



Legislative Department
Seattle City Council
Memorandum

Date: October 10, 2011

To: Councilmembers Sally J. Clark, Tim Burgess, and Sally Bagshaw
Committee on the Built Environment (COBE)

From: Rebecca Herzfeld, Council Central Staff

Subject: **October 12, 2011, COBE Meeting: Proposed Transfer of Development Rights Program in the Pike/Pine Conservation Overlay District**

Introduction

At the COBE meeting on September 14, 2011, the Committee provided direction on three issues related to the legislation sponsored by Councilmember Tom Rasmussen to establish a Transfer of Development Potential (TDP) program in the Pike/Pine neighborhood. The goal of the proposal is to add to the current incentives for maintaining the Pike/Pine neighborhood's existing stock of "character structures" (defined as buildings that are at least 75 years old) and to continue protecting the area's special character. The Committee did not have time to provide direction on the two remaining issues.

This memo describes amendments to the legislation for Committee vote to carry out the direction of the Committee on the three issues that were completed at the last meeting. In addition, the memo requests Committee direction on the two issues that were not fully discussed on September 14.

Overview of Proposed Pike/Pine TDP Program

The proposed legislation would establish a TDP program that would apply in the commercial zones within the boundaries of the Pike/Pine Conservation Overlay District (District). Both sending and receiving sites would be located in this area. The proposal would also designate a smaller area within the District, called the Conservation Core. This area in Pike/Pine has the highest concentration of character structures that were identified in a 2011 Historic Resources Survey as having potential historic value. Any character structure within the Conservation Core would be eligible to sell development potential. In addition, the legislation would establish new limits on structure width and depth in the Conservation Core, and would prohibit receiving sites within the Core in order to address the greater need for compatibility with existing development in this area.

Under the proposal, a site would be eligible to sell development potential if it meets one of the following conditions:

- It contains a designated landmark structure;
- It is located anywhere in the Overlay District and contains a character structure identified in the 2011 Historic Resources Survey as: having a high degree of architectural integrity, representing the Pike/Pine neighborhood's building typology, and being compatible with nearby structures in the Pike/Pine neighborhood (these structures would be listed in a Department of Planning and Development (DPD) Director's Rule); or
- It is located within the Conservation Core and contains any character structure.

A sending site would be able to transfer the unused amount of floor area available on the lot based on floor area ratio (FAR) limits. If the character structure is a designated landmark, the amount that could be transferred would be doubled. Attachment 1 illustrates the boundaries of the proposed Conservation Core and eligible TDP sending sites (Map 1). The owner of a TDP sending site would be required to bring the character structure into compliance with applicable codes and to maintain the structure for a minimum of 50 years with no significant alterations. If the structure is a designated landmark, the Landmarks Board may require elements of the building be preserved or restored.

Sites eligible to receive TDP would have to be located outside the Conservation Core in a NC3 zone with a 65 foot height limit. A lot would not be an eligible receiving site if the new project would result in the demolition of any character structure. On receiving sites, an additional 10 feet above the current 65 foot height limit, for a total of 75 feet, would be permitted. In order to accommodate the transferred development potential, the floor area being transferred to a receiving site would not count toward the established FAR limit. Development on receiving sites could exceed the current FAR limits, with or without an increase in height, but the portion of the structure allowed above the height limit would be subject to the same bulk controls that apply to the rest of the structure. The square footage gained from transferred development potential could only be used for housing.

Follow up on Committee direction from September 14, 2001 COBE meeting

Issue #1: Should the proposed TDP program allow transfer of development potential outside of the Pike/Pine neighborhood?

Since the idea of a TDP program was first raised, the community has advocated for allowing receiving sites to be located in other neighborhoods. Because Pike/Pine is a relatively small area, this would expand the market for development rights without putting undue pressure on the character of the neighborhood.

The Committee direction on this issue was to adopt now the proposed program that applies only within Pike/Pine, and to add language to the Land Use Code that would specifically allow transfer of development potential outside of Pike/Pine if authorized by ordinance at a later date. Council and Executive staff are also working on a resolution that would call for establishing a city-wide framework for TDP programs that would provide guidance about City priorities. The amendment to the legislation that would carry out this direction is shown below.

23.73.024 Transfer of development potential

A. General Standards for the transfer of development potential (TDP) within the Pike/Pine Conservation Overlay District.

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2. Development potential may not be transferred from one lot to another except as allowed by this Chapter 23.73.

3. Development potential may be transferred from eligible sending lots meeting the conditions of subsection 23.73.024.C to locations outside the Pike/Pine Conservation

Overlay District if TDP transfer to specifically-identified areas or lots is authorized by City ordinance.

COBE vote on proposed code language:

Issue #2: Should all character structures in the Overlay District be eligible sending sites?

As noted on page 1, under the proposed legislation some character structures that are located outside the Conservation Core would not be eligible TDP sending sites. Character structures located outside of the Conservation Core would only be eligible sending sites if they meet criteria in the Code for architectural integrity and contribution to the character of the Pike/Pine neighborhood.

Public comments recommended that all buildings 75 years old or older should be eligible sending sites. The Committee supported this recommendation at the September 14th meeting, and the amendments to the legislation that would carry out the Committee’s direction are shown below.

23.73.024 Transfer of development potential

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C. Standards for Sending Sites.

1. TDP sending sites shall be located in an NC3P zone within the Pike/Pine Conservation Overlay District, excluding NC3P zones with an MIO-105 overlay, and shall contain one of the following structures; provided that character structures on the proposed TDP sending site have not been demolished, or significantly altered as defined in subsection 23.73.024.B.2, since the effective date of this ordinance:

a. One or more structures designated wholly or in part as a landmark under Chapter 25.12 or its predecessor ordinance;

~~((b. A character structure that is listed in a rule promulgated by the Director according to Section 23.73.005;))~~ or

~~((e))~~b. Any character structure ~~((if the lot is located in the Conservation Core identified on Map A for 23.73.010)).~~

Committee vote on the definition of eligible TDP sending sites:

Issue #3: Should use of square footage gained through TDP be limited to housing?

One comment asked about the rationale for restricting the transferred square footage to residential use. The commenter pointed out that while most developers will want to build housings, some “may see fit to create office or live-work lofts, and they should be able to decide based on market demand.”

The Committee direction on this issue was to allow transferred square footage to be used for live-work units as well as residential uses. “Live-work unit” was created as a commercial use category in the Code in 2006. A live-work unit is defined as a space in which a permitted business is combined with a residential living space for the owner or an employee of the business. It is considered a commercial use, but also has a strong residential component. The amendment that would carry out to allow transferred square footage to be used for live-work units is shown in Attachment 2 on page 10.

Committee vote on allowing square footage gained through TDP to be used for live-work units:

Issues relating to designation of a Conservation Core area that still require Committee direction

As described above, the proposed legislation would establish an area within the District called the Conservation Core. This area has the highest concentration of character structures in Pike/Pine that were identified in a 2011 Historic Resources Survey as having potential historic value. It also has active commercial uses along almost every street front, and generally has smaller parcels and less land assembly compared to the area outside the proposed Core. There are six ways that the proposed Conservation Core would be different from the rest of the Overlay District, as summarized on Table 1 below. One of these differences, about eligible sending sites, would no longer apply if the Committee votes to approve the amendment presented in Issue #2 above.

Table 1: Comparison of Proposed Regulations inside and outside the Conservation Core area

	Allows sites to receive TDP	Eligible sending sites include all character structures	Width Limits apply	Depth Limits apply	Floor size limits apply above 35 feet in height	Flexibility from width, depth, and floor size limits allowed
Within the Conservation Core	No	Yes	Yes, on all streets	Yes, 128 feet	No, not necessary with width and depth limits	Yes, if a character structure is retained on site, and only if no character structure is removed
Outside the Conservation Core	Yes	No, limited to listed sites	Yes, but only on Pike and Pine Streets (limited to half the width of the block)	No	Yes, on lots over 15,000 square feet in size	Yes, if a character structure is retained on site, and only if a listed character structure is not removed; otherwise, on a lot with several character structures, a character structure that is not listed could be removed

At the public meeting in May 2011 about the draft proposal, several community members said that the community never intended to create different classes of character buildings in Pike/Pine, or to

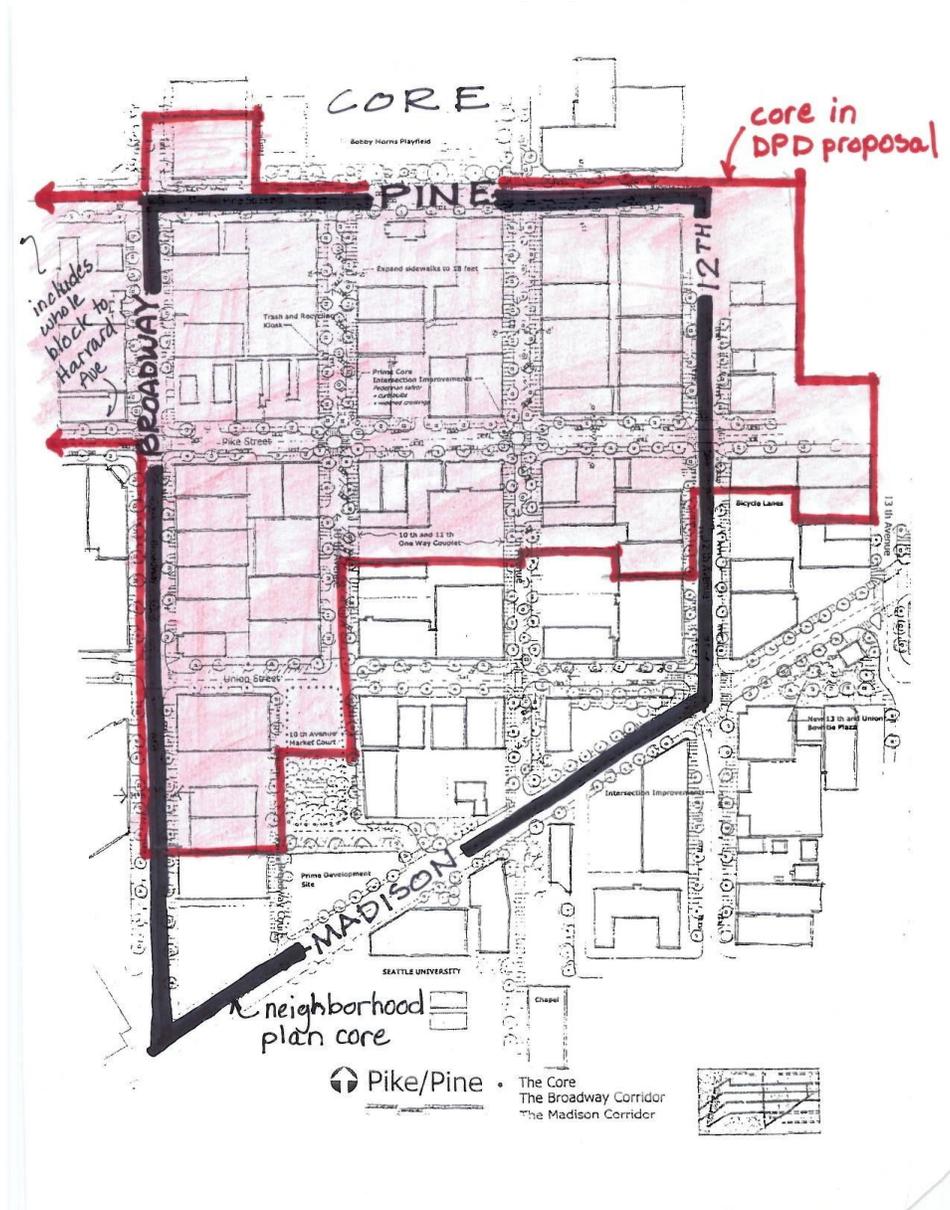
designate a particular zone of more conservation value. The Committee has already addressed part of this concern in Issue #2 by giving direction that all character structures should be eligible TDP sending sites regardless of location. Under the proposed legislation there would, however, still be important differences between the areas inside and outside of the Conservation Core.

The Conservation Core designation is based on the concept of a neighborhood core that was identified in the Urban Design section of the Pike/Pine Neighborhood Plan that was adopted in 1999. The Plan describes a core area east of Broadway:

“East of Broadway lies the core of the neighborhood with 10th and 11th Avenues E as the cross-spine of the core. The core will develop into a six plus block area bounded by E Pine Street on the north, Madison on the south, Broadway on the west and 12th Avenue E on the east. The intersections of 10th Avenue E and 11th Avenue E at Pike Street are the “epicenter” of the core.”

Map 2 below shows the difference between the Core defined in the Neighborhood Plan and the one proposed in the current legislation. The boundaries of the proposed Conservation Core are similar to those in the Neighborhood Plan, except that they do not extend all the way south to Madison Street. This is because the area between East Madison and Union Streets generally has less retail street frontage, and has several potential TDP receiving sites that would be precluded as receiving sites if they were included in the Core.

Map 2: Comparison of Core area defined in the Pike/Pine Neighborhood Plan and the Conservation Core in the proposed legislation



Designating the Conservation Core provides more opportunities to maintain the established scale of development and to protect older buildings in the core area identified in the Pike/Pine Neighborhood Plan. Given this background information, two specific issues (one with three sub-issues) that were raised about the regulations proposed for the Conservation Core are presented below.

Issue #4: How should building width and depth limits be addressed inside and outside of the Conservation Core?

Within the Conservation Core, building width limits would apply on every lot, not just those that abut Pike and Pine Streets. In addition, a building depth limit of 128 feet would apply. However, the floor size limit that applies above 35 feet in height on lots larger than 15,000 square feet outside of the Core would not apply. Three proposals have been made by the public about the additional building width and depth limits proposed for the Core. These proposals and an additional option are discussed below.

Proposal #1: In addition to adopting the more stringent width and depth limits within the Conservation Core, also apply them to TDP receiving sites outside the Core.

Proposal #2: Apply the more stringent width and depth limits to all lots in the Overlay District.

Proposal #3: Do not adopt the more stringent width and depth limits proposed for the Conservation Core.

Proposal #1 would apply the more stringent building width and depth limits to TDP receiving sites outside of the Core, to keep buildings that buy development potential from getting too bulky. However, this would significantly reduce the capacity to use development potential purchased from eligible character structures and would make the TDP program less attractive. For this reason, and because the current limits on building bulk would continue to address the potential bulk impacts of structures on TDP receiving sites, we do not recommend this option.

Another public comment about the proposed width and depth limits was that they should either be applied throughout the Overlay District, or not at all. Proposal #2 would apply the more stringent limits throughout the District. Because of the pattern of parcel size and assembly outside of the Conservation Core, doing this would further restrict the scale of new development.

As described for Proposal #1, applying the more stringent standards would work against using the TDP Program, as they would reduce the capacity to use development potential purchased from eligible character structures. They would also work against the use of incentives that are already in place that permit new buildings to be bigger if they incorporate a character structure on the same lot. The additional floor area currently allowed in this situation was seen as a necessary economic incentive to offset the higher costs of retaining an older structure in the development. In addition, the redevelopment of large parcels already assembled would be affected, potentially requiring two structures to be developed on a single lot in order to comply with the limits. The code would need to address whether such developments could share an underground parking garage, and other conditions resulting from the need for separate structures.

One option that could address some of the concerns raised by Proposals #1 and #2 is to apply the more stringent width and depth limits outside the Conservation Core, but only to lots that are not TDP receiving sites and that do not incorporate an existing character structure into the new development. This option would further limit the scale of new projects that are not preserving or incorporating a character structure in some way. It would require further analysis to make sure the width and depth standards work well with the other limits on building bulk, and would require further public notice and comment under state growth management regulations.

Proposal #3 would delete the additional building width and depth limits that are proposed for the Conservation Core. If this recommendation is followed, there would be no deterrent to assembling larger development sites in the Core, and it is more likely that over time the scale of development in this area will increase and that a larger number of character structures will be demolished. It is difficult, however, to quantify the number of character buildings that might be lost. If this proposal is adopted, the only remaining difference in the regulations in the Conservation Core and the rest of the District would be that TDP receiving sites would be prohibited.

In summary, the five options to address additional building width and depth standards are:

Option 1: Adopt the more stringent width and depth limits within the Conservation Core, and also apply them to TDP receiving sites outside the Core.

Option 2: Apply the more stringent width and depth limits to all lots in the Overlay District.

Option 3: Apply the more stringent width and depth limits within the Conservation Core, and also apply them to lots outside the Core that are not TDP receiving sites and that do not incorporate an existing character structure into the new development.

Option 4: Adopt the existing proposal (more stringent standards apply only within the Core area).

Option 5: Do not adopt the more stringent width and depth limits proposed for the Conservation Core.

Committee direction on width and depth limits:

Issue #5: Should the proposed boundaries of the Conservation Core be expanded?

At the public hearing, a suggestion was made to include two additional areas in the Conservation Core: (1) the south half of two blocks along Union between 10th and 12th Avenues; and (2) the former BMW dealership site at the corner of East Pike Street and Harvard Avenue East (see Map 1 on page 10).

In proposing the boundaries of the Conservation Core, the focus was on the area in the center of the Overlay District along Pike, Pine, and Broadway that included a large number of character structures that meet the proposed criteria in the Code. This area also has different development objectives than the larger area west of Broadway, where more intensive residential development along north-south side streets is promoted in the Neighborhood Plan. As noted above, the Core also has active commercial uses along almost every street front, and generally has smaller parcels and less land assembly compared to the area outside the proposed Core. The two areas proposed for addition to the Core are discussed separately below.

Issue #5a: Add the south half of two blocks along Union between 10th and 12th Avenues

These two half blocks were considered part of the neighborhood core in the Pike/Pine Neighborhood Plan and contains several character structures. They were omitted from the Conservation Core because they are close to the southern edge of the Overlay District, and because they contain large parcels that could take advantage of the current incentives for incorporating a character structure or that could be TDP receiving sites.

Committee direction on including the south half of two blocks along Union between 10th and 12th Avenues in the Conservation Core:

Issue #5b: Add the east half of the block between Harvard and Boylston Avenues

The core area defined in the Pike/Pine Neighborhood Plan only extended as far west as Broadway Avenue. The proposed Conservation Core would extend one block further, to Harvard Avenue. The area proposed for inclusion was omitted from the Conservation Core because it is even farther west, and the activity and development there do not closely match the characteristics of the Core, which generally has multiple small businesses along the street front and smaller parcel sizes.

Committee direction on including the east half of the block between Harvard and Boylston Avenues in the Conservation Core:

Next Steps

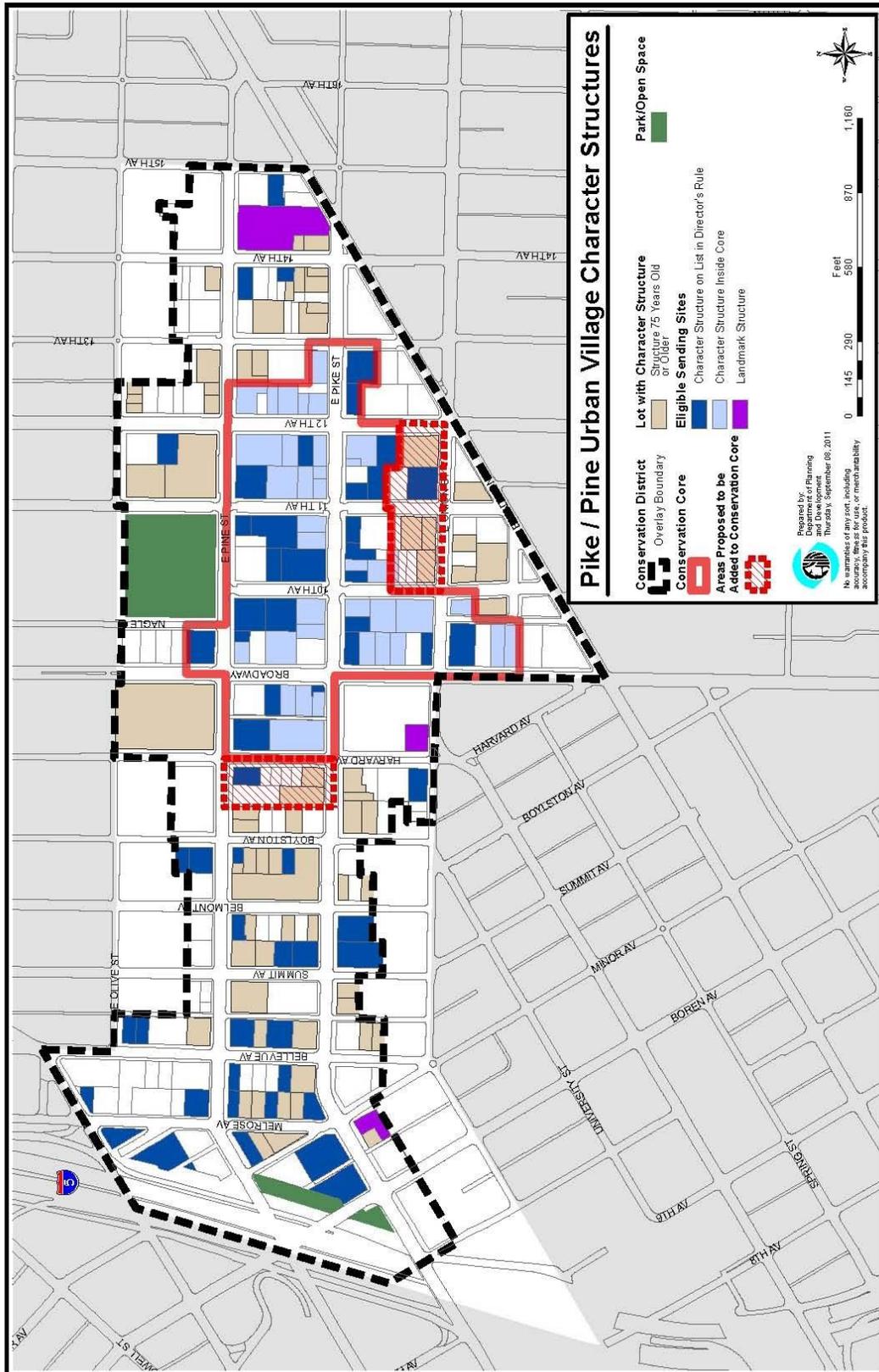
Staff will respond to the direction provided today and prepare any necessary Code amendments for Committee discussion and possible vote at a future meeting.

Attachments

1. Map 1: Proposed Conservation Core, Eligible TDP Sending Sites, and proposed additions to the Conservation Core
2. Amendment to add Live-Work Units as a permitted use for transferred TDP

Attachment 1

Map 1: Proposed Conservation Core, Eligible TDP Sending Sites, and proposed additions to the Conservation Core



Attachment 2: Amendment to add Live-Work Units as a permitted use for transferred TDP

23.73.024 Transfer of development potential

A. General Standards for the transfer of development potential (TDP) within the Pike/Pine Conservation Overlay District.

1. For a lot located in an NC3P 65 zone within the Pike/Pine Conservation Overlay District shown on Map A for 23.73.004, excluding the area within the Conservation Core shown on Map A for 23.73.010, an applicant may use transferable development potential to obtain one or both of the following:

a. Additional residential and live-work unit floor area above the maximum FAR limit for a mixed use structure in subsection 23.47A.013; or

b. A height exception to allow an additional 10 feet above the 65-foot height limit.

2. Development potential may not be transferred from one lot to another except as allowed by this Chapter 23.73.

B. Standards for character structure TDP receiving sites. A lot must meet the following conditions in order to be eligible to achieve extra residential floor area through TDP:

1. Character structure TDP receiving sites shall be located outside the Conservation Core identified on Map A for Section 23.73.010.

2. Development of the receiving site shall not result in the demolition or significant alteration of a character structure or a designated landmark. For purposes of this Section 23.73.024, significant alteration of a character structure means:

a. For character structures that are not designated landmarks:

1) Alteration of the exterior façades of the character structure, except alterations that restore the façades to their original condition;

2) Alteration of the floor-to-ceiling height of the street level story, except alterations that restore the floor-to-ceiling height to its original condition; or

3) The addition of stories to the character structure, unless the proposed addition is no taller than the maximum height to which the character structure was originally built.

b. For character structures that are designated landmarks, if the Landmarks Preservation Board grants a Certificate of Approval for an alteration, the alteration is not considered significant.

3. An additional 10 feet in height above the height limit of the zone is permitted on TDP receiving sites.

4. All floor area above the FAR limit and above 65 feet in height shall be achieved through the use of TDP.

4. Floor area gained through the use of TDP shall be for residential or live-work unit use only.

5. For a structure that achieves an increase in height through the use of TDP, the minimum street level floor-to-ceiling height shall be 13 feet.

6. TDP required before construction. No permit after the first building permit, and in any event no permit for construction activity other than excavating or shoring, and no permit for occupying existing floor area by any use based on TDP; will be issued for development that includes TDP until the applicant has demonstrated possession of TDP to the Director's satisfaction.