

ORDINANCE NO. 09-895

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF BLACK DIAMOND, KING COUNTY
WASHINGTON, MAKING MINOR CHANGES TO
CHAPTER 19.24 RELATING TO THE CITY'S
TRANSFER OF DEVELOPMENT RIGHTS PROGRAM

WHEREAS, the City of Black Diamond created a Transfer of Development Rights (TDR) program in 2003 in order 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, minor changes to the TDR program were needed in order to allow the program to run more efficiently and effectively in order to meet the needs of the City of Black Diamond; and

WHEREAS, the City Council held a duly noticed public hearing on the proposed changes to the Transfer of Development Rights program on April 2, 2009; and

NOW THEREFORE,

THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, ORDAINS AS FOLLOWS:

SECTION 1. The City Council adopts changes to chapter 19.24, Transfer of Development Rights (TDR) program attached to this ordinance and hereby incorporated by reference as Exhibit A.

SECTION 2. This Ordinance changes shall be in full force and effect five days 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.

SECTION 3. 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.

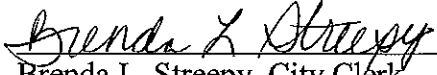
Introduced the 2nd day of April, 2009.

Passed by a majority of the City Council at a meeting held on the 2nd day of April, 2009.



Mayor Howard Botts

Attest:



Brenda L. Streepy, City Clerk

APPROVED AS TO FORM:

Loren D. Combs, City Attorney

Published: 4-7-09
Posted: 4-3-09
Effective Date: 4-12-09

Appendix A

Chapter 19.24 TRANSFER OF DEVELOPMENT RIGHTS (TDR) PROGRAM

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 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, Plum Creek Timber Company, L.P. and Palmer Coking Coal Company, dated December 31, 1996. (Ord. 752 § 2 Exh. 1 (part), 2003)

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 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 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. 755 § 1, 2004; Ord. 752 § 2 Exh. 1 (part), 2003)

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. 752 § 2 Exh. 1 (part), 2003)

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. 752 § 2 Exh. 1 (part), 2003)

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. 752 § 2 Exh. 1 (part), 2003)

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. 767 § 1, 2004; Ord. 752 § 2 Exh. 1 (part), 2003)

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. 752 § 2 Exh. 1 (part), 2003)

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. 767 § 2, 2004)

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. 752 § 2 Exh. 1 (part), 2003)

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. 752 § 2 Exh. 1 (part), 2003)

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. 752 § 2 Exh. 1 (part), 2003)

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. 752 § 2 Exh. 1 (part), 2003)

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. 752 § 2 Exh. 1 (part), 2003)

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. 752 § 2 Exh. 1 (part), 2003)

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. 752 § 2 Exh. 1 (part), 2003)

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. 752 § 2 Exh. 1 (part), 2003)

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. 752 § 2 Exh. 1 (part), 2003)

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.

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; 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. (Ord. 752 § 2 Exh. 1 (part), 2003)

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. 752 § 2 Exh. 1 (part), 2003)

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.