

## PITKIN COUNTY'S TDR PROGRAM

In 1987, when Pitkin County completed the *Down Valley Comprehensive Plan*, we did not envision the type of accelerated, large-scale development pressures that we would experience in the backcountry. By 1994, the Board of County Commissioners (BOCC) was ready to adopt zoning that would acknowledge that the backcountry was different from the rest of the County, in terms of character and in terms of County services that could and/or should be available. The Rural/Remote Zone District was born. And from the Rural/Remote Zone District, the TDR (Transferable Development Right) program was born.

### **Why did Pitkin County adopt a TDR program?**

*The County's TDR program was originally adopted to encourage the relocation of development from the backcountry to areas closer to existing services and infrastructure. The program has since been expanded to utilize TDRs to preserve and protect rural character, open space, scenic features, and environmental and historic resources, and to avoid development in environmentally constrained areas.*

### **What is a TDR?**

*A TDR, or Transferable Development Right is a development right that may be transferred from a "Sending Site" to lands that are designated as suitable for development ("Receiver Site").*

### **What is a Sending Site?**

*A Sending Site is a lot/parcel of land from which development rights are severed and transferred. The Sending Site is deed restricted against further development. Sending Sites include:*

- *Any legally created lot/parcel within the Rural/Remote (R/R) or Transitional Residential (TR-1 and TR-2) Zone Districts.*
- *Lands within the Conservation Development PUD (CD-PUD) Zone District.*
- *A "constrained site" or a "visually constrained site" not within the R/R, CD-PUD, TR-1 or TR-2 Zone Districts.*
- *A "Limited Development Conservation Parcel" located within the AR-10, RS-20, RS-30, RS-35 or RS-160 zone district.*
- *Properties designated to the Pitkin County Historic Register.*

### **How many TDRs can be obtained from a Sending Site?**

1. *Rural/Remote and TR-1 Sending Sites: There is one TDR for every 35 acres of land within a R/R or TR-1 Sending Site. A legally created parcel greater than 1 acre, but less than 35 acres also has one TDR available. A Rural/Remote or TR-1 property less than 1 acre in size may also qualify for one TDR, if certain criteria are met.*

#### **Example:**

<b>Size of R/R or TR-1 Parcel (Acres)</b>	<b>Number of TDRs Available</b>
1-69.9	1
70-104.9	2

105-139.9	3
-----------	---

2. TR-2 Sending Sites: There is one TDR for every 10 acres of land within a TR-2 Sending Site. A legally created parcel greater than 1 acre, but less than 10 acres also has one TDR available. A TR-2 property less than 1 acre in size may also qualify for one TDR, if certain criteria are met.

**Example:**

Size of TR-2 Lot/Parcel (Acres)	Number of TDRs Available
1-19.9	1
20-29.9	2
30-39.9	3

3. “Constrained” and “Visually Constrained” Sending Sites: The BOCC may grant one or more TDRs for a “constrained” site or one TDR per development right on a “visually constrained” site in certain Zone Districts.
4. Conservation Development PUD (CD-PUD): There is one TDR for every 35 acres of land within the CD-PUD Zone District (excluding the 160 acres designated for development).

**Example:**

Size of CD-PUD Parcel (Acres)	Number of TDRs Available
300	4
600	12

5. Limited Development Conservation Parcel Sending Sites: There is one TDR for every 35 acres of land. To calculate overall parcel size for purposes of determining TDR potential, 70 acres of land must be deducted from the acreage total for each legal dwelling unit that exists on the property. If no dwellings exist on the property, the entire acreage may be used for purposes of determining the number of potential TDRs.
6. Properties designated to the Pitkin County Historic Register: The BOCC may award TDRs to a property designated to the Pitkin County Historic Register.

## What is a Receiver Site?

- A Receiver Site is a lot/parcel of land within unincorporated Pitkin County to which development rights are transferred from a Sending Site.
- Special Review approval is required to designate a lot/parcel a Receiver Site for TDR(s), except when a TDR(s) is used for additional floor area within the Aspen Urban Growth Boundary and in certain County approved subdivisions.
- Properties within the following zone districts may **not** be Receiver Sites for TDRs: R/R, RS-160, TR-1, RS-G, MHP, AH, AH-PUD, B-1, B-2, VC, P-I, T, SKI-REC, VR, I, PUD, AC-REC-2, and FPV-O.

## How can TDRs be used?

### 1. To Obtain a GMQS Exemption for a New Development Right.

- TDRs may only be used to create a new development right for a single family residence on a lot/parcel within the Aspen Urban Growth Boundary.
- Each TDR for a new development right provides 2,500 square feet of floor area.
- Subject to a One-Step Special Review by the BOCC.
- The number of TDRs required for exemption from the Growth Management Quota System (GMQS) depends upon the size of the residence proposed.
- TDRs from any Sending Site may be used on any Receiver Site approved for a new development right.

### 2. To Obtain a GMQS Exemption for Additional Floor Area.

- Special Review approval is not required to utilize TDRs for additional floor area up to the final maximum size on lots in certain County approved subdivisions or on lots/parcels within the Aspen Urban Growth Boundary.
- A One-Step Special Review by the Hearing Officer is required to utilize TDRs for additional floor area up to the final maximum size on all other lots/parcels within eligible Zone Districts.
- Each TDR used for additional floor area provides 2,500 square feet of floor area, except within the TR-2 Zone District, where one TDR provides 1,000 square feet of floor area.
- The number of TDRs required for a GMQS exemption depends upon the size of the residence desired.
- TDRs from any Sending Site may be used on any Receiver Site as a GMQS exemption for additional floor area.

⇒ **Purchase of a TDR does not automatically guarantee approval of a Receiver Site for development. Development of a Receiver Site is still subject to any applicable land use reviews, including Special Review, Site Plan Review, Subdivision, etc.**

## **If I own land in the Rural/Remote, CD-PUD, TR-1 or TR-2 Zone Districts and want to sell my development right, what should I do?**

1. Obtain an **Irrevocable Certificate of Development Rights** from the Community Development Department. In order to be eligible for a Certificate, the property owner must typically provide a chain of title: (a) to document ownership and the legal creation of the lot/parcel (in compliance with County Subdivision regulations, which were adopted for most parts of the County in 1972), and (b) to document that the lot/parcel has a development right to transfer and has not merged with adjacent parcels (under some circumstances, if two adjacent properties come under common ownership, only one development right may exist). An Irrevocable Certificate of Development Rights will be issued concurrent with severance of the development right from the Sending Site and execution of a Restrictive Covenant for the Sending Site.
2. Execute a **Restrictive Covenant**. Concurrent with issuance of an Irrevocable Certificate of Development Rights, the owner of the Sending Site must execute and record a restrictive covenant on the lot/parcel, which acknowledges that the development right has been severed from the lot/parcel and that future development, as defined in the Land Use Code, is prohibited.
3. If the lot/parcel within the Rural/Remote, TR-1 or TR-2 zone districts contains less than one acre, the owner must first submit an application to the Community Development Department to demonstrate that the parcel could be developed with a 1,000 square foot footprint, a well and an on-site wastewater treatment system, and that legal access to the site exists.

## **How do I obtain a “Constrained” or “Visually Constrained” Site TDR?**

1. Submit an application to the Community Development Department requesting a determination that the property is “undevelopable”, “severely restricted” or “visually constrained” pursuant to the Land Use Code.
2. The BOCC shall determine at a public hearing if the property complies with the criteria for a “constrained site” and whether one or more TDRs will be granted.
3. If the Community Development Department finds that the property is “visually constrained”, then the BOCC shall determine at a public hearing whether one TDR per existing development right will be granted.

## **How do I obtain TDRs as part of a Conservation Development PUD?**

A property is only eligible for a CD-PUD if it contains at least 160 acres, and must be rezoned to CD-PUD to take advantage of the Development Options and creation of TDRs. Once the BOCC approves a development plan for the property, the owner may obtain TDRs at one TDR for each 35 acres, excluding the 160 acres that are developed.

## **How do I obtain TDRs as part of a Limited Development Conservation Parcel?**

A property which contains a minimum of 160 acres; on which improvements and property are configured as they were on December 6, 2006; and on which no new development is proposed, may obtain special review approval from the Board of County Commissioners to become eligible to sever and sell TDRs. TDRs shall be awarded based on 1 TDR for each 35 acres, excluding 70 acres for each legal dwelling unit.

## **How do I obtain TDRs if I have an historic resource on my property?**

*To be eligible for TDRs a property with an historic resource(s) must first be designated by the BOCC to the Pitkin County Historic Register. A TDR(s) may be requested as an incentive for the designation. The number of TDRs awarded by the BOCC is discretionary and is subject to recordation of a covenant to ensure the preservation of the historic resource(s).*

## **Is there a fee to obtain a TDR Certificate?**

- *There is a fee associated with the review and issuance of TDR Certificates for properties in the Rural/Remote, TR-1 and TR-2 Zone Districts.*
- *There is a fee associated with a request for review and approval of a “constrained” or “visually constrained” site TDR. Once the BOCC has determined that a property is “constrained” or “visually constrained”, there is no additional fee to obtain a TDR Certificate(s).*
- *There is a fee associated with a request to rezone a property to CD-PUD and obtain approval of a Development Plan. Once the property is rezoned to CD-PUD and a Development Plan is approved, there is no additional fee to obtain a TDR Certificate(s).*
- *There is a fee associated with a request to obtain Special Review approval as a Limited Development Conservation Parcel. Once the Special Review approval is granted, there is no additional fee to obtain a TDR Certificate(s).*
- *There is a fee associated with a request to designate an historic resource to the Pitkin County Historic Inventory and to obtain a TDR(s) as an incentive for the designation. Once the BOCC has designated a property to the historic register and has approved issuance of a TDR(s), there is no additional fee to obtain a TDR Certificate(s).*

## **How long will the certification process take?**

- *On lots/parcels within the Rural/Remote, TR-1 and TR-2 Zone Districts that have clear title, issuance of a TDR Certificate will typically take four weeks from the date of submittal of a complete application.*
- *The process to obtain a “constrained” or “visually constrained” site TDR will typically take at least three months from the date of submittal of a complete application.*
- *On land within the CD-PUD Zone District with an approved Development Plan, on a property that has received Special Review approval as a Limited Development Conservation Parcel, or on a property designated to the historic register where a TDR has been approved as an incentive for the designation, issuance of a TDR Certificate(s) will occur concurrent with recordation of the Conservation Easement or Covenant Agreement, as applicable.*

## **How long is an Irrevocable Certificate of Development Rights valid?**

*A TDR Certificate is “irrevocable,” and will remain valid until such time as it “lands” on a Receiver Site, at which time the development right will be retired and the Certificate “extinguished”.*

## **How do I redeem a TDR Certificate on a Receiver Site?**

*To utilize or redeem a TDR Certificate on a Receiver Site, the owner must surrender the original, signed TDR Certificate at building permit to use the floor area associated with the TDR. In addition, at that time the owner must provide a copy of the deed(s) evidencing conveyance of the Certificate to the current owner (if applicable).*

## **What do I do if I lose the original TDR Certificate?**

*If an irrevocable TDR Certificate is lost or destroyed after issuance by the County and prior to surrender for use in a proposed development, the County will reissue the Certificate to the current owner. No certificate shall be reissued unless the owner of the Certificate submits a signed and notarized affidavit confirming the loss or destruction of the Certificate and agreeing that if the original Certificate is later found, that it will be surrendered to the County and shall be of no further force and effect. A reissued TDR Certificate shall bear the same number as the Certificate that is replaced, and shall state that any TDR Certificate bearing the same number as an earlier issue date shall be invalid.*

## **What do I do when I convey a TDR Certificate?**

*The sale, assignment, conveyance or other transfer or change in ownership of a TDR Certificate must be reported to the Community Development Department within 5 days of such transfer. The report of such transfer shall disclose the Certificate number, the grantor, the grantee and the total value of the consideration paid for the Certificate. Failure to timely and accurately report such transfer may render the Certificate void.*

## **Where can I find information about TDRs in the 2006 Pitkin County Land Use Code?**

- *Subsec. 2-30-30.h.2, Special Review Criteria*
- *Subsec. 2-40-30, Transfer of Development Rights – Review and Approval Procedures*
- *Chapter 3, Zone Districts (each Zone District specifies whether properties in that zone district are eligible Sending or Receiving Sites)*
- *Subsec. 3-70-40, Conservation Development PUD (CD-PUD)*
- *Subsec. 6-30-50, Growth Management Exemption for Development Using Transferable Development Rights*
- *Sec. 6-70, Transferable Development Rights System*
- *Submittal Requirements can be found in the Pitkin County Land Use Application Manual (separate from the Land Use Code)*

***This document is intended to provide a general overview of its subject matter. In all cases, the Pitkin County Land Use Code should be consulted on the topics discussed above.***

***The information contained in this publication is subject to change without notice.***