons who have requested notification, and shall also be posted and published in the same manner as an official City notice.

B. No later than January 31, 2004, the City Administrator will identify each parcel that qualifies as a TDR Sending Area and send the owner of record a Preliminary Letter of Notification. The Preliminary Letter of Notification will indicate that the property has been identified as a TDR Sending Area, and will provide an estimate of the number of development rights that are available on the parcel based upon information existing at the time of notification, including any "bonus development right" as authorized by the TDR Program. Neither the Preliminary Letter of Notification nor the Final Letter of Notification creates a vested right to the number of development rights indicated. The actual number of development rights attached to a qualifying parcel will only be calculated at the time an owner files an application for a Development Right Certificate (DRC) pursuant to section 19.24.060.

C. The City Administrator shall create a parcel database to be known as the TDR Program Data Base that will provide information that will track the development rights created pursuant to the TDR Program. It shall include such information as the City Administrator deems necessary to administer the TDR Program and shall include information for tracking the identified TDR Sending Areas, the owners of the TDR sending Areas and the estimated development rights available for transfer. It shall also include information regarding Development Right Certificates (DRC) including the names and addresses of DRC Holders, and details of any DRC transfers. Each development right eligible for sale or transfer will be serially numbered preceded by its King County Tax Parcel Number and entered in the City's parcel database by the City Administrator. The numbering system will include a code to identify those development rights which were created as a result of a successful administrative appeal and a

code to indicate the status of the development rights (e.g., Final Letter of Notification, DRC applied for, DRC issued, development right sold or transferred, or modified by zone classification change). The TDR Program Database shall be available for public inspection upon reasonable notice.

D. After sending out the Preliminary Letters of Notification, the City Administrator will hold a second public meeting to review the program and describe the procedures for exercising and transferring development rights. At the City Administrator's discretion, additional public meetings may be held, if necessary, for the purpose of explaining the TDR program and procedures.

E. As soon as practicable after the conclusion of the public meetings the City Administrator shall issue a Final Letter of Notification (FLN) regarding each parcel for which a Preliminary Letter of Notification was provided. The FLN shall identify the tax parcel that contains a TDR Sending Area and an estimate of the number of Transferable Development Rights associated therewith. This information shall be entered in the TDR Program Data Base.

F. Any parcel owner who does not receive a Final Letter of Notification but believes its parcel is eligible to participate in the TDR Program, may submit a letter to the City Administrator requesting a Final Letter of Notification. The City Administrator will determine whether the parcel contains a TDR Sending Area and either a Final Letter of Notification or an explanation as to why the parcel is not eligible.

G. The issuance of an FLN or a refusal to issue an FLN shall be a final decision for purposes of determining whether a property contains a TDR Sending Area. This decision may be appealed to the City Council following the same procedures provided in section 19.24.070 for appeals relating to Development Right Certificates (DRC). If the basis for appeal includes a dispute with regards to the size of the TDR Sending Area, then the appeal application, in addition to the requirements of section 19.24.070, must include a survey, stamped by a licensed surveyor or professional engineer authorized to practice in the State of Washington, showing the alleged dimension error in relation to the actual field conditions.

**19.24.030 Allocation/Calculation of Transferable Development Rights.**

A. The issuance of an FLN does not impact the use of a parcel containing a TDR Sending Area. The underlying development and zoning regulations continue to apply.

B. Once a DRC is issued for a TDR Sending Area, only those uses consistent with the conservation easement and as further limited by Black Diamond zoning and development regulations shall be allowed on the TDR Sending Area.

C. Parcels zoned Community Commercial prior to January 1, 2004 shall have three (3) TDRs transferable for each  $\frac{1}{4}$  acre within the TDR Sending Area. All other parcels shall have one (1) TDR transferable for each  $\frac{1}{4}$  acre within the TDR Sending Area. Provided, parcels designated as low density residential on the TDR Program Map must retain at least one development right per one acre or portion thereof. That portion of a parcel that was used to satisfy zoning bulk requirement or other conditions of development, or that is already subject to a conservation easement or other encumbrance that was not created as part of the TDR process and

that effectively results in the same protection from development that is afforded by being a TDR Sending Area, shall be excluded from being considered in the calculation to determine the number of available TDRs.

D. In calculating available development rights, the area of the parcel that is within the TDR Sending Area shall be used. A minimum of  $\frac{1}{4}$  acre of the parcel must be contained within the area to be protected for transferable development right eligibility. No fractional development rights shall be created. For the parcels designated as low density residential on the TDR Program Map a minimum of one-half acre of the parcel must be contained within the area to be protected for transferable development right eligibility. Any fraction of a development right that provides for at least 1 development right shall be rounded to the closest whole number.

E. **Optional Bonus.** Fee ownership of certain TDR Sending Areas may be preferred by the City. These are areas to which intensive public access may be desired, such as active recreation parks, public trails, or other properties for which significant expenditure of monies are anticipated to be made by the City, in order for the property to maximize the potential for which it was preserved. If the City accepts an offer to convey a fee ownership interest, or a lesser estate, such as for a public trail that will have high public use but, due to real property laws regarding conveyances the fee cannot be transferred the owner will receive two transferable development rights for every unused development right associated with the parcel. Notwithstanding the eligibility of the parcel, acceptance of a fee interest or public trail easement is within the discretion of the City Council. If a property has been designated a Treasured Place, then it shall receive the bonus density established in the Treasured Place Designation Process, which will not be more than three TDRs for every unused development right.

F. If the City acquires fee ownership of a parcel that was designated as a TDR Sending Area, and the development rights were not already transferred from the parcel, then the City may receive a DRC for the TDR Sending Area so acquired. The TDR associated with TDR Sending Area acquired by the City shall equal the total development potential of the site, even though the site will subsequently be developed consistent with the purpose for which it was acquired.

**19.24.050 Effect on Other Laws; Sending Area Parcels Under Moratorium on the Conversion of Forest Land to Other Use.**

A. Nothing contained herein shall be construed as allowing a use that is not otherwise permitted by applicable federal, state and local laws, regulations, codes and ordinances.

B. Sending and receiving site parcels subject to a Forest Practices moratorium pursuant to Title 76 RCW on conversions of forestland to other uses shall not be eligible to transfer or receive development rights during the term of the moratorium.

**19.24.055 Creation of TDR Bank.**

A. There is hereby created a TDR Bank within the TDR Program. The City Administrator shall include information regarding TDR Bank issued DRCs (City DRCs) in the TDR Program Database.

B. The TDR Bank may buy, sell, and issue DRCs. Any monies generated from the sale of DRCs from the TDR Bank, shall only be used to purchase TDR Sending Area Parcels, to purchase DRCs already issued for TDR Sending Areas, or to develop, preserve or enhance properties acquired by the City pursuant to the TDR Program.

C. The TDR Bank shall initially have 1,000 City DRCs which will be identified in the TDR Program Database as City DRCs. City DRCs shall immediately be transferred to the Receiving Site upon purchase from the TDR Bank. Any DRCs that are otherwise purchased by the TDR Bank from a property identified as a TDR Sending Area, shall only be transferred to the Receiving Site in accordance with the provision of section 19.24.100.

D. The TDR Bank may not sell City DRCs unless all of the following conditions are met:

1. The City has received an application to buy City DRCs that sets forth the tax parcel number of the intended Receiving Site, the number of City DRCs requested, the number of DRCs already acquired for the intended Receiving Site, and the efforts made to acquire DRCs from other property owners. The application must be signed by all owners of record for the intended Receiving Site.

2. The applicant will pay all City costs associated with the purchase and sale of City DRCs and in complying with the terms of this code section, whether or not a sale is consummated, including, but not limited to notice costs, appraisal costs, and City staff time. The City may require that the applicant deposit with the City an amount that is estimated to cover the costs before the City processes the application.

3. The sales price must be at no less than the fair market value at the time of sale, as determined by a qualified real estate appraiser hired by the City.

4. The City must first notify all property owners to which a FLN has been issued and that have not sold their DRCs, that the City intends to sell a designated number of City DRCs at the designated price, unless owners of property for which FLNs have been issued agree to sell their DRCs on the same terms and conditions. If a property owner(s), within 15 days of being sent the notice, notifies the City Administrator, in writing, that it will sell its DRCs on the same terms and conditions, then the City will delay the sale of the City DRCs for 60 days to allow the private sale to be consummated. If the sale is not consummated within that time through no fault of the party seeking to buy the DRCs, or, if the private sale is for fewer development credits than the buyer was seeking, then the City may consummate the sale for the number of City DRCs necessary to provide the number of credits sought by the buyer up to the number of available City DRCs.

5. In no event shall the City sell more DRCs than are in the TDR Bank, nor more than the Sending Site is eligible to receive.

6. Regardless of the number of City DRCs purchased the Sending Site may only develop to the density authorized by development regulations and other City approvals.

E. DRCs acquired by the TDR Bank, other than City DRCs, may be sold by the City through a sealed bid process following the same procedures as required for calling for bids on a public works project for which formal bids are required, except as expressly modified herein. The terms of sale shall be cash, and a cashier's check in the amount of 5% of the bid amount must be included with the Bid as a bid guarantee. The bid must be irrevocable for 60 days from the bid date. The full purchase price must be paid within 10 days of bid award or the 5% bid guarantee is forfeited. The bid guarantee of the unsuccessful bidders shall be returned after the full purchase price has been paid. In addition, each owner of record, as determined by the County Assessor's records, for each property within the City that has been officially designated as a TDR Sending Site shall be mailed a copy of the call for bids, at the address appearing in the County Assessor's records, at least 21 calendar days before the intended sale date. The City reserves the right to reject any and all bids or to only sell a portion of the available TDRs that were offered. If two or more bids are for the same amount, and the Council determines that it will accept the bid, then the Mayor, by random drawing between the tied bids, shall select the winning bid.

F. The TDR Bank shall be administered by the City Administrator, subject to the terms and conditions of the TDR Program.

**19.24.060. Issuance of Development Right Certificates -- Perfecting the Right to Sell.**

A. Parcel owners receiving a Final Letter of Notification may request a Development Right Certificate (DRC) from the City Administrator. Upon receiving the request for a DRC, the City Administrator will calculate the number of development rights attached to the parcel pursuant to the provisions of the TDR Program.

B. A DRC certifies that a specific number of development rights are available for severance from a parcel and authorizes the rights to be sold or transferred to an eligible Receiving Site. The amount of development rights indicated in the DRC may be held by the parcel owner for future sale and/or transfer if not applied to the TDR Sending Area Parcel. The DRC is valid for a period of five years following its issuance. However, the five-year period shall be tolled commencing when the DRC Holder submits a preliminary plat application for a receiving site that is eligible for additional residential density in accordance with the TDR Program. The five-year period shall continue to be tolled until the preliminary or final plat application is withdrawn or the City issues a final decision on a final plat application or five years after preliminary plat approval, whichever is earlier. Following the expiration of the five-year period, the DRC becomes void and the Sending Area owner must apply for a new DRC to sell or transfer development rights from the parcel. The number of development rights available for transfer may be recalculated at any time after the DRCs term of validity has expired.

C. Development rights eligible for transfer remain with the parcel that contains the TDR Sending Area until transferred to a Receiving Site. A DRC may be requested by successive parcel owners if one is not issued to an earlier owner.

D. Requests for DRCs must include the following:

1. Name(s) and address(es) of the parcel owner(s) of the site;

2. Legal description and parcel numbers;
3. Copy of the parcel deed and title;
4. Application fee in the amount set forth in the City of Black Diamond's fee resolution;
5. Title report confirming that applicant is the owner of the parcel and has unrestricted legal right to transfer the development;
6. Mortgage and/or lien holder subordination and release. The mortgage and/or lien holder must provide an acknowledgment that a conservation easement will be placed on the parcel and that they agree to subordinate their interest in the parcel to the conservation easement;
7. Acknowledgment of intent to grant to the City of Black Diamond a conservation easement in a form provided by the City permanently restricting development uses to those allowed by the remaining development rights attached to the parcel, if any, and preserving the parcel's environmental/resource value;
8. A description of any changes in the parcel (development, dredging, clearing, etc.) occurring since the Final Letter of Notification was issued; and
9. Acknowledgement of intent to grant a fee simple deed to the parcel or a public trail easement, if bonus development rights are requested.

E. Upon review and approval of the required documentation, and confirmation of the remaining development rights, the City Administrator will issue individual DRCs for each eligible parcel for which an application is received. The certificate will cite the serial numbers of each development right certified for sale or transfer to an eligible receiving site. A notice of issuance of the DRC shall be recorded by the City with the King County Recorder's Office in order to provide notice that the Certificate has been issued and shall state the name of the DRC Holder.

F. The City Administrator will promptly notify DRC Holders if the development rights available for transfer under the DRC are to be modified by the Black Diamond City Code after the term of validity has expired. Notification of modifications to the DRC is not required for those DRCs that have already been applied to a receiving site.

G. A DRC must be surrendered if the TDR Sending Area Parcel is developed using all or a portion of the density included within the previously issued DRC. The development of the TDR Sending Area Parcel will not be approved until the DRC is surrendered.

**19.24.070. Request for Administrative Appeal.**

A. Parcel owners who dispute the number of development rights identified as available for transfer from their parcel or the eligibility of the parcel for participation in the program may submit a Request for Administrative Appeal to the City Council.

B. Requests for an Administrative Appeal must be filed with the City Clerk within 21 calendar days from the issuance of the DRC, from the receipt of the written denial of eligibility for participation in the program, or from the date of any final action made pursuant to the terms of the TDR Program for which an appeal is allowed.

C. The Request for Administrative Appeal shall include the appeal fee set forth in the City's fee resolution, and shall contain the following information: the name, address and phone number of the property owner for the parcel(s) affected by the appeal, identify the decision being appealed, the alleged error that is contained in the appealed decision, the facts that are the basis for the appeal, the legal basis for the appeal, and the requested relief. The appeal request must be signed by the owners of record for the affected parcel.

D. The City Administrator will review each Request for an Administrative Appeal and may prepare a report assessing the eligibility of the parcel or the number of development rights identified as available for transfer from the parcel. The City Council will consider the City Administrator's recommendations and report, if applicable, and will issue a final decision on the administrative appeal request after holding a closed record hearing. The City Council shall issue findings and a decision either denying the appeal or directing the City Administrator to issue a new or revised Development Right Certificate or FLN.

**19.24.080. Conservation Easement and Restrictive Covenant**

A. In order to sever development rights from a TDR Sending Area Parcel for transfer to a receiving site, a conservation easement must be placed on the TDR Sending Area Parcel permanently restricting development of the site to the uses allowed by the remaining development rights attached to the parcel, if any, and protecting/preserving the environmental/resource values associated with the TDR Sending Area. The conservation easement must be signed by all owners of record for the TDR Sending Area Parcel and the City of Black Diamond Mayor or his/her designee and recorded with the County Recorder's Office. If fee ownership is to be acquired, then a perpetual restrictive covenant shall be placed on the property that restricts its future use to only the uses for which it was acquired under the TDR program, in addition to the other restrictions set forth below for conservation easements.

B. Conservation Easements shall be on a form approved by the Black Diamond City Attorney and shall contain at a minimum the following basic provisions:

1. The uses of the TDR Sending Area shall be limited to uses that further the intent for which the specific TDR Sending Area was designated as a sending area.

2. Future use of the TDR Sending Area Parcel will be governed by zoning regulations in effect at the time of development to the extent they are not inconsistent with the terms of the conservation easement.

3. Restrictions are granted in favor of the City of Black Diamond and the residents and property owners within the City and are enforceable by the City of Black Diamond and if the City fails or refuses to enforce them that they can be enforced by any City resident or owner of property within the City;

4. Restriction is granted in perpetuity, and shall bind existing and future parcel owners, and

5. Unless specifically provided for, nothing in the restrictions shall be construed to convey to the public a right of access or use of the parcel, and the owner of the parcel, his/her heirs, successors and assigns shall retain exclusive right to such access or use subject to the terms of the easement.

6. If enforcement action is commenced then the substantially prevailing party shall be entitled to their costs and attorneys fees incurred in the action.

C. At the point of transfer of TDRs from an eligible Sending Area, the conservation easement must be recorded with the King County Recorder's Office, and a copy of the recorded document filed with the City Clerk.

D. The City's TDR Program Database must be amended to show that the development rights have been removed from these parcels.

**19.24.090 Sale or Transfer of Right to Acquire Development Rights.**

The right to use the development rights specified in a DRC may be transferred to the owner of record of any eligible Receiving Site for use on that Receiving Site, or a person who has acquired the right to develop the Receiving Site. Provided, however, in order for a person or entity to have the right to use any of the development rights specified in a DRC he must be the DRC Holder. If the City receives written notification from a DRC Holder that he has conveyed the right to use the development rights specified in the DRC, then the City Administrator, upon receipt of the notice and payment of the applicable transfer fee as specified in the City fee schedule, will enter that data into the TDR Program Data Base, change the name of the DRC Holder to reflect the transfer, issue a written notice to the new DRC Holder and the former DRC Holder that the TDR Program Data Base has been updated to reflect the transfer, and record with the King County Recorder's Office notification that the DRC Holder has changed. .

**19.24.100 Transfer and Application of Development Rights to Receiving Sites.**

A. The TDRs shall remain with the TDR Sending Area Parcel until the receiving site parcel is authorized to apply the TDRs pursuant to a final plat approval. All transfers shall occur by a Deed of Transfer to the receiving site, the form of which shall be provided by the City. The Deed of Transfer shall specify the number and source of development rights sold or otherwise conveyed and the legal description of the receiving site. The Deed of Transfer will be recorded simultaneously with the Conservation Easement for the TDR Sending Area Parcel.

B. The development rights may be used only on a Receiving Site(s) that is eligible for additional residential density through the transfer of development rights in accordance with the Black Diamond zoning regulations. The process for transferring and applying TDRs to an eligible Receiving Site is as follows:

1. The DRC and a Title Report for the TDR Sending Area Parcel shall be included with the application for preliminary plat approval for subdivision or development of a receiving site.

2. At such time as the Receiving Site owner submits an application for final plat approval, the application shall be accompanied by an updated Title Report for the TDR Sending Area Parcel, a draft Conservation Easement and a draft Deed of Transfer, both of which shall be in a form designated by the City.

3. The City Administrator will review the Conservation Easement and Deed of Transfer to ensure compliance with the TDR Program and the updated Title Report to verify ownership of the development rights.

4. As a condition of final plat approval the TDR Sending Area and Receiving Site owners shall execute and record a Deed of Transfer and the Sending Area owner shall simultaneously execute and record a Conservation Easement.

5. The Conservation Easement for the TDR Sending Area Parcel and Deed of Transfer shall be recorded with the King County Recorders Office and a recorded copy filed with the City Clerk. The Deed of Transfer must comply with any other requirements imposed by law on the conveyance of interest in real property.

6. The TDR Sending Area Parcel and Receiving Site Parcel owners shall be responsible for all costs of recording.

C. The development density allowed on the Receiving Site parcel shall not exceed that allowed by the zone in which the parcel is located.

D. If the preliminary plat application is denied or only a portion of the available TDRs are permitted for use, the City will reissue the DRC indicating the remaining TDRs available for sale or transfer.

**19.24.110 Density Rights Appurtenant to the Land.**

A. Subject to applicable federal and state laws, all TDRs shall be deemed to be appurtenant to the TDR Sending Area until such rights are separated from the parcel by the proper recording of a Deed of Transfer severing the development rights from the parcel.

B. After a Deed of Transfer is executed and recorded the density associated with the Deed of Transfer becomes appurtenant to the Receiving Site.

**19.24.120 Program Evaluation.**

A. The City shall review the TDR Program or any components thereof within three years after adoption and then as deemed necessary by the City, making a written report and recommendations to the City Council on the following matters:

1. Program Utilization. The use of the program, including the number of and distribution of all sales, transfers, and purchases of development rights during the reporting period.

2. Program Functioning. The functioning of the program itself, including such issues as administration, cost, application processing, monitoring, etc.; and

3. Program Effectiveness. The effectiveness of the program in meeting its land preservation goals.

**19.24.130. Stewardship Program.**

**A. Strategic Purchase Program.**

1. The City of Black Diamond may elect to purchase and hold development rights which have been designated as TDR Sending Areas when the purchase will significantly further the objectives of Black Diamond's Comprehensive Plan. In determining whether to purchase development rights from an eligible parcel, the Council will consider the availability of adequate funds and the extent to which the purchase is necessary for:

- a. The protection of parcel which is of significant ecological importance;
- b. The protection of parcel which is contiguous to, or buffers, publicly owned or managed conservation lands;
- c. The transfer of development rights to a residential development project would further a compelling public need such as affordable housing;
- d. The demonstration of a significant and positive example of the TDR Program in operation;
- e. The enhancement or improvement of the parcel's environmental, resource, or recreational values (e.g. habitat restoration) and is consistent with the terms of the restriction on the deed to the parcel; or
- f. Otherwise furthering the goals of the City of Black Diamond's Comprehensive Plan.

2. In selecting between two equally beneficial properties, the City may also consider additional public policy and equity concerns relative to the sale of development rights to the City. Notwithstanding the availability of funds and eligible parcel, the Strategic Purchase Program is solely discretionary by the City Council and it may elect to delay or decline the purchase of development rights.

**B. Fee Ownership.**

1. The principal interest of the City of Black Diamond is to ensure that quality open space lands are preserved and subsequently stewarded in a manner that maintains

and enhances their open space values. There may be some instances where there is a public interest in holding a fee interest in the land, for continued stewardship and protection of the land. In these instances, either fee simple or less-than-fee parcel interests may be acquired for eligible lands. Whether a fee interest is acquired will depend on a variety of considerations including:

- a. The degree to which the land will require management or stewardship and the resources available to conduct the necessary activities.
- b. Whether public access is necessary or beneficial.
- c. The scope of parcel interests the land owner/donor has offered.
- d. The administrative, monitoring and enforcement issues associated with the interest to be acquired and the resources available to address the issues.

C. Stewardship/Ownership Review.

1. The City of Black Diamond will include as part of its review of the potential acquisition of transferable development rights or a fee parcel interest an assessment of whether the City or a non-profit organization would be the optimal owner or steward of the acquired parcel interests over the long term. The principal concern regarding the ownership of the parcel is to ensure the preserved lands are cared for in a manner that maintains and enhances their open space values. If the City of Black Diamond concludes another organization would be the preferable owner of the development rights, it may seek that organization's cooperation and involvement during negotiations, or, if appropriate, transfer the newly acquired interests to that organization at some later date. The City will consider:

- a. The preferences of the donor or seller;
- b. Maintenance and stewardship costs;
- c. The entity that is best equipped to provide maintenance and stewardship;
- d. The jurisdiction in which the parcel is located; and
- e. The entity that can provide for appropriate public access.

2. No transfer will be authorized until the City Attorney certifies that to do so would not be an unconstitutional gift of public funds.

**19.24.140 Establishing Additional TDR Sending Areas.**

The TDR Program encourages preservation of targeted open space land by enabling owners of designated TDR Sending Area Parcels to transfer the development rights from the land to permissible TDR Receiving Areas. The initial TDR Sending Areas are set forth on the TDR Program Map as adopted. The City may consider designation of additional sites for preservation

by designating them as TDR Sending Areas. The following procedures and processes apply to the designation of additional TDR Sending Areas.

**19.24.150 Lands Eligible for TDR Sending Area Designation**

Public Benefit lands are eligible for TDR Sending Area designation by the City in accordance with the criteria and procedures set forth below. Eligible parcels for Sending Area designation must be at least ¼ acre in size and contain one or more of the following features, as defined in the City's Comprehensive Plan:

A. Category I Wetlands.

1. Documented habitat for endangered or threatened fish or animal species or for potentially extirpated plant species recognized by state or federal agencies; or
2. High quality native wetland communities, including documented Category I or II quality Natural Heritage Wetland sites and sites which qualify as a Category I or II quality Natural Heritage Wetland; or
3. High quality, regionally rare wetland communities with irreplaceable ecological functions, including sphagnum bogs and fens, estuarine, wetlands, or mature forested swamps; or
4. Wetlands of exceptional local significance. The criteria for such a designation shall be developed and adopted by the local jurisdiction under appropriate public review and administrative appeal procedures. The criteria may include, but not be limited to, rarity, groundwater recharge areas, significant habitats, unique educational sites or other specific functional values within a watershed or other regional boundary.

B. Freshwater Bodies.

1. High Priority Freshwater Bodies. For those freshwater sites which meet any of the following criteria, property is of high priority for acquisition which, by itself or in conjunction with other offered or already preserved property, includes a material portion of a Category I or II wetland and a buffer 100 feet beyond the wetland boundary of the contained portion:
  - a. Either the presence of species proposed or listed as endangered, or threatened or which receives some other legal protection, or the presence of critical or outstanding actual habitat for those species;
  - b. Wetlands with 40% to 60% coverage by permanent open water in dispersed patches with two or more subclasses of vegetation;
  - c. Wetlands equal to or greater than ten acres in size and having three or more wetland classes, one of which is open water; or
  - d. The presence of plant associations of infrequent occurrence.

2. Priority Freshwater Bodies. For those freshwater sites which meet any of the following criteria, property is eligible which by itself or in conjunction with other offered or already preserved property includes an entire freshwater site or Category I or II wetland along with a buffer of 50 feet beyond the wetland boundary.

- a. Wetlands greater than 1 acre in size;
- b. Wetlands equal to or less than one acre in size that have three or more wetland classes;
- c. Wetlands equal to or less than one acre in size that have a forested wetland class or subclass; or
- d. The presence of heron rookeries or raptor nesting sites.

C. Wildlife Corridors. Eligible wildlife corridors should have high species abundance and diversity, or provide a critical wildlife access link between two or more important wildlife areas, or contain species listed as Threatened, Rare or Endangered.

D. Stream and Small Creek Corridors. Lands under this category include property which either by itself, or in conjunction with other offered or already preserved property is contiguous with the established high water mark of a Type 1 or Type 2 stream. Property may extend up to 500 feet from the center of the stream channel or up to 200 feet in elevation above the channel in order to buffer the stream with sufficient vegetative cover and runoff protection.

E. Historic Landmarks/Archaeological Sites. Historic and archaeological lands are those which constitute, or upon which is situated, a historic landmark formally listed or registered by the County or City for local regulatory protection.

F. Open Space Lands. Open Spaces Lands are those that contain environmentally sensitive areas and buffers. In addition, Open Space Lands include those parcels adjacent to environmentally sensitive areas that also provide community valued open space and treasured areas, urban/rural buffers, in-city urban separators, public and private parks and recreation and community facilities.

G. Urban Wildlife Pocket. Lands under this category provide some open space and wildlife habitat in the urban setting. These naturally vegetative lands are found in densely configured communities where an undeveloped lot is the exception in the area. Although single lots may be eligible as an Urban Wildlife Pocket, a higher priority will be given to those lands offered in conjunction with other offered or already preserved properties or where there exists a high probability of other properties that may be preserved in the vicinity. The natural and wildlife amenities of such lands should be reasonably certain to remain unaffected over the foreseeable future.

H. Critical Fish and Wildlife Habitat Areas. Lands under this category should provide high quality habitat and support a diversity and abundance of wildlife. High quality fish and wildlife habitat areas also tend to protect rare, unique, or threatened habitat.

I. Endangered, Threatened, or Sensitive Species Habitat. Lands under this category have been identified by the Washington State Department of Wildlife as areas with threatened or endangered species, or species of special concern.

J. Trails. Lands under this category should contribute to the completion of trails designed and scheduled for eventual right-of-way acquisition or surface preparation. These trails should provide public access between and through open spaces in the City, serving bicyclists, pedestrians, equestrians or other appropriate users. *(Note: Public access makes this land category suitable for fee acquisition.)*

K. Greenways. Lands under this category should lie within a greenway or greenbelt, which are land areas that are naturally vegetated, provide public access to and linkages between open space resources.

L. Viewpoints and Vistas. Vista properties are parcels of land which offer sweeping views of lakes, mountains, valleys, rivers, streams, historic structures, farms and other rural landscapes, or landmarks. The quality of a view from a vista property should be reasonably certain to remain unaffected over the foreseeable future. For instance, a potential property may not be of high priority under this particular land type if development is likely to occur that would materially diminish the quality of the view from the vista property.

M. Parklands. Property in its natural state, open to the public and located in an urban growth area, which will enhance opportunities for passive recreational needs, as determined at the time of land classification.

N. Parksites and Active Recreation Sites: Property which has been identified as land which the city, school district, other municipal corporation or other qualified not-for-profit land conservation organization may, at a future date, want to purchase as park, recreation, or open space parkland.

**19.24.160 Application and Designation Process for TDR Sending Areas.**

A. Applications.

Applications requesting inclusion of Public Benefit Lands into the TDR Program as a TDR Sending Area shall be submitted to the City Administrator. Applications shall be completed on forms supplied by the City and shall include the following information:

1. Name(s) and address(es) of each parcel owner(s);
2. Legal description and parcel number of the parcel;
3. Description of the parcel, to include size, existing zoning, site characteristics, current use and the resources and/or features that may be considered in evaluating the property's eligibility as a qualifying land type under section 19.24.030, above;
4. Copy of the parcel deed and title;

5. Expected area or population to benefit from the preservation of the parcel;
6. Proposed property interest to be conveyed to the City; and
7. Statement(s) and or letter(s), if any, evidencing community support of the property's designation for inclusion into the TDR program.
8. Signed by all owners of record.

B. City Review.

Applications will be screened by the City Administrator or designee to determine eligibility and to evaluate each application according to the listed criteria. The City Administrator may conduct an inspection of the nominated property and may also require the submission of additional information necessary to evaluate the property's resources/features. The City Administrator will provide to the Planning Commission a report that sets forth: 1) whether the property meets the requisite criteria for Sending Area designation, and 2) whether its designations as a TDR Sending Area will impair in any appreciable degree the operation of the TDR Program; and 3) what bonus density, if any, should be credited to the TDR Sending Area.

C. Planning Commission Review and Recommendation.

The City Administrator will present his/her analysis and recommendations to the Black Diamond Planning Commission for review and consideration. The Commission will consider the City Administrator's report and submit its recommendation to the Black Diamond City Council as to whether or not the area should be designated as a TDR Sending Area, and whether the area should be considered for bonus density.

D. City Council Action.

The City Council will hold a public hearing, consider the Planning Commission's recommendation and the City Administrator's report, and will issue a final decision on the application for TDR Sending Area designation. The City Council may deny the application or approve the application and direct the City Administrator to issue a Final Letter of Notification. Parcels that are approved for TDR Sending Area designation are subject to the City's TDR Program procedures for transfer of development rights, including the DRC process. As a condition of granting TDR Sending Area status, the City may require either a fee transfer or grant of conservation easement within the discretion of the City Council. The Council shall also determine whether bonus density should be allowed. The designation of a TDR Sending Area, a Treasured Place, and the appropriate density bonus are legislative actions.

**19.24.170 Public Benefit Land Evaluation Criteria.**

The following evaluation criteria are designed to assist the City's review and assessment of designating additional properties as TDR Sending Areas

A. Significant Land Resource. The property supports multiple environmental, resource or recreational purposes by materially satisfying one or more of the definitions of eligible land types.

B. Educational or Recreational Value. The property promotes conservation principles by example or by offering educational opportunities or enhancing recreational opportunities.

C. Size of Parcel. The size of the property is significant to the environmental, resource or recreational value and/or public benefit provided by the property in preserving or defining the character of the City.

D. Threat To Property. The property's open space value is substantially threatened. Evidence of substantial threat could include:

1. There is development activity nearby the parcel;
2. The property is presently listed for sale;
3. Development permits have been submitted on the property;
4. There is commercial development within the vicinity of the property, or,
5. Preservation assistance offered by another entity is available for a limited time, including matching funds, contributions of conservation easements or other property interests, or sale at less than full value.

E. Community Support. The community supports designation of the property as a TDR Sending Area. The following support will be recognized:

- a. Letters supporting not only the preservation of the property, but the intended permanent open space or resource objectives for the property if it is preserved; or
- b. Resolution of support by an established citizens organization or community land trust; or,
- c. Endorsement by other agencies or local governments.

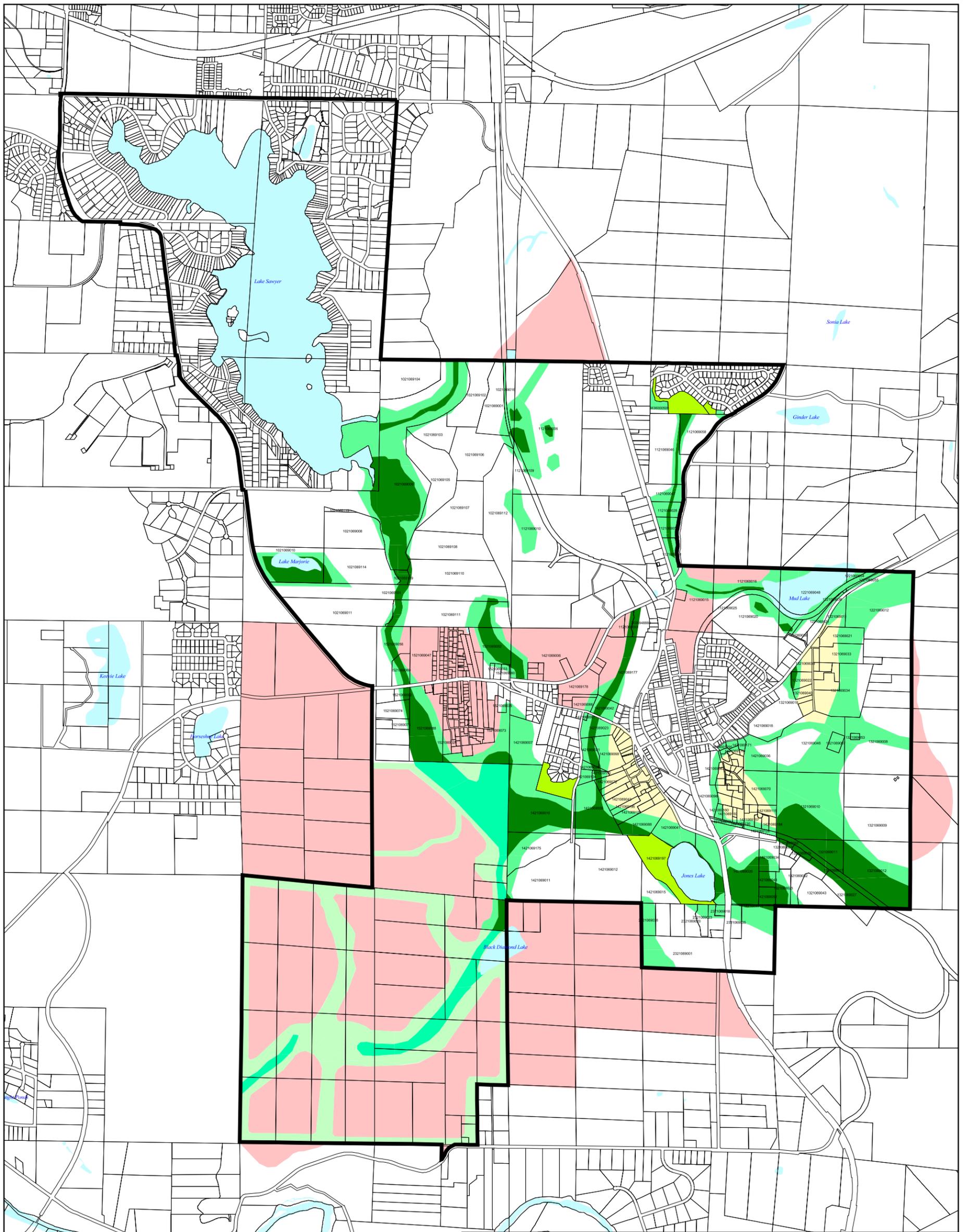
F. Geographic Distribution. The property is located in an area where the environmental, resource or recreational value is scarce and the preservation of any land would provide a significant benefit.

G. TDR Program Functionality. Designating the parcel as a TDR Sending Area will not impair in any appreciable degree the functionality of the TDR Program.

**19.24.180 Treasured Place Designation Process**

A. The Treasured Place Designation Process shall be initiated by the City Council adopting a resolution identifying an area as a potential Treasured Place. The process set forth in section 19.24.160 (B)-(E) shall be followed, with the additional requirement that the staff report and the Planning Commission recommendation shall also set forth whether or not all or a portion of the property meets the criteria for Treasured Place designation, and, if so, what conditions, if any, should be placed upon the designation, and the recommended density bonus credit that should be given. The Council may set a time limit on how long an area will be designated a Treasured Place without further Council confirmation of its continuing Treasured Place status.

i:\docs\18256\ord\exhibit121803.doc



**Exhibit 2 - Black Diamond Ordinance 752  
TDR Program Map**

- TDR Sending Areas**  
Open Space Land Use
- Primary
  - Secondary
  - Low Density Residential
- 50% Open Space Preserved per Annexation Ord. 515 and 517**
- Primary
  - Secondary
- TDR Receiving Areas**
- TDR Receiving Areas
  - Protected Open Space
- TDR boundaries are approximate

- City Boundary
- Parcels
- Rivers and Lakes



0.25 0 0.25 0.5 Miles

## Chapter 18.98

### MASTER PLANNED DEVELOPMENT\*

#### Sections:

- 18.98.005 MPD zoning district created.
- 18.98.010 Master planned development (MPD) permit—Purpose.
- 18.98.020 MPD permit—Public benefit objectives.
- 18.98.030 MPD permit—Criteria for MPD eligibility.
- 18.98.040 MPD permit—Application requirements.
- 18.98.050 MPD permit—Required approvals.
- 18.98.060 MPD permit—Review process.
- 18.98.070 MPD permit—Environmental review (SEPA).
- 18.98.080 MPD permit—Conditions of approval.
- 18.98.090 MPD permit—Development agreement.
- 18.98.100 MPD permit—Amendments to an approved MPD permit.
- 18.98.110 MPD standards—Design review required.
- 18.98.120 MPD standards—Permitted uses and densities.
- 18.98.130 MPD standards—Development standards.
- 18.98.140 MPD standards—Open space requirements.
- 18.98.150 MPD standards—On-site recreation and trail requirements.
- 18.98.155 MPD standards—Sensitive areas requirements.

18.98.160 MPD standards—Transfer of development rights.

18.98.170 MPD standards—Street standards.

18.98.180 MPD standards—Stormwater management standards.

18.98.190 MPD standards—Water and sewer standards.

18.98.195 Vesting.

18.98.200 Revocation of MPD permit.

#### 18.98.005 MPD zoning district created.

The master plan development (MPD) zoning district is created. No development activity may occur, or any application accepted for processing, on property subject to an MPD zoning designation, or for which the submittal of an MPD is required by a development agreement, unless it is done in accordance with the terms and conditions of a valid MPD permit or consistent with this chapter. Development activity shall include, but not be limited to, grading, clearing, filling, tree harvesting, platting, short platting, building or any other activity for which a city permit or other approval is required.

(Ord. No. 897, § 1(Exh. A), 4-16-2009)

#### 18.98.010 Master planned development (MPD) permit—Purpose.

The purposes of the master planned development (MPD) permit process and standards set out in this chapter are to:

A. Establish a public review process for MPD applications;

B. Establish a comprehensive review process for development projects occurring on parcels or combined parcels greater than eighty acres in size;

C. Preserve passive open space and wildlife corridors in a coordinated manner while also preserving usable open space lands for the enjoyment of the city's residents;

D. Allow alternative, innovative forms of development and encourage imaginative site and

\*Editor's note—Ord. No. 897, § 1(Exh. A), adopted April 16, 2009, amended Ch. 18.98 in its entirety to read as herein set out. Former Ch. 18.98, §§ 18.98.005—18.98.200, pertained to similar subject matter, and derived from Ord. 796, §§ 1, 2, 4, adopted 2005; Ord. 779, § 2 Exh. 1 (part), adopted 2005.

16. Proposed floor area ratios (FAR) for both residential and non-residential areas;

17. A narrative description, with associated tables, showing the intended residential density, the number of development rights that are needed to meet the intended density, the number of development rights that are already associated with the property included within the proposed MPD boundaries, and the number of development rights that must be acquired to meet the intended density;

18. If transfer of development rights are needed to attain proposed densities, a phase plan for the acquisition of development rights certificates shall be submitted, demonstrating that for each residential phase, no more than sixty percent of the proposed density is based upon the land area included in that phase. Prior to approval of implementing project actions (subdivision approval, site plan approval, etc.), the originals or documentation of the right to use development rights held in trust by the city pursuant to the terms of the transfer of development rights program (Chapter 19.24), shall be provided.

B. The director shall have the authority to administratively establish additional detailed submittal requirements.

C. The applicant shall pay all costs incurred by the city in processing the MPD permit application, including, but not limited to, the costs of planning and engineering staff and consultants, SEPA review, fiscal experts, legal services, and overall administration. A deposit in an amount equal to the staff's estimate of processing the MPD, as determined after the preapplication conference shall be required to be paid at the time of application, and shall be placed in a separate trust account. The city shall establish procedures for periodic billings to the applicant of MPD review costs as such costs are incurred, and may require the maintenance of a minimum fund balance through additional deposit requests.

(Ord. No. 897, § 1(Exh. A), 4-16-2009)

#### 18.98.050 MPD permit—Required approvals.

A. *MPD permit required.* An approved MPD permit and development agreement shall be required for every MPD.

B. *Consolidated review.* An MPD permit will be allowed as part of a consolidated permit action as authorized by RCW 36.70B. Consolidation shall not be allowed for comprehensive plan amendments. At the city's discretion, an MPD permit may be processed concurrently with amendments to the development regulations or interlocal agreements, provided that the applicant acknowledges in writing that they assume the risk of the MPD permit application being denied or otherwise conditioned as a result of final action on any requested amendment.

C. *Implementing development applications.* An MPD permit must be approved, and a development agreement as authorized by RCW 36.70B completed, signed and recorded, before the city will grant approval to an application for any implementing development approval. An application for an MPD permit may be processed with amendments to the comprehensive plan, zoning code, inter-local agreements and land development permits associated with the MPD permit, such as forest practice permits, clearing and grading permits, shorelines permits, and permits required by other public agencies. The city shall not grant approvals to related permits before the granting of an MPD permit and recording of a development agreement except as provided in [Section] 18.98.030.A.4.

(Ord. No. 897, § 1(Exh. A), 4-16-2009)

#### 18.98.060 MPD permit—Review process.

A. *MPD permit—Preapplication conference, public information meeting and planning commission informational meeting required.*

1. A preapplication conference between the MPD applicant or representative and staff is required before the city will accept an MPD permit application.

a. The purpose of this conference is for the applicant to familiarize the staff with the pro-

and migration corridors. This shall include minimizing use of culverts in preference to open span crossings.

(Ord. No. 897, § 1(Exh. A), 4-16-2009)

**18.98.160 MPD standards—Transfer of development rights.**

A. All proposed transfers of development rights shall be consistent with the TDR program (Chapter 19.24). An MPD permit and development agreement shall establish the TDR requirements for a specific MPD. Maximum allowable MPD residential densities can only be achieved through participation in the city's TDR program as a receiving site.

B. Property that is subject to a preannexation agreement, development agreement or annexation ordinance conditions relating to residential density will have as its base density the density designated in such agreement or ordinance. All other property will have as its base density the minimum density designated in the comprehensive plan.

(Ord. No. 897, § 1(Exh. A), 4-16-2009)

**18.98.170 MPD standards—Street standards.**

A. Street standards shall be consistent with the MPD design guidelines, which may deviate from city-wide street standards in order to incorporate "low impact development" concepts such as narrower pavement cross-sections, enhanced pedestrian features, low impact stormwater facilities, and increased connectivity or streets and trails. Any increased operation and maintenance costs to the city associated therewith shall be incorporated into the fiscal analysis.

B. The street layout shall be designed to preserve and enhance views of Mt. Rainier or other views identified in the city's comprehensive plan to the extent possible without adversely impacting sensitive areas and their buffers.

C. The approved street standards shall become part of the MPD permit approval, and shall apply to public and private streets in all subse-

quent implementing projects except when new or different standards are specifically determined by the city council to be necessary for public safety.

(Ord. No. 897, § 1(Exh. A), 4-16-2009)

**18.98.180 MPD standards—Stormwater management standards.**

A. The stormwater management system shall enhance the adopted standards that apply generally within the city, in order to implement the concepts in Sections 18.98.010(C), (H), and (L), 18.98.020(B) and (C), and 18.98.180(C). The stormwater detention system shall be publicly owned. Provided, in non-residential areas, the use of private vaults and filters may be authorized where: (1) the transmission of the stormwater by gravity flow to a regional system is not possible and (2) there is imposed a maintenance/replacement condition that requires vault filters to be regularly inspected and maintained by the property owner.

B. The stormwater management system shall apply to public and private stormwater management systems in all subsequent implementing projects within the MPD, except when new or different standards are specifically determined by the city council to be necessary for public health or safety, or as modified as authorized in Section 18.98.195(B).

C. Opportunities to infiltrate stormwater to the benefit of the aquifer, including opportunities for reuse, shall be implemented as part of the stormwater management plan for the MPD.

D. The use of small detention/retention ponds shall be discouraged in favor of the maximum use of regional ponds within the MPD, recognizing basin constraints. Ponds shall be designed with shallow slopes with native shrub and tree landscaping and integrated into the trail system or open space corridors whenever possible. Small ponds shall not be allowed unless designed as a public amenity and it is demonstrated that transmitting the stormwater to a regional pond within the MPD is not technically feasible.

(Ord. No. 897, § 1(Exh. A), 4-16-2009)

## Chapter 19.24

TRANSFER OF DEVELOPMENT RIGHTS  
(TDR) PROGRAM\*

## Sections:

- 19.24.010 Definitions.
- 19.24.020 Parcel owner notification.
- 19.24.030 Allocation/calculation of transferable development rights.
- 19.24.040 Treasured place designation process.
- 19.24.050 Effect on other laws; sending area parcels under moratorium on the conversion of forest land to other use.
- 19.24.055 Creation of TDR bank.
- 19.24.060 Issuance of development right certificates, perfecting the right to sell.
- 19.24.065 DRCs held in trust by the TDR bank.
- 19.24.070 Request for administrative appeal.
- 19.24.080 Conservation easement and restrictive covenant.
- 19.24.090 Sale or transfer of right to acquire development rights.
- 19.24.100 Transfer and application of development rights to receiving sites.
- 19.24.110 Density rights appurtenant to the land.
- 19.24.120 Program evaluation.
- 19.24.130 Stewardship program.
- 19.24.140 Establishing additional TDR sending areas.

- 19.24.150 Lands eligible for TDR sending area designation.
- 19.24.155 Lands not eligible for TDR sending area designation.
- 19.24.160 Application and designation process for TDR sending areas.
- 19.24.170 Public benefit land evaluation criteria.
- 19.24.175 Establishing additional TDR receiving areas.

## 19.24.010 Definitions.

When used in this chapter, unless the context indicates otherwise, the following words when capitalized shall be defined as set forth in this section.

"Development right certificate (DRC)" means a document issued by the city administrator indicating the development rights available for transfer. City DRCs shall mean DRCs that are created by the TDR bank.

"DRC holder" means the person or entity who appears in the TDR program database as the person entitled to use the development rights specified in a DRC.

"Final letter of notification" means the official action of the city, through the city administrator that establishes a parcel as being a TDR sending area.

"Preliminary letter of notification" means the written notice provided to parcel owners of eligible sending sites notifying them of the parcel's potential eligibility to participate in the transfer of development rights program.

"Public benefit lands" mean parcels that have been or may be approved as TDR sending areas due to the presence of outstanding environmental, resource or recreational values, or provide significant public benefit(s) by preserving or defining the character of the city or will provide a site for necessary city facilities.

"TDR receiving area" means the real property designated by the city to which development rights can be transferred under the TDR program. The TDR receiving areas are identified on the map

\*Editor's note—Ord. No. 895, § 1(Exh. A), adopted April 2, 2009, amended Ch. 19.24 in its entirety to read as herein set out. Former Ch. 19.24, §§ 19.24.010—19.24.180, pertained to similar subject matter, and derived from Ord. 752, § 2 Exh. 1 (part), adopted 2003; Ord. 755, § 1, adopted 2004; Ord. No. 767, §§ 1, 2, adopted 2004.

entitled the TDR program map, which is attached to Ordinance 752 as Exhibit 2 and is dated December 18, 2003. Further TDR receiving areas may be established pursuant to the process set forth in the TDR program.

"TDR receiving area parcel(s)" means the lot of record upon which the TDR receiving area is located.

"TDR sending area" means the real property from which development rights can be transferred under the TDR program. The initial TDR sending areas are identified on the map entitled TDR sending area map, which is attached to Ordinance 752 as Exhibit 2 and is dated the 26th day of December, 2003.

"TDR sending area parcel(s)" means the lot of record upon which the TDR sending area is located.

"Transferable development right (TDR)" means an interest in real property that represents the difference between the existing use of a parcel and its potential development use. This right is made severable from the parcel to which the interest is attached and transferable to another parcel for development and use under Black Diamond's TDR program.

"Treasured place" means a public benefit land that, due to its high significance and uniqueness for environmental, cultural, aesthetic, community or strategic city planning purposes, its immediate acquisition by the city is deemed to be of the utmost importance to the public welfare.

"UGA agreement" means the agreement between the City of Black Diamond, King County, Palmer Creek Timber Company, L.P. and Palmer Coking Coal Company, dated December 31, 1996. (Ord. No. 895, § 1(Exh. A), 4-2-2009)

#### **19.24.020 Parcel owner notification.**

A. Prior to sending the preliminary letter of notification the city administrator will hold a public meeting to explain the TDR program to interested persons. Written notice of the meeting will be sent to parcel owners whose property is identified on the TDR sending area map as a TDR

sending area, to all persons who have requested notification, and shall also be posted and published in the same manner as an official city notice.

B. The mayor is hereby directed as soon as possible, but no later than April 30, 2004, based upon available staffing and funding, to direct the preparation and submittal of the preliminary letter of notification. The city administrator will identify each parcel that qualifies as a TDR sending area and send the owner of record a preliminary letter of notification. The preliminary letter of notification will indicate that the property has been identified as a TDR sending area, and will provide an estimate of the number of development rights that are available on the parcel based upon information existing at the time of notification, including any "bonus development right" as authorized by the TDR program. Neither the preliminary letter of notification nor the final letter of notification creates a vested right to the number of development rights indicated. The actual number of development rights attached to a qualifying parcel will only be calculated at the time an owner files an application for a development right certificate (DRC) pursuant to Section 19.24.060.

C. The city administrator shall create a parcel database to be known as the TDR program database that will provide information that will track the development rights created pursuant to the TDR program. It shall include such information as the city administrator deems necessary to administer the TDR program and shall include information for tracking the identified TDR sending areas, the owners of the TDR sending areas and the estimated development rights available for transfer. It shall also include information regarding development right certificates (DRC) including the names and addresses of DRC holders, and details of any DRC transfers. Each development right eligible for sale or transfer will be serially numbered preceded by its King County tax parcel number and entered in the city's parcel database by the city administrator. The numbering system will include a code to identify those development rights which were created as a result of a success-

ful administrative appeal and a code to indicate the status of the development rights (e.g., final letter of notification, DRC applied for, DRC issued, development right sold or transferred, or modified by zone classification change). The TDR program database shall be available for public inspection upon reasonable notice.

D. After sending out the preliminary letters of notification, the city administrator will hold a second public meeting to review the program and describe the procedures for exercising and transferring development rights. At the city administrator's discretion, additional public meetings may be held, if necessary, for the purpose of explaining the TDR program and procedures.

E. As soon as practicable after the conclusion of the public meetings the city administrator shall issue a final letter of notification (FLN) regarding each parcel for which a preliminary letter of notification was provided. The FLN shall identify the tax parcel that contains a TDR sending area and an estimate of the number of transferable development rights associated therewith. This information shall be entered in the TDR program database.

F. Any parcel owner who does not receive a final letter of notification but believes its parcel is eligible to participate in the TDR program, may submit a letter to the city administrator requesting a final letter of notification. The city administrator will determine whether the parcel contains a TDR sending area and either a final letter of notification or an explanation as to why the parcel is not eligible.

G. The issuance of an FLN or a refusal to issue an FLN shall be a final decision for purposes of determining whether a property contains a TDR sending area. This decision may be appealed to the city council following the same procedures provided in Section 19.24.070 for appeals relating to development right certificates (DRC). If the basis for appeal includes a dispute with regards to the size of the TDR sending area, then the appeal application, in addition to the requirements of Section 19.24.070, must include a survey, stamped

by a licensed surveyor or professional engineer authorized to practice in the State of Washington, showing the alleged dimension error in relation to the actual field conditions.

(Ord. No. 895, § 1(Exh. A), 4-2-2009)

#### **19.24.030 Allocation/calculation of transferable development rights.**

A. The issuance of an FLN does not impact the use of a parcel containing a TDR sending area. The underlying development and zoning regulations continue to apply.

B. Once a DRC is issued for a TDR sending area, only those uses consistent with the conservation easement and as further limited by Black Diamond zoning and development regulations shall be allowed on the TDR sending area.

C. Parcels zoned community commercial prior to January 1, 2004, shall have three TDRs transferable for each one-fourth acre within the TDR sending area. All other parcels shall have one TDR transferable for each one-fourth acre within the TDR sending area. Provided, parcels designated as low density residential on the TDR program map must retain at least one development right per one acre or portion thereof. That portion of a parcel that was used to satisfy zoning bulk requirement or other conditions of development, or that is already subject to a conservation easement or other encumbrance that was not created as part of the TDR process and that effectively results in the same protection from development that is afforded by being a TDR sending area, shall be excluded from being considered in the calculation to determine the number of available TDRs.

D. In calculating available development rights, the area of the parcel that is within the TDR sending area shall be used. A minimum of one-fourth acre of the parcel must be contained within the area to be protected for transferable development right eligibility. No fractional development rights shall be created.

E. Optional bonus. Fee ownership of certain TDR sending areas may be preferred by the city. These are areas to which intensive public access

may be desired, such as active recreation parks, public trails, or other properties for which significant expenditure of monies are anticipated to be made by the city, in order for the property to maximize the potential for which it was preserved. If the city accepts an offer to convey a fee ownership interest, or a lesser estate, such as for a public trail that will have high public use, but, due to real property laws regarding conveyances the fee cannot be transferred the owner will receive two transferable development rights for every unused development right associated with the parcel. Notwithstanding the eligibility of the parcel, acceptance of a fee interest or public trail easement is within the discretion of the city council. If a property has been designated a treasured place, then it shall receive the bonus density established in the treasured place designation process, which will not be more than three TDRs for every unused development right.

F. If the city acquires fee ownership of a parcel that was designated as a TDR sending area, and the development rights were not already transferred from the parcel, then the city may receive a DRC for the TDR sending area so acquired. The TDR associated with TDR sending area acquired by the city shall equal the total development potential of the site, even though the site will subsequently be developed consistent with the purpose for which it was acquired.  
(Ord. No. 895, § 1(Exh. A), 4-2-2009)

#### **19.24.040 Treasured place designation process.**

The treasured place designation process can only be initiated by the city council adopting a resolution identifying an area as a potential treasured place. The process set forth in subsections 19.24.160(B) through (E) shall be followed, with the additional requirement that the staff report and the planning commission recommendation shall also set forth whether or not all or a portion of the property meets the criteria for treasured place designation, and, if so, what conditions, if any, should be placed upon the designation, and the recommended density bonus credit that should

be given. Once an application has been properly submitted, no development may occur on the nominated site until the application for treasured place status has been approved or denied, and all appeals completed or waived. However, the council may set a time limit on how long a decision on approval or denial of the application shall take.  
(Ord. No. 895, § 1(Exh. A), 4-2-2009)

#### **19.24.050 Effect on other laws; sending area parcels under moratorium on the conversion of forest land to other use.**

A. Nothing contained herein shall be construed as allowing a use that is not otherwise permitted by applicable federal, state and local laws, regulations, codes and ordinances.

B. Sending and receiving site parcels subject to a forest practices moratorium pursuant to Title 76 RCW on conversions of forestland to other uses shall not be eligible to transfer or receive development rights during the term of the moratorium.  
(Ord. No. 895, § 1(Exh. A), 4-2-2009)

#### **19.24.055 Creation of TDR bank.**

A. There is created a TDR bank within the TDR program. The city administrator shall include information regarding TDR bank issued DRCs (city DRCs) in the TDR program database.

B. The TDR bank may buy, sell, and issue DRCs. Any monies generated from the sale of DRCs from the TDR bank, shall only be used to purchase TDR sending area parcels, to purchase DRCs already issued for TDR sending areas, or to develop, preserve or enhance properties acquired by the city pursuant to the TDR program.

C. The TDR bank shall initially have one thousand city DRCs which will be identified in the TDR program database as city DRCs. City DRCs shall immediately be transferred to the receiving site upon purchase from the TDR bank. Any DRCs that are otherwise purchased by the TDR bank from a property identified as a TDR sending area,

shall only be transferred to the receiving site in accordance with the provision of Section 19.24.100.

D. The TDR bank may not sell city DRCs unless all of the following conditions are met:

1. The city has received an application to buy city DRCs that sets forth the tax parcel number of the intended receiving site, the number of city DRCs requested, the number of DRCs already acquired for the intended receiving site, and the efforts made to acquire DRCs from other property owners. The application must be signed by all owners of record for the intended receiving site.

2. The applicant will pay all city costs associated with the purchase and sale of city DRCs and in complying with the terms of this code section, whether or not a sale is consummated, including, but not limited to notice costs, appraisal costs, and city staff time. The city may require that the applicant deposit with the city an amount that is estimated to cover the costs before the city processes the application.

3. The sales price must be at no less than the fair market value at the time of sale, as determined by a qualified real estate appraiser hired by the city.

4. The city must first notify all property owners to which a FLN has been issued and that have not sold their DRCs, that the city intends to sell a designated number of city DRCs at the designated price, unless owners of property for which FLNs have been issued agree to sell their DRCs on the same terms and conditions. If a property owner(s), within fifteen days of being sent the notice, notifies the city administrator, in writing, that it will sell its DRCs on the same terms and conditions, then the city will delay the sale of the city DRCs for sixty days to allow the private sale to be consummated. If the sale is not consummated within that time through no fault of the party seeking to buy the DRCs, or, if the private sale is for fewer development credits than the buyer was seeking, then the city may consummate the sale for the number of city DRCs necessary to provide the number of credits sought by the buyer up to the number of available city DRCs.

5. In no event shall the city sell more DRCs than are in the TDR bank, nor more than the sending site is eligible to receive.

6. Regardless of the number of city DRCs purchased the sending site may only develop to the density authorized by development regulations and other city approvals.

E. DRCs acquired by the TDR bank, other than city DRCs, may be sold by the city through a sealed bid process following the same procedures as required for calling for bids on a public works project for which formal bids are required, except as expressly modified herein. The terms of sale shall be cash, and a cashier's check in the amount of five percent of the bid amount must be included with the bid as a bid guarantee. The bid must be irrevocable for sixty days from the bid date. The full purchase price must be paid within ten days of bid award or the five percent bid guarantee is forfeited. The bid guarantee of the unsuccessful bidders shall be returned after the full purchase price has been paid. In addition, each owner of record, as determined by the county assessor's records, for each property within the city that has been officially designated as a TDR sending site shall be mailed a copy of the call for bids, at the address appearing in the county assessor's records, at least twenty-one calendar days before the intended sale date. The city reserves the right to reject any and all bids or to only sell a portion of the available TDRs that were offered. If two or more bids are for the same amount, and the council determines that it will accept the bid, then the mayor, by random drawing between the tied bids, shall select the winning bid.

F. The TDR bank shall be administered by the city administrator, subject to the terms and conditions of the TDR program.

G. The TDR bank is authorized to place DRCs in trust, subject to the conditions set forth in Black Diamond Municipal Code Section 19.24.065.

(Ord. No. 895, § 1(Exh. A), 4-2-2009)

**19.24.060 Issuance of development right certificates, perfecting the right to sell.**

A. Parcel owners receiving a final letter of notification may request a development right certificate (DRC) from the city administrator. Upon receiving the request for a DRC, the city administrator will calculate the number of development rights attached to the parcel pursuant to the provisions of the TDR program.

B. A DRC certifies that a specific number of development rights are available for severance from a parcel and authorizes the rights to be sold or transferred to an eligible receiving site. The amount of development rights indicated in the DRC may be held by the parcel owner for future sale and/or transfer if not applied to the TDR sending area parcel. The DRC is valid for a period of five years following its issuance. However, the five-year period shall be tolled commencing when the DRC holder submits a preliminary plat application for a receiving site that is eligible for additional residential density in accordance with the TDR program. The five-year period shall continue to be tolled until the preliminary or final plat application is withdrawn or the city issues a final decision on a final plat application or five years after preliminary plat approval, whichever is earlier. Following the expiration of the five-year period, the DRC becomes void and the sending area owner must apply for a new DRC to sell or transfer development rights from the parcel. The number of development rights available for transfer may be recalculated at any time after the DRCs term of validity has expired.

C. Development rights eligible for transfer remain with the parcel that contains the TDR sending area until transferred to a receiving site. A DRC may be requested by successive parcel owners if one is not issued to an earlier owner.

D. Requests for DRCs must include the following:

1. Name(s) and address(es) of the parcel owner(s) of the site;
2. Legal description and parcel numbers;

3. Copy of the parcel deed and title;
4. Application fee in the amount set forth in the City of Black Diamond's fee resolution;
5. Title report confirming that applicant is the owner of the parcel and has unrestricted legal right to transfer the development;

6. Mortgage and/or lien holder subordination and release. The mortgage and/or lien holder must provide an acknowledgment that a conservation easement will be placed on the parcel and that they agree to subordinate their interest in the parcel to the conservation easement;

7. Acknowledgment of intent to grant to the City of Black Diamond a conservation easement in a form provided by the city permanently restricting development uses to those allowed by the remaining development rights attached to the parcel, if any, and preserving the parcel's environmental/resource value;

8. A description of any changes in the parcel (development, dredging, clearing, etc.) occurring since the final letter of notification was issued; and

9. Acknowledgement of intent to grant a fee simple deed to the parcel or a public trail easement, if bonus development rights are requested.

E. Upon review and approval of the required documentation, and confirmation of the remaining development rights, the city administrator will issue individual DRCs for each eligible parcel for which an application is received. The certificate will cite the serial numbers of each development right certified for sale or transfer to an eligible receiving site. A notice of issuance of the DRC shall be recorded by the city with the King County recorder's office in order to provide notice that the certificate has been issued and shall state the name of the DRC holder.

F. The city administrator will promptly notify DRC holders if the development rights available for transfer under the DRC are to be modified by the Black Diamond City Code after the term of validity has expired. Notification of modifications to the DRC is not required for those DRCs that have already been applied to a receiving site.

G. A DRC must be surrendered if the TDR sending area parcel is developed using all or a portion of the density included within the previously issued DRC. The development of the TDR sending area parcel will not be approved until the DRC is surrendered.

(Ord. No. 895, § 1(Exh. A), 4-2-2009)

**19.24.065 DRCs held in trust by the TDR bank.**

A. The city may authorize a DRC to be placed into trust with the TDR bank. A DRC may only be placed into trust with the TDR bank if all of the following conditions are met:

1. The city council has determined that the immediate removal of development rights from a specified sending area prior to the time that they are transferred to a receiving area will further the goals and purposes of the city comprehensive plan, the TDR program and the 1996 Black Diamond urban growth area agreement;

2. A permanent conservation easement in a form approved by the city attorney, has been recorded on the receiving area;

3. All of the receiving area property owners have signed a DRC trust agreement with the city.

B. The provisions of Section 19.24.060 notwithstanding, the following special conditions shall only apply to a DRC placed into trust with the TDR bank:

1. The DRCs shall be permanently removed from the receiving area as of the date they are placed into trust;

2. The DRC shall not have an expiration date;

3. The DRC shall remain in trust until the DRC holder provides the city TDR bank administrator with written notice that the DRC should be transferred to a specific receiving area, and the designated receiving area is eligible to receive the development rights identified in the DRC.

C. The TDR program database shall identify the trust status of DRCs held in trust by the TDR bank.

(Ord. No. 895, § 1(Exh. A), 4-2-2009)

**19.24.070 Request for administrative appeal.**

A. Parcel owners who dispute the number of development rights identified as available for transfer from their parcel or the eligibility of the parcel for participation in the program may submit a request for administrative appeal to the city council.

B. Requests for an administrative appeal must be filed with the city clerk within twenty-one calendar days from the issuance of the DRC, from the receipt of the written denial of eligibility for participation in the program, or from the date of any final action made pursuant to the terms of the TDR Program for which an appeal is allowed.

C. The request for administrative appeal shall include the appeal fee set forth in the city's fee resolution, and shall contain the following information: the name, address and phone number of the property owner for the parcel(s) affected by the appeal, identify the decision being appealed, the alleged error that is contained in the appealed decision, the facts that are the basis for the appeal, the legal basis for the appeal, and the requested relief. The appeal request must be signed by the owners of record for the affected parcel.

D. The city administrator will review each request for an administrative appeal and may prepare a report assessing the eligibility of the parcel or the number of development rights identified as available for transfer from the parcel. The city council will consider the city administrator's recommendations and report, if applicable, and will issue a final decision on the administrative appeal request after holding a closed record hearing. The city council shall issue findings and a decision either denying the appeal or directing the city administrator to issue a new or revised development right certificate or FLN.

(Ord. No. 895, § 1(Exh. A), 4-2-2009)

**19.24.080 Conservation easement and restrictive covenant.**

A. In order to sever development rights from a TDR sending area parcel for transfer to a receiving site, a conservation easement must be placed

on the TDR sending area parcel permanently restricting development of the site to the uses allowed by the remaining development rights attached to the parcel, if any, and protecting/preserving the environmental/resource values associated with the TDR sending area. The conservation easement must be signed by all owners of record for the TDR sending area parcel and the City of Black Diamond Mayor or his/her designee and recorded with the county recorder's office. If fee ownership is to be acquired, then a perpetual restrictive covenant shall be placed on the property that restricts its future use to only the uses for which it was acquired under the TDR program, in addition to the other restrictions set forth below for conservation easements.

B. Conservation easements shall be on a form approved by the Black Diamond City Attorney and shall contain at a minimum the following basic provisions:

1. The uses of the TDR sending area shall be limited to uses that further the intent for which the specific TDR sending area was designated as a sending area;

2. Future use of the TDR sending area parcel will be governed by zoning regulations in effect at the time of development to the extent they are not inconsistent with the terms of the conservation easement;

3. Restrictions are granted in favor of the City of Black Diamond and the residents and property owners within the city and are enforceable by the City of Black Diamond and if the city fails or refuses to enforce them that they can be enforced by any city resident or owner of property within the city;

4. Restriction is granted in perpetuity, and shall bind existing and future parcel owners;

5. Unless specifically provided for, nothing in the restrictions shall be construed to convey to the public a right of access or use of the parcel, and the owner of the parcel, his/her heirs, successors and assigns shall retain exclusive right to such access or use subject to the terms of the easement; and

6. If enforcement action is commenced then the substantially prevailing party shall be entitled to their costs and attorneys fees incurred in the action.

C. At the point of transfer of TDRs from an eligible sending area, the conservation easement must be recorded with the King County Recorder's Office, and a copy of the recorded document filed with the city clerk.

D. The city's TDR program database must be amended to show that the development rights have been removed from these parcels. (Ord. No. 895, § 1(Exh. A), 4-2-2009)

**19.24.090 Sale or transfer of right to acquire development rights.**

The right to use the development rights specified in a DRC may be transferred to the owner of record of any eligible receiving site for use on that receiving site, or a person who has acquired the right to develop the receiving site. Provided, however, in order for a person or entity to have the right to use any of the development rights specified in a DRC he must be the DRC holder. If the city receives written notification from a DRC holder that he has conveyed the right to use the development rights specified in the DRC, then the city administrator, upon receipt of the notice and payment of the applicable transfer fee as specified in the city fee schedule, will enter that data into the TDR program database, change the name of the DRC holder to reflect the transfer, issue a written notice to the new DRC holder and the former DRC holder that the TDR program database has been updated to reflect the transfer, and record with the King County Recorder's Office notification that the DRC holder has changed. (Ord. No. 895, § 1(Exh. A), 4-2-2009)

**19.24.100 Transfer and application of development rights to receiving sites.**

A. The TDRs shall remain with the TDR sending area parcel until the receiving site parcel is authorized to apply the TDRs pursuant to a final plat approval. All transfers shall occur by a deed

of transfer to the receiving site, the form of which shall be provided by the city. The deed of transfer shall specify the number and source of development rights sold or otherwise conveyed and the legal description of the receiving site. The deed of transfer will be recorded simultaneously with the conservation easement for the TDR sending area parcel.

B. The development rights may be used only on a receiving site(s) that is eligible for additional residential density through the transfer of development rights in accordance with the Black Diamond zoning regulations. The process for transferring and applying TDRs to an eligible receiving site is as follows:

1. The DRC and a title report for the TDR sending area parcel shall be included with the application for preliminary plat approval for subdivision or development of a receiving site.

2. At such time as the receiving site owner submits an application for final plat approval, the application shall be accompanied by an updated title report for the TDR sending area parcel, a draft conservation easement and a draft deed of transfer, both of which shall be in a form designated by the city.

3. The city administrator will review the conservation easement and deed of transfer to ensure compliance with the TDR program and the updated title report to verify ownership of the development rights.

4. As a condition of final plat approval the TDR sending area and receiving site owners shall execute and record a deed of transfer and the sending area owner shall simultaneously execute and record a conservation easement.

5. The conservation easement for the TDR sending area parcel and deed of transfer shall be recorded with the King County Recorder's Office and a recorded copy filed with the city clerk. The deed of transfer must comply with any other requirements imposed by law on the conveyance of interest in real property.

6. The TDR sending area parcel and receiving site parcel owners shall be responsible for all costs of recording.

C. The development density allowed on the receiving site parcel shall not exceed that allowed by the zone in which the parcel is located.

D. If the preliminary plat application is denied or only a portion of the available TDRs are permitted for use, the city will reissue the DRC indicating the remaining TDRs available for sale or transfer.

(Ord. No. 895, § 1(Exh. A), 4-2-2009)

#### **19.24.110 Density rights appurtenant to the land.**

A. Subject to applicable federal and state laws, all TDRs shall be deemed to be appurtenant to the TDR sending area until such rights are separated from the parcel by the proper recording of a deed of transfer severing the development rights from the parcel.

B. After a deed of transfer is executed and recorded, the density associated with the deed of transfer becomes appurtenant to the receiving site. (Ord. No. 895, § 1(Exh. A), 4-2-2009)

#### **19.24.120 Program evaluation.**

A. The city shall review the TDR program or any components thereof within three years after adoption and then as deemed necessary by the city, making a written report and recommendations to the city council on the following matters:

1. *Program utilization.* The use of the program, including the number of and distribution of all sales, transfers, and purchases of development rights during the reporting period;

2. *Program functioning.* The functioning of the program itself, including such issues as administration, cost, application processing, monitoring, and maintaining an appropriate balance between the number of sending and receiving areas; and

3. *Program effectiveness.* The effectiveness of the program in meeting its land preservation goals. (Ord. No. 895, § 1(Exh. A), 4-2-2009)

**19.24.130 Stewardship program.**

*A. Strategic purchase program.*

1. The City of Black Diamond may elect to purchase and hold development rights which have been designated as TDR sending areas when the purchase will significantly further the objectives of Black Diamond's comprehensive plan. In determining whether to purchase development rights from an eligible parcel, the council will consider the availability of adequate funds and the extent to which the purchase is necessary for:

- a. The protection of parcel which is of significant ecological importance;
- b. The protection of parcel which is contiguous to, or buffers, publicly owned or managed conservation lands;
- c. The transfer of development rights to a residential development project would further a compelling public need such as affordable housing;
- d. The demonstration of a significant and positive example of the TDR program in operation;
- e. The enhancement or improvement of the parcel's environmental, resource, or recreational values (e.g., habitat restoration) and is consistent with the terms of the restriction on the deed to the parcel; or
- f. Otherwise furthering the goals of the City of Black Diamond's comprehensive plan.

2. In selecting between two equally beneficial properties, the city may also consider additional public policy and equity concerns relative to the sale of development rights to the city. Notwithstanding the availability of funds and eligible parcel, the strategic purchase program is solely discretionary by the city council and it may elect to delay or decline the purchase of development rights.

*B. Fee ownership.*

1. The principal interest of the City of Black Diamond is to ensure that quality open space lands are preserved and subsequently stewarded in a manner that maintains and enhances their open space values. There may be some instances where there is a public interest in holding a fee interest in

the land, for continued stewardship and protection of the land. In these instances, either fee simple or less-than-fee parcel interests may be acquired for eligible lands. Whether a fee interest is acquired will depend on a variety of considerations including:

- a. The degree to which the land will require management or stewardship and the resources available to conduct the necessary activities;
- b. Whether public access is necessary or beneficial;
- c. The scope of parcel interests the land owner/donor has offered; or
- d. The administrative, monitoring and enforcement issues associated with the interest to be acquired and the resources available to address the issues.

*C. Stewardship/ownership review.*

1. The City of Black Diamond will include as part of its review of the potential acquisition of transferable development rights or a fee parcel interest an assessment of whether the city or a non-profit organization would be the optimal owner or steward of the acquired parcel interests over the long term. The principal concern regarding the ownership of the parcel is to ensure the preserved lands are cared for in a manner that maintains and enhances their open space values. If the City of Black Diamond concludes another organization would be the preferable owner of the development rights, it may seek that organization's cooperation and involvement during negotiations, or, if appropriate, transfer the newly acquired interests to that organization at some later date. The city will consider:

- a. The preferences of the donor or seller;
- b. Maintenance and stewardship costs;
- c. The entity that is best equipped to provide maintenance and stewardship; or
- d. The jurisdiction in which the parcel is located; and
- e. The entity that can provide for appropriate public access.

2. No transfer will be authorized until the city attorney certifies that to do so would not be an unconstitutional gift of public funds.  
(Ord. No. 895, § 1(Exh. A), 4-2-2009)

**19.24.140 Establishing additional TDR sending areas.**

The TDR program encourages preservation of targeted open space land by enabling owners of designated TDR sending area parcels to transfer the development rights from TDR sending areas to permissible TDR receiving areas. The initial TDR sending areas are set forth on the TDR program map as adopted. The city may consider designation of additional sites for preservation by designating them as TDR sending areas after careful evaluation to ensure an appropriate balance will continue to exist between the number of sending and receiving areas to ensure the program will function effectively. The following procedures and processes apply to the designation of additional TDR sending areas.

(Ord. No. 895, § 1(Exh. A), 4-2-2009)

**19.24.150 Lands eligible for TDR sending area designation.**

Public benefit lands are eligible for TDR sending area designation by the city in accordance with the criteria and procedures set forth below. Eligible parcels for sending area designation must be at least one-fourth acre in size and contain one or more of the following features, as defined in the city's comprehensive plan:

**A. Category I wetlands.**

1. Documented habitat for endangered or threatened fish or animal species or for potentially extirpated plant species recognized by state or federal agencies;

2. High quality native wetland communities, including documented category I or II quality natural heritage wetland sites and sites which qualify as a category I or II quality natural heritage wetland;

3. High quality, regionally rare wetland communities with irreplaceable ecological functions, including sphagnum bogs and fens, estuarine, wetlands, or mature forested swamps; or

4. Wetlands of exceptional local significance. The criteria for such a designation shall be developed and adopted by the local jurisdiction under appropriate public review and administrative appeal procedures. The criteria may include, but not be limited to, rarity, groundwater recharge areas, significant habitats, unique educational sites or other specific functional values within a watershed or other regional boundary.

**B. Freshwater bodies.**

1. *High priority freshwater bodies.* For those freshwater sites which meet any of the following criteria, property is of high priority for acquisition which, by itself or in conjunction with other offered or already preserved property, includes a material portion of a category I or II wetland and a buffer in accordance with Chapter 19.12 and the wetland boundary of the contained portion:

a. Either the presence of species proposed or listed as endangered or threatened or which receives some other legal protection, or the presence of critical or outstanding actual habitat for those species;

b. Wetlands with forty percent to sixty percent coverage by permanent open water in dispersed patches with two or more subclasses of vegetation;

c. Wetlands equal to or greater than ten acres in size and having three or more wetland classes, one of which is open water; or

d. The presence of plant associations of infrequent occurrence.

2. *Priority freshwater bodies.* For those freshwater sites which meet any of the following criteria, property is eligible which by itself or in conjunction with other offered or already preserved property includes an entire freshwater site or category I or II wetland along with a buffer of fifty feet beyond the wetland boundary.

a. Wetlands greater than one acre in size;

b. Wetlands equal to or less than one acre in size that have three or more wetland classes;

c. Wetlands equal to or less than one acre in size that have a forested wetland class or subclasses; or

d. The presence of heron rookeries or raptor nesting sites.

C. *Wildlife corridors.* Eligible wildlife corridors should have high species abundance and diversity, or provide a critical wildlife access link between two or more important wildlife areas, or contain species listed as threatened, rare or endangered.

D. *Stream and small creek corridors.* Lands under this category include property which either by itself or in conjunction with other offered or already preserved property is contiguous with the established high water mark of a type 1 or type 2 streams. Property may extend up to five hundred feet from the center of the stream channel or up to two hundred feet in elevation above the channel in order to buffer the stream with sufficient vegetative cover and runoff protection.

E. *Historic landmarks/archaeological sites.* Historic and archaeological lands are those which constitute, or upon which is situated, a historical landmark formally listed or registered by the county or city for local regulatory protection.

F. *Open space lands.* Open spaces lands are those that contain environmentally sensitive areas and buffers. In addition, open space lands include those parcels adjacent to environmentally sensitive areas that also provide community valued open space and treasured areas, urban/rural buffers, in-city urban separators, public and private parks and recreation and community facilities.

G. *Urban wildlife pocket.* Lands under this category provide some open space and wildlife habitat in the urban setting. These naturally vegetative lands are found in densely configured communities where an undeveloped lot is the exception in the area. Although single lots may be eligible as an urban wildlife pocket, a higher priority will be given to those lands offered in conjunction with other offered or already preserved properties or where there exists a high probability of other properties that may be preserved in the vicinity. The natural and wildlife amenities of such lands should be reasonably certain to remain unaffected over the foreseeable future.

H. *Critical fish and wildlife habitat areas.* Lands under this category should provide high quality habitat and support a diversity and abundance of wildlife. High quality fish and wildlife habitat areas also tend to protect rare, unique, or threatened habitat.

I. *Endangered, threatened, or sensitive species habitat.* Lands under this category have been identified by the Washington State Department of Wildlife as areas with threatened or endangered species, or species of special concern.

J. *Trails.* Lands under this category should contribute to the completion of trails designed and scheduled for eventual right-of-way acquisition or surface preparation. These trails should provide public access between and through open spaces in the city, serving bicyclists, pedestrians, equestrians or other appropriate users. (Note: Public access makes this land category suitable for fee acquisition.)

K. *Greenways.* Lands under this category should lie within a greenway or greenbelt, which are land areas that are naturally vegetated, provide public access to and linkages between open space resources.

L. *Viewpoints and vistas.* Vista properties are parcels of land which offer sweeping views of lakes, mountains, valleys, rivers, streams, historic structures, farms and other rural landscapes, or landmarks. The quality of a view from a vista property should be reasonably certain to remain unaffected over the foreseeable future. For instance, a potential property may not be of high priority under this particular land type if development is likely to occur that would materially diminish the quality of the view from the vista property.

M. *Parklands.* Property in its natural state, open to the public and located in an urban growth area, which will enhance opportunities for passive recreational needs, as determined at the time of land classification.

N. *Parksites and active recreation sites.* Property which has been identified as land which the city, school district, other municipal corporation

or other qualified not-for-profit land conservation organization may, at a future date, want to purchase as park, recreation, or open space parkland. (Ord. No. 895, § 1(Exh. A), 4-2-2009)

**19.24.155 Lands not eligible for TDR sending area designation.**

Any lands identified under Section 19.24.150 that are located within identified receiving areas shall not be eligible for designation as TDR sending areas.

(Ord. No. 895, § 1(Exh. A), 4-2-2009)

**19.24.160 Application and designation process for TDR sending areas.**

A. *Applications.* Applications requesting inclusion of public benefit lands into the TDR program as a TDR sending area shall be submitted to the city administrator. Applications shall be completed on forms supplied by the city and shall include the following information:

1. Name(s) and address(es) of each parcel owner(s);

2. Legal description and parcel number of the parcel;

3. Description of the parcel, to include size, existing zoning, site characteristics, current use and the resources and/or features that may be considered in evaluating the property's eligibility as a qualifying land type under Section 19.24.030;

4. Copy of the parcel deed and title;

5. Expected area or population to benefit from the preservation of the parcel;

6. Proposed property interest to be conveyed to the city;

7. Statement(s) and or letter(s), if any, evidencing community support of the property's designation for inclusion into the TDR program; and

8. Signed by all owners of record.

B. *City review.* Applications will be screened by the city administrator or designee to determine eligibility and to evaluate each application according to the listed criteria. The city administrator may conduct an inspection of the nominated property and may also require the submission of addi-

tional information necessary to evaluate the property's resources/features. The city administrator will provide to the planning commission a report that sets forth: (1) whether the property meets the requisite criteria for sending area designation, and (2) whether its designations as a TDR sending area will impair in any appreciable degree the operation of the TDR program; and (3) what bonus density, if any, should be credited to the TDR sending area.

C. *Planning commission review and recommendation.* The city administrator will present his/her analysis and recommendations to the Black Diamond Planning Commission for review and consideration. The commission will consider the city administrator's report and submit its recommendation to the Black Diamond City Council as to whether or not the area should be designated as a TDR sending area, and whether the area should be considered for bonus density.

D. *City council action.* The city council will hold a public hearing, consider the planning commission's recommendation and the city administrator's report, and will issue a final decision on the application for TDR sending area designation. The city council may deny the application or approve the application and direct the city administrator to issue a final letter of notification. Parcels that are approved for TDR sending area designation are subject to the city's TDR program procedures for transfer of development rights, including the DRC process. As a condition of granting TDR sending area status, the city may require either a fee transfer or grant of conservation easement within the discretion of the city council. The council shall also determine whether bonus density should be allowed. The designation of a TDR sending area, a treasured place, and the appropriate density bonus are legislative actions. (Ord. No. 895, § 1(Exh. A), 4-2-2009)

**19.24.170 Public benefit land evaluation criteria.**

The following evaluation criteria are designed to assist the city's review and assessment of designating additional properties as TDR sending areas:

A. *Significant land resource.* The property supports multiple environmental, resource or recreational purposes by materially satisfying one or more of the definitions of eligible land types.

B. *Educational or recreational value.* The property promotes conservation principles by example or by offering educational opportunities or enhancing recreational opportunities.

C. *Size of parcel.* The size of the property is significant to the environmental, resource or recreational value and/or public benefit provided by the property in preserving or defining the character of the city.

D. *Threat to property.* The property's open space value is substantially threatened. Evidence of substantial threat could include:

1. There is development activity nearby the parcel;
2. The property is presently listed for sale;
3. Development permits have been submitted on the property;
4. There is commercial development within the vicinity of the property; or
5. Preservation assistance offered by another entity is available for a limited time, including matching funds, contributions of conservation easements or other property interests, or sale at less than full value.

E. *Community support.* The community supports designation of the property as a TDR sending area. The following support will be recognized:

1. Letters supporting not only the preservation of the property, but the intended permanent open space or resource objectives for the property if it is preserved;
2. Resolution of support by an established citizens organization or community land trust; or

3. Endorsement by other agencies or local governments.

F. *Geographic distribution.* The property is located in an area where the environmental, resource or recreational value is scarce and the preservation of any land would provide a significant benefit.

G. *TDR program functionality.* Designating the parcel as a TDR sending area will not impair in any appreciable degree the functionality of the TDR program.

(Ord. No. 895, § 1(Exh. A), 4-2-2009)

**19.24.175 Establishing additional TDR receiving areas.**

The mayor, or his or her designee, shall periodically review the city's official TDR map and TDR database to determine whether the number of TDR receiving areas needs adjustment to ensure the TDR program continues to function effectively. If, based on this review, it is determined that additional TDR receiving areas are necessary, the mayor or his or her designee shall designate areas that shall be proposed as additional TDR receiving areas and present this proposal to the planning commission. The planning commission shall conduct a public hearing in which the proposal shall be considered. The planning commission shall then decide whether to recommend or oppose the proposal, or to recommend the proposal with suggested modifications, and forward this decision to the city council. The city council shall then make the final decision on whether the proposal is approved, denied, or approved with modifications.

(Ord. No. 895, § 1(Exh. A), 4-2-2009)

**THE VILLAGES MASTER PLANNED DEVELOPMENT  
DEVELOPMENT AGREEMENT  
BETWEEN  
CITY OF BLACK DIAMOND, WASHINGTON and  
BD VILLAGE PARTNERS, L.P.**

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    4.2 Total Number of Dwelling Units ..... 13

    4.3 Total Amount of Non-Residential Development ..... 14

    4.4 MPD Site Plan Amendments..... 14

    4.5 Interface with Adjoining Development..... 17

    4.6 Expansion Parcels..... 17

    4.7 Additional Use Standards..... 17

    4.8 Process To Track Total Dwelling Units and Floor Area ..... 19

    4.9 Transfer of Development Rights ..... 19

    4.10 Developer Improvements ..... 21

4.2 of this Agreement. The 3:1 ADU ratio established in this subsection is inapplicable to the Maple Valley Transportation Mitigation Agreement (Exhibit “Q”).

**4.8 PROCESS TO TRACK TOTAL DWELLING UNITS AND FLOOR AREA**

The Designated Official and Master Developer shall develop a process to track Dwelling Unit counts and non-residential square feet based on approved Construction Permits. Pursuant to Condition of Approval No. 129 of the MPD Permit Approval, Table 4-8-4 below shows the anticipated approximate number of Dwelling Units and non-residential square footage within each Phase of The Villages MPD. As part of the Annual Review described in the Funding Agreement (Exhibit “N”), the Designated Official and Master Developer shall confirm the number of Dwelling Units and amount of non-residential Development square footage that has been developed within The Villages MPD.

**Table 4-8-4 Target Unit Count by Phase**

Phase	Target Single Family Dwelling Units	Target Multi-Family Dwelling Units	Target Commercial/Office/Retail (Square Feet)	Total (Units)
1A	436	334	200,000	770
1B	110	205	320,000	315
2	1155	165	0	1,320
3	1899	496	255,000	2,395
<b>Total</b>	<b>3,600</b>	<b>1,200</b>	<b>775,000</b>	<b>4,800</b>

**4.9 TRANSFER OF DEVELOPMENT RIGHTS**

To achieve the proposed Densities on the Project Site, the Master Developer shall purchase TDRs and transfer them to the Project Site. The phasing of the purchase and transfer of TDRs to the Project Site must be consistent with the process and requirements found in the City’s TDR and MPD Ordinances (Exhibit “E”). Pursuant to the MPD Ordinance, BDMC 18.98.040.A.18 (Exhibit “E”), The Village MPD’s phasing plan for the acquisition of TDRs must demonstrate that for each Phase, no more than 60% of the proposed residential Density is based upon the land area included in that Phase. Pursuant to Conclusion of Law No. 62 of the MPD Permit Approval, The Village MPD’s TDR phasing plan is set forth in Table 4-9 and demonstrates that the Master Developer’s proposed phasing of the purchase and transfer of TDRs meets the requirements of

**The Villages Master Planned Development  
Development Agreement**

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BDMC 18.98.040.A.18 (Exhibit "E"), since the ratio of base Density to planned Density for the land within each Phase is less than or equal to 60%. The Master Developer will update the TDR phasing plan, Table 4-9, as necessary and submit it to the City with subsequent Implementing Project applications. If the proposed Density for an Implementing Project application does not result in the utilization of more than 60% of the land area for the particular Phase in which the Implementing Project is proposed, TDRs are not required to be purchased.

The Master Developer and Designated Official shall work cooperatively to create an efficient process for TDR transactions consistent with BDMC Ch. 19.24 (Exhibit "E"). The Master Developer shall identify to the City a primary contact for TDR acquisitions. This TDR acquisition process shall be reviewed annually as part of the Annual Review as identified in Funding Agreement (Exhibit "N").

The Master Developer shall include a summary of "Base Density Used" and "TDRs Needed" with each Preliminary Plat application or Site Plan application submitted to the City, and these values shall be shown on such application's cover sheet. The City may process and approve a Preliminary Plat or Site Plan subject to a condition requiring the Master Developer to demonstrate ownership of all TDRs required for the Preliminary Plat or Site Plan, but the City will not issue Utility Permits for any road or stormwater improvements for any division of a Preliminary Plat or Site Plan until the Master Developer has demonstrated ownership of any TDRs needed for that division of the Preliminary Plat or Site Plan. Any division of a Final Plat requiring TDRs will not be processed or approved until the Master Developer has acquired title to the needed TDRs and they have been assigned by the Master Developer to the applicable division of the Final Plat.

**Table 4-9. TDR Phasing Plan**

Phase	Planned Density	Base Density used <sup>1</sup>	TDRs needed	Percent of proposed Density based upon land area within that Phase
Phase 1A	770	452	318	59%
Phase 1B	315	189	126	60%
Phase 2	1320	295	1025	22%
Phase 3	2395	993	1,407	42%

**Note 1**

Phase 1A Base Density from Parcel D

Phase 1B Base Density from Parcel C and Parcel B, 70 Dwelling Units of base Density transferred to Phase 2

Phase 2 Base Density from Parcel E and Guidetti Parcel TDRs, plus 70 Dwelling Units base Density from Phase 1B

Phase 3 Base Density from BDA, Parcel F-North, and Parcel G

**4.10 DEVELOPER IMPROVEMENTS**

The Villages MPD design and mitigation measures described in this Agreement, including the MPD Permit Approval and its Conditions of Approval in Exhibit “C”, mitigate any probable significant adverse environmental impact directly identified as a consequence of MPD Permit Approval and this Agreement. Additionally, some elements of the MPD Permit Approval and mitigation measures include provisions relating to system improvements identified in the City’s Comprehensive Plan (Exhibit “E”), for which the City might adopt impact fees under RCW 82.02.050 *et seq.* As designed and with full implementation of all the mitigation measures, The Villages MPD build-out will fully and adequately mitigate the probable significant adverse environmental impacts of The Villages MPD and, that through such mitigation measures, provisions will be made for: (i) the facilities needed to serve new growth as a result of The Villages MPD within the City and (ii) the Master Developer to construct or pay a proportionate share of the cost of completing certain system improvements. Unless otherwise provided elsewhere in this Agreement or in the MPD Permit Approval, the mitigation measures listed this Agreement and in Exhibit “C” are in lieu of the payment of any impact fees that the City has the authority to impose pursuant to RCW 82.02.050 *et seq.*, including any amendments thereto, such that no impact fees shall be imposed on any Implementing Project during the term of this Agreement except for those impact fees explicitly allowed in this Agreement. This section

**BLACK DIAMOND  
URBAN GROWTH AREA AGREEMENT**

among

**King County, Washington**

and

**City of Black Diamond, Washington**

and

**Palmer Coking Coal Company**

and

**Plum Creek Timber Company, Limited Partnership**

5

WHEREAS this agreement is intended to implement the provisions Ordinance 12065 and the CPPs;

WHEREAS, RCW 39.34 provides authority for jurisdictions to enter into interlocal agreements and state law authorizes contracts between jurisdictions and property owners defining conditions of land use development and approvals;

NOW, THEREFORE, King County, the City of Black Diamond, Plum Creek Timber Company L.P., and Palmer Coking Coal Company do hereby agree as follows:

## 1. PARTIES AND MUTUAL CONSIDERATION

The parties to this Agreement are King County (hereinafter referred to as "County"), the City of Black Diamond (hereinafter referred to as "City"), Plum Creek Timber Company, L.P. (hereinafter referred to as "Plum Creek") and Palmer Coking Coal Company (hereinafter referred to as "Palmer"). The parties acknowledge that they have diverse and potentially conflicting objectives with regard to the City's Urban Growth Area, and this Agreement is entered into to resolve those issues in a mutually beneficial way. The parties covenant to perform such acts as may be called for by this Agreement. In consideration of the mutual promises set forth herein, including, but not limited to, the County agreeing to support annexation consistent with the terms of this Agreement, the City agreeing to seek annexations consistent with the terms of this Agreement, and Plum Creek and Palmer agreeing to use and develop their property consistent with the terms of this Agreement, the parties hereby mutually promise to be bound by the terms and conditions of this Agreement.

## 2. DEFINITIONS

"**County Open Space**" means approximately 984.2 acres of land outside the Urban Growth Area within unincorporated King County to be dedicated as permanent open space under this Agreement upon annexation of the West and South Annexation Area, shown as "County Open Space" on Appendix A, Map 5.

"**East Annexation Area**" means approximately 50 acres along the eastern boundary of the City in the Urban Growth Area intended for urban development upon annexation under this Agreement and shown as "East Annexation Area" on Appendix A, Map 1.

"**In-City Forest Land**" means approximately 50 acres of land within the existing City limits subject to a limited-term conservation easement under this Agreement and shown as "In-City Forest Land" on Appendix A, Map 6.

"**In-City Open Space**" means approximately 542 acres of land within the existing City limits to be preserved as permanent open space, trails, parks, or treasured places, either by having their development rights purchased pursuant to a City TDR Program or by having their conservation otherwise provided for upon annexation of the West and South Annexation Area under this Agreement.

"**Master Planned Development**" or "**MPD**" means the 783 acres located in Section 22 and in the southeast quarter of Section 15 which were annexed into the City of Black Diamond in December, 1994.

"Lake 12 Annexation Area" means approximately 160 acres in the northeast corner of the Urban Growth Area intended for annexation under this Agreement and shown as "Lake 12 Annexation Area" on Appendix A, Map 1.

"Potential Annexation Area" or "PAA" means approximately 782.2 acres within unincorporated King County intended for annexation under this Agreement, which is also the City's Urban Growth Area designated in King County Ordinance 12533. It is shown as "Black Diamond Urban Growth Area/Potential Annexation Area" on Appendix A, Map 1.

"Potential In-City Open Space" means planned or potential open space, trails, parks and treasured places within the existing City designated as "Potential In-City Open Space" in Appendix A, Map 4 which may be amended by the City from time to time consistent with Section 3.2 and within which In-City Open Space shall be provided under this Agreement.

"South Annexation Area" means approximately 233.6 acres in the southern portion of the Urban Growth Area intended for annexation under this Agreement and shown as the "South Annexation Area" on Appendix A, Map 1.

"Transfer of Development Rights or TDR Program" means the program to be established by the City pursuant to Section 7.4 that will allow the transfer of development rights off of priority open space parcels located inside the City's boundaries to residential lands in the West, South and East Annexation Areas as well as within the existing City.

"Urban Development Areas" means approximately 416.9 acres within the West and South Annexation Areas intended for urban development upon annexation and shown as "Urban Development Areas" on Appendix A, Map 7.

"Urban Growth Area" or "UGA" means approximately 782.2 acres in unincorporated King County designated as the City's Urban Growth Area in Ordinance 12533 and shown on the County Comprehensive Land Use Map as "Rural-City Urban Growth Area" and on Appendix A, Map 1 as "Urban Growth Area/Potential Annexation Area."

"UGA Open Space" means approximately 145 acres within the West and South Annexation Areas intended to be preserved as permanent open space upon annexation and shown as "UGA Open Space" on Appendix A, Maps 2, 3, & 7.

"West Annexation Area" means approximately 328.6 acres within the western portion of the Urban Growth Area intended for annexation under this Agreement shown as the "West Annexation Area" on Appendix A, Map 1.

"West Boundary Adjustment" means approximately 10 acres of land along the west boundary of the City intended for annexation in order to provide a road and utility corridor for future development in the City, shown as "West Boundary Adjustment" on Appendix A, Map 1.

### 3. AREAS COVERED BY AGREEMENT

3.1 Potential Annexation Area. The area intended for annexation under this Agreement is the City's Potential Annexation Area, which is the UGA designated for the City by King County Ordinance 12533 and

**5.7 Phasing Areas within West Annexation Area.** The West Annexation Area may be annexed in three phases comprising the north area in Sections 2 and 3 , the west area in Section 15, and the south area in Section 27 if approved by the City and County Councils; provided that for any such phasing the City and County Councils must determine the proportional provision of County, In-City and UGA Open Space required in Section 5.2(c) to fulfill the four to one requirements of open space to urban development; and provided further that infrastructure to the areas to be annexed must be provided consistent with Section 5.2(b).

## **6. URBAN DEVELOPMENT IN THE ANNEXED LANDS**

**6.1 Development Agreement.** On or before annexation of the West and South Annexation Areas, the City shall enter into a development agreement with Plum Creek which shall establish land uses, zoning and development standards for the Urban Development Areas in the West and South Annexation Areas consistent with the standards and service levels set forth below.

**6.2 Land Uses and Zoning.** Upon annexation of the West and South Annexation Areas, the City shall adopt land use designations and zoning for the Urban Development Areas that will permit the land uses as shown on Appendix A, Map 7; provided that the City and Plum Creek may agree to such other mixes of urban land uses within the Urban Development Areas of the West and South Annexation Areas as may be necessary to respond to real estate market and finance conditions. Upon annexation of the East Annexation Area, the City shall adopt land use designations and zoning that will permit urban residential development in this area. Upon annexation of the Lake 12 Annexation Area, the City shall adopt land use designation and zoning that will permit urban residential development at one dwelling unit per acre in the Lake 12 Annexation Area.

**6.3 Residential Density.** Following annexation, the West, South and East Annexation Areas shall be developed at a minimum average residential density of four units per acre. Maximum densities shall be determined prior to annexation as part of a development agreement between the City and property owners. Innovative planning, zoning and design shall be used to provide a variety of housing types serving all market segments. The base residential densities shall be two dwelling units per acre. The additional zoned residential density shall be achieved through participation in the City's TDR Program.

In the event development rights cannot be purchased through the City's TDR Program from either a private party or the TDR bank, or it is demonstrated to the City that, despite commercially reasonable efforts, development rights cannot be purchased on terms and conditions that allow annexation or development approvals to proceed, In-City Open Space created through other mechanisms consistent with Section 7.3 of this Agreement may be used as a density credit in the subject receiving area.

**6.4 Development Standards.** Following annexation the West, East, South, and Lake 12 Annexation Areas shall be developed under the jurisdiction of the City and shall at a minimum comply with the following County standards:

**6.4.1 Affordable Housing.** The parties will work with other local governments and appropriate agencies to maintain Black Diamond's fair-share of affordable housing and in that regard will take into account the City's existing housing stock.

**6.7 Permit Processing.** The City agrees to process project permit applications within the review period mandated by State law.

**6.8 Additional Conditions Relating to Lake 12 Annexation Area.** In addition to the standards governing development in the UGA set forth in this Section 6, the Lake 12 Annexation Area shall be subject to the following standards and service levels upon annexation to ensure that urban growth does not occur in the adjacent rural and resource lands and to minimize impacts to such lands from development in the Lake 12 Annexation Area:

(a) Any new residential development in the Lake 12 Annexation Area shall be sited and clustered away from the adjacent rural and resource lands and required to create a buffer of permanent open space between the residential development and rural and resource lands;

(b) Water and sewer systems shall be sized to accommodate the Lake 12 Annexation Area only and connections by property owners in the adjacent rural and resource lands shall be prohibited;

(c) No Four-to-One Program proposals pursuant to Comprehensive Plan policies I-204<sup>435</sup> and I-205 shall be approved along the Lake 12 Annexation Area UGA Boundary; and

(d) Any new residential development shall contribute as appropriate its fair share to the funding of any improvements required by the City to the Green River Gorge Road.

## **7. OPEN SPACE**

**7.1 County Open Space.** On or before the effective date of annexation of the West Annexation Area, provided said date is within 20 years of the effective date of this agreement, Plum Creek shall convey to King County fee title to approximately 645.2 acres of land designated "County Open Space" on Appendix A, Map 2. On or before the effective date of annexation of the South Annexation Area, provided said date is within 20 years of the effective date of this Agreement, Plum Creek shall convey to King County fee title to approximately 339 acres of land designated "County Open Space" on Appendix A, Map 3. These County Open Space lands shall be dedicated as permanent open space and shall be owned and managed by the County as part of the King County Open Space and Trail System or for their forest resource value. Title to County Open Space conveyed by Plum Creek pursuant to this section shall be subject to any reservations, easements, and other encumbrances of record as of September 1, 1996 that are agreed to by King County. It is acknowledged that Plum Creek does not own oil and gas rights and that the County shall take title subject to these oil and gas rights.

**7.2 UGA Open Space.** On or before the effective date of annexation of the West Annexation Area, provided said date is within 20 years of the effective date of this Agreement, Plum Creek shall convey to the City and County conservation easements covering approximately 63.3 acres of land within the West Annexation Area designated as "UGA Open Space" on Appendix A, Map 2. On or before the effective date of annexation of the South Annexation Area, provided said date is within 20 years of the effective date of this Agreement, Plum Creek shall convey to the City and County conservation easements covering approximately 81.7 acres of land within the South Annexation Area designated as "UGA Open Space" on Appendix A, Map 3. Such conservation easements shall preserve UGA Open Space as permanent open space as provided in Section 7.5. County Open Space shall be conveyed in a reasonably fit condition and prior to conveyance of the fee to the County Open Space, King County shall be afforded reasonable time to conduct due diligence inspections.

**7.3 In-City Open Space.** On or before the effective date of annexation of the West Annexation Area, provided said date is within 20 years of the effective date of this Agreement, approximately 347 acres of Potential In-City Open Space shall be protected or conserved. On or before the effective date of annexation of the South Annexation Area, provided said date is within 20 years of the effective date of this Agreement, approximately 195 acres of Potential In-City Open Space shall be protected or conserved. Such In-City Open Space shall be protected or conserved through any of the following methods:

(a) The purchase or transfer of development rights from Potential In-City Open Space, whether purchased by Plum Creek or others, including without limitation, owners or developers of the proposed MPD, pursuant to the City's TDR Program, so long as all such lands are subject to conservation easements, provided however, that development rights from the In-City Forest Land shall not be counted unless development rights have been purchased for use in the West or South Annexation Areas or the MPD. Where the development rights to Potential In-City Open Space have been applied as development credit within the City as it existed prior to the annexation of the MPD, such land may still qualify as In-City Open Space for the purposes of satisfying the open space acreage requirements identified above in this Section where the party requesting such designation has provided compensation to the city equal to 75 percent of the fair market value of such development right. Any such funds received by the City under this provision shall be dedicated solely to the acquisition and stewardship of open space, trails, parks, or other treasured places.

(b) In addition to the In-City Open Space conserved pursuant to Section 7.3(a) above, any permanent open space, park, trails or treasured places created within the City from the Potential In-City Open Space through dedication to the City or County, through conveyance of conservation easements to the City or County, or through other mechanisms, including any land acquired by the City or County for open space, parks, trails, or treasured places.

(c) Such other equivalent open space or mechanisms for providing open space within, or in the vicinity of, the City as agreed to by the City, County and Plum Creek

Conservation easements required under this Section shall be conveyed in perpetuity to the City. Some conservation easements may be limited to development rights only as provided by the City TDR Program. Conservation easements may be for broader purposes in which case they shall preserve In-City Open Space as permanent open space intended to be used in a manner consistent with the purposes included in King County Code 26.04.020L, such as preservation of wetlands and other critical areas, buffers, recreational areas and natural areas, or as an urban separator and/or urban/rural buffer. At times In-City Open Space serves different functions than rural or suburban open space. Should those properties marked for potential parks use on Appendix A, Map 4 be acquired in accord with the terms of this Agreement, active recreational and park uses can be used on those sites notwithstanding any of the above. A copy of King County Code 26.04.020L is attached hereto as Appendix G and by reference incorporated herein.

**7.4 City's Open Space Transfer of Development Rights Program.** The City, with the cooperation of the parties, shall establish a Transfer of Development Rights Program for Open Space ("TDR Program"). The TDR Program shall be used to transfer development rights off of priority open space parcels located inside the City's boundaries and shown as "Potential In-City Open Space" on Appendix

A, Map 4. Development rights shall be transferable to the residential lands in the West, South and East Annexation Areas as well as within the existing City. The TDR Program may assign a larger number of transfer units to higher priority open space parcels.

To facilitate preservation of open space within the existing City limits and to facilitate planning and marketing of the residential lands in the Potential Annexation Area, the City's TDR Program shall be established during the first year of implementation of this Agreement. The TDR Program shall be designed so that it is responsive to market conditions. Specifically, the TDR Program will, among other features, include a TDR bank or similar mechanism to buy, sell and hold development rights and credits. Development rights and credits shall be transferable both through and outside of a TDR bank. The City will explore in good faith, possibilities for providing capital to fund a TDR bank or other mechanism, but it is under no such obligation to provide such funds.

In those instances where a bank or other mechanism has been established and has acquired development rights to Potential In-City Open Space, the owners of the West Annexation Area or the MPD may enter into an agreement to purchase such development rights that are needed for purposes of satisfying the In-City Open Space requirements in Section 7.3. The purchase price shall be the fair market value at the time of purchase. The purchase shall close no later than the effective date of the South Annexation or the termination of this Agreement, whichever sooner occurs.

**7.5 Open Space Uses.** Except as otherwise provided in this Agreement, UGA Open Space within the West and South Annexation Areas can only be used for the purposes included in K.C.C. 26.04.020 L, such as preservation of wetlands and other critical areas, buffers, recreational areas and natural areas or as an urban separator and/or urban/rural buffer. Open space within the West and South Annexation Areas and the County Open Space immediately south of the City in Sections 23 and 27 may also be used for stormwater management and for utility and transportation corridors; provided that the "South Connector" road included in the City's Comprehensive Plan may be constructed through Section 23 prior to annexation of the South Annexation Area to provide access to the MPD; provided that substitute open space of similar value must also be provided if more than five contiguous acres of open space provided by Plum Creek or if more than twenty acres of open space provided by Plum Creek, whether contiguous or not, are used for road purposes. Such proposals for substitutions of open space shall be reviewed by the City and County as appropriate and in the case of County Open Space, must be adjacent to other County Open Space parcels. UGA Open Space in the West and South Annexation Areas may be disturbed as reasonably necessary for construction activities but must be restored and replanted with native vegetation. Furthermore, dedications of County Open Space shall not cut off road and utility access to adjacent Plum Creek parcels. Temporary access across County Open Space and permanent buried utility lines will be permitted so long as disturbed land is restored. Reasonably necessary permanent road access will be permitted so long as substitute open space is provided on a one to one basis, unless otherwise agreed by the County and Plum Creek.

**7.6 In-City Forest Land.** On or before the effective date of annexation of the East Annexation Area, all the development rights to the In-City Forest Land (100 dwelling unit equivalent) will be completely transferred to the East Annexation Area so that the East Annexation Area achieves an average minimum density of 4 units per acre, or transferred to another receiving site, or sold to Plum Creek at fair market value. If transferred other than to the East Annexation Area, or if sold, Palmer shall purchase or transfer development rights to bring the East Annexation Area up to the minimum 4 units per acre.