

**SECTION 3202.03 ET. SEQ. OF THE SUMMIT COUNTY
LAND USE AND DEVELOPMENT CODE**

REGULATIONS AND STANDARDS FOR TRANSFERABLE DEVELOPMENT RIGHTS

Last Amended/Updated – August 26, 2008

Chapter 3 Zoning Regulations

Section 3202.03 Transferable Development Rights (“TDRs”)

- A. Purpose and Intent:** The transfer of development rights in certain zoning amendment applications provides a means to help achieve the community’s common vision for the future, and identified goals and objectives, such as but not limited to the protection of: backcountry and rural areas, lands with important resource protection or open space value, natural features, scenic vistas or visually important lands, environmentally sensitive areas, land with development constraints, and community character. Furthermore, these regulations are intended to:
- Implement key goals and policies/actions of the Countywide Comprehensive Plan, and respective basin master plans and subbasin plans.
 - Provide a mechanism to monetarily compensate landowners who voluntarily participate in the TDR Program, thereby providing opportunities to preserve resources valued by the community.
 - Encourage new development to occur in areas that have adequate infrastructure and services capable to accommodate growth or additional development.
 - Moderate activity levels and the rate of growth in traffic volume to maintain acceptable levels of service. Particularly, reduce the amount of residential and vehicular activity associated with ultimate build-out allowed per zoning on backcountry or rural properties.
 - In the Lower Blue Basin, provide a mechanism whereby property owners may realize income from the conveyance of development rights from portions of their land without being forced to subdivide or sell large/entire tracts.

Approval Required to Receive Development Rights

Receiving Areas identified on Official TDR Sending and Receiving Areas Maps represent areas that could “possibly” serve as sites for additional density or more intense development. Receiving areas represent properties where it is felt adequate infrastructure and services capable to accommodate growth or additional development might be available. However, just because a property is identified as a “receiving area” on an Official TDR Sending and Receiving Areas Map does not imply, grant or vest the right to actually utilize or receive TDRs. The Review Authority analyzing and approving a formal development project/application determines whether a particular property is suitable to utilize or receive TDRs. Therefore, utilization or acquisition of TDRs is a condition supplemental to the successful approval of a County development project/application.

- B. Basin Specific Regulations:** The transfer of development rights within the respective Lower Blue, Snake River, Ten Mile and Upper Blue basins is allowed pursuant to the regulations contained in this subsection. No zoning amendment or PUD modification as identified in Section 3202.03 B.1 shall be approved by the County unless the provisions of this section are met.
- 1. Applicability:** To carry forward the purpose and intent of the TDR program, the following regulations shall be applicable to all development that undertakes any of the following actions, except for actions listed under the exemptions set forth in subsection 2 below and 3202.03.C.

- a. **Rezoning / Upzonings:** An application for a zoning amendment or PUD modification that would increase the development rights (or equivalent thereof) associated with permitted or previously-approved conditional use(s) in any one or more of the following ways:
 - **Residential Density:** Increases the residential density of development beyond the maximum permitted by the existing zoning district; and/or
 - **Floor Area:** Increases the permitted residential, commercial or industrial floor area beyond that permitted by the existing zoning district or this Code; and/or
 - **Vehicle Trips:** Increases the total number of vehicle trips generated by commercial or industrial development beyond that permitted by the existing zoning district; and/or
 - **Mixed Uses / Combination of New Uses:** Increases the overall activity levels beyond the maximum permitted by the existing zoning district. For example, where a combination of new uses are proposed on a property (e.g., mix of residential and commercial), it shall be shown that overall activity levels (i.e. residential density, floor area or vehicle trips) stays the same or decreases.
 - b. **Additional Uses:** TDRs can be utilized in other ways besides through a rezoning / upzoning application. If the circumstances of a particular application warrant, TDRs can be utilized and authorized in any approval.
- 2. Exemptions:** The following types of development are exempt from the provisions of these regulations:
- a. **Affordable Workforce Housing:** Development of housing, which meets the specification set forth in Section 3809.02 of this Code.
 - b. **Community Facilities and Institutional Uses:** Development applications or portions of development applications where the proposed land use is restricted to community facilities and institutional uses as defined by this Code.
 - c. **Blight Placer TDR Bank:** The development rights located in the Blight Placer TDR Bank are not eligible to take advantage of the bonus density as specific in Section B.5.iii. However, the 2-units allowed to be located on the Blight Placer PUD property may take advantage of this provision.
 - d. **Keystone Resort PUD:**
 - Where upzonings are proposed in neighborhoods within the existing boundaries of the Keystone Resort PUD, development rights may be transferred from other neighborhoods of the PUD or from identified TDR sending areas, in accordance with the specific requirements of the PUD. At such time that a zoning amendment request would exceed the overall density allocated to the Keystone Resort PUD (as of January 1, 2005), new density will only be allowed if it is transferred from other designated TDR sending areas.
 - For any future rezonings of the NR-2 zoning district land known as “the Soda Ridge Triangle” into the Keystone Resort PUD, up to 14 actual units (35 equivalent units) of the sending area density/development rights for the requested rezoning may originate exclusively from the Keystone “PUD-wide Density Bank”.
 - For rezoning requests of land designated NR-2 that is contiguous to the Keystone Resort PUD, the proportion of density/development rights transferred or originating from either the Keystone Resort PUD, PUD-wide Density Bank or designated TDR sending area or backcountry areas shall be determined at the time of the individual request. The BOCC shall make the final determination with input from the Snake River Planning Commission.
 - For density calculation purposes, resort support and community support facilities, as identified and defined by the Keystone Resort PUD, are exempt from TDR requirements.
 - e. **Copper Mountain PUD:** Where upzonings are proposed in neighborhoods within the existing boundaries of the Copper Mountain PUD, equivalent unit density may be transferred from other neighborhoods of the PUD in accordance with the specific Density Transfer requirements contained in the PUD.

3. Designation of TDR Sending, Receiving, Optional and Neutral Areas

- a. Official Transfer of Development Rights Sending and Receiving Areas Maps for the four planning basins, to designate respective sending, receiving, optional, and neutral areas have been codified and adopted as part of the Code. Optional areas are only identified or applicable to the Lower Blue Basin. The BOCC may amend these maps from time-to-time. The respective Official Transfer of Development Rights Sending and Receiving Areas Maps shall be kept on file in the Planning Department and the Office of the Clerk and Recorder, and the maps shall be available for public inspection.
- b. The areas suitable for transferring development rights from shall be parcels identified as sending areas as shown on the respective basin's Official Transfer of Development Rights Sending and Receiving Areas Map or be a parcel authorized to send development rights through an approval of the County, and shall meet the following criteria to the satisfaction of the County:
 - i. Proof that the sending area is a legal parcel in accordance with all the applicable provisions of this Code, including proof that the parcel complies with the zone lot requirements specified in Section 14101.02.F.
 - ii. Proof that the applicant has an ownership interest in the property sufficient to proceed with transfer of the development rights as proposed, including evidence of clear title and that no encumbrances/private or regulatory restraints to the title would preclude its eligibility to be used for transfer of development rights.
 - iii. Demonstration that no significant environmental or other liabilities exist on the property that would preclude the County from accepting the property. In the Snake River or Ten Mile basins, in rare instances were the County does not want to accept title to the property, the transfer of development rights from the property could still be recognized as specified in Section B.7.d. below.

In addition, other areas as listed below may also qualify as TDR sending areas.

- c. Parcels potentially suitable for the receipt of development rights shall be those parcels identified as receiving areas as shown on the respective basin's Official Transfer of Development Rights Sending and Receiving Areas Map or a parcel authorized through an approval of the County. A parcel may not actually be used as a receiving area unless it receives approval for a zoning amendment, PUD, PUD amendment subject to the provisions of Sections 12100 et seq. and 12200 et seq., or is authorized through an approval of the County.
 - In the Lower Blue Basin any receiving area parcel located in the "Rural Area" of the basin utilizing development rights shall transfer development rights from identified sending areas located in the "Rural Area" of the basin.
- d. In the Lower Blue Basin those parcels that have been determined to be suitable for sending or receiving development rights shall be parcels identified as optional, and therefore eligible to send or receive density. However, an optional area does not enable the parcel to both send and receive development rights, only one or the other. A parcel identified as optional may not be used as a receiving area unless it receives approval of a zoning amendment, PUD, or PUD amendment subject to the provisions of Sections 12100 et seq. and 12200 et seq. At such time a property owner decides on the preferred designation, the Official Lower Blue Basin Sending and Receiving Areas Map shall be amended accordingly.
 - In the Lower Blue Basin, any optional area receiving development rights shall transfer development rights from identified sending areas located only in the "Rural Area" of the basin.

- e. Those parcels that have been determined to not be suitable for the transfer of development rights, and therefore not eligible to send or receive density shall be identified as neutral areas as shown on the respective basin's Official Transfer of Development Rights Sending and Receiving Areas Map.
 - f. In the Upper Blue Basin, properties with a NR-2 Zoning District designation, but not identified as TDR receiving areas on the Official Upper Blue Basin Transfer of Development Rights Sending and Receiving Areas Map, may be allowed to serve as TDR receiving areas provided that the zoning amendment Review Authority determines (a) that the uses and densities proposed are in general conformity with the applicable master plan policies and applicable master plan land use designations; (b) that any specific restrictions on the use of the property are given consideration, and (c) that the receiving area receives approval for a zoning amendment subject to the provisions of this Code.
 - g. In the Upper Blue Basin, properties containing wetlands of "high importance" or wetlands of "concern", as defined in and shown on mapping prepared for the "Final Report on Enhancement of Wetlands Management in Summit County", February, 2003 (as kept in the County Planning Department), may also qualify to serve as TDR sending areas. In order to qualify, 50 percent or more of the property must be covered by wetlands of "high importance" or wetlands of "concern". Because the TDR Sending and Receiving Areas Map is not of sufficient detail to identify the location of such lands, a site-specific delineation of wetlands will be required in order to demonstrate that a parcel is covered 50 percent or more by wetlands of "high importance" or wetlands of "concern". Such wetlands shall be delineated to the satisfaction of the U.S. Army Corps of Engineers, with exceptions as called-out below:
 - Where a property owner can demonstrate to the Army Corps of Engineers that wetlands not shown on the above-referenced map meet the criteria to be classified as wetlands of "high importance" or wetlands of "concern", then the wetlands are eligible to serve as TDR sending areas, provided they cover at least 50 percent of the property (i.e. assessment that the wetlands are of high quality and have a high degree of functionality, as defined by the study referenced above).
 - If circumstances preclude the Army Corps of Engineers from the review or field verification of the site-specific delineation and functionality of the wetlands, determination and verification may come from a wetlands/environmental consultant listed on the most recently published list of "Wetlands Delineation Consultants", for the region, as provided by the Army Corps of Engineers.
 - h. Properties designated as TDR sending areas in all basins of the County may serve as TDR sending areas for density transferred to other basins of the County (reference Section 3202.03.D for interbasin transfer guidelines, criteria and ratios).
 - i. Properties designated as TDR receiving areas in all basins of the County may serve as TDR receiving areas for density transferred from other basins of the County (reference Section 3202.03.D for interbasin transfer guidelines, criteria and ratios).
- 4. Amendments to the Official Transfer of Development Rights Sending and Receiving Areas Maps:** Landowners of property designated as a TDR Receiving, Sending, Optional or Neutral Area, may request that their property be re-designated on the respective Official Transfer of Development Rights Sending and Receiving Areas Map. Applicants requesting a change shall submit the following to the Planning Department:
- a. An application, identifying the property location and statement of interest in the property, and stating the request for change in TDR designation. Application fees shall be submitted as required by resolution of the BOCC.
 - b. For requests to change a TDR Receiving or Neutral Area designation to a TDR Sending Area designation, a written narrative of how the subject property meets the following criteria:

- i. The property has a master plan designation or other County development policy/action or regulation that specifically contemplates sending development rights.
 - ii. The property is in an area not readily served by urban facilities and services (i.e. public sewer and water).
 - iii. Surrounding properties primarily have a TDR Sending Area designation.
 - iv. Designation of the property as a TDR Sending Area would be consistent with the overall philosophy of protecting rural areas, backcountry areas or environmentally sensitive areas, or would be consistent with accomplishing other important master plan goals and policies/actions.
- c. For requests to change a TDR Sending or Neutral Area designation to a TDR Receiving Area designation, a written narrative of how the subject property meets the following criteria:
- i. The property has the ability, based on master plan designation or other County development policy/action or regulation, to accommodate additional development densities.
 - ii. Surrounding properties primarily have a TDR Receiving Area designation.
 - iii. Designation of the property as a TDR Receiving Area would be consistent with the overall philosophy of directing development to urbanized locations or would be consistent with accomplishing other important master plan goals and policies/actions.
- d. In the Lower Blue Basin, for requests to change from either a TDR Sending, Receiving or Neutral Area designation to an Optional Area designation, a written narrative of how the subject property has inherent site characteristics (e.g., size, available infrastructure or visually important lands) that supports and demonstrates the property is suitable for sending and receiving additional development rights/densities as set forth in Sections B.4.b and B.4.c above.
- e. For requests to change a TDR Sending, Receiving or Optional Area to a Neutral Area designation, a written narrative of how the subject property meets the following criteria:
- i. The property has a master plan designation or other County development policy that supports the Neutral Area designation; and/or
 - ii. It is demonstrated that the property is not suitable for transferring development rights from or to, and therefore should not be eligible to send or receive density.

The Planning Department shall prepare a report based on whether the application meets the criteria listed in Section 3202.03 B.4.b, B.4.c, B.4.d or B.4.e above, whichever situation applies. A public hearing shall be held by the respective basin planning commission. The basin planning commission shall make a recommendation as to whether the TDR Sending and Receiving Areas Map should be modified, based on how the proposal meets the criteria above. The BOCC shall next review the proposal at a public hearing. The BOCC shall take action to approve or deny the proposal based on its conformance with the criteria in Sections 3202.03 B.4.b, B.4.c, B.4.d or B.4.e above, whichever situation applies. If the BOCC takes action to approve a modification to a basin's Official TDR Sending and Receiving Areas Map, the Planning Department shall make such modifications to the official map as kept in the Planning Department and the Office of the Clerk and Recorder.

- 5. Increase in Development Rights / Density:** For each additional development right requested in the receiving area over and above the number of units permitted by the proposed development's existing zoning, either one (1) development right shall be purchased from the TDR Bank, or one (1) development right shall be transferred from identified sending or optional areas based on the following formula:
- i. Twenty (20) acres of property in the sending or optional area equals one development right.
 - ii. Fractions of a development right shall be recognized for sending area properties less than or exceeding twenty (20) acres in size. For example, 5 acres equals one-fourth (1/4) of a

development right and 25 acres equals one and one-fourth (1-1/4) development right, based on the formula of 20 acres equaling one (1) development right, as described above.

iii. Exceptions to development right values, of one development right per twenty (20) acres of property, are as follows:

- Platted lots in the sending area shall have a value of one (1) development right per platted lot. In the Upper Blue Basin, lots which are not located in identified sending areas shall qualify to have a value of one (1) development right per platted lot, provided that at least 50 percent of the total area of the lot is covered by wetlands of high importance or wetlands of concern, as set forth in Section 3202.03 B.3.g.
- For those properties identified as “Sending Areas – Significant Wildlife Value” on the Official Snake River Basin Transfer of Development Rights Sending and Receiving Areas Map, the development right shall have a value of 2:1 (including the 2-units allowed to be located on the Blight Placer PUD). For example, 20 acres of property equals 2 TDRs, instead of one TDR.
- An individual unplatted parcel two acres or less in size is equal to one-tenth (1/10) of a development right.
- In the Lower Blue Basin, if a rural cluster subdivision is reviewed and approved, then the sending area development rights available on that property will be equal to the density recognized per the approval.

6. Transfer of Development Rights Values: An owner or developer of property seeking to undertake development that is subject to the provisions of these regulations shall transfer the necessary number of development rights to a receiving or optional area (as identified on an Official TDR Sending and Receiving Areas Map) or to a property authorized through an approval of the County, as set forth below:

a. Development Right Conversions: When transferring or converting development rights, as set forth in this Section of the Code, the following standards shall be equal to one (1) development right:

- 4,356 square feet of one single-family residential or duplex dwelling unit floor area;
- 1,400 square feet of multi-family dwelling unit floor area (i.e. townhouses and condominiums);
- 3 lock-off or lodge rooms (no kitchen), not to exceed an average per building of 467 square feet of floor area each; or
- 1,000 square feet of non-residential gross floor area (e.g., commercial, industrial, etc.).

b. Utilization of Development Rights When Converted: For the purpose of converting development rights, the following standards identify what can be constructed:

- i. **Full / entire development rights:** One development right can be used to build up to: 4,356 square feet of one (1) single-family residential or duplex dwelling unit floor area; 1,400 square feet of multi-family dwelling unit floor area; or 3 lock-off or lodge rooms not to exceed an average per building of 467 square feet of floor area each. If the maximum permitted size of a dwelling unit is not built, unused or residual floor area cannot be sold or transferred, but will remain on the property and be available to the existing or future property owner for potential additions or expansions of the structure on the property. Unused or residual floor area shall not be used for more dwelling units or density than allowed per zoning.
- ii. **Additional floor area / fractions of development rights:** Additional floor area or fractions of development rights shall be purchased if additional floor area, above the maximum permitted through the above development right conversions, is requested. Additional floor area or fractions of development rights can be purchased to construct more than: 4,356 square feet of one single-family residential or duplex dwelling unit floor area; 1,400 square

feet of multi-family dwelling unit floor area; 3 lock-off or lodge room not to exceed an average per building of 467 square feet of floor area each; or 1,000 square feet of non-residential gross floor area. For example, a 5,445 square foot single-family residence would equal 1.25 development rights. In no event shall additional floor area or fractions of development rights purchased allow for the actual number of dwelling units or density permitted per zoning to be exceeded.

- iii. **Non-residential gross floor area:** Development rights purchased for non-residential gross floor area shall represent the amount / fraction of additional floor area approved. For example, 500 square feet of non-residential gross floor area would equal 0.5 development right.
 - c. **Increase in Vehicle Trips:** For proposed changes in commercial or industrial use but not involving changes in floor area requested by a zoning amendment or PUD modification that increase the average daily vehicle trips (“ADT”) over and above the number of trips that would be generated by the most intense uses that could occur under the existing zoning or PUD approval, the applicant shall transfer development rights (based on the formula under Section 3202.03 B.5) at a rate equal to the expected increase in vehicle trips. Vehicle trips shall be determined based on the formula of one (1) development right transferred equaling the vehicle trips generated by a single-family dwelling unit, as specified in the most recent version of Trip Generation manuals prepared by the Institute of Transportation Engineers.
 - d. **Commercial and Industrial Floor Area Conversions to Residential:** When a property’s zoning permits commercial or industrial uses, the floor area permitted by the zoning (as determined by the Review Authority) may be converted to residential density to be used on the property as a part of a zoning amendment or PUD modification application based on a conversion factor using the development right conversions outlined above in Section 3202.03 B.6.a. This conversion expressly prohibits the conversion of resort support, community facilities, institutional uses, conference facilities, recreational facilities, conditional uses, temporary uses and other similar land uses that may be permitted by the underlying zoning.
 - e. **Backcountry (BC) Zoned Properties – Transfer of Residual Development Rights or Square Feet of Floor Area:** Unused, residual or remnant development right value associated with a BC Zoning District property shall not be sold or transferred as a development right or fraction of a development right. Additionally, the transfer of unused or residual square feet of floor area to another BC Zoning District property, to be used as part of a parcel assemblage to increase structure size, shall not be allowed. For example, if an owner of a 20-acre BC zoned property in the Upper Blue or Ten Mile basin chooses to build a 950 sq. ft. home instead of a maximum 1,650 sq. ft. home as allowed per the BC Zoning District, the unused or residual development rights or square feet of floor area cannot be sold or transferred, but will remain on the property and be available to the existing or future property owner for potential additions or expansions of the structure on the property. Also reference Section 3514 et seq.
 - f. **Backcountry (BC) Zoned Parcels – TDR Banks:** BC Zoning District properties shall not be eligible to acquire development rights, or fractions thereof, from TDR banks for assembling parcel acreage to increase structure size (i.e. meet or maximize BC Zoning District acreage thresholds and formulas). Also reference Section 3514 et seq.
7. **Recordation of Transfer:** All TDR transactions shall be filed with the Planning Department. The following shall be required in order to enact a TDR:
- a. In the Snake River and Ten Mile basins, title to all TDR sending area properties shall be transferred to Summit County via an instrument recorded in the Office of the Summit County Clerk and Recorder. The Planning Department shall issue transfer of development right certificates in exchange for TDR Sending Area properties that are deeded to the County. Certificates shall be issued in values established in Section 3202.03 B.5 above.

- b. In the Upper Blue Basin, title to all TDR sending area properties shall be transferred jointly to Summit County and the Town of Breckenridge via an instrument recorded in the Office of the Summit County Clerk and Recorder. However, if development rights are transferred into the Upper Blue Basin via an interbasin transfer, title to the TDR sending area property shall not be transferred jointly to the County and Town but to the County alone, unless as identified Section 7.a above.
 - In the Upper Blue Basin, the Planning Department shall issue transfer of development right certificates in exchange for TDR Sending Area properties that are deeded jointly to the County and Town as a part of the Upper Blue TDR Bank. Certificates shall be issued in values established in administrative policies for the Upper Blue TDR Bank.
- c. In the Lower Blue Basin the sale of development rights shall occur between private entities or the County. The sale shall be registered with the County and a Transfer of Development Rights Certificate issued, so long as nothing is contrary to the provisions as provided in Section 3202.03 et seq. In rare or unusual instances, a property owner may want to transfer full-title of a TDR sending area property to the County. This may occur so long as the sending area property is legally subdivided and title recorded via an instrument in the Office of the Summit County Clerk and Recorder.

Per the intent of the Lower Blue TDR Program, in the Lower Blue Basin a property owner may retain ownership of the property subject to a transfer of development right and residual permitted uses. Under these circumstances the property owner shall work with the County to develop a perpetual restrictive covenant or other document enforceable by the County, and in a form acceptable to the County, which shall be placed on the sending area property and recorded in the Office of the Clerk and Recorder. Such restrictive covenant or document, granted in perpetuity, shall clearly:

- Describe the disposition of the property.
- Describe that portion of the land intended to serve as a sending area. If less than all development rights are transferred off a TDR sending area parcel, then an area shall be defined on the sending area parcel, equaling the acreage / development right value transferred.
- Describe the residual and permitted uses allowed which reflect: historic use of the property, preservation of open space, or uses typically consistent and associated with past agricultural operations and normal expansion thereof. These uses may include any of the following:
 1. Agricultural operations, with the following provision applicable to lumbering: Lumbering shall only be permitted when timber harvest is for resource management purposes (i.e., maintaining forest health) in conjunction with a forest management plan approved by the CSFS.
 2. Animal keeping (see Section 3802).
 3. Existing agricultural buildings and barns.
 4. Reconstruction/replacement of damaged structures or existing agricultural buildings and barns. Where an existing structure is damaged or destroyed, the structure may be restored or repaired to not more than its original size (bulk, mass and height); provided the restoration occurs within generally the same footprint as the original structure and architectural designed to demonstrate rural character/exhibit similar character of the previous building. The replacement of the structure shall be subject to review by the Planning Department, appealable to the Lower Blue Planning Commission.
 5. Fences—repair, replacement and new fences when used for agricultural or resource protection purposes (i.e., keeping cattle out of a stream), provided the fences shall be constructed to effectively hold livestock while allowing for the passage of wildlife.
 6. Minor utilities—maintenance of existing minor utilities and placement of new minor utilities when underground and when the disturbed area is restored and re-vegetated.
 7. Roads:

- Existing public or private roads and the maintenance of the roads.
 - New construction of roads for purposes of providing access to agricultural structures and/or operations, fire mitigation or similar purpose, or other uses allowed by this section.
8. Stormwater detention facilities for on-site agricultural operations and drainage.
 9. Recreation trails and pathways.
 10. Leach fields for septic systems provided any ground disturbance is restored.
 11. Wellheads/well houses and developed springs.
 12. Wetlands, stream and wildlife enhancement projects.
 13. Repair and replacement of existing irrigation ditches, headgates, water diversion structures, dikes and construction of new irrigation or water structures for the purposes of reasonable and customary management of irrigation water for agriculture.
 14. Other uses consistent with protection of open space values, preserving rural/agricultural character, and other goals of the Lower Blue Master Plan or County development policies, as approved in the final restrictive covenant. For example, construction of a building necessary for legitimate agricultural operations (i.e. loafing shed).
- d. In the Snake River or Ten Mile basins, in unique or rare situations the Planning Department, in consultation with other County Departments, may determine that it is not appropriate to transfer title / ownership of a property to the County, but instead may be retained by the current owner or transferred to another party (e.g., U.S. Forest Service). Under these circumstances a transfer of development rights certificate shall still be issued. However, a perpetual restrictive covenant or other document enforceable by the County and in a form acceptable to the County shall be recorded in the Office of the Clerk and Recorder. Such restrictive covenant or document shall clearly describe the disposition of the property and shall prevent development or uses inconsistent with the TDR program.
- e. Where the property owner holds an interest in subsurface mineral rights, the subsurface mineral rights shall also be deeded to the County, or in the Upper Blue Basin, jointly to Summit County and the Town of Breckenridge, unless the BOCC makes a finding that the open space values of the property are important enough to accept the property without subsurface mineral rights and further provided that the applicant demonstrates the ability to access such rights from other lands by a lease, adjacent ownership, or other methods approved by the County. In making such findings, the BOCC shall use the Selection Criteria in the *Summit County Open Space Protection Plan*. If the County decides to take ownership of a sending property without obtaining ownership of the subsurface mineral rights, an agreement shall be recorded acknowledging that access to the subsurface mineral estate shall not be allowed from the surface of said property.

8. Criteria for Approval of TDR Receiving Areas: Development on a receiving area that is proposed to utilize TDRs to secure additional development rights or increases in intensity of use beyond that allowed by existing zoning shall be reviewed pursuant to the zoning amendment development review process as set forth in this Code.

9. Private Party Transfer of Development Rights: Transfer of Development Rights between private persons shall be subject to all provisions of the TDR regulations. Nothing shall preclude the sale of a development right between private entities so long as the sale is: registered with the County, a Transfer of Development Rights Certificate is issued, and nothing is contrary to the provisions as provided in Section 3202.03 et seq.

C. Voluntary and Alternative Measures of Compliance with TDR Regulations - Only for Substantial Developments in the Lower Blue, Snake River and Ten Mile Basins:

Joint Upper Blue Master Plan

To honor the spirit of the *Joint Upper Blue Master Plan*, the below Density Bonus Proposal provisions are

not applicable to the Upper Blue Basin. The *Joint Upper Blue Master Plan* (adopted August 20, 1997) establishes key goals and policies to not create additional density anywhere in the basin, whether through upzonings, annexations or any other mechanism. Additionally, goals and policies in the Plan support curtailing or reducing overall density in the basin by 25%, and reducing potential activity levels to a level which is consistent with the vision of the *Joint Upper Blue Master Plan*.

a. Purpose and Intent

The intent of such voluntary and alternative measures to comply with the TDR requirements placed upon any particular application is to mitigate the impacts of density increases by furthering other related legitimate community interests and objectives as specifically promoted by master plan goals and policies or other County development policies. By offering such alternatives, the voluntary compliance measures are intended to increase flexibility by allowing applicants a second, voluntary means of attaining compliance with the TDR regulations and approval of development applications in a manner that promotes implementation of specific *Countywide Comprehensive Plan* goals and policies/actions.

In accordance with the *Countywide Comprehensive Plan* TDR policies, as presently located at General Land Use policies/actions 1, 1.5, 2, and 2.1, and subject to change from time to time, an applicant may propose an alternative means to the transfer of development rights to meet the TDR requirements implicated by the applicant's proposal. Additionally, it is recognized that in rare instances the amount of TDRs required by a project might not be readily available for purchase or transfer. In light of such considerations, and in order to provide applicants with a voluntary measure to avoid the demands to satisfy the requirement of the introduction of a certain number of TDRs, an applicant may propose certain alternatives to such direct TDR requirement through one or a combination of the alternative measures as set forth below.

In no circumstance shall any such alternative be required of any applicant, nor shall the exercise of any of these alternative options cause an applicant to exceed the total value of any specific TDR requirement that would otherwise apply to the applicant's development proposal, based upon the calculated fair market value of such TDRs as determined in accordance with the County TDR Value Appraisal Methodology, which is set forth in Figure 3-9. In the Lower Blue Basin, until such time more detailed regulations are developed, values shall be considered on a case-by-case basis based on detailed information submitted by the applicant. Accordingly, the following types of proposals should be evaluated as an alternative measure of compliance, in part or in whole, to meet TDR regulation requirements.

b. Density Bonus Proposals - Examples

A density bonus proposal is a proposal made by an applicant, as an alternative in whole or in part to the satisfaction of a numerical TDR requirement placed upon any particular application for an increase in development rights. A density bonus proposal instead proposes to offset the impacts of such requested development rights, in a roughly proportional manner, by the promotion, establishment or support of a program or project that substantially furthers other legitimate community interests and objectives as specifically promoted by master plan goals and policies/actions or other County development policies. Notwithstanding the foregoing, acquisition of TDRs is the preferred method of complying with these provisions.

Examples of such legitimate density bonus proposals that may be proposed by the applicant, and may in turn be considered by the Review Authority, include, but are not limited to, the following:

- i. Dedication of land for purposes of open space, development of community facilities, provision of deed-restricted affordable workforce housing, or other legitimate community interests and objectives;
- ii. Construction of facilities for purposes of public recreation and transportation, or public health, safety and welfare purposes;

- iii. Provision of deed-restricted affordable workforce housing that meets the specifications set forth in Section 3809.02 of this Code.
- iv. Donation of funds for purposes of promotion, establishment or support of a program or project that substantially furthers other legitimate community interests and objectives; and,
- v. Commitment to the provision of services for purposes of promotion, establishment or support of a program or project that substantially furthers other legitimate community interests and objectives.

c. Density Bonus Proposals – Criteria

Although the utilization of TDRs remains the preferred alternative to account for new density involved in a zoning amendment application for substantial developments, there could be situations where an Applicant needs flexibility to propose or provide sufficient benefits in lieu of TDRs. Additionally, this flexibility could be partially driven by a lack of available TDRs (pool of TDRs) to purchase/acquire. In these situations, it could be in the community's and Applicants interest to provide alternative benefits, projects or programs other than TDRs, and to realize these public benefits greater flexibility is needed in the regulations.

In consideration of the need for greater flexibility for projects that implicate greater development right requests and accordingly broader and more generalized impacts upon the community, only substantial developments in the Lower Blue, Snake River and Ten Mile basins may initiate a density bonus proposal in an effort to attain any exemption from satisfying all or part of the TDR requirements. A substantial development is any development of fifteen (15) or more development rights (or equivalent thereof) as specified in Section B.5. Any density bonus proposal meeting the standards set forth herein may be proposed by the applicant and considered by the Review Authority, provided, however, that no such proposal may be approved by the Review Authority unless the following criteria are satisfied:

- i. The application is for a substantial development;
- ii. The applicant has demonstrated, based upon substantial evidence presented at relevant public hearing(s), and by means of a professional, empirical study, that such density bonus proposal is roughly proportional to the impact of the proposed increase in density, pursuant to County regulations, goals and policies related to such increase in density;
- iii. The applicant has demonstrated, based upon substantial evidence presented at relevant public hearing(s), and by means of a professional, empirical study, that an essential nexus exists between the legitimate community interests and objectives advanced by such density bonus proposal and the impacts of the increase in development rights from the development proposed;
- iv. The applicant has proposed an alternative to the TDR requirement that advances legitimate community interests and objectives as specifically promoted by master plan goals and policies, other County development policies, or otherwise in this Code;
- v. The density bonus proposal does not exceed the total value of any specific TDR requirement that would otherwise apply to the applicant's development proposal, based upon the calculated fair market value of such TDRs as determined in accordance with the County TDR Value Appraisal Methodology. In the Lower Blue Basin, until such time more detailed regulations are developed, values shall be considered on a case-by-case basis based on detailed information submitted by the applicant; and,
- vi. The applicant has certified that the density bonus proposal at issue is offered on a completely voluntary basis, pursuant to the exercise of a viable choice by such applicant, and that the applicant understands that it is not required to make such a proposal under any circumstance.

If an Applicant of a substantial development application proposes to use TDRs as a part or portion of the density bonus proposal, the Review Authority shall have the discretion to modify the development right values or acreage requirements based upon the particular qualities of the proposed sending area(s), including without limitation: significant environmental or conservation values, visually important lands, hillsides/ridgelines, historically significant features, etc. In the event an interbasin transfer is proposed as part of a substantial development application, the Review Authority reserves the right to request a referral or recommendation on the importance of the development right(s) from

the basin planning commission in which the Sending Area property is located (i.e. why the sending area property is highly valued for preservation purposes).–

Notwithstanding the foregoing, the decision as to whether or not to accept an offered alternative to full utilization of TDRs is a discretionary decision within the sole province of the Review Authority for any given application. Moreover, a full release of an applicant's TDR obligations shall only be granted under exceptional circumstances.

d. Payment in Lieu of TDRs

In instances where TDRs are not available for purchase or transfer, or otherwise present substantial practical difficulties, a financial contribution in lieu of transferring development rights may be allowed as an option to offset TDR requirements, in whole or in part, that have been identified as a result of a development proposal. Notwithstanding the foregoing, acquisition of TDRs is the preferred method of complying with these provisions.

Payment in lieu of TDRs shall be based upon the rate established for the fair market value of such TDRs, as determined in accordance with the standards and criteria established in the County TDR Value Appraisal Methodology, which is set forth in Figure 3-9, and incorporated and legislatively adopted herein as if referenced in full. In the Lower Blue Basin, until such time more detailed regulations are developed, values shall be considered on a case-by-case basis based on detailed information submitted by the applicant.

If the applicant elects to propose to make an in lieu payment, the applicant shall be required to articulate the legitimate concerns which justify such in lieu proposal. Said in lieu proposal shall be evaluated by the Review Authority, and the Review Authority may refuse a payment in lieu of transferring development rights and require that TDRs be transferred, in accordance with the provisions of this Section.

Under no circumstances shall any payment in lieu of TDRs exceed the total value of any specific TDR requirement that would otherwise apply to the applicant's development proposal, based upon the calculated fair market value of such TDRs as determined in accordance with the County TDR Value Appraisal Methodology or in the Lower Blue Basin on a case-by-case basis based on detailed information submitted by the applicant.

All payments in lieu allowed herein shall be deposited into a specified account expressly authorized to retain such payments. Such monies shall be utilized to sustain the County's efforts to provide funding for the acquisition of development rights from properties identified as TDR sending areas on the Official Transfer of Development Rights Sending and Receiving Areas Maps.

Payments in lieu revenues should be spent on the acquisition of real property interests and development rights in the basin from which they are collected (through either County purchases or via joint efforts with other entities/towns). However, such revenues generated from a particular basin may be used to purchase property interests and rights in other basins in rare or unique situations, such as when suitable property interests or rights are not readily available or feasible for purchase in the basin generating such revenues.

As with the timing for acquisition and dedication of TDRs, any payment in lieu of TDRs shall occur prior to recordation of the applicable zoning amendment or PUD designation documents, unless an alternative time period is approved by the Review Authority and stated in the resolution of approval for the zoning amendment, PUD, or PUD amendment.

- D. Interbasin Transfers:** The preferred method of complying with the TDR provisions is to acquire development rights from within the basin they are proposed to be utilized (i.e. intrabasin transfers are preferred to interbasin transfers). However, allowing for interbasin transfer of TDRs supports the idea of

helping to facilitate a cohesive Countywide TDR Program and can increase creative opportunities for the use of TDRs.

1. Review Guidelines: The Review Authority, for the basin to accept or receive the proposed development rights, may consider an allowance for interbasin TDRs to occur between individual planning basins as a part of a zoning amendment application or other specific / unique land use approval. Interbasin transfer proposals shall be subject to the following guidelines:

- a. The Applicant specify the reason and nature of such an interbasin transfer in its application for approval.
- b. The proposed TDR is in general conformance with the applicable master plan policies/actions provided such policies do not contradict the provisions of this Code.
- c. Purchase of development rights shall be from 1) TDR banks or 2) enacted through private party transactions.

2. Review Criteria: The Review Authority, for the basin to accept or receive the proposed development rights, retains the ability to accept or deny a proposed interbasin transfer based on, but not limited to, one or more of the following criteria:

- a. Evidence proposed development rights, or a portion of the development rights, are not readily available within the respective basin of said application.
- b. Preservation of environmental, conservation, visual or historic resource values.
- c. Legal, physical or financial viability of said transaction.
- d. A referral or recommendation from the basin planning commission(s) where the development rights are proposed to be transferred from.

3. Transfer Ratios:

a. Lower Blue Basin: Until such time more detail Lower Blue TDR Program regulations are developed to incentivize transfers out of the “Rural Area” of the basin, the development right value for a proposed interbasin transfer (from a sending area in the Lower Blue Basin to a receiving area in another basin) shall be valued at one (1) development right per twenty (20) acres. No development rights shall be transferred from other basins of the County into the “Rural Area” of the Lower Blue Basin, but may be transferred into the “Urban/Silverthorne Area”.

b. Snake River, Ten Mile and Upper Blue Basins: Interbasin transfers between the Snake River, Ten Mile and Upper Blue basins shall be on a 1:1 ratio and consistent with the Transfer of Development Rights Values established in these regulations (Sections B.5. and B.6). For interbasin transfer purposes, basin specific provisions and exceptions include:

- i. **Snake River Basin:** Per Section 3202.03 B.5 (Increase in Development Rights / Density), properties identified as “Sending Areas – Significant Wildlife Value” on the Official Snake River Basin Transfer of Development Rights Sending and Receiving Areas Map, the development right shall have a value of 2:1 (including the 2-units allowed to be located on the Blight Placer PUD property).
- ii. **Upper Blue Basin:** No development rights shall be transferred from other basins of Summit County into the Upper Blue Basin until development rights have first been transferred out of the Upper Blue Basin to other basins of the County, according to the following ratio: For every four development rights transferred out of the Upper Blue Basin, three development rights shall be allowed to be transferred from other basins into the Upper Blue Basin. This ratio is established to accomplish the goal of the *Joint Upper Blue Master Plan* to reduce overall density in the basin by 25 percent. The Summit County Planning Department shall be responsible for tracking development rights transferred into and out of the basin to ensure that the above provisions are complied with. Nothing in this section shall prohibit additional development rights (beyond the established four-out:three-in ratio) from being transferred out of the Upper Blue Basin to other basins of the County.

- 4. Backcountry (BC) Zoning District – Parcel Assemblage:** BC Zoning District properties or properties designated in basin master plans as Backcountry shall not be eligible to transfer development rights, or fractions thereof, to other basins to meet the BC Zoning District acreage assemblage thresholds or formulas to increase structure size. Also reference Section 3514.

- 5. Planning Commission Review / Other Procedural Issues:** The Review Authority, for the basin to accept or receive the proposed development rights, retains the ability / discretion to require an Applicant to indicate the portion of development rights proposed to be transferred from other basins. Subsequently, the resolution approving a zoning amendment application involving interbasin transfer of development rights may specify the basin from which the development rights (or portion of development rights) will be obtained.

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