

## TRANSFER OF DEVELOPMENT RIGHTS (TDRS)



### HAZARDS ADDRESSED



### HOW IT WORKS

A **transfer of development rights (TDR)** program allows additional density where the community wants to grow in exchange for preservation of sensitive areas that the community wants to protect from future development. This tool requires an adopted plan that clearly identifies areas the community desires to preserve or protect from development (“sending areas”) and areas where growth and development are encouraged (“receiving areas”). A potential developer who owns property in a receiving area may purchase development rights (either from a TDR bank or directly from a property owner in the sending area) to boost her overall development potential; that additional potential could come in the form of additional buildings, additional height, additional density, or some other form established by the jurisdiction. Similarly, a property owner in a sending area may have limited building potential, but can realize a financial return by selling their development rights to an owner in a receiving area. TDRs have been used successfully in Colorado for decades to protect environmental resources, agricultural land, historic areas, and areas susceptible to natural hazards, such as steep slopes and floodplains, which often are identified as sending areas.

A closely related concept is a **purchase of development rights program (PDR)**, in which development rights are acquired from an owner of property in an area that the community has identified as appropriate for protection and less development intensity. The rights are extinguished rather than transferred, thus lowering the number of potential developable sites both in the protected area and in the jurisdiction overall. In exchange for selling her development rights, the landowner grants a conservation easement on the property, permanently protecting the land from development. The land may be sold or transferred, but the deed restriction remains in place.

## IMPLEMENTATION

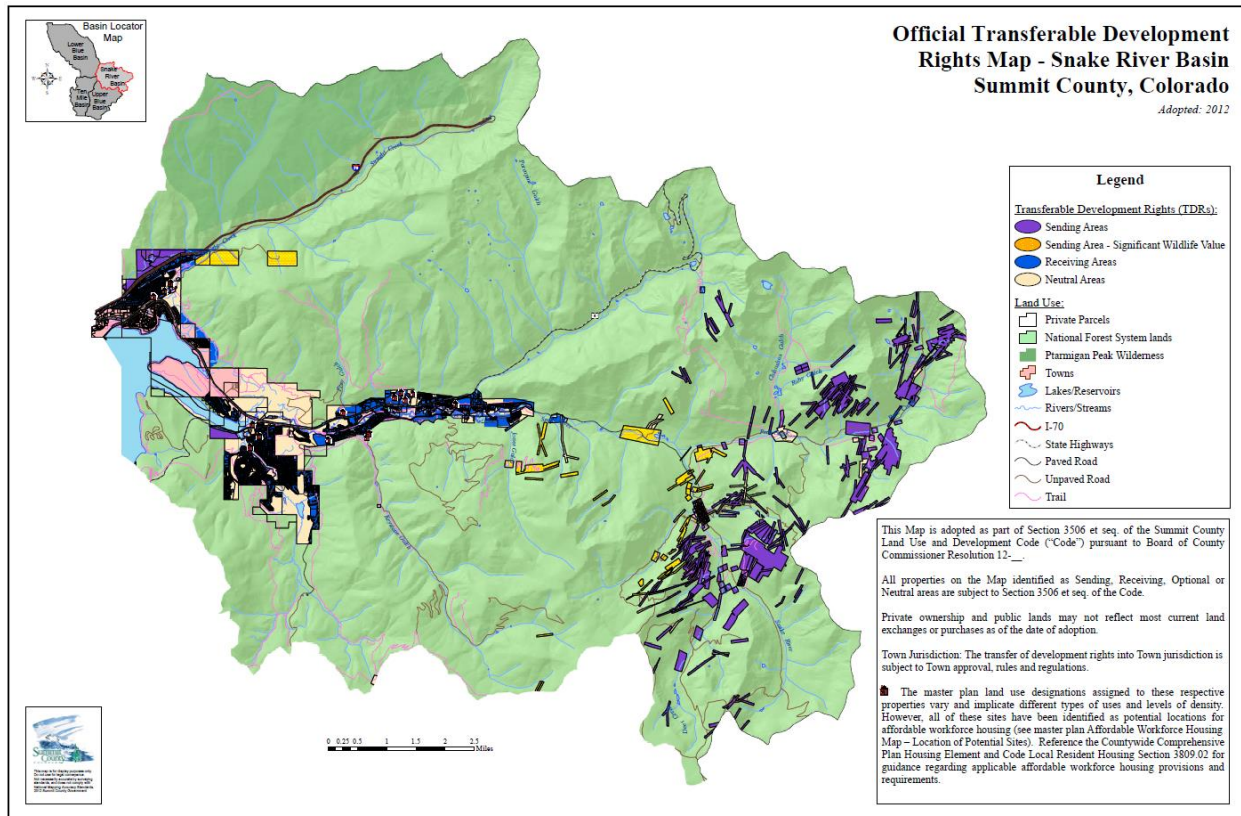
While simple in concept, creation and administration of a TDR program can be complex. Adopting a TDR program involves designating sending and receiving areas, as well as establishing values and allocation rates for development rights. For the program to work, developers must realize value (extra profit) beyond the cost of the additional development rights. Additionally, landowners in sending areas must feel that they are adequately compensated for giving up the right to develop. For example, a TDR program may sell development rights at a rate of \$10,000 per TDR, yet the added density would increase the value of the property or development by only \$13,000; the \$3,000 extra profit might not be enough incentive to promote the use of the program. Planners should consult with valuation experts to determine the appropriate rates and allocations to ensure that transactions will occur.

The community should follow the following basic steps:

- **Define the purpose of the program.** It is important that TDRs be tied to the goals and policies of a community's comprehensive plan and its hazard risk reduction priorities.
- **Identify where the TDRs are permitted.** Consider whether the incentives should apply to all zoning districts, only areas meeting certain conditions, or on a case-by-case basis. Identify specific sending areas and receiving areas.
- **Determine valuation and costs.** Establish values and allocation rates for development rights. This could be done by researching existing programs in comparable jurisdictions, or conducting new research with landowners and economists.
- **Establish procedures and institutions to administer the program.** Communities must decide whether to work with an existing financial institution or develop their own internal systems and procedures to promote the program, bank development credits, and handle transactions.
- **Develop the specifics of the program.** Identify the degree to which incentives are issued, whether they are permitted by right or require a public hearing, and other conditions or agreements that must accompany the program.
- **Adopt the ordinance.** Draft and adopt an ordinance formally establishing the TDR program and covering basic information such as the program purpose, applicability, and other specifics addressed in the sample model language below. Ensure consistency with other land use regulations.

## WHERE IT'S BEEN DONE

**Summit County** has a robust TDR program that protects environmentally sensitive areas from development. The program is divided into four geographically specific TDR areas, generally protecting rural backcountry parcels (sending areas) in exchange for more development in the urban (receiving) areas. Summit County's program also includes "neutral areas" and "optional areas." Neutral areas are parcels that are not suitable for either sending or receiving development rights, and are not eligible for sending or receiving density. Optional areas include parcels that are determined to be suitable for either sending or receiving density. Summit County recently explored options for directly addressing natural hazards, in particular wildfire, through the TDR program. Those discussions were still underway at the time of drafting this guide.



The official TDR Map for the Snake River Basin in Summit County. Sending areas are in purple and orange – receiving areas are in blue.

Source: [co.summit.co.us/DocumentCenter/Home/View/182](http://co.summit.co.us/DocumentCenter/Home/View/182)

**Routt County** established a Purchase of Development Rights (PDR) Program in November 1996 and reauthorized the program in 2005 with increased funding through 2025. The program is intended to provide landowners a financially viable alternative to selling land for development by compensating them for the development rights on their land. Agricultural lands and natural areas (including wildlife habitat and riparian areas) have been the focus of the preservation efforts. An Advisory Board assists the County Commissioners in administering the program and selecting sites for acquisition (*Routt County PDR, 2015*).

## ADVANTAGES AND KEY TALKING POINTS

TDR programs can be effective ways to not only reduce development in hazard areas, but also direct growth to the desirable areas throughout a community. Other benefits include:

- Increased opportunity for developers to boost their bottom line. By purchasing development rights, a developer can increase the number of units and realize a higher profit.
- Increased density where the community wants it. Densifying receiving areas can result in a more diverse housing stock, can help boost surrounding commercial areas, and could potentially result in development of affordable housing units not otherwise feasible without the added density bonus.

## CHALLENGES

Administering a successful TDR program is not as simple as protecting one area and increasing the density elsewhere by means of a transaction. TDR programs are often highly political and can be difficult to both map and maintain over time. Other challenges include the following:

- Receiving areas can be potentially contentious. It might look good on paper, and the comprehensive plan might even state that additional density is appropriate in the vicinity; but officially designating an area as a receiving area can elicit mixed emotions related to density.
- Conversely to the receiving areas, designation of sending areas can be perceived as stripping a landowner’s right to develop and can result in legal challenges and lengthy negotiations.
- Values of a development right must be calculated and recalibrated to respond to market conditions.
- Not all sending or receiving areas are created equal. In larger counties or municipalities, the perceived values of TDRs could vary in different locations. For example, a sending area that is surrounded by encroaching development might be the basis for argument that the value of developing that land is greater than another less desirable sending area. These nuances can be addressed by adjusting allocations, but only add to the complexity of the program.
- A TDR program can be complex to administer without adequate staff training and education. Planners must strike a balance between a simplified approach that is easy to understand, yet responsive enough to development realities to act as an effective incentive.
- Intergovernmental agreements (IGAs) are needed to effectively implement a TDR program if multiple jurisdictions are involved. In Summit County, the TDR program within the Upper Blue Basin has been very effective due in large part to an IGA between the County and the Town of Breckenridge where many of the receiving areas are located.

## MODEL CODE LANGUAGE AND COMMENTARY

A TDR program should be tailored to the needs of the individual community and reflect local planning goals. Key features found in TDR programs include:

- Purpose
- Applicability
- Designation of Sending and Receiving Areas
- Determination and Allocation of Development Rights
- Requirements for Sending and Receiving Sites
- Program Monitoring
- TDR Bank (optional)

### **Commentary**

*Local Examples: In Colorado, two of the more longstanding TDR programs are in Boulder County and Summit County. See “Where It’s Been Done” above for more detail.*

The following sections provide example language for each of the common elements. Model language is in blue shading. Commentary is located in *italics* in the column at the right. The model language used in this document is based on existing ordinances from several communities around the state with effective TDR programs, including municipalities and counties.

The language is illustrative only; consult local counsel to tailor language for your jurisdiction.

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### Purpose

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The purpose of the transfer of development rights program is to help implement the goals and objectives of the community's comprehensive plan and to:

- A.** Preserve and protect environmentally sensitive lands or land with development constraints;
- B.** Protect public and private property from natural hazards, including but not limited to floods, geologic hazards, and wildfire;
- C.** Assist in the orderly development of urban and rural lands;
- D.** Encourage new development in areas with adequate existing infrastructure and services;
- E.** Provide a mechanism for willing landowners in sending areas to protect environmentally sensitive lands and land with development constraints and make reasonable use of their property rights by transferring some or all of their development rights to receiving areas; and
- F.** Provide an opportunity for landowners in receiving areas to obtain a higher return on investment through development at an increased density through the purchase of development rights from sending areas; and
- G.** Establish a system whereby development rights may be reliably transferred.

***Purpose:** TDR programs are typically designed to address multiple goals. Typically TDR programs strive to preserve open space and environmental features in exchange for allowing more development in areas with planned or existing infrastructure and services capable of accommodating additional growth and development. The list of purposes may be tailored to the community's planning goals or may include a broad range of purposes to allow expansion of the program based on adjustments to planning goals.*

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### Applicability

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- A.** The TDR program regulations are applicable only in designated sending and receiving areas as described in this ordinance.
- B.** The applicable provisions of this section shall be met by any development project, receiving site, or sending site that seeks to utilize the TDR program.
- C.** Additional density (in residential receiving areas) or square footage (in commercial receiving areas) must be approved as part of the required permit process for the type of development proposed and shall comply with all other applicable requirements of the zone district of the receiving area.

***Applicability:** The purchase of a development right does not guarantee approval of a project.*

*The TDR program establishes the units that will be traded, which in residential areas might be dwelling units, but in nonresidential areas, could be a range of things like square footage, height, or access to utilities.*

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## Designation of Sending Areas and Receiving Areas

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- A. Official Transferable Development Rights Map:** The properties designated as Sending Areas and Receiving Areas are depicted on a map designated the “Official Transferable Development Rights Map.” This map is included as part of this ordinance by reference and shall be kept on file in the Planning Department and available for public inspection. The [approval body] may amend these maps from time-to-time based on the criteria for designating Sending Areas and Receiving Areas.
- B. Comprehensive Plan:** Sending and Receiving Areas designated on the Official Transferable Development Rights Map shall be consistent with the comprehensive plan.

**Designation of Sending and Receiving Areas:** Some TDR programs use overlay zone districts to show TDR sending and receiving areas. Others establish specific zone districts as eligible sending areas or receiving areas and list them in the TDR section of the land development code. Whatever method is used, it is important to clearly define sending and receiving areas (or “optional areas,” as used in Summit County).

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## Determination and Allocation of Development Rights

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The transfer of development rights program establishes a framework to match landowners that are eligible to transfer (sell) development rights with land developers that desire to acquire (purchase) development rights as follows:

- A. Calculation of Transferable Development Rights in Sending Area**
1. Properties located in a residential zone district in a Sending Area: Each residential unit permitted by the existing zone district shall be considered one development right.
  2. Properties located in a non-residential zone district in a Sending Area: Each [unit] of non-residential development shall be considered one development right.
  3. A subdivision plat and/or site plan may be required to determine the number of dwelling units or amount of non-residential square footage that could be established on the property in the Sending Area.
- B. Allocation of Purchased Development Rights in Receiving Area**
1. Development rights purchased from a Sending Area shall be used only in a designated Receiving Area.
  2. Each purchased development right entitles a receiving site to increase the density allowed under the receiving site’s zone district as follows:
    - a. [One] additional residential unit; or
    - b. [Unit] of non-residential space.

**Determination and Allocation of Development Rights:** TDR programs need to gear the calculation of TDRs to the local market conditions, infrastructure capacity, and desired character for receiving areas. In some markets a TDR may need to be calculated at a higher “value” (e.g., one allowed residential unit in the sending area provides 1.5 residential units in a receiving area) to make TDRs desirable to developers. A local TDR program can also establish different density ratios for different Sending and Receiving Areas. A market study is critical to establish market demand in receiving areas and realistic TDR values.

**Nonresidential:** For nonresidential properties, an appropriate unit must be established, such as 15,000 square feet.

**C. Uses Allowed:** Only the uses allowed by the receiving site's existing zone district are allowed under the TDR program.

### **Sending Site Requirements**

**A. Separation of Development Rights:** Transferable development rights (TDRs) may only be transferred from specified Sending Areas to specified Receiving Areas. A landowner in a Sending Area may voluntarily sell development rights to a buyer at a market value established by the landowner and the buyer. Prior to the time of the sale, a deed restriction shall be recorded with the County Clerk's Office limiting the future development potential of the Sending Site. A TDR Certificate shall then be issued by [name of local government] identifying the number of transferred development rights and the book and page numbers of the recorded Declaration of Restriction of Development and Easement.

**B. Future Development of a Sending Site:** Development of the unrestricted portion of the sending site shall comply with the standards of the sending site's zone district and is limited to the remaining development rights not extinguished through conversion to a TDR. No rezoning of the sending site to a higher density shall be permitted by [name of local government].

**C. Transferable Development Right Certificate:** A certificate specifying the number of development rights to be transferred is required to sell and transfer development rights. The [Planning Director or designee] shall be responsible for:

1. Determining the development rights that may be transferred from an eligible sending site;
2. Issuing a transfer of development rights certificate specifying the number of development rights being transferred in either dwelling units or square feet of non-residential floor area eligible for transfer; and
3. Calculating the number of remaining development rights on a sending site, if any.

**D. Declaration of Restriction of Development and Easement:** The owner of the sending site shall execute an easement in perpetuity restricting development in accordance with the requirements of this section and in a form acceptable to the Planning Department, approved by the [name of local government] Attorney and signed by the owner of record. Such easement shall be recorded in the

***Sending Site Easements:** The form of the easement should be tailored of the local community's goals and private landowner's needs. A standard easement agreement should be developed for ease of administration. The easement should detail what areas of the sending site are to be restricted from any future development to fully address natural hazard mitigation. The local government can work with local conservation agencies to accept an easement and take responsibility for working with sending site property owners to monitor the easement.*

***Restriction on Sending Site:** A crucial part of the overall tradeoff behind the TDR system is the restriction placed on the sending site, here accomplished through a prohibition on future rezoning to higher density.*

Clerk's Office prior to issuance of a TDR certificate and approval of any development application on an eligible receiving site.

- E. Recordation of Easement:** Upon recordation of an easement restricting development based on issuance of a TDR Certificate, the number of development rights specified by the TDR Certificate shall be considered severed from the sending site and available for purchase and use on a receiving site or for purchase by a conservation organization and permanently retired or held for future purchase.
- F. Use of TDRs Voluntary:** An owner of record in a Sending Area choosing not to participate in the TDR Program shall retain the option to develop the property as provided by the property's existing zone district and applicable requirements of this code.

**Mandatory TDR Programs:** Most TDR programs are voluntary, but a handful, such as the large Pinelands program in New Jersey, are mandatory.

#### Receiving Site Requirements

- A. Official Map:** TDR Certificates proposed for use on a receiving site shall originate only from a Sending Area identified on the [name of local government] Official Transfer of Development Rights Map.
- B. Pre-Application Meeting:** Prior to making an application to purchase or use TDRs, an owner of record of a receiving site or their representative shall meet with [name of local government agency] to discuss:
  - 1. Program requirements;
  - 2. Availability of TDRs;
  - 3. Potential density increase with the use of TDRs for the specific receiving site; and
  - 4. Zoning and site development requirements for the receiving site.
- C. Application to Use Transferable Development Rights:** An application for use of transferable development rights on a property in a Receiving Area shall be submitted in conjunction with an application for a development permit. In addition to the information required for the development permit, the following shall be submitted:

**Mapping Receiving Areas:** Mapping the receiving areas provides assurance to property owners and is often done, but not always. Boulder County, for example, does not map TDR receiving areas so as to influence land values and encourage speculation. Property owners are given flexibility to propose their land as a receiving site and show it meets the criteria for approval. Surrounding property owners and the public are given the chance to comment on proposed receiving areas.



1. Affidavit of intent to transfer development rights to the receiving property;
2. Certified copy of the Transfer of Development Rights Certificate for the sending site; and
3. Certified copy of the recorded Declaration of Restriction of Development and Easement.

**D. Use of TDRs Voluntary:** An owner of record in a Receiving Area choosing not to participate in the TDR Program shall retain the option to develop the property as provided by the property's existing zone district and applicable requirements of this code.

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### Monitoring TDR Certificates

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The [name of local government] Planning Department Director or designee shall be responsible for maintaining permanent records of all TDR Certificates issued, easements recorded, and development rights transferred to receiving sites or purchased and held by a conservation organization or otherwise extinguished. An annual summary of TDR Certificates issued shall be prepared by the Planning Department and submitted to the [name of local governing body] for information.

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### TDR Bank (Optional)

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A TDR bank is not a requirement for a TDR program to be successful but can be a useful tool for implementing the program and ensuring effective long-term, consistent program administration. A TDR bank is a freestanding entity that may be run by the local jurisdiction or by a participating partner organization such as a trust or other nonprofit. It is intended to help bridge the gap between sellers and buyers of TDRs, stabilize TDR prices, and market the TDR program. TDR banks also can be authorized to buy and sell TDRs, as well as buy and hold development rights for future acquisition. Proceeds from the sale of "banked" TDRs may be used to buy TDRs in key areas to further the goals of the program. King County, Washington, has a successful TDR program with an active TDR bank. See link below.

An example of a purpose statement for a TDR bank is below. Typically, an ordinance creating a TDR bank also details who administers the bank, funding mechanisms for the bank, duties and authority of the bank, procedures for sale and purchase of TDRs, and monitoring and reporting of transactions.

### **Monitoring TDR Certificates:**

*Tracking development rights severed from a sending site is critical to a TDR program's success. The details of the tracking system do not need to be in the ordinance, but requiring it is a critical part of the program and identifying who is responsible ensures it will be done. Planners will need to consult the records when reviewing applications for development in sending and receiving areas.*

**A. Purpose:** The TDR bank is intended to facilitate the implementation of the TDR Program and the purchase and sale of transferable development rights as allowed in this section. The TDR bank may acquire development rights from Sending Areas and sell development rights for use in Receiving Areas as designated on the Official Transferable Development Rights Map.

## KEY FACTS

<b>Administrative capacity</b>	Experienced planner with city or county attorney to write ordinance. Skilled planners to administer program and track implementation
<b>Mapping</b>	Technical mapping of sending and receiving areas is typically required
<b>Regulatory requirements</b>	Land use regulations such as a zoning code and/or subdivision regulations. An intergovernmental agreement (IGA) is typically used if the TDR program is administered as a joint initiative between multiple jurisdictions
<b>Maintenance</b>	Yes, requires extensive on-going tracking mechanism for TDRs
<b>Adoption required</b>	Yes, the requirements and conditions for TDRs must be specified in the local land use regulations
<b>Statutory reference</b>	General zoning and land use regulatory authority. Home rule authority. See earlier discussion in the <i>Planning Framework</i>
<b>Associated costs</b>	Extensive staff time. TDRs will require outside consulting for land value expertise and dedicated staff for long-term maintenance of the program

## EXAMPLES

<b>Boulder County</b> Land Use Code	<a href="http://bouldercounty.org/doc/landuse/lucodearticle06.pdf">bouldercounty.org/doc/landuse/lucodearticle06.pdf</a> Section 6-700
<b>City of Fruita</b> Land Use Code	<a href="http://fruita.org/sites/default/files/fileattachments/community_development/page/242/17.09.pdf">fruita.org/sites/default/files/fileattachments/community_development/page/242/17.09.pdf</a> Chapter 17.09 TDR
<b>Mesa County</b> Land Development Code	<a href="http://mesacounty.us/planning/land-development-code.aspx">mesacounty.us/planning/land-development-code.aspx</a> Section 9.8 Transferable Density Credits
<b>Pitkin County</b> Land Use Code	<a href="http://pitkincounty.com/DocumentCenter/View/5858">pitkincounty.com/DocumentCenter/View/5858</a> Section 6-70
<b>Routt County</b> PDR program	<a href="http://www.co.routt.co.us/DocumentCenter/View/16">www.co.routt.co.us/DocumentCenter/View/16</a>
<b>Summit County</b> TDR program	<a href="http://co.summit.co.us/index.aspx?NID=187">co.summit.co.us/index.aspx?NID=187</a>
<b>King County, Washington</b> TDR bank	<a href="http://kingcounty.gov/environment/stewardship/sustainable-building/transfer-development-rights/bank.aspx">kingcounty.gov/environment/stewardship/sustainable-building/transfer-development-rights/bank.aspx</a>

## FOR MORE INFORMATION

**American Planning Association Planning Advisory Service - PAS Memo May/June 2010: “TDR-Less TDR Revisited.”**

[clarionassociates.com/pdfs/duerksen-tdr-less.pdf](http://clarionassociates.com/pdfs/duerksen-tdr-less.pdf)