

**CITY OF SNOHOMISH
Snohomish, Washington**

ORDINANCE 2216

AN ORDINANCE OF THE CITY OF SNOHOMISH, WASHINGTON, AMENDING THE CITY'S DEVELOPMENT CODE, AS SET FORTH IN TITLE 14 OF THE SNOHOMISH MUNICIPAL CODE, BY ADDING A NEW CHAPTER 14.222, "TRANSFER OF DEVELOPMENT RIGHTS," RELATING TO STANDARDS FOR THE USE OF TRANSFERRED DEVELOPMENT RIGHTS IN DEVELOPMENT PROJECTS.

WHEREAS, transfer of development rights (TDR) is one tool available to Washington communities to encourage the preservation of working agricultural and forest land and other valued uses and places while also promoting more compact infill development within urban areas, consistent with the Washington State Growth Management Act (GMA), Chapter 36.70A RCW, and as provided in the Regional Transfer of Development Rights Program, Chapter 43.362 RCW; and

WHEREAS, pursuant to Resolution 1220, the City Manager signed a Memorandum of Agreement with the Cascade Land Conservancy (now Forterra) to participate in a TDR pilot program under a grant funded by the Washington State Department of Community, Trade, and Economic Development (now Department of Commerce) for local governments to develop TDR programs; and

WHEREAS, in Resolution 1220, the City Council agreed to accommodate an appropriate number of TDR credits, the appropriate number to be determined by the City, and to give certain TDR credits purchased by the Cascade Land Conservancy priority above all others; and

WHEREAS, in Resolution 1220, the City Council agreed to review and consider enacting policies and regulations establishing a TDR program; and

WHEREAS, in Resolution 1231, the City Council expressed an intent to adopt TDR policies and regulations in conjunction with the adoption of development standards for a TDR receiving area; and

WHEREAS, the draft TDR policies and regulations attached to Resolution 1231 were intended to express the City Council's commitment to adopting comparable policies and regulations at the time the City established a TDR program; and

WHEREAS, with approval of Ordinance 2208 on March 15, 2011, the City Council adopted Comprehensive Plan policies providing guidelines for, and directing implementation of, a TDR program; and

WHEREAS, with approval of Ordinance 2209 on March 15, 2011, the City Council enacted development regulations for the Pilchuck District land use designation, which are set forth in Chapter 14.212 SMC; and

WHEREAS, Chapter 14.212 SMC includes development capacity thresholds for which TDR credits are required, making timely the implementation of a TDR program; and

WHEREAS, adopting a TDR program and creating value for TDR credits does not modify the vision or development standards for the Pilchuck District land use designation or for any other area of the City; and

WHEREAS, while with approval of Resolution 1220, the City Council confirmed its intent to designate one or more properties within the City as a receiving area for TDR credits and to enact the necessary land use controls to facilitate TDR, the City retained full legislative authority over the land use controls associated with TDR; and

WHEREAS, in preparing the provisions of this Ordinance, the City has conducted, reviewed, and considered a pro forma economic analysis of prototypical development within the Pilchuck District to help determine a baseline TDR exchange rate, and held a forum of professionals representing various aspects of the local development community to inform the economic analysis; and

WHEREAS, in accordance with RCW 43.21C.031(2), the City Planner, acting as the City's SEPA Responsible Official, issued the Pilchuck District Subarea Planned Action Environmental Impact Statement, which identifies impacts and mitigation measures associated with planned development in the Pilchuck District subarea and related programmatic actions such as adoption of a TDR process and regulations; and

WHEREAS, TDR exchange rates have been discussed in open meetings by the Planning Commission and the Economic Development Committee and both bodies concurred with the proposal to offer a generous increment for each TDR credit; and

WHEREAS, the City has provided for broad public participation in considering the future vision, policies, and development regulations for the Pilchuck District Subarea Plan and related programmatic actions such as adoption of a TDR process and regulations; and

WHEREAS, pursuant to SMC 14.15.070 and RCW 36.70A.106, the City has notified the Washington State Department of Commerce of the City's intent to adopt the proposed amendments to the City's Development Code; and

WHEREAS, on December 20, 2011, a public hearing on the proposed amendments was held by the City Council, and all persons wishing to be heard were heard; and

WHEREAS, public notice of the SEPA process elements and the public hearing for the legislation contained herein was provided as required by law;

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

Section 1. The amendments to the City's Development Code, Title 14 SMC, as contained in this Ordinance are hereby found to be:

- a. Internally consistent with the City's Comprehensive Plan;
- b. Consistent with the Washington State Growth Management Act (GMA), Chapter 36.70A RCW;
- c. Consistent with the Washington State Environmental Policy Act (SEPA), Chapter 43.21C RCW; and
- d. In the interest of the public health, safety, and welfare of Snohomish residents.

Section 2. Title 14 of the Snohomish Municipal Code is hereby amended by adding a new Chapter 14.222, as provided with this Ordinance as Exhibit A.

Section 3. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance or its application to any person or circumstance be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be preempted by state or federal law or regulation, such a decision or preemption shall not affect the validity or constitutionality of the remaining portions of this ordinance or its application to any other persons or circumstances.

Section 4. Effective Date. This ordinance shall be effective five days after adoption and publication by summary.

ADOPTED by the City Council and **APPROVED** by the Mayor this 20th day of December, 2011.

CITY OF SNOHOMISH

By _____
KAREN GUZAK, MAYOR

ATTEST:

APPROVED AS TO FORM:

By _____
TORCHIE COREY, CITY CLERK

By _____
GRANT K. WEED, CITY ATTORNEY

Exhibit A

Chapter 14.222

TRANSFER OF DEVELOPMENT RIGHTS

Sections:

14.222.010	Purpose
14.222.020	Definitions
14.222.030	Authorized and Priority TDR Sending Areas
14.222.040	Authorized Receiving Areas
14.222.050	TDR Credit Use and Exchange Rates
14.222.060	Program Evaluation

14.222.010 Purpose.

- A. This chapter is adopted pursuant to the Growth Management Act, Chapter 36.70A RCW. Transfer of Development Rights (TDR) is intended to provide a general public benefit by permanently protecting valuable community assets such as resource lands, critical areas, open space, and other lands for which preservation is preferred over development or redevelopment. TDR allows eligible land owners to achieve a reasonable economic return while protecting the resource land from development by voluntarily transferring development potential from these lands to locations better suited for urban development. TDR constitutes a voluntary, incentive-based approach to land use management.
- B. The provisions of this chapter supplement existing land use regulations by allowing increased development potential in TDR receiving areas designated by ordinance.

14.222.020 Definitions.

Development right means one of a series of rights inherent in fee simple ownership of land. It represents the potential for the improvement of a parcel of property, as measured in the number of potential residential dwellings or square footage of commercial use allowed by the property's land use designation and site attributes.

Receiving site or area means one or more properties designated by ordinance to which TDR credits may be transferred for the right to develop property in excess of the development potential entitled by-right.

Sending site or area means one or more properties from which TDR credits may be transferred to use in a designated TDR receiving site as provided in SMC 14.222.030.

TDR certificate means a recorded document issued by Snohomish County representing one TDR credit that may be submitted as part of an application for development of a receiving site to allow additional development consistent with the adopted exchange rate.

TDR credit means a tradable commodity representing one certified development right.

TDR exchange rate means the development increment represented by one TDR credit for a specific receiving area, as may be measured in building area, building height, lot coverage, residential density, number of residential dwellings, or other development provisions as provided by this chapter.

Transfer of development rights (TDR) means the method by which the entitlement to develop property within a designated sending area may be sold for use within an eligible receiving site or area. At a designated receiving site, TDR credits can be exchanged for the license to place an increment of development on the receiving site in excess of the extent of development otherwise allowed.

14.222.030 Authorized and Priority Sending Areas.

- A. All properties for which transferrable development rights have been certified by Snohomish County are authorized TDR sending areas for the City of Snohomish TDR Program.
- B. The 17 certified development rights purchased by the Cascade Land Conservancy between February 3, 2009, and June 30, 2009, from forest lands in Snohomish County shall have priority over all other TDR credits and shall be the only TDR credits accepted by the City until each TDR certificate representing such credits is extinguished or is otherwise determined by the City to be removed from the market.

14.222.040 Authorized Receiving Areas. Receiving areas shall include only those properties designated by ordinance. The Pilchuck District land use designation is designated a TDR receiving area subject to any limitations specified in Chapter 14.212 SMC.

14.222.050 TDR Credit Use and Exchange Rates.

- A. Where specifically authorized in Title 14 SMC, one or more whole TDR credits may be used to exceed the building height, density, or other development standard allowed by-right, subject to the limitations and requirements in this section and conformance to all other applicable development regulations. A TDR credit shall have no value except as specified in this title for a specific receiving site.
 - 1. The exchange rate of TDR credits shall be established by ordinance as amended from time to time, and the exchange rate of a TDR credit shall be based on the standards in effect at the time a land use application requiring TDR credits is determined complete as provided by SMC 14.55.012.
 - 2. Within the Pilchuck District land use designation:
 - a. Each TDR credit associated with a development application determined complete prior to January 1, 2017, shall have an exchange rate of 18,000 square feet of gross floor area above the third story.

- b. Each TDR credit associated with a development application determined complete on or after January 1, 2017, shall have an exchange rate of 14,000 square feet of gross floor area above the third story.

B. Use of TDR credits shall be subject to the following:

1. TDR credits shall be approved for use in designated receiving areas only.
2. If located within a shoreline environment designation, building height shall not exceed the limitations in the Snohomish Shoreline Master Program.
3. The development potential represented by one TDR certificate may be applied to more than one building only when all buildings are on one contiguous site and approved as part of one land use application. Otherwise, fractional TDR credits shall not be accepted as part of a building permit application.
4. The use of TDR credits shall not entitle the bearer to establish or expand land uses other than those permitted under Title 14 SMC for the land use designation in which the site is located or to modify other development standards except as specifically provided in Title 14 SMC. Development permitted with the use of TDR credits shall be subject to all applicable codes, standards, and requirements for impact mitigation.
5. No building permit requiring the use of TDR credits shall be issued prior to submittal of an original TDR certificate.

14.222.060 Program Evaluation. To ensure consistency of the TDR program with current development market conditions, the City shall evaluate adopted exchange rates at intervals no greater than five years.