

**APPENDIX A: Transferable Development Credit Program code amendment**

REVIEWED  LEGAL COUNSEL
REVIEWED  CODE REVIEW COMMITTEE

For Recording Stamp Only
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BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Title 11, County Owned Land and Property, and Declaring an Emergency \*  
\* **ORDINANCE NO. 2006-016**

WHEREAS, nitrogen, particularly in the form of nitrate, contained in inadequately treated sewage discharged to groundwater poses a risk to both public health and water quality in south Deschutes County and

WHEREAS, the primary goal for south Deschutes County is to protect public health and the environment with the specific objective of protecting public waters of the La Pine sub-basin from impacts of wastewater treatment and dispersal and

WHEREAS, at this time, except for limited areas served by a community water system with access to deeper aquifers, the shallow unconfined aquifer in south Deschutes County provides the sole source of residential drinking water and

WHEREAS, findings from the US Geological Survey's 3D Groundwater Nutrient Fate and Transport Model, La Pine National Decentralized Wastewater Treatment Demonstration Project, and Nitrate Loading Management Model for South Deschutes County (La Pine Studies) illustrate that the assumptions used for the development of the Transferable Development Credit program require modification because the Transferable Development Credit program will have significantly less impact on improving groundwater quality than alternative wastewater treatment systems and

WHEREAS, the La Pine Studies show continued use of conventional wastewater treatment systems in the region will ultimately increase the nitrate-nitrogen levels in the groundwater in most areas of the region beyond the EPA safe drinking water standard of 10 mg/l and

WHEREAS, the La Pine Studies show alternative treatment technologies exist that can denitrify wastewater and using available nitrogen reducing wastewater treatment technologies on individual properties in the La Pine sub-basin will protect the groundwater from exceeding safe drinking water standards for nitrate and

WHEREAS, the Transferable Development Credit Review Committee and Planning Staff met for six months from July 2005 to December 2005, and reconvened on April 11, 2006 to discuss the need for, and direction of, changes to the Transferable Development Credit Program based on findings from the La Pine Studies.

WHEREAS, the Transferable Development Credit Review Committee recommends that the Transferable Development Credit program should be amended to include Pollution Reduction Credits that would be created when a conventional onsite wastewater treatment system is retrofitted to become a nitrogen reducing system; that existing property owners in the south County need incentives to accept retrofits or financial assistance in order to afford to install retrofits; and that development should be able to commence in the Neighborhood Planning Area regardless of whether or not there are sufficient retrofitted onsite wastewater treatment systems at the time a developer is ready to begin development so long as the developer provides sufficient funds to allow the County to retrofit existing onsite wastewater treatment systems, and



WHEREAS, the Deschutes County Planning Commission concurs with the recommendation of the Transferable Development Credit Review Committee to amend the Transferable Development Credit program as described and

WHEREAS; additional formulas are needed to calculate the number of Pollution Reduction Credits required for developing a tract in the La Pine Neighborhood Planning Area and for establishing the amount per Pollution Reduction Credit when a developer of the Neighborhood Planning Area chooses to fund the proportional cost of a retrofit and

WHEREAS, the purpose of the County fund is solely to provide financial assistance for property owners to retrofit existing wastewater treatment systems and

WHEREAS, Deschutes County entered into a contract with Pahlisch Homes, Inc. to develop Quadrants 2a, 2b, and 2d in Neighborhood 2 of the Neighborhood Planning Area and Pahlisch Homes, Inc., now Elk Horn Land Development LLC, wants to submit a tentative plat for their next phase in Quadrant 2a in Spring 2006 and

WHEREAS, Vic Russell owns Quadrants 1a, 1b, and 1d of Neighborhood 1 and is responsible for obtaining Transferable Development Credits for those quadrants; now therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

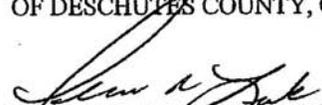
Section 1. AMENDMENT. DCC 11.12 is amended to read as described in Exhibit "A," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

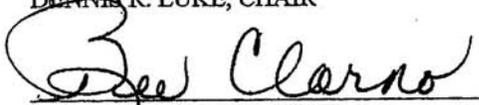
Section 2 FINDINGS. The Board of Commissioners adopts as its findings in support of this amendment the Staff Report dated 5/31/06, EXHIBIT "B" to Ordinance 2006-016 and incorporated by reference herein.

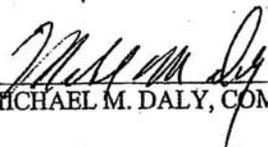
Section 3. EMERGENCY. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

Dated this 5<sup>th</sup> of June 2006

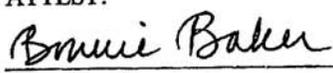
BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

  
DENNIS R. LUKE, CHAIR

  
BEV CLARNO, VICE CHAIR

  
MICHAEL M. DALY, COMMISSIONER

ATTEST:

  
Recording Secretary



Date of 1<sup>st</sup> Reading: 5<sup>th</sup> day of June, 2006.

Date of 2<sup>nd</sup> Reading: 5<sup>th</sup> day of June, 2006.

Record of Adoption Vote

Commissioner	Yes	No	Abstained	Excused
Dennis R. Luke	<u>X</u>	___	___	___
Bev Clarno	<u>✓</u>	___	___	___
Michael M. Daly	<u>✓</u>	___	___	___

Effective date: 5<sup>th</sup> day of June, 2006.

ATTEST:

Bonnie Baker  
Recording Secretary



“Exhibit A”

**Chapter 11.12. TRANSFERABLE DEVELOPMENT CREDIT PROGRAM**

**11.12.010. Definitions.**

**11.12.020. TDC transactions.**

**11.12.030. TDC sending area eligibility criteria.**

**11.12.040. TDC Advisory Committee.**

**11.12.010. Definitions.**

As used in DCC 11.12, the following words and phrases shall mean as set forth in DCC 11.12.010.

“Certificate of TDC Purchase” means a certificate from Deschutes County that documents the purchase or, in the case of a PRC, creation of TDC(s).

“Department” means, for purposes of this chapter, the Deschutes County Community Development Department.

“Existing Wastewater Treatment System” means a wastewater treatment system in use in the Sending Area on May 31, 2006 that is not a Nitrogen Reducing System approved by Deschutes County.

“High Priority Deer Migration Corridor Area” means the area mapped in 2000 by the Oregon Department of Fish and Wildlife which shows the area of priority protection for migrating mule deer within a larger migration corridor acknowledged under statewide planning Goal 5. A copy of this map is on file with the Community Development Department.

“Net Developable Acre” means the acreage in a tract of land in a Receiving Area calculated by subtracting the acreage reserved for collector road right-of-way and community parks and open space from the gross acreage of a subject tract.

“Nitrate Loading Management Model” means the groundwater model developed by

the US Geological Survey to determine the nitrate loading capacity of the drinking water aquifer underlying south Deschutes County.

“Nitrogen Reducing System” means a wastewater treatment system that reduces nitrogen loading to the groundwater in accordance with the Nitrate Loading Management Model and that is approved by Deschutes County.

“Pollution Reduction Credit” (PRC) means the credit given for the Retrofitting of an Existing Wastewater Treatment System or payment into the County’s fund.

“Receiving Area” means the area designated by the County where Ttransferable Ddevelopment Ccredits are required in order to purchase and develop a tract of land.

“Restrictive Covenant” means a legal instrument which places restrictions on future development on a lot or parcel of land in the Sending Area.

“Retrofit” means to upgrade or replace an Existing Wastewater Treatment System in the Sending Area with a Nitrogen Reducing System approved by the County.

“Sending Area” means the area designated by the County in which Ttransferable Ddevelopment Ccredits may be sold.

“TDC Report” means a report from a title company verifying title to and encumbrances on the subject property.

“Transferable Development Credit” (TDC) means the credit given for a Rrestrictive Ccovenant granted to Deschutes County restricting the placement of a septic system on the subject property or a PRC. (Ord. 2006-016 § 1, 2006; Ord. 2004-007 § 1, 2004; Ord. 2002-010 § 1, 2002)

**11.12.020. TDC transactions.**

A. Sale of TDCs from the Sending Area. Either Section B or C. The following



"Exhibit A"

~~procedures shall be followed for a property owner to sell the creation of TDCs, from an eligible lot or parcel in the Selling Area to Deschutes County or other TDC purchaser.~~

B. Restrictive Covenant

1. The property owner or any other interested person shall request verification from the County that the subject property is eligible for a TDC.
2. The Department shall send the property owner or interested person written verification confirming the number of TDCs the subject property is eligible for based on the criteria in DCC 11.12.030.
3. Upon mutual agreement of a sale between the property owner and TDC purchaser, the following transactions shall occur:
  - a. The property owner shall provide a TDC Report to the Department.
  - b. If the TDC purchaser is other than the County then the property owner and TDC purchaser shall sign a TDC Contract form provided by the County.
  - c. Upon Department review and approval of the TDC Report and receipt of payment of the consideration in accordance with the County's agreement with the property owner or the TDC Contract pursuant to DCC 11.12.010(A)(3)(b), the County shall prepare a Restrictive Covenant that restricts development on the subject property. This Restrictive Covenant shall be signed by the County and the property owner. The County shall record the Restrictive Covenant.
  - d. Contemporaneously with the recording of the Restrictive Covenant, County shall provide the TDC purchaser with

documentation of the TDC purchase.

C. PRC.

1. The property owner or any other interested person shall request verification from the County that the subject property is eligible for a PRC.
2. The Department shall provide the property owner or interested person written verification confirming the subject property is eligible for a PRC based on the criteria in DCC 11.12.030.
3. The County shall grant a PRC to a developer in the Receiving Area if the developer provides one of the following:
  - a. A Retrofit, in cooperation with the property owner of a property eligible for a PRC, Existing Wastewater Treatment System and documentation submitted to the County that includes proof of ownership of the subject property, proof of consent of the property owner for the Retrofit, and final County inspection of the Retrofit; or
  - b. Payment into the County's fund for TDCs and PRCS the proportional cost established by Board of County Commissioner resolution for a Retrofit. The County's fund shall be used to aid property owners in Retrofitting their Existing Wastewater Treatment Systems.

BD. Assignment of TDCs to the Receiving Area. Prior to ~~tentative~~-final plat approval in the Receiving Area, the Department must have record of the required number of TDCs ~~purchased established~~ and available ~~for transfer to~~ to apply to development of a tract or lot meeting the following criteria within the Receiving Area:

1. The tract or lot shall be located within the La Pine Neighborhood Planning Area in the La Pine Urban



“Exhibit A”

- Unincorporated Community and be zoned Residential General or Residential Center. The TDC ~~Receiving a~~Area is identified on a map prepared and maintained by the ~~Community~~ ~~Development~~ Department.
2. TDCs shall be assigned to a lot or tract based on the ~~Net D~~developable ~~a~~Acres at a rate approved by Board of County Commissioner ~~r~~Resolution.
  3. PRCs shall be assigned to a tract at a rate established by Board of County Commissioner resolution.
  4. The Board may, by ~~r~~Resolution, adjust the number of TDCs required per acre or alter the factors for which TDCs are required in the receiving ~~a~~Area.
- E. ~~Non-Residential Uses—Districts~~. Where permitted under DCC 18.61.050, uses in non-residential uses—districts in the ~~r~~Receiving aArea do not require TDCs.
- F. Right to Develop. If an owner of a lot or parcel of land eligible for a TDC chooses not to participate in the TDC program, the owner shall not be restricted from developing said lot or parcel in accordance with the applicable zoning standards in DCC Title 18, and any other applicable regulations, rules or standards.

(Ord. 2006-016 § 1, 2006; Ord. 2004-007 § 1, 2004; Ord. 2002-010 § 1, 2002)

**11.12.030. TDC sending area eligibility criteria.**

- A. A lot or parcel that meets the following criteria is eligible to receive a TDC. The lot or parcel shall:
1. Be located within the “~~S~~ending ~~A~~area” identified on a map prepared and maintained by the Department;
  2. Be no greater than two acres in area;
  3. Be capable of being served by an on-site sewage disposal system that meets current Oregon Department of Environmental Quality standards, as demonstrated by a satisfactory

- feasibility evaluation for an on-site sewage disposal system or when the lot or parcel is shown as being eligible for such system on the TDC ~~s~~ending ~~a~~Area map; and
4. Not be developed with an existing sewage disposal system, or if developed with an existing sewage disposal system, the landowner shall disable said system, or
  5. Have received prior approval for a site evaluation or an installed septic system that has expired or is no longer valid, or
  6. Have an Existing Wastewater Treatment System eligible for a Retrofit.
- B. TDCs and PRCs shall be assigned to an eligible lot or parcel that meets the criteria in DCC 11.12.030(A), as follows:
1. An eligible lot or parcel upon which a Restrictive Covenant is recorded shall be assigned receive one TDC.
  2. An eligible lot or parcel located in the High Priority Deer Migration Corridor Area upon which a Restrictive Covenant is recorded shall be assigned receive—an additional one-half TDC.
  3. An eligible lot or parcel upon which an Existing Wastewater Treatment System has been Retrofitted shall be assigned one PRC.
  34. The Board of County Commissioners may by Resolution revise the number of TDCs assigned or the factors for which TDCs are assigned to eligible lots or parcels in the ~~S~~ending ~~a~~Area.

(Ord. 2006-016 § 1, 2006; Ord. 2004-007 § 1, 2004; Ord. 2002-010 § 1, 2002)

**11.12.040. TDC Advisory Committee.**

- A. Purpose. The TDC Advisory Committee is an advisory committee whose purpose is to assist staff in implementing the TDC program and to recommend to staff the means to accomplish the goals of Regional Problem Solving insofar as the transfer of development credits from the



"Exhibit A"

- sSending aArea to the rReceiving aArea are concerned.
- B. Duties. The committee will advise staff in evaluating the TDC program for record keeping accuracy, determine if program goals are being met, consider whether any changes to the TDC allocation criteria in the sSending aArea or TDC requirements in the rReceiving aArea are advisable, or if any other revisions to the program are warranted. The committee may assist the County in determining which TDC options to exercise.
- C. Committee member terms. Committee members will be selected by staff based on the knowledge and expertise that each member may contribute to the development of the TDC Program. One-half the initial members shall serye for one year and one-half shall serve for two years. Thereafter, members shall serve two-year terms. Members may be requested to serve additional terms. Staff shall report the membership of the TDC Advisory Committee to the Board of County Commissioners on an annual basis.
- D. Committee members. The TDC Advisory Committee may include a representative from each of the following organizations, agencies or professions:
1. The International Society of Appraisers or an Oregon State Certified Appraiser;
  2. A firm established for the purpose of real estate development or the representation of development interests;
  3. An individual with recognized expertise in hydrology or ground water;
  4. An individual with recognized expertise in big game wildlife management;
  5. The Community Solutions Team for Central Oregon;
  6. An individual who resides in the designated sSending Aarea;
  7. A member of the La Pine Community Action Team;
  8. The Deschutes County Community Development Department Director or designee as an ex officio member.
  9. Staff may select additional members as it deems appropriate.
  10. ~~The Deschutes County Community Development Department Director or designee as an ex officio member.~~
- (Ord. 2006-016 § 1, 2006; Ord. 2003-033 § 1, 2003; Ord. 2002-010 § 1, 2002)

