

1 CHAPTER 10  
2 VOLUNTARY TRANSFER OF DEVELOPMENT RIGHTS (TDR) PROGRAM  
3 SECTION:

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16 10-10-1: STATEMENT OF PURPOSES:

17 To protect the agricultural, natural, and scenic qualities of open lands, to enhance sites and  
18 areas of special character or special historical, cultural, aesthetic or economic interest or  
19 value, and to enable and encourage flexibility of design and careful management of land in  
20 recognition of land as a basic and valuable natural resource. The preservation and  
21 maintenance of these resources will be ensured by encouraging countywide land use  
22 planning through the transfer of development rights from parcels suitable for preservation  
23 to properties meeting the criteria for development as receiving parcels. (Ord. 2006-06, 6-  
24 29-2006)

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26 10-10-2: DEFINITIONS:

27 DEVELOPMENT RIGHTS: Those development rights as calculated herein permitted to a lot,  
28 parcel or area of land under a zoning or other ordinance respecting permissible use, area,  
29 density, bulk or height of improvements.

30 RECEIVING AREA: One or more areas of land designated by the Blaine County board of  
31 county commissioners to which development rights generated from one or more sending  
32 areas may be transferred and in which increased development is permitted to occur by  
33 reason of such transfer. The receiving areas shall be A-20 zone district subareas  
34 established by Blaine County pursuant to the procedures of section 67-6511, Idaho Code, as  
35 an area suitable to receive transferred development rights.

36 RECEIVING PARCEL(S): Parcel(s) of land within a receiving area to which one or more  
37 development rights may be or are transferred.

38 SENDING AREA: One or more designated areas of land in which development rights may be  
39 designated for use in one or more receiving areas. The sending areas shall be in A-20 or A-  
40 40 zoning districts established by Blaine County pursuant to the procedures of section 67-  
41 6511, Idaho Code, as an area in which use or development should be restricted.

42 SENDING PARCEL(S): A parcel(s) of land within a sending area from which one or more  
43 development rights may be or are transferred.

44 TRANSFER OF DEVELOPMENT RIGHTS: The process by which one or more development  
45 rights are severed from a sending parcel by the recording of a deed of transfer and a TDR  
46 easement transferring such development rights. Any such severed rights subsequently may  
47 become appurtenant to a receiving parcel as provided herein. (Ord. 2006-06, 6-29-2006)

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#### 10-10-3: DESIGNATION OF SENDING AREAS:

50 The sending areas to be subject to development rights transfers and protected through the  
51 application of this chapter are those designated by the board of county commissioners  
52 from time to time and those areas designated through intergovernmental agreements with  
53 municipalities in Blaine County. The underlying zoning district regulations for any sending  
54 area continue to apply, except as limited by this chapter.

55 A. The following area as depicted on attachment E (sending areas map) to the ordinance  
56 codified herein, specified as a TDR sending area, is hereby designated as a TDR sending  
57 area. Its boundaries shall generally be described as follows:

58 Lands in the A-20 district (effective prior to July 5, 2006) including: south of the Boise  
59 Baseline but including Sections 35 in T1N, R18E and Sections 34 and 35 in T1N, R19E, B.M.;  
60 east of the Big Wood River; north of the Timmerman and Picabo Hills; along the Former  
61 Picabo Desert Rd. & Roberts St. to Hwy. 20 in the Picabo Townsite; north of Hwy. 20 to the  
62 Intersection of Hwy. 20 and the southern boundary of Section 26 in T1N, R20E, B.M.; north  
63 of that southern section boundary and west of a line from the southeast corner of that  
64 Section 26 north to the Boise Baseline.

65 (Ord. 2006-06, 6-29-2006)

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#### 10-10-4: ESTABLISHMENT OF RECEIVING AREAS:

68 A. The following area as depicted on attachment F (receiving areas map) to the  
69 ordinance codified herein, specified as a TDR receiving area, is hereby designated as a TDR  
70 receiving area. Its boundaries shall generally be described as follows:

71 Lands in the A-20 district (effective prior to July 5, 2006) including: north of the north 1/2  
72 and the southeast 1/4 of the northeast quarter of Section 27 and the north 1/2 of the  
73 northwest quarter of Section 26, T1N, R18E, B.M.; north of the east to west section line two  
74 miles north of the Boise Baseline portion of which correspond with Pero Rd. to the A-10  
75 Zoning District line; west of that A-10 zoning line; south of the R-5 zoning district  
76 boundary; along Glendale Rd. to Silverwood Dr. and south and east of the Glendale "bench."

77 B. Additional receiving areas are those:

78 1. Areas reclassified pursuant to the standards set out in subsection C of this section; or  
79 2. Areas designated through intergovernmental agreements with municipalities in  
80 Blaine County.

81 C. An applicant for reclassification of property as a receiving area has the burden of  
82 demonstrating compliance with each of the following standards, in addition to applicable  
83 standards for rezone under sections 9-26-4 and 9-26-8, and title 9, chapter 31 of this code:

84 1. Designation of the property as a receiving area is in accordance with the  
85 comprehensive plan.

86 2. The proposed receiving area will be located outside of the mountain overlay district,  
87 avalanche overlay district, floodplain overlay and riparian setback districts, wetlands

88 overlay district and seasonal overlay district, and outside of any environmentally sensitive  
89 lands, or critical wildlife habitats or corridors as identified by the county in consultation  
90 with the Idaho department of fish and game.

91 3. The proposed receiving area will be located adjacent to an existing state or county  
92 road, or platted road, and adequately served by existing transportation systems.

93 4. The proposed receiving area will be compatible with adjoining development and  
94 land uses, and, if located within a designated area of city impact, will be compatible with  
95 the land uses designated for the area in the adopted municipal comprehensive plan and  
96 municipal and county ordinances governing the area of city impact.

97 5. The transfer of additional densities and other uses to the proposed receiving area  
98 will be compatible with the uses and any agricultural operations in the area.

99 6. The transfer of additional densities and other uses to the proposed receiving area,  
100 when considered in light of the existing or likely cumulative effect of residential  
101 development in the area, will not materially change the character of agricultural land,  
102 agricultural uses, or the economic viability of existing agricultural operations in the area.

103 7. The transfer of additional densities and other uses to the proposed receiving area  
104 will not adversely affect the quality of essential public services and facilities to current  
105 residents, including, but not limited to, school facilities, school bus transportation, police  
106 and fire protection, emergency services, and shall not require substantial additional public  
107 funding in order to meet the needs created by the creation of the proposed receiving area.

108 8. The proposed receiving area will provide setbacks from the heavy industrial district.

109 D. The applicant may be required by the board to mitigate the adverse effects of the  
110 proposed transfer of additional densities and other uses to the proposed receiving area,  
111 which may include, without limitation, entering into a development agreement with the  
112 county, contributions for additional capital improvements, ongoing maintenance, and labor  
113 costs. The plan for, timing of, and proposed phasing of the mitigation shall be in a form  
114 acceptable by the board. (Ord. 2011-01, 1-18-2011; Ord. 2006-06, 6-29-2006)

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116 10-10-5: CALCULATION OF TRANSFERABLE DEVELOPMENT RIGHTS:

117 Transferable development rights within a sending area are calculated for certification as  
118 follows:

119 A. The number of development rights for a sending parcel shall be calculated based on a  
120 maximum density of one dwelling unit per twenty (20) acres.

121 B. Notwithstanding the foregoing provision, in calculating the number of development  
122 rights, the following property shall be subtracted from the total acreage of the parcel:

123 1. Any part of said parcel that is subject to, or encumbered by, a conservation  
124 easement, Idaho department of fish and game easement, or other easement that restricts or  
125 prohibits development of the parcel; provided, however, that the total number of certified  
126 TDRs may not exceed the total number of development rights retained pursuant to any  
127 such easement.

128 2. Any part of said parcel located within a public road right of way, or within a recorded  
129 access easement.

130 3. Any part of said parcel located within Blaine County's floodway as defined in title 9,  
131 chapter 17 of this code.

132 C. The minimum size for any sending parcel from which development rights will be  
133 removed and transferred shall be one hundred sixty (160) acres, except for smaller legal  
134 parcels in existence on July 5, 2006, for which the minimum size for a transferring parcel  
135 may be forty (40) acres.

136 D. Any fractional development right exceeding 0.5 (1/2) shall be rounded up to the  
137 nearest whole number. (Ord. 2006-06, 6-29-2006)

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139 10-10-6: APPLICATION FOR CERTIFICATION OF NUMBER OF TRANSFERABLE  
140 DEVELOPMENT RIGHTS:

141 A. The owner of record of a sending parcel may request certification of the number of  
142 transferable development rights on the sending parcel by submitting a completed  
143 application to the administrator.

144 B. Following receipt of a complete application, the administrator shall issue a  
145 certification of the number of transferable development rights on the sending parcel and  
146 serially numbered individual certificates for each transferable development right credited  
147 to that parcel. The owner of record of the sending parcel shall cause all certificates issued  
148 by the administrator to be promptly recorded in the chain of title for the sending parcel  
149 with the Blaine County recorder.

150 C. An application shall be in the form prescribed by the administrator, and shall contain  
151 such information as deemed necessary to verify parcel size and applicable density, and  
152 existing uses as a basis for certifying the number of development rights. This information  
153 shall include, but is not limited to:

154 1. A map of the proposed sending parcel based on a survey if available or a map  
155 prepared in a professional manner on an assessor's map of the parcel if no recent survey is  
156 available.

157 2. The legal description and parcel numbers of the sending parcel.

158 3. A copy of the deed showing that the applicant is the owner of record of the sending  
159 parcel.

160 4. The number of single-family residences existing on the sending parcel excluding  
161 employee housing or accessory dwelling units.

162 D. A certification fee as may be prescribed by resolution of the board. (Ord. 2006-06, 6-  
163 29-2006)

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165 10-10-7: TRANSFER OF DEVELOPMENT RIGHTS FROM SENDING PARCELS:

166 A. No development rights from a sending parcel may be transferred, or offered for  
167 transfer or sale, until they have been duly certified as provided herein.

168 B. In order to validly convey or transfer certified development rights from a sending  
169 parcel, a TDR easement shall be recorded against the sending parcel and the grantee of the  
170 development rights shall receive a deed of transfer of the development right from the  
171 grantor, the owner of the sending parcel.

172 C. A TDR easement shall be duly signed by the owner of the sending parcel and Blaine  
173 County by and through the board, and promptly recorded by the county with the Blaine  
174 County recorder. Nothing herein shall preclude grantees in addition to the county being  
175 made a party to such easements. A separate TDR easement shall be executed for each

176 development right that is transferred, and the administrator shall designate each such TDR  
177 easement with a distinctive instrument or serial number and shall maintain records of all  
178 such TDR easements.

179 D. The TDR easement shall be in a form approved by the board and shall contain the  
180 following provisions:

181 1. All of the serial numbers of the transferable development rights that have been  
182 certified by the administrator on the sending parcel which is the subject of the TDR  
183 easement.

184 2. A covenant on the sending parcel, or part thereof from which development rights  
185 have been transferred, that all residential development rights have been removed from the  
186 parcel and that only the other permitted, accessory or conditional uses listed in the  
187 underlying zoning district, if any, shall be allowed.

188 3. A covenant that all provisions of the TDR easement shall run with and bind the  
189 sending parcel in perpetuity in favor of the county and any other grantees and may be  
190 enforced by any of said grantees.

191 4. A statement that nothing in the restrictions shall be construed to convey to the  
192 public a right of access or use of the property and that the owner of the property, his/her  
193 heirs, successors and assigns shall retain exclusive right to such access or use subject to the  
194 terms of the TDR easement.

195 5. If only a portion of the transferable development rights of a sending parcel is being  
196 transferred, then a survey map of the entire parcel must be recorded with the Blaine  
197 County recorder. The map must show the actual area on the sending parcel that is being  
198 protected by the transfer of development rights. That portion of the sending parcel  
199 protected by a TDR easement shall contain a statement that all residential development  
200 rights except for one dwelling unit per one hundred sixty (160) acres or fraction thereof  
201 have been removed from this portion of the parcel and that only the other permitted,  
202 accessory or conditional uses listed in the underlying zoning district, if any, shall be  
203 allowed.

204 6. The written consent of all lien holders and other parties with an interest of record in  
205 the sending parcel.

206 E. The deed of transfer of development rights shall be in the form prescribed by the  
207 board. The grantee of the deed shall promptly record the same with the Blaine County  
208 recorder, which recordation shall appear in the chain of title of the sending parcel.

209 F. The deed of transfer shall specify the number of transferable development rights  
210 conveyed or transferred from the sending parcel and shall only be valid when signed by the  
211 owner of the sending parcel, containing the provisions established by the board for such a  
212 document, and recorded along with the original TDR easement against the sending parcel.

213 G. A deed of transfer shall contain:

214 1. A legal description and map of the sending parcel(s);

215 2. A covenant that all provisions of the deed of transfer shall run with and bind the  
216 sending parcel and shall be enforced by the board;

217 3. The names of the grantor and the grantee of the development right;

218 4. A covenant that the grantor grants and conveys to the grantee a specified number of  
219 certified development rights from the sending parcel, including the serial numbers of the

220 individual certificates for each development right to be transferred from the sending  
221 parcel;  
222 5. Proof of ownership of the sending parcel;  
223 6. If the transferor is not the owner of the sending parcel, the recorded instrument  
224 numbers of the TDR easement and the original deed of transfer, with the names of the  
225 grantor and grantee of such deed;  
226 7. A covenant by which the grantor acknowledges that the grantor has no further use  
227 or right of use with respect to the development rights being transferred;  
228 8. The certification of the number of transferable development rights on the sending  
229 parcel and copies of the appropriate certificates of those rights issued by the administrator  
230 pursuant to this chapter;  
231 9. Proof of the execution and recordation of a TDR easement on the sending parcel;

232 **And**  
233 **10. Proof of the purchase price to Administrator, not open for public inspection**  
234 **(pursuant to IC Section 74-107(2)) and not to be recorded with the Deed of Transfer.**

235 **And**  
236 ~~10.~~ 11. The signature of the administrator's staff member who has reviewed the deed  
237 of transfer for completeness. (Ord. 2006-06, 6-29-2006)

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239 10-10-8: RESPONSIBILITY:

240 The grantor and the grantee named in a deed of transfer shall have the responsibility to  
241 supply the information required by this chapter, to provide a proper instrument of transfer  
242 and to pay all costs of its recordation, in addition to any other fees required by this section.  
243 (Ord. 2006-06, 6-29-2006)

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245 10-10-9: INTERMEDIATE TRANSFER:

246 Development rights may be transferred to an intermediate transferor or broker and held  
247 for a period of time as provided by law before they are permanently affixed or made  
248 appurtenant to a receiving parcel. All such intermediate transfers shall be affected by a  
249 deed of transfer duly recorded with the Blaine County recorder. (Ord. 2006-06, 6-29-2006)

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251 10-10-10: PERMANENT TRANSFER OF DEVELOPMENT RIGHTS TO A RECEIVING PARCEL:

252 A. The transfer of a development right to a receiving area established pursuant to section  
253 10-10-4 of this chapter:

254 1. Shall become affixed or appurtenant to a specific receiving area parcel upon  
255 approval by the county of a plat pursuant to the provisions of chapter 4 of this title;

256 2. Shall result in a minimum lot size of no less than ~~one unit per~~ one acre; ~~or a~~  
257 ~~maximum density of no more than one unit per two and one-half (2.5) acres;~~

258 **3. Maximum density of no more than one unit per two and one-half (2.5) acres;**

259 ~~3.~~ 4. Shall include a note on the plat describing all development rights made  
260 appurtenant thereto, including the serial numbers of the individual certificates for each  
261 such development right; and

**Commented [AK1]:** We need to be able to know what the market price is for tdrs in order to a) understand the market b) give advice of a market range to interested parties. Most entities have these on a webpage as public knowledge.

262 4 5. Shall, once the plat is recorded, become permanently affixed to the receiving  
263 parcel.

264 B. A deed of attachment of development right, in the form prescribed by the board, shall  
265 be recorded with the Blaine County recorder indicating the permanent attachment of any  
266 development rights to the receiving area plat or lot(s) and shall include the names of the  
267 initial grantor of each development right affixed or made appurtenant to the receiving  
268 parcel, the instrument number of the original deed of transfer, the name of the last grantee  
269 of record of each development right affixed or made appurtenant to the receiving parcel,  
270 and the serial numbers of the individual certificates for each such development right. (Ord.  
271 2006-06, 6-29-2006)

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273 10-10-11: EFFECT OF THE TRANSFER OF DEVELOPMENT RIGHTS:

274 After development rights have been transferred from a sending parcel, the following shall  
275 apply:

276 A. The sending parcel may be used only for the other nonresidential, accessory or  
277 conditional uses permitted in the underlying zone district, ~~except that one dwelling unit~~  
278 ~~per one hundred sixty (160) acres may be maintained or developed on the sending parcel~~  
279 ~~after transfer of development rights. TDR rights shall be retained in order to develop on a~~  
280 ~~sending parcel to match the underlying zoning. (For example: 2 TDRS shall be retained to~~  
281 ~~develop one dwelling unit and associated accessory uses in the A-40. 1 TDR shall be~~  
282 ~~retained if developing one dwelling unit and associated accessory uses in the A-20 zoning~~  
283 ~~district. )~~ That portion of the sending parcel protected by a TDR easement may be used  
284 only for the other permitted accessory or conditional uses and shall not be included in  
285 establishing the base density of any land proposed to be subdivided.

286 B. All certified transferable development rights and the value of such rights shall be  
287 deemed for all other purposes to be appurtenant to the sending parcel until such rights are  
288 transferred by a recorded deed of transfer.

289 C. Nothing in such restrictions shall be construed to convey to the public a right of access  
290 or use of a sending parcel; the owner of the sending parcel and the owner's heirs,  
291 successors and assigns shall retain the exclusive right to such access or use subject to the  
292 terms of the TDR easement.

293 D. The use of a parcel from which development rights have been transferred remains  
294 subject to the other restrictions of the underlying zone district.

295 E. A property owner may designate only a portion of his property as a TDR sending area.  
296 Portions that are not so designated shall retain the base density permitted in the  
297 underlying zone district. (Ord. 2006-06, 6-29-2006)