

ORDINANCE NO. 643, 1998

An ordinance adding a new chapter 33.26 to the Clallam County Zoning Code, Title 33 C.C.C., on Transfer of Development Rights (TDR). The ordinance also amends Sections 33.13.(050,070) for internal consistency with this new chapter. Chapter 33.26 establishes the requirements for transferring development rights from lands designated Agricultural within the Sequim-Dungeness Regional Planning Area to lands designated as receiving areas within the Sequim Urban Growth Area; and from lands designated as Open Space Overlay Corridors within the Port Angeles Regional Planning Area to land designated as receiving areas within the Port Angeles Urban Growth Area. The ordinance also adopts a Port Angeles Regional Comprehensive Plan Open Space Overlay Corridor Map.

BE IT ORDAINED BY THE BOARD OF CLALLAM COUNTY COMMISSIONERS

Chapter 33.26

Transfer Of Development Rights

Sections:

33.26.010	Purpose
33.26.020	Transfer of Development Rights Sending Areas
33.26.030	Allocation of Transferable Development Rights
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33.26.050	Effect of Transfer of Development Rights
33.26.060	Reservation of Power; Damages
33.26.070	Transfer of Development Right Receiving Areas

C.C.C. 33.26.010 TRANSFER OF DEVELOPMENT RIGHTS - PURPOSE. The purpose of this chapter is to encourage the conservation of long-term commercially significant agricultural lands in the Sequim-Dungeness Regional Planning Area by allowing owners of such lands to realize the equity in the land's development potential without conversion to non-agricultural uses. This ordinance also seeks to protect critical areas within the Port Angeles Regional Planning Area by allowing owners of such lands to realize the equity in the land's development potential without conversion to non-agricultural or non-forestry related uses. Lastly, the ordinance seeks to encourage appropriate growth in urban growth areas.

C.C.C. 33.26.020 TRANSFER OF DEVELOPMENT RIGHTS (TDR) SENDING AREAS. All lands designated as Agricultural on the Sequim-Dungeness Regional Comprehensive Plan map are established as Agricultural Transfer of Development Rights Sending Areas. The underlying regulations for this district continue to apply. Agricultural Transfer of Development Rights credited by Clallam County to lands in this area can be sold by landowners for use in designated residential TDR Receiving Areas within the Sequim Urban Growth Area.

All lands designated as Very Low Density/Open Space on the Port Angeles Regional Comprehensive Plan Map and all Open Space Overlay Corridors identified by the Port Angeles Regional Comprehensive Plan Open Space Overlay Corridors Map are established as Critical Area Transfer of Development Rights Sending Areas. The underlying regulations for these districts continue to apply. Critical Area Transfer of Development Rights credited by Clallam County to lands in this area can be sold by landowners for use in designated residential TDR Receiving Areas within the Port Angeles Urban Growth Area.

C.C.C. 33.26.030 ALLOCATION OF TRANSFERABLE DEVELOPMENT RIGHTS. Every parcel of land located in the TDR Sending Area shall have credited to it, upon certification by the Clallam County Department of Community Development, transferable development rights in the amount set forth below. These transferable development rights allocated in accordance with this section may be used to obtain approval for established residential densities on lands located within TDR Receiving Areas, in accordance with the zoning in the TDR Receiving Areas.

1. Transferable development rights within Agricultural Retention Zones are calculated as follows:

a. When a property located within an Agricultural Designation and within the Agricultural Retention zoning district is proposed for a separation of its development rights which will create an agricultural reserve area protected from non-agricultural development by a conservation easement and which agricultural reserve is at least as large in area as the agricultural reserve which would be established through an Agricultural Retention development on that same property, then that property may be credited with transferable development rights calculated by multiplying the gross acreage of the parcel within the Agricultural Retention zoning district by 0.30. (Acres in AR \* 0.30).

b. As an alternative to method number 1 above, when a property is to be developed with a partial separation of its development rights with an accompanying Agricultural Retention development proposal, then that property may be credited with transferable development rights calculated by multiplying the gross acreage of the parcel within the Agricultural Retention zoning district by 0.30. (Acres in AR \* 0.30).

c. Lastly, should an owner of land zoned Agricultural Retention decide to sell development rights without protecting through conservation easement a portion of the farm equivalent to that which would be created through an Agricultural Retention development on that same farm then the transferable development rights on that parcel would be calculated by dividing the gross acreage of the parcel within the Agricultural Retention zoning district by 5. (does not qualify for 50% density bonus)

2. Transferable development rights within a Very Low Density/Open Space designation on the Port Angeles Regional Comprehensive Plan Map or in an Open Space Overlay Corridor are calculated as follows:

The number of transferable development rights credited to parcels located within a Very Low Density/Open Space designation on the Port Angeles Regional Comprehensive Plan Map or in an Open Space Overlay Corridor identified by the Port Angeles Regional Comprehensive Plan Open Space Overlay Map is calculated by determining the acreage of the entire parcel which has at least a portion of the Very Low Density/Open Space designation or a portion of the Open Space Overlay Corridor found within the parcel boundary and dividing the entire qualifying parcel acreage by the density allowed in the underlying zoning district rounded down to the nearest whole number.

3. One development right shall be subtracted for each residence located on a parcel in the TDR Sending Area which exists as of the effective date of this ordinance or is built after the effective date of this ordinance.

4. No fractional development rights shall be created.

5. The use of a parcel from which development rights have been transferred remains subject to the density and other restrictions of the underlying zone. If the number of development rights remaining on a parcel is less than that permitted by the underlying zone, the property may be developed only to the extent of the remaining development rights.

#### C.C.C. 33.26.040 CERTIFICATION AND TRANSFER OF TRANSFERABLE DEVELOPMENT RIGHTS.

1. Application for Certification of Number of Transferable Development Rights.

a. Clallam County Department of Community Development shall issue a certification of the number of transferable development rights on the Sending Area parcel and serially numbered individual certificates for each transferable development right credited to that parcel upon satisfactory application for Certification of Transferable Development Rights (TDRs) by the Sending Area parcel owner. The issuance of TDR certificates shall be recorded in the chain of title for the subject property.

b. An application shall contain such information as deemed necessary to verify parcel size and existing uses as a basis for certifying the number of development rights. This information shall include:

i. A map of the proposed Sending Area parcel based on a survey if available or a map prepared in a professional manner on an assessor's map of the parcel if no recent survey is available.

ii. Legal description and parcel numbers of the Sending Area parcel.

- iii. A copy of the deed showing that the applicant is the owner of the subject Sending Area parcel.
- iv. Number of housing units existing on the subject Sending Area parcel.
- v. A review fee as may be prescribed by the Board of Clallam County Commissioners.

2. Transfer of Development Rights (TDR) Easement. In order to validly convey the transferable development rights certified on a Sending Area parcel, a TDR Easement shall be signed between the owner of the Sending Area parcel and Clallam County and recorded with the Clallam County Auditor. To validly retain the transferable development rights which have been certified on a Sending Area parcel when an original owner sells such parcel, a TDR Easement shall be signed by the purchaser of the subject parcel and Clallam County and recorded with the Clallam County Auditor. The TDR Easement shall be on a form approved by the Board of Clallam County Commissioners and shall contain the following provisions:

a. All of the serial numbers of the transferable development rights which have been certified by Clallam County Department of Community Development on the Sending Area parcel which is the subject of the TDR Easement.

b. A covenant on the Sending Area parcel that it may be developed or subdivided for residential purposes as authorized by the underlying zone only if transferable development rights have been reserved for each dwelling to be constructed on the subject property prior to subdivision on the Sending Area parcel. If subdivision is not required, a transferable development right shall be reserved prior to construction of any single-family dwelling. The covenant shall also state that any use of the parcel remains subject to the provisions of CCC Title 33 at the time the TDR Easement is signed. A reserved transferable development right must be attached to a legal lot by a Document of Attachment in order for a single-family dwelling as defined in CCC Title 33 to be built. These reserved transferable development rights can be used only on the original Sending Area parcel or its legal subdivisions.

c. A covenant that all provisions of the TDR Easement shall run with and bind the Sending Area parcel in perpetuity and shall be enforced by the Board of Clallam County Commissioners.

d. A statement that nothing in the restrictions shall be construed to convey to the public a right of access or use of the property and that the owner of the property, his/her heirs, successors and assigns shall retain exclusive right to such access or use subject to the terms of the TDR Easement.

e. If only a portion of the transferable development rights of a parcel in a Very Low Density/Open Space zoning district or an Open Space Overlay Corridor are being transferred, then a survey map of the entire parcel must be recorded with the Clallam County Auditor. The map must show the actual area on the parcel within a Very Low Density/Open Space zoning district or an Open Space Overlay Corridor which is being protected by the transfer of development rights. That portion of the parcel protected by a TDR easement shall contain a statement that all residential development rights have been removed from this portion of the parcel and that only those limited agricultural or limited forestry uses listed in the underlying zoning district or as further limited by the Critical Areas Code shall be allowed.

3. Deed of Transfer.

a. The certified transferable development rights shall be sold or otherwise conveyed only by means of a Deed of Transfer, the form and content of which is prescribed by the Board of Clallam County Commissioners and approved by the Clallam County Prosecuting Attorney. This Deed must be recorded with the Clallam County Auditor and appear in the chain of title of the parcel from which the development right(s) have been transferred.

b. The Deed of Transfer shall specify the number of transferable development rights sold or otherwise conveyed and shall only be valid when recorded along with the appropriate TDR Easement on the subject property, signed by the owner of the Sending Area parcel and Clallam County, containing the provisions established by the Board of Clallam County Commissioners for such a document.

c. Contents. A Deed of Transfer shall contain:

- i. A legal description and map of the Sending Area parcel(s).
- ii. A covenant that all provisions of the Deed of Transfer shall run with and bind the Sending Area parcel and shall be enforced by the Board of Clallam County Commissioners;
- iii. The names of the Transferor and the Transferee;

- iv. A covenant that the Transferor grants and assigns to the Transferee a specified number of development rights from the Sending Area parcel;
- v. Proof of ownership of the Sending Area parcel;
- vi. If the transferor is not the owner of the Sending Area parcel, a statement that the transfer is (i) an original transfer, including a description of the reason for such (e.g., where an original owner sold the Sending Area parcel but retained the development rights), or (ii) an intermediate transfer of development rights derived from another receiving area parcel with unused development rights or from a Sending Area parcel described in an original instrument of transfer, identified by its date, the names of the original Transferor and Transferee and the volume and page where it was recorded by the Clallam County Auditor;
- vii. A covenant by which the Transferor acknowledges that he/she has no further use or right of use with respect to the development rights being transferred;
- viii. The certification of the number of transferable development rights on the Sending Area parcel and copies of the appropriate certificates of those rights issued by the Clallam County Department of Community Development as required by CCC Chapter 23.26;
- ix. Payment of required Excise Tax and recording fees on the transaction;
- x. Proof of the execution and recordation of a TDR Easement on the subject Sending Area parcel; and
- xi. The signature of the Clallam County Department of Community Development staff member who has reviewed the document for completeness.

4. Responsibility. The Transferor and the Transferee named in an instrument of transfer shall have the responsibility to supply the information required by this section, to provide a proper instrument of transfer and to pay all costs of its recordation, in addition to any other fees required by this section.

5. Intermediate Transfer. Transferable development rights may be transferred to an intermediate transferor or broker before they are used and held for a period of time before they are used on a Receiving Area parcel. In the case of an intermediate transfer, the transferable development rights shall still be considered to be appurtenant to the sending area parcel until the time they are actually attached to a receiving area parcel. The value of an intermediate transferable development right shall be tracked separately from the rest of the parcel value and taxes due for this value shall be paid by the owner of the transferable development right.

C.C.C. 33.26.050 EFFECT OF THE TRANSFER OF DEVELOPMENT RIGHTS. After development rights have been transferred from a property in the Sending Area, the following shall apply:

1. The Agricultural Sending Area parcel may be used only for agricultural uses, as defined and permitted in CCC Chapter 33.07 (Agricultural Retention District), except that subdivision for residential purposes, including a farm residence, as authorized by the underlying zone shall be permitted only if transferable development rights have been reserved for each dwelling to be constructed on the subject property prior to subdivision. That portion of the Critical Area Sending Area parcel protected by a TDR easement may be used only for agricultural or forestry related uses, as defined and permitted in the underlying zoning district, except that subdivision for residential purposes or other uses authorized by the underlying zone shall be permitted outside the Very Low Density/Open Space zoning district or an Open Space Overlay Corridor portion of the parcel only if transferable development rights have been reserved for each dwelling to be constructed on the subject property prior to subdivision. If subdivision is not required, a transferable development right shall be reserved prior to construction of any single family dwelling. A reserved transferable development right may be used to construct a single-family dwelling only if it has been attached by a Document of Attachment to a legal lot. These reserved transferable development rights may be used only on the original Sending Area parcel or its legal subdivisions.

2. All certified transferable development rights and the value of such rights shall be deemed for all other purposes to be appurtenant to the Sending Area parcel until such rights are transferred by a recorded Deed of Transfer. The value of an intermediate transferable development right shall be tracked separately from the rest of the parcel value and taxes due for this value shall be paid by the owner of the intermediate transferable development right.

3. Nothing in such restrictions shall be construed to convey to the public a right of access or use of the property; the owner of the property, his/her heirs, successors and assigns shall retain exclusive right to such access or use subject to the terms of the TDR Easement.

4. An unused transferable development right may be shifted from one receiving area parcel to another receiving area parcel upon execution of a deed of transfer and recorded exchange of transferable development rights certificates.

C.C.C. 33.26.060 RESERVATION OF POWER: DAMAGES. Nothing in this ordinance shall be construed to limit or affect the power of the County to amend, supplement or repeal all or any part of the provisions of this chapter at any time, however, should Clallam County eliminate the ability of an owner of unused, certified transferable development rights to transfer those rights into designated receiving areas, then Clallam County shall agree to compensate the owner of such certified transferable development rights for the exact amount which the owner originally paid for these rights, upon provision of proof of the price originally paid for such certified, transferable development rights.

C.C.C. 33.26.070 TRANSFER OF DEVELOPMENT RIGHT RECEIVING AREAS. Receiving Area zones for Agricultural Sending Areas are located within the Sequim urban growth area and are listed below. Receiving Areas for Port Angeles Critical Area Sending Areas are located within the Port Angeles urban growth area and are listed below.

Chapter 33.19.050(3) Sequim Urban Residential II, III, IV Zones

Chapter 33.13.050 Urban Very Low Density/Urban Low Density District (Port Angeles)

And any additional future receiving area zones within City limits designated by Sequim or Port Angeles

### **PROPOSED CHANGES IN THE CURRENT ZONING ORDINANCE TO IMPLEMENT THE NEW TRANSFER OF DEVELOPMENT RIGHTS ORDINANCE**

C.C.C. 33.13.050 URBAN VERY LOW DENSITY/URBAN LOW DENSITY (VLD/LD). The purpose of the Urban Very Low Density/Urban Low Density zoning district is to provide areas of very low density urban development which provide the opportunity to increase per acre urban densities up to an additional seven units per acre through the purchase of development rights. This zoning district provide areas for a mix of single family residences, duplexes and multiple family residential development which is free from encroachment of commercial and industrial activities.

1. Allowed Land Uses - The following land uses should be allowed outright in the Urban Very Low Density/Urban Low Density zoning district:

- Agricultural activities
- Bed and breakfast inns
- Child day care center
- Churches
- Duplexes
- Family child care home
- Home enterprises
- Lodges
- Mobile home parks
- Multiple family dwellings
- Planned unit developments
- Single family dwellings
- Timber harvesting

2. Conditional Land Uses - The following land uses should be permitted in the Urban Very Low Density/Urban Low Density zoning district through a special permitting process with public input and a determination that the proposed use is consistent with applicable land use regulations and the character of the neighborhood:

- Cemeteries
- Home based industries
- Public outdoor oriented recreational activity
- Schools

3. Prohibited Land Uses - The following land uses should be prohibited in the Urban Very Low Density/Urban Low Density zoning district:

- Airports
- Asphalt plants
- Business parks
- Commercial greenhouses
- Commercial horse facility
- Commercial storage
- Gas stations
- Grocery stores
- Medical service facilities
- Mineral extraction
- Motels
- Primitive campgrounds
- Professional offices
- Race tracks
- Research facilities
- Restaurants
- Retail stores
- RV parks
- Shooting ranges
- Taverns
- Timber labor camps
- Tourist shops
- Vehicular repair
- Veterinarian clinics/kennels
- Wood manufacturing
- Wrecking yards

4. Maximum Residential Density:

Two dwelling units per acre without purchase of development rights.

Nine dwelling units per acre with purchase of development rights.

5. Maximum Lot Size: 21,500 square feet, unless the remaining lot in a subdivision is greater than 10 acres and capable of being redivided.

6. Minimum Lot Size: 4,840 square feet

7. Setbacks:

Front yard - 45 feet from a local access street, 50 feet from a arterial street, 60 feet from a highway

Side yard - 8 feet (40 feet from the centerline of the right-of-way of a side street).

Rear yard - 15 feet (40 feet from the centerline of the right-of-way of a rear street).

8. ~~Purchase-Transfer~~ of development rights.

~~— A development right is established by the density of development allowed in a zoning district. For example, every 5 acres of land in a 5-acre zoning district within an Open Space Overlay district or an Open Space Overlay Corridor has one development right. Development rights may be purchased~~transferred~~ from any urban property located within an Urban Very Low Density/Open Space Overlay zone or any rural property located within an Open Space Overlay Corridor. . Development rights may be utilized to increase densities in the VLD/LD zoning district utilizing the Transfer of Development Rights process of Chapter 33.26.—Limiting development of critical areas and habitats by allowing owners of critical areas to sell their development rights results in further protection of critical areas and serves to compensate owners of critical areas for loss of development rights.~~

~~— A transfer of development rights can occur when a property owner of property located within an Open Space Overlay district or an Open Space Overlay Corridor agrees to sell one or more of his/her development rights to an owner of property within a VLD/LD zoning district. A development right shall be transferred by placing a notice to title on the property selling the development rights and recording a notice on the plat of the subdivision receiving the development rights. Both notices shall be in a recordable form approved by the Department of Community Development. The notice to title shall limit the future construction of dwelling units in the open space overlay zones or corridors to the total number of development rights established by the zoning of the property minus all development rights transferred. The transfer of development rights shall be recorded on the plat of the subdivision and in the land records of Clallam County and shall indicate the number of development rights transferred to the property to increase the density of the development.~~

The base density of the VLD/LD zoning district shall not be increased above 9 dwelling units per acre.

~~— A request to utilize development rights shall be in the form of a preliminary subdivision plan. A sales agreement will document the number and location of the development rights being transferred.~~

C.C.C. 33.13.070 URBAN VERY LOW DENSITY/OPEN SPACE OVERLAY/OPEN SPACE OVERLAY CORRIDORS (OS). The purpose of the Urban Very Low Density/Open Space Overlay zoning district and the Open Space Overlay Corridor is to identify areas which have development rights which may be ~~purchased~~transferred in order to further protect the critical areas or habitats identified by these overlay designations. Land Uses, densities, lot sizes and setbacks are those allowed in the underlying zoning district. A development right in an Urban Very Low Density/Open Space Overlay Zoning District or an/ Open Space Overlay Corridor is established by the density of development allowed in the underlying zoning district. For example, every 5 acres of land in a Rural Low (R5) zoning district within an ~~Open Space Overlay district or an Open Space Overlay Corridor~~ has one development right. These development rights may be ~~transferred~~purchased as specified in Chapter 33.26, Section 33.13.050 (8).

SOURCE:

Ordinance No. 581, 1995

ADOPTED:

12/19/95

Section 1 All of the preceding ordinance and the Port Angeles Regional Comprehensive Plan Open Space Overlay Corridor Map known as Exhibit A constitute Section 1 of this ordinance.

Section 2 Exhibit A shall be added to the official Clallam County Comprehensive Plan Maps covering the Port Angeles Regional Planning Area.

Section 3 The signed ordinance and Exhibit A shall be recorded in the Clallam County Auditor's Office.

Section 4 This ordinance shall become effective ten (10) days after adoption.

PASSED AND ADOPTED this 28<sup>th</sup> day of July, 1998

BOARD OF CLALLAM COUNTY  
COMMISSIONERS

Carole Y. Boardman  
Carole Y. Boardman, Chair

Martha M. Ireland  
Martha M. Ireland

Phillip Kitchel  
Phillip Kitchel

ATTEST:

Karen Flores  
Karen Flores  
Clerk of the Board

cc: Community Development  
minutes  
file