

ORDINANCE NO. 06-21 N.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RICHMOND APPROVING A ZONING TEXT AMENDMENT AND REZONING THE RICHMOND HILLS INITIATIVE AREA (PLN20-269) TO PROTECT PUBLIC HEALTH AND SAFETY, NATURAL QUALITIES, AND OPEN SPACE AREAS IN THE RICHMOND HILLS AREA

WHEREAS, City of Richmond has prepared a General Plan Amendment and Zoning Amendment to address the Richmond Hills Initiative adopted by the City Council in 2017, which includes revisions to the land use and conservation elements of the General Plan and Zoning Amendment of the site to OS-H, Hillside Open Space, and amendments to Articles 15.04.202, 15.04.206, and 15.04.611, at a site located north and east of Wildcat Canyon Regional Park, consisting of ~430-acre and 38 parcels (APNs: 435-180-005, 435-180-008, 435-190-001, 435-200-004, 435-200-007, 435-200-008, 435-210-001, 435-210-006, 435-210-007, 435-230-004, 435-230-005, 435-230-006, 435-230-007, 435-230-008, 435-230-009, 435-230-011, 435-230-012, 435-230-013, 435-230-014, 435-230-015, 435-230-020, 435-230-021, 435-230-023, 435-230-027, 435-230-028, 435-230-030, 435-230-038, 435-230-040, 435-230-042, 435-230-043, 435-230-045, 435-230-046, 435-230-050, 435-230-051, 435-230-052, 435-240-001, 435-240-002, and 435-300-009 (“subject site”), and

WHEREAS, the Planning Commission has reviewed the General Plan Amendment and Zoning Amendment for conformance with the California Government Code Sections 65358(a) and all other applicable regulations of the Richmond Municipal Code, including Articles 15.04.813 and 15.04.814; and

WHEREAS, on March 4, 2021, the Planning Commission conducted a properly noticed public hearing pursuant to California Government Code Section 65090 and duly considered all written and verbal testimony presented before or during the hearing, including the agenda report dated March 4, 2021; and

WHEREAS, on the basis of the application, plans, materials, and testimony submitted at or before the public hearing, the Planning Commission recommend approval of the General Plan Amendment and Zoning Amendment statements of fact to support the findings as required by California Government Code Section 66474 for recommending approval to the City Council of the General Plan Amendment and Zoning Amendment; and

WHEREAS, on April 6, 2021, the City Council adopted Resolution No. 37-21, finding that the General Plan Amendment and Zoning Amendment are categorically exempt per CEQA Guidelines Section 15308, which are action taken by regulatory agencies, as authorized by the state of local ordinance, to assure maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment, and Section 15061(b)(3) because it can be seen with certainty there is no possibility for causing a significant effect on the environment because the amendments only provide protection of the hillsides in the designated area from development and a transfer of density from one area of the City to another, with no increase overall in total residential development capacity over the term of the General Plan. Additionally, in *Tuolumne Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029, the California Supreme Court held that CEQA does not apply to “citizen-sponsored” initiatives, even where the initiative is adopted by local officials rather than the voters; and

WHEREAS, on April 6, 2021, the City Council conducted a properly noticed public hearing pursuant to California Government Code Section 65090 and Municipal Code Table 15.04. 803.150, and duly considered all written and verbal testimony presented before or during the hearing, including the agenda report as set forth in this Resolution and the applicable provisions of the Richmond Municipal Code (“the Record”).

NOW, THEREFORE BE IT RESOLVED, the City Council does ordain as follows:

SECTION I. The City Council finds and determines the following in approving the Zoning Amendment as set forth in Exhibit A (PLN20-269) based on the following findings pursuant to Richmond Municipal Code (RMC) Section §15.04.814.050:

A. The proposed amendment is consistent with the General Plan.

Statement of Fact: *Criterion Satisfied.* The zoning text amendments are consistent with several goals set forth in the General Plan, such as Conservation, Natural Resources, and Open Space. Approval of amendments will serve the public interest by protecting undeveloped rural hillside land in El Sobrante Hills. Development in this area would be harmful and would displace agriculture and outdoor recreation, destroy scenic resources, impact stream flows, exacerbate erosion and pollution, reduce wildlife habitat, and substantially increase traffic.

B. The proposed amendment is necessary for public health, safety, and general welfare or will be of benefit to the public.

Statement of Fact: *Criterion Satisfied.* Development in this area would be harmful and would displace agriculture and outdoor recreation, destroy scenic resources, impact stream flows, exacerbate erosion and pollution, reduce wildlife habitat, and substantially increase traffic.

C. The proposed amendment has been reviewed in compliance with the requirements of the California Environmental Quality Act.

Statement of Fact: *Criterion Satisfied.* The amendment is categorically exempt per CEQA Guidelines Sections 15308, which are action taken by regulatory agencies, as authorized by the state of local ordinance, to assure maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. It is also categorically exempt per Section 15061(b)(3) because it can be seen with certainty there is no possibility for causing a significant effect on the environment because the amendments only provide protection of the hillsides in the designated area from development and a transfer of density from one area of the City to another, with no increase overall in total residential development capacity over the term of the General Plan. In addition, in *Tuolumne Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029, the California Supreme Court held that CEQA does not apply to “citizen-sponsored” initiatives, even where the initiative is adopted by local officials rather than the voters.

D. For a change to the Zoning Maps, that the subject property is suitable for the uses permitted in the proposed zone in terms of access, size of parcel, relationship to similar or related uses, and other relevant considerations, and that the proposed change of zoning district is not detrimental to the use of adjacent properties.

Statement of Fact: *Criterion Satisfied.* The proposed OS-H, Hillside Open Space zoning district designation is consistent with the Richmond Hills Initiative in terms of compatible land uses and development standards and protection of open space lands and viewsheds. It only allows extremely low density development pursuant to the standards in the Initiative and so will not have any detrimental effects.

SECTION II. By this ordinance, the City Council approves the Zoning Text Amendments as set forth in Exhibit A (“Zoning Text Amendments”) and Rezoning (“Zoning Map Amendments”), incorporated herein and made part hereof.

SECTION III. Any provisions of the Richmond Municipal Code, or appendices thereto, or any other ordinances of the City inconsistent herewith, to the extent of such inconsistencies and no further, are hereby repealed.

SECTION IV. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid, the remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed each section, subsection, paragraph, sentence, clause or phrase of this Ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, paragraph, sentence, clause or phrase.

SECTION V. Effective Date. This Ordinance becomes effective thirty (30) days after its final passage and adoption.

Exhibit A: Zoning Amendment

First introduced at a regular meeting of the City Council of the City of Richmond held April 6, 2021, and finally passed and adopted at a regular meeting held April 20, 2021, by the following vote:

AYES: Councilmembers Bates, Jimenez, Martinez, McLaughlin, Willis, Vice Mayor Johnson III, and Mayor Butt.

NOES: None.

ABSTENTIONS: None.

ABSENT: None.

PAMELA CHRISTIAN
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:
TOM BUTT
Mayor

Approved as to form:
TERESA STRICKER
City Attorney

State of California }
County of Contra Costa } : ss.
City of Richmond }

I certify that the foregoing is a true copy of **Ordinance No. 06-21 N.S.** passed and adopted by the City Council of the City of Richmond at a regular meeting held on April 20, 2021.



Pamela Christian, City Clerk of the City of Richmond

Exhibit A:
Proposed Zoning Amendments to
Implement the Richmond Hills
Initiative

Planning Commission Recommended Draft
March 4, 2021

Article 15.04.202 Mixed Use Districts

Note to Reader: Additions are underlined and deletions are in ~~strikethrough~~ format. Ellipsis (...) denote existing text that is not changed.

1. Development Standards

Tables 15.04.202.030(1) through 15.04.202.030(5) prescribe the development standards for Mixed-Use Districts. Additional regulations are denoted in the right hand column. Section numbers in this column refer to other sections of this Article, while individual letters refer to subsections that directly follow the table. The numbers in each illustration below refer to corresponding regulations in the “#” column in the associated table.

Table 15.04.202.030(1): Lot, Density, FAR, and Building Placement Standards – Mixed-Use Districts								
District	CM-1	CM-2	CM-3	CM-4	CM-5	LW	Additional Regulations	#
Lot and Density Standards								
Minimum; Maximum Density	15; 50	10; 30	15; 50	30; 75 <u>82.51</u>	40; 125	15; 50		

1 The increase in density, made by Ordinance ___ on ___, is intended to conform to the requirements of the Housing Crisis Act of 2019 by ensuring that there is no net loss in residential

Table 15.04.202.030(1): Lot, Density, FAR, and Building Placement Standards – Mixed-Use Districts								
(units/net acre)					<u>135</u> ¹			
...	...							

Article 15.04.206 Open Space Districts

Note to Reader: Additions are underlined and deletions are in ~~striketrough~~ format.

Sections:

15.04.206.010 Purpose and Applicability

15.04.206.020 Land Use Regulations

15.04.206.030 Development Standards

15.04.206.040 Supplemental Regulations

2. Purpose and Applicability

OS Open Space District. The purpose of the OS Open Space District is to provide land for development of open, space uses, consistent with the General Plan. More specifically, this zoning district is intended for undeveloped publicly owned lands, visually significant open lands, water areas, and wildlife habitat. These areas are set aside as permanent open space preserves and may include trails, trail heads, agricultural uses (such as 4H), and other facilities for low-impact public recreational uses. This zoning district includes wetlands, mudflats, creek corridors and other natural preservation areas, as well as private lands deed-restricted for open space preservation.

OS-H Hillside Open Space. The purpose of the OS-H Hillside Open Space District is to protect undeveloped rural hillside land in El Sobrante Valley designated for Open Space in the General Plan where any substantial additional development in this area would be harmful and would displace agriculture and outdoor recreation, destroy scenic resources, impact stream flows, exacerbate erosion and pollution, reduce wildlife habitat, and substantially increase traffic in

capacity in the City as a result of the Richmond Hills Initiative and the implementing rezoning also made in this Ordinance which reduced the residential development capacity in the Richmond Hills Initiative area by 864 units. This density increase is allowed by the General Plan, which states on page 3.10 that the maximum number of allowable units in a land use designation may be exceeded to accommodate a density transfer or development rights transfer.

existing residential neighborhoods and along San Pablo Dam Road. Limitations on permissible uses and restrictions on development are established to implement the General Plan. A Transfer of Development Credits program established under Section 15.04.611 will allow property owners in the OS-H District to transfer housing development potential to other parts of the City.

3. Land Use Regulations

Table 15.04.206.020 below prescribes the land use regulations for the OS Open Space District. These regulations are established by letter designations as follows:

“P” designates permitted uses.

“A” designates use classifications that are permitted after review and approval of an administrative use permit by the Zoning Administrator.

“C” designates use classifications that are permitted after review and approval of a conditional use permit by the Planning Commission.

Use classifications are defined in Article 15.04.104, Key Terms and Definitions. In cases where a specific land use or activity is not defined, the Zoning Administrator shall assign the land use or activity to a classification that is substantially similar in character. Use classifications and subclassifications not listed in the table or not found to be substantially similar to the uses below are prohibited. Section numbers in the right hand column refer to other sections of this Ordinance.L1, L2

Table 15.04.206.020: Land Use Regulations – Open Space District			
Uses	OS	OS-H	Additional Regulations
<u>RESIDENTIAL</u>			
<u>Residential Facility below</u>	<u>See subclassifications</u>		
<u>Residential Care, Limited</u>	-	<u>L5</u>	
<u>Hospice, Limited</u>	-	<u>L5</u>	
<u>COMMERCIAL</u>			
<u>Animal Sales and Services below</u>	<u>See subclassifications</u>		See § 15.04.610.070 Animal Keeping
<u>Riding Schools and Stables</u>	C	<u>L3</u>	
<u>INSTITUTIONAL AND COMMUNITY FACILITIES</u>			
<u>Government Buildings</u>	-	<u>L6</u>	

Table 15.04.206.020: Land Use Regulations – Open Space District			
Uses	OS	OS-H	Additional Regulations
Park and Recreation Facility	C	<u>L4</u>	
<u>Social Service Center</u>	-	<u>L5</u>	
TRANSPORTATION, COMMUNICATION AND UTILITIES			
Utilities, Major	C	<u>L6</u>	
Utilities, Minor	P		
AGRICULTURE			
Agricultural Production and Services	C	<u>L1, L2</u>	
Animal Husbandry	P	<u>L1</u>	See § 15.04.610.070 Animal Keeping
Outdoor Agriculture	P		
OTHER			
Accessory Uses and Structures	See § 15.04.601.010 Accessory Uses and Structures. <u>Residential accessory structures are not permitted in the OS-H District.</u>		
Nonconforming Uses	See Article 15.04.606, Nonconforming Uses, Structures, and Lot		
Temporary Use	See Article 15.04.807, Temporary Use Permits <u>and L7 for the OS-H District.</u>		
Notes:			
<p><u>L1 - Including grazing, viticulture, arboriculture, horticulture, research, and rearing, care and use of ruminants, pigs, poultry, and bees, but not including feedlots unless most of the feed over a calendar year is grown in the OS-H District, but dairy farms, pig farms, poultry ranches, Christmas tree farms and nurseries are allowed with a conditional use permit only if they are small-scale and the Planning Commission determines that they will not cause substantial environmental harm, including noise, odor or vermin.</u></p> <p><u>L2 - Processing, packaging, storage or sale of agricultural produce is allowed with an</u></p>			

Table 15.04.206.020: Land Use Regulations – Open Space District			
Uses	OS	OS-H	Additional Regulations
			<p><u>administrative use permit if most of the produce over a calendar year is grown in the OS-H District and the Zoning Administrator determines that there will be no significant deleterious effects on the environment.</u></p> <p><u>L3 - Rearing, boarding, training, care, rental or sale of horses and other animals but not including temporary boarding or day care of household pets, is allowed with an administrative use permit, provided that the Zoning Administrator determines that the use will not cause substantial environmental harm, including noise, odors or vermin.</u></p> <p><u>L4 - Low-intensity outdoor recreation, exercise, and pastimes predominately for active participants, not spectators, and subordinate auxiliary uses (including small-scale camps, picnic facilities, provision of food and drink, and safety and sanitary services) are permitted, provided they are compatible with a rural environment and do not contribute to noise or light pollution.</u></p> <p><u>L5 - Institutional and other non-profit uses that predominantly serve permitted uses in the OS-H District and neighboring areas are allowed with an administrative use permit as are small facilities for convalescence, rehabilitation, and hospice care for not more than six patients each that the Zoning Administrator determines will not substantially impair the environment;</u></p> <p><u>L6 - Government and public utility uses are permitted that are limited to meeting needs created by permitted uses in the OS-District, except to the extent the City Council finds reasonably substantial public need that cannot be met outside this area. However, this exception shall not apply to waste disposal, processing or treatment, and electrical power production or transmission primarily for sale.</u></p> <p><u>L7 - A temporary use permit may be approved for occasional short-term events related to agriculture, animals or outdoor recreation that do not interfere materially with agriculture or cause substantial environmental harm.</u></p>

Additional Use Regulations – OS-H District. If a reasonable use exception is requested pursuant to Section 15.04.206.070 and it is determined that a reasonable accommodation must be provided to enable an economically beneficial use, then:

One single family dwelling unit may be built on each parcel or each 20 acres of a parcel, with normal and appropriate residential accessory uses and structures, including accessory dwelling units as required by State law;

The maximum residential floor area for the principal dwelling unit shall not exceed the amount permitted by Section 15.04.201.030 (G) or 4,000 square feet, whichever is less, with additional floor area allowed for accessory dwelling units and accessory structures for home occupations and offices; and

Home occupations and offices are permitted, if they are secondary to residential uses and do not add more than 25 percent to the living area of the dwelling unit, and the occupations are conducted primarily by residents of the home and will not increase materially traffic in the OS-H District or on adjacent streets. The floor area for home occupations and offices shall be counted as part of the residential floor area for purposes of determining compliance with the maximum residential floor area allowed by paragraph (A)(2), above.

Houses built under this subsection shall be designed and constructed as near as reasonably practicable to have substantially the same exterior form and use similar exterior materials as are used for existing houses and public utilities adjacent to the OS-H District, consistent with the General Plan. Exceptions to this requirement may be approved by the Zoning Administrator in order to reduce fire hazards or make reasonable accommodations for individual household's living requirements.

If a parcel is transferred to another person, a residence may not be built on the parcel unless all of the transferable development credits provided for by the OS-H District for the parcel and its acreage are transferred to the parcel transferee. If one or more of the credits are used or transferred to any person, other than a transferee of the parcel, a residence may not be built on the parcel.

4. Development Standards

Table 15.04.206.030 prescribes the development standards for the Open Space Districts. Additional regulations are denoted in a right hand column. Section numbers in this column refer to other sections of the Ordinance. The numbers in each illustration below refer to corresponding regulations in the “#” column in the associated table.

Table 15.04.206.030: Development Standards – Open Space District				
District	OS	OS-H	Additional Regulations	#
Lot Size; Building Form and Location				
Minimum Lot Size	n/a	<u>20 acres</u>		
Minim Lot Width (ft.)	n/a	<u>200</u>		
Maximum Height (ft.)	35	<u>35</u>	See § 15.04.601.050 Exceptions to Height Limits	①
Minimum Setbacks (ft.)				
Front	20% of lot depth, not to exceed 40 ft.		Play structures are allowed in setback areas; See also § 15.04.601.020 Building Projections into Yards	②
Side	10% of lot depth, not to exceed 20 ft.			③
Rear	20% of lot depth; not to exceed 20 ft.			④
Maximum Floor Area Ratio (FAR)	0.5	<u>n/a</u>		
Maximum Density (net units/acre)	n/a	<u>n/a</u>		

5. Additional Development Standards – OS-H District

Minimum Parcel Size. If a legally created parcel smaller than 20 acres (a "subsize" parcel) is contiguous to another subsize parcel or parcels, or if a subsize parcel is linked to another subsize parcel or parcels by an intervening parcel or parcels, whether subsize or not, the parcels shall be treated pursuant to the General Plan as though they are a single parcel for purposes determining the number of allowable dwelling units, the development envelope, the maximum floor area, the maximum sign area, visibility protection, the award of development credits, and the application of visibility.

Maximum Floor Area. The maximum aggregate floor area for all floors in all buildings on a parcel, except basement and cellar floors, shall not exceed 10,000 square feet. If residences and residential accessory buildings are permitted, they shall not exceed 5,000 square feet of the 10,000 maximum.

With approval of a conditional use permit, the Planning Commission may increase the maximum floor area up to an additional 10,000 square feet, in aggregate, if necessary for agricultural use, processing, packaging, storage, or sale of produce, rearing, boarding, care and use of animals, or recreational facilities including camps and, separately, up to 20,000 square feet for covered riding arenas.

With a conditional use permit, the permissible floor area of a parcel may be transferred to one or more other parcels within the OS-H district if there is no building on the transferor parcel. A transfer of floor area does not increase the 5,000-square foot limit for residences and residential accessory buildings on the transferee parcel. No more than 30,000 square feet of floor area in aggregate may be transferred to a parcel from one or more other parcels. If any floor area is transferred, then no building is permitted on the parcel from which the floor area is transferred, and a development restriction establishing this limitation shall be recorded in the Office of the County Recorder.

Development Envelope. All buildings on a parcel must be located within a contiguous area, as compact as reasonably practicable, not to exceed two acres, except for buildings that the Planning Commission finds necessarily must be located outside that area for agricultural use, processing, packaging, storage or sale of agricultural produce, rearing, care, training or use of animals, government or public utility use, or to protect residents of other parcels from substantial noise, odor or vermin. All of the required findings in Article 15.04.805 also must be made.

Development Easements. Before any building permit is granted, or a development credit or credits based on the parcel used or transferred, other than transferred to a grantee of the parcel, the Zoning Administrator must receive written evidence that an easement,

running with the land, has been recorded on the parcel that bars development or use not permitted under the OS-H District. The easement shall be conveyed to the City and, if available, jointly to an independent land trust acceptable to the Zoning Administrator. The easement shall convey no possessory interest or liability to the City or the independent land trust, nor confer any right of public access.

Signs. The following specific standards for signs apply in the OS-H District in addition to the standards in Article 15.04.609, Signs. They are intended to ensure that signs are no more numerous, larger, or more noticeable than necessary to provide directions and information about permissible uses.

The total sign area for all permanent, freestanding non-exempt signs shall not exceed 10 square feet for each parcel of 20 acres or more and for “subsize” parcels that are not required to be treated as a single parcel pursuant to subsection (A), above.

No individual freestanding sign shall exceed six feet in height.

One wall sign is permitted for each principal non-residential building, excluding accessory buildings and structures, not exceeding six square feet in area and not projecting more than 6 inches from the building wall. The Planning Commission may approve additional wall signs as part of a Master Sign Program pursuant to Section 15.04.609.170 upon finding that the visual character of the area is not significantly changed, the additional signs are in harmony with other signs on the sign, and such additional signs are the minimum necessary to identify buildings and uses.

No banners, feather banners, or pennants are allowed as temporary signate in an OS-H District.

Areas of Special Environmental Concern. The following restrictions apply within the OS-H District. In each case, the Zoning Administrator shall make this determination as part of environmental review, pursuant to Section 15.04.803.050. The Zoning Administrator may impose reasonable conditions of approval related to impacts on these areas of special environmental concern in order to achieve the specific purposes of the OS-H district, the general purposes of Article XV, and consistency with the General Plan.

Wetlands: Development on wetlands or use of wetlands for development is not permitted if by itself or in conjunction with other development or use such an action would reduce appreciably the quantity or biological quality of wetlands.

Stream Corridors: Development or use is not permitted if by itself or in conjunction with other development or use it would impair appreciably the quantity or quality of water or of native vegetation in a stream corridor, except for otherwise permissible flood control to protect human safety, or preservation of special status species.

Wildlife: No development or use is permitted that would reduce appreciably the number, prevent the recovery in number, or impair the genetic variability of one or more special status species.

Steep Slopes: No building shall be located, in whole or in part, on a slope of 15 percent or more. No building shall be located on a site that cumulatively has access for more than 25 feet over a slope of 15 percent or more, unless there is no other development site on a parcel. Cultivated agriculture shall not be conducted on a slope of 20 percent or more. No grading shall take place on a slope of 15 percent or more unless necessary to maintain fire roads.

Elevation: No building is permitted above 400-foot elevation unless the parcel involved is entirely above 400 feet.

Visual Safeguards. Structures shall not be located on ridgelines or hilltops, or where they will project into the view of a ridgeline or hilltop from public streets and other publicly-owned land, unless there is no less obtrusive site on the parcel or on a contiguous parcel in legal or de facto common ownership. To the extent practicable, structures shall be located on that part of a parcel that minimizes visibility from roads, trails, and other publicly-owned land. Roads shall be located, to the maximum extent feasible, where they are least visible from publicly-owned land. New utilities shall be installed underground.

Design Standards and Design Review Criteria. All development is subject to design review pursuant to Article 15.04.805. The following criteria shall apply in addition to the design review established in Section 15.04.805.040.

Development shall be subordinate to and blend harmoniously with the natural and open space qualities of the surrounding area where it is located. The alteration of natural topography, vegetation, and other characteristics by grading, excavating, filling or other development activity shall be minimized, and successive padding or terracing of building sites shall be avoided. In all cases, appropriate landscaping, preservation of vegetation, design, and building materials shall be required by the City to reduce as much as practicable the visibility of development.

Signs shall not be more numerous, larger or more noticeable than is necessary to provide directions and information about permissible uses.

Visibility of development from roads, parks and other Development shall be subordinate to and blend harmoniously with the natural and open space qualities of the area where located.

Transfer of Development Credits. Under the provisions of Article 15.04.611, Transfer of Development Rights and consistent with the General Plan, the City Council has established a transferable development credit (TDC) program for OS-H District as a “Sending Zone”. “Receiving Zones” are listed in Table 15.04.611.040 in Article 15.04.611. This program shall grant

one credit to the owner or owners. of each parcel, and one credit for each 5 acres of a parcel more than 5 acres, unless all remaining permissible residential development has previously been transferred from the parcel. Credits shall not be granted for parcels or acres above 400 feet elevation. Each credit may be used to build one residence in a receiving area, with the consent of the parcel owner there.

TDC-based residences shall be similar in type and size to the residences that exist or otherwise may be built in the zoning district where they are located. Consistent with that similarity and with public health and safety, they do not have to comply with density limitations or other land-use regulations to the extent those regulations would bar or make impracticable their construction. No more than two TDC-based residences may be built on a parcel except as authorized by a Specific Plan or in a Planned Area District.

Development credits may be sold or otherwise transferred to any person, regardless whether they own property in the OS-H District or the receiving area, including to and by the City and nonprofit entities. If, however, a residence is built on a parcel in the OS-H District, or the right to build vested, the credits based on the parcel or its acreage established by this subsection are then void and shall not be available to be transferred or used.

Supplemental Regulations

1. **Truck Docks, Loading and Service Areas.** Truck docks, loading areas, and service areas must be located at the rear or interior sides of buildings and screened so as not to be visible from public streets or residential properties.
2. **Abutting Residential Districts.** When a lot abuts a Residential zoning district, the setbacks of the abutting district apply.

15.04.206.070 Reasonable Use Exceptions

This section establishes the procedure for approval or disapproval of Reasonable Use Exceptions for proposed development in the OS-H Hillside Open Space District. Nothing in this section regarding the OS-H Hillside Open Space District is intended to preclude reasonable economic use of property as set forth in Section 15.04.206.030. If the requirements of Section 15.04.206.030 as applied to a specific lot in the OS-H Hillside Open Space District would deny all reasonable economic use of the lot, then development shall be permitted as set forth below if the applicant demonstrates to the satisfaction of the Planning Commission that all of the requirements of this section have been satisfied.

1. **Review Authority.** The Planning Commission has the authority under this Article XV to approve, conditionally approve, or deny applications for

reasonable use exceptions based on consideration of the requirements of this section.

Application Requirements. Applications for reasonable use exceptions must be filed with the Planning Division on the prescribed application forms in accordance with the procedures in Article 15.04.803 (Common Procedures). An application for a reasonable use exception must include, but is not limited to, the following:

Data or other evidence that conforms to the required findings set forth in Section 15.04.206.070 (D) below (Required Findings);

A calculation of the maximum floor area allowed by Section 15.04.206.050(B).

A map showing the location, size, and areas of the parcel that are areas of special environmental concern, as identified Section 15.04.206.05 (F);

A map showing the location and areas of the parcel subject to the visual safeguards in Section 15.04.206.050 (G);

An analysis of the minimum development necessary to achieve reasonable economic use of the parcel, including a narrative of the factual basis for this determination;

An analysis of whether any other reasonable use than that described in subsection 5 with less impact on the areas of special environmental concern is feasible, meaning capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors. This must also include an analysis of whether there is any practicable on-site alternative to the proposed development with less impact, including reduction in density, revision of lot layout and/or related site planning considerations that would allow a reasonable economic use with less adverse impacts to the open space and related buffers and the areas of special environmental concern.

A design of the proposal so that the amount of development proposed as a reasonable economic use will have the least impact practicable on the areas of special environmental concern;

An analysis of the modifications needed to the standards of Sections 15.04.206.040 and 15.04.206.050 to accommodate the proposed development;

A calculation of the number of Development Credits attributable to the subject parcel under Section 15.04.206.050.I, and a description of the efforts the applicant has made to sell, transfer or otherwise utilize such Development Credits pursuant to the provisions in Article 15.04.611; and,

Such other information as the Zoning Administrator determines is reasonably necessary for the Planning Commission to evaluate the issue of reasonable economic use as it relates to the proposed development.

Public Notice and Hearings. An application for a reasonable use exception requires public notice and hearing before the Planning Commission in accordance with Article 15.04.803 (Common Procedures).

Required Findings. The Planning Commission may approve an application for a reasonable use exception as it was applied for, or in a modified form as required by conditions of approval, if, on the basis of the application, plans, materials and testimony submitted, the Planning Commission finds that:

There is no other reasonable economic use or feasible alternative to the proposed development with less impact on the open space;

The proposed development does not pose a threat to the public health, safety and welfare on or off the subject parcel;

The alterations that would be permitted to the development standards in Sections 15.04.206.040 and 15.04.206.050 are the minimum necessary to allow for a reasonable use of the property and do not exceed the limitations established in Section 15.04.206.030 (A); and

The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant in subdividing the property or adjusting a boundary line, thereby creating the undevelopable condition after the effective date of the ordinance codifying this chapter

Conditions of Approval. When approving a reasonable use exception, the Planning Commission may impose reasonable conditions related to environmental impacts caused by the project application in order to:

1. Achieve the specific purposes of the zoning district in which the project is to be located, the general purposes of Article XV, and consistency with the General Plan;

Protect the public health, safety, and welfare of the citizens of the City of Richmond;

Mitigate potential environmental impacts; and

Ensure that the design of the proposed project will be compatible with the surrounding area where it will be located.

No condition of approval can impose further discretionary review of the project by the Planning Commission.

Decision; Appeals.

Expiration, Extensions and Modifications. A reasonable use exception is effective and may only be extended or modified as provided for in Article 15.04.803 (Common Procedures).

Appeals. The Planning Commission's decision may be appealed to the City Council in accord with Section 15.04.803.140 (Appeals).

Article 15.04.611 Transfer of Development Rights

Note to Reader: Underlined text is new, and ~~strikethrough~~ text is to be deleted. Ellipsis (...) indicate where there is no change in existing text.

Sections:

- 15.04.611.010 Purpose
- 15.04.611.020 Definitions
- 15.04.611.030 TDR Sending Zones – Assignment of Transferable Development Rights
- 15.04.611.040 Maximum Density/Intensity Allowed in Receiving Zones
- 15.04.611.050 Right to Transfer Development Rights
- 15.04.611.060 TDR Conversion Ratio
- 15.04.611.070 Effect of Transfer
- 15.04.611.080 Rights of Transferees
- 15.04.611.090 Number of Rights Involved in Transfer
- 15.04.611.100 Certification by Zoning Administrator
- 15.04.611.110 Instrument of Transfer
- 15.04.611.120 Original Instruments of Transfer
- 15.04.611.130 Application for Use on Receiving Parcel
- 15.04.611.140 Consideration of Application for Use
- 15.04.611.150 Final Approval of Use
- 15.04.611.160 Fee-in-Lieu for Open Lands Option

Purpose

The purpose of this Article is to support the protection of open space and natural resource areas identified in the General Plan by allowing the transfer of development potential and development credits from a site in such areas having a resource deserving protection, land suitable for agriculture and outdoor recreation, land subject to hazards, including landslides and very high fire hazard risk, or otherwise designated by the General Plan as a protected sending area to a site in designated receiving zones requiring less protection. The mechanism for transfer of development rights (TDRs) is used to implement the General Plan, protect farmland and resource areas and/or to provide the owners of property an alternative to development. Payment of fees to a trust fund for use by the City in acquiring property having a resource deserving of protection is an alternative to the purchase or transfer of development rights. The TDR program and the fee-in-lieu option in this Article are voluntary for property owners and provided as a means to further the objectives of the General Plan.

Definitions

Development Rights. The legal rights for development established in zoning regulation, which include the maximum number of dwelling units or square feet of floor area, that are permitted by the zoning district regulations for a specific site, lot or parcel.

Sending Zone. A geographic area, which may be a zoning district, from which development rights can be transferred. Sending zones may include specified areas where land use and development is restricted by the General Plan and zoning regulations. Once development rights are “sent” to another parcel, they can no longer be used for development in the sending zone.

Receiving Zone. A geographic area, which may be a zoning district, that is identified as suitable to receive a transfer of development rights from a sending zone, which enable an increase in the density or development intensity above that which is otherwise allowed by the zoning district regulations.

Transfer of Development Rights (TDRs). A method for transferring a development right from a sending zone to a receiving zone, which allows an increase in density or development intensity in the receiving zone above the limit established in the zoning regulations that otherwise would apply. This is normally done by a legal instrument in the form of a contract, which is recorded with the title of the property. An easement restricting development in the sending zone also may be required as a condition of allowing a transfer of development rights to occur.

TDR Sending Zones – Assignment of Transferable Development Rights

The City Council, upon a recommendation of the Planning Commission, shall identify Sending Zone(s), as defined in this Article, and assign a specific number of TDRs to each zone unless the General Plan itself and/or the zoning district regulations establishes transferable development rights or credits for a specific area in which case these rights or credits shall be used. These TDRs may be used to obtain approval for development on other parcels of land located in a TDR Receiving Zones, which also shall be identified by the City Council, at a density or intensity of use greater than would otherwise be allowed on those parcels, up to a maximum specified ~~by the City Council~~ in this Article or in the zoning district regulations.

Maximum Density/Intensity Allowed in Receiving Zones

Every parcel of land located in a Receiving Zone may be developed at additional density/intensity of use, through the acquisition of TDRs, up to the maximum density/intensity identified ~~by the City Council~~ in Table 15.04.611.040 below.

<p><u>Table 15.04.611.040: TDR Receiving zones Maximum density/intensity with transfer of development rights or credits</u></p>

<u>Receiving Zone</u>	<u>Base Zone Maximum Density/Intensit y</u>	<u>Maximum Additional Density with TDRs</u>	<u>Maximum Bonus FAR With TDRs</u>
<u>RL1 Single Family Very Low Density Residential</u>	<u>5 units/net acre</u>	<u>+1.0</u>	<u>See Note 1</u>
<u>RL2 Single Family Low Density Residential</u>	<u>12 units/net acre</u>	<u>+2.0</u>	
<u>RM1 Medium Density Multi-family Residential</u>	<u>27 units/net acre</u>	<u>+3.0</u>	
<u>RM2 High Density Multi-Family Residential</u>	<u>40 units/net acre</u>	<u>+4.0</u>	
<u>Note:</u>			
<u>1 The maximum floor area ratio in Table 15.04.201.060 for small lot single unit, bungalow court and townhouse development types may be increased up to 0.5.2 Fractional portions of dwelling units shall be ignored in calculating the number of transferable rights and density units for a parcel or lot.</u>			

Right to Transfer Development Rights

Development rights assigned to parcels in Sending Zones may be transferred to parcels in Receiving Zones and used to increase the density/intensity on a Receiving Parcel in accordance with the provisions of this Article and the General Plan.

Limitations. A development right may not be used in any manner inconsistent with the General Plan, Table 15.04.611.040, and the following provisions of this Article:

No development right may be used to increase intensity or density within a Receiving Zone that exceeds the maximum intensity or density set by the General Plan for parcels in the Receiving Zone that can be achieved under the TDR program unless a specific exemption from density limitations has been established in the General Plan for transferable development credits from a specific area to the extent that these limits would bar or make impracticable their construction; and

No development right may be derived from land in a Sending Zone that is already precluded from development by nature of a recorded restrictive covenant or easement.

No more than two TDR-based dwelling units may be built on a parcel except as authorized by a Specific Plan or a Planned Area District.

Intermediate Transfer. A development right may be transferred to a transferee prior to the time when its use for a specific Receiving Parcel has been finally approved in accordance with this Article.

TDR Conversion Ratio

For purposes of converting residential TDRs to non-residential FAR, one residential TDR unit equals .05 non-residential FAR unless an alternative ratio has been set by the City Council for a specific Sending Zone(s).

Effect of Transfer

After development rights have been transferred by an original instrument of transfer:

The Sending Parcel shall not be further subdivided or developed to a greater density or intensity of use than permitted by the remaining development rights.

The Sending Parcel shall not be used in connection with any determination of site area or site capacity, except as may be necessary in determining the number of development rights involved in the transfer.

All development rights that are the subject of the transfer, and the value of such rights, shall be deemed for all other purposes, including assessment and taxation, to be appurtenant to the Sending Parcel, until such rights are certified by the Zoning Administrator and have been finally approved for use on a specific Receiving Parcel.

Rights of Transferees

Between the time of the transfer of a development right by an original transferor and the time when its use on a specific Receiving Parcel is final in accordance with the provisions of this Article, a transferee has only the right to use the development right to the extent authorized by all applicable provisions of Article XV in effect at the time when use of the development right for a specific Receiving Parcel is finally approved. No transfer shall be construed to limit or affect the power of the City Council to amend, supplement or repeal any or all of the provisions of this Article or any other section of Article XV or to entitle any transferor or transferee to damages or compensation of any kind as the result of any such amendment, supplementation or repeal.

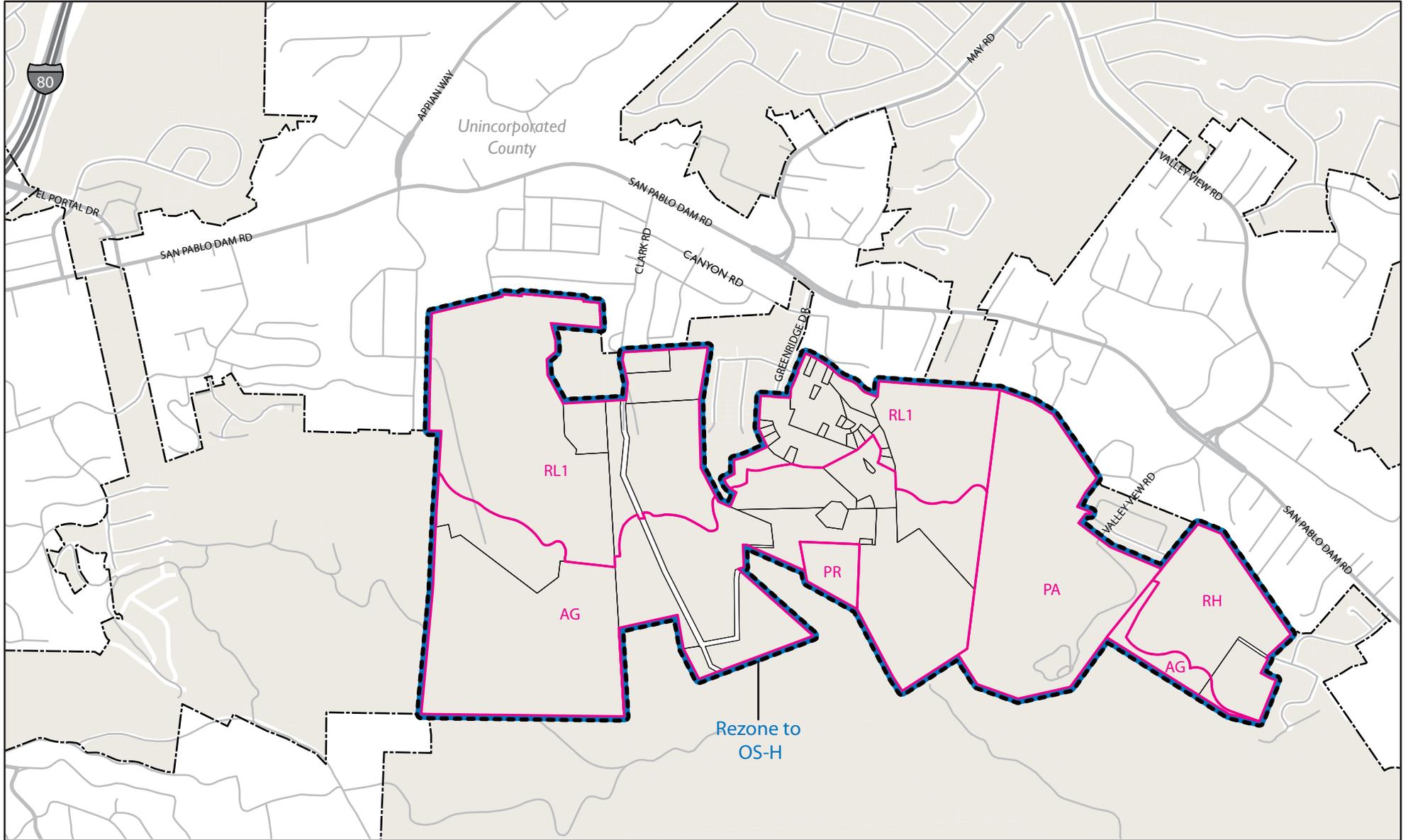
Number of Rights Involved in Transfer

Determination. The number of development rights involved in an original instrument of transfer shall be equal to the lesser of (1) "maximum dwelling units" or (2) "number of dwelling units" permitted on the Sending Parcel, as determined in accordance with the procedures for determining site area and residential land use site capacity and floor area in this Code and specific procedures for such calculations as may be established in the General Plan. In making such calculations, "gross site area" shall refer to the gross site area of the Sending Parcel as determined by actual on-site survey.

Fractional Rights. Fractional parts of a development right shall be disregarded. No transfer shall include other than a whole number of development rights.

...

Proposed Zoning Map Amendment



-  Richmond Hills Initiative Area
-  Proposed OS-H Hillside Open Space Zone
-  Existing Zoning Districts
-  Richmond Hills Initiative Parcels
-  City of Richmond

