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**TRANSFER OF DEVELOPMENT RIGHTS PROGRAM**

**BLAINE COUNTY ORDINANCE NO. 2006 - 06**

AN ORDINANCE OF BLAINE COUNTY, IDAHO, AMENDING BLAINE COUNTY CODE, TITLE 10, SUBDIVISION REGULATIONS BY: THE ADDITION OF A NEW CHAPTER 10 CREATING A VOLUNTARY TRANSFER OF DEVELOPMENT RIGHTS (TDR) PROGRAM THAT; ESTABLISHES DEFINITIONS AND PROCEDURES FOR THE CALCULATION, CERTIFICATION, AND TRANSFER OF DEVELOPMENT RIGHTS; DESIGNATING SENDING AREAS; PROVIDING PROCEDURE AND CRITERIA FOR ESTABLISHING RECEIVING AREAS BY APPLICATION; ESTABLISHING LOT REQUIREMENTS AND THE EFFECTS OF A TRANSFER OF DEVELOPMENT RIGHTS, CREATING TRANSFERABLE DEVELOPMENT RIGHT (TDR) SENDING AND RECEIVING AREAS; PROVIDING FOR A SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners is empowered pursuant to Section 31-714, Idaho Code, to pass all ordinances and rules and make all regulations, not repugnant to law, necessary for the carrying into effect or discharging the powers and duties conferred by the laws of the State of Idaho, and such as are necessary or proper to provide for the safety, promote the health and prosperity, peace and good order, comfort and convenience of the county and the inhabitants thereof, and for the protection of property therein;

WHEREAS, the Board of County Commissioners is empowered by Chapter 65, Title 67, Idaho Code, to enact a zoning ordinance and provide for amendments as deemed necessary;

WHEREAS, the Board of County Commissioners is empowered by Section 67-6515A, Idaho Code, to enact an ordinance creating development rights and establishing procedures authorizing landowners to voluntarily transfer said development rights subject to certain enumerated restrictions;

WHEREAS, this ordinance helps to protect the agricultural, natural, or scenic qualities of open lands, to enhance sites and areas of special character or special historical, cultural, aesthetic or economic interest or value and to enable and encourage flexibility of design and careful management of land in recognition of land as a basic and valuable natural resource;

WHEREAS, the county's agricultural community recognizes the constant volatility of its economic base and important element of land assets in its economic base, this ordinance enhances land owners' ability to transfer some of those land assets in the form of development rights while at the same time preserving lands currently used for productive agriculture;

WHEREAS, the county recognizes the benefit of agricultural stewardship of open space lands, this ordinance provides an additional voluntary, flexible, free-market mechanism for the property owner to continue this stewardship of open space and agricultural lands;

WHEREAS, this ordinance seeks to promote the orderly development of the community and to help preserve its rural character; and

WHEREAS, this ordinance is in compliance with the language in the Blaine County Comprehensive Plan and the Blaine County 2025 preferred scenario relating to the Transfer of Development Rights; the preservation of agriculture; the protection of sensitive environmental features; and rural character of this community; and

NOW THEREFORE, be it ordained by the Board of County Commissioners of Blaine County, Idaho:

**Section 1.** That Title 10, of the Blaine County Code be, and the same is hereby amended by the addition of a CHAPTER 10 to read as follows:

**10-10-1: STATEMENT OF PURPOSES:** To protect the agricultural, natural, and scenic qualities of open lands, to enhance sites and areas of special character or special historical, cultural, aesthetic or economic interest or value, and to enable and encourage flexibility of design and careful management of land in recognition of land as a basic and valuable natural resource. The preservation and maintenance of these resources will be ensured by encouraging county-wide land use planning through the transfer of development rights from parcels suitable for preservation to properties meeting the criteria for development as receiving parcels.

**10-10-2: DEFINITIONS:**

A. "Development rights" shall mean those development rights as calculated herein permitted to a lot, parcel or area of land under a zoning or other ordinance respecting permissible use, area, density, bulk or height of improvements.

- B. "Receiving area" shall mean one (1) or more areas of land designated by the Blaine County Board of County Commissioners to which development rights generated from one (1) or more sending areas may be transferred and in which increased development is permitted to occur by reason of such transfer. The receiving areas shall be A-20 zone district subareas established by Blaine County pursuant to the procedures of Section 67-6511, Idaho Code, as an area suitable to receive transferred development rights.
- C. "Receiving parcel(s)" shall mean parcel(s) of land within a receiving area to which one (1) or more development rights may be or are transferred.
- D. "Sending area" shall mean one (1) or more designated areas of land in which development rights may be designated for use in one (1) or more receiving areas. The sending areas shall be in A-20 or A-40 zoning districts established by Blaine County pursuant to the procedures of §67-6511, Idaho Code, as an area in which use or development should be restricted.
- E. "Sending parcel(s)" shall mean a parcel(s) of land within a sending area from which one (1) or more development rights may be or are transferred.
- F. "Transfer of development rights" shall mean the process by which one (1) or more development rights are severed from a sending parcel by the recording of a Deed of Transfer and a TDR Easement transferring such development rights. Any such severed rights subsequently may become appurtenant to a receiving parcel as provided herein.

**10-10-3: DESIGNATION OF SENDING AREAS:** The sending areas to be subject to development rights transfers and protected through the application of this Chapter are those designated by the Board of County Commissioners from time-to-time and those areas designated through Intergovernmental Agreements with municipalities in Blaine County. The underlying zoning district regulations for any sending area continue to apply, except as limited by this chapter.

- A. The following area as depicted on Attachment E (Sending Areas Map), specified as a TDR Sending Area, is hereby designated as a TDR Sending Area. Its boundaries shall generally be described as follows:

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

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

- A. The following area as depicted on Attachment F (Receiving Areas Map), specified as a TDR Receiving Area, is hereby designated as a TDR Receiving Area. Its boundaries shall generally be described as follows:

Lands in the A-20 district (effective prior to July 5, 2006) including: north of the north ½ and the southeast ¼ of the northeast quarter of Section 27 and the north 1/2 of the northwest quarter of Section 26, T1N, R18E, B.M.; north of the east to west section line two miles north of the Boise Baseline portion of which correspond with Pero Rd. to the A-10 Zoning District line; west of that A-10 zoning line; south of the R-5 zoning district boundary; along Glendale Rd. to Silverwood Dr. and south and east of the Glendale "bench."

- B. Additional receiving areas are those
1. areas reclassified pursuant to the standards set out in subsection C; or
  2. areas designated through Intergovernmental Agreements with municipalities in Blaine County.
- C. An applicant for reclassification of property as a receiving area has the burden of demonstrating compliance with each of the following standards, in addition to applicable

standards for rezone under Chapter 26(4) & (8) and Chapter 31, Title 9, of the Blaine County Code.

1. Designation of the property as a receiving area is in accordance with the Comprehensive Plan.
2. The proposed receiving area will be located outside of the Mountain Overlay District, Avalanche Overlay District, Floodplain Management and Riparian Setback Districts, Wetlands Overlay District and Seasonal Overlay District, and outside of any environmentally sensitive lands, or critical wildlife habitats or corridors as identified by the County in consultation with the Idaho Department of Fish and Game.
3. The proposed receiving area will be located adjacent to an existing state or county road, or platted road, and adequately served by existing transportation systems.
4. The proposed receiving area will be compatible with adjoining development and land uses, and, if located within a designated area of city impact, will be compatible with the land uses designated for the area in the adopted municipal comprehensive plan and municipal and county ordinances governing the area of city impact.
5. The transfer of additional densities and other uses to the proposed receiving area will be compatible with the uses and any agricultural operations in the area.
6. The transfer of additional densities and other uses to the proposed receiving area, when considered in light of the existing or likely cumulative effect of residential development in the area, will not materially change the character of agricultural land, agricultural uses, or the economic viability of existing agricultural operations in the area.
7. The transfer of additional densities and other uses to the proposed receiving area will not adversely affect the quality of essential public services and facilities to

current residents, including, but not limited to, school facilities, school bus transportation, police and fire protection, emergency services, and shall not require substantial additional public funding in order to meet the needs created by the creation of the proposed receiving area.

8. The proposed receiving area will provide setbacks from the Heavy Industrial District.
- B. The applicant may be required by the Board to mitigate the adverse effects of the proposed transfer of additional densities and other uses to the proposed receiving area, which may include, without limitation, entering into a development agreement with the County, contributions for additional capital improvements, on-going maintenance, and labor costs. The plan for, timing of, and proposed phasing of the mitigation shall be in a form acceptable by the Board.

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

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

- A. The number of development rights for a sending parcel shall be calculated based on a maximum density of one (1) dwelling unit per 20 acres.
- B. Notwithstanding the foregoing provision, in calculating the number of development rights, the following property shall be subtracted from the total acreage of the parcel:
  1. Any part of said parcel that is subject to, or encumbered by, a conservation easement, Idaho Department of Fish and Game easement, or other easement that restricts or prohibits development of the parcel; provided, however, that the total number of certified TDRs may not exceed the total number of development rights retained pursuant to any such easement.
  2. Any part of said parcel located within a public road right of way, or within a recorded access easement.

3. Any part of said parcel located within Blaine County's Floodway as defined in Section 9-17.

- C. The minimum size for any sending parcel from which development rights will be removed and transferred shall be 160 acres, except for smaller legal parcels in existence on July 5, 2006, for which the minimum size for a transferring parcel may be 40 acres.
- D. Any fractional development right exceeding 0.5 (1/2) shall be rounded up to the nearest whole number.

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

- A. The owner of record of a sending parcel may request certification of the number of transferable development rights on the sending parcel by submitting a completed application to the Administrator.
- B. Following receipt of a complete application, the Administrator shall issue a certification of the number of transferable development rights on the sending parcel and serially numbered individual certificates for each transferable development right credited to that parcel. The owner of record of the sending parcel shall cause all certificates issued by the Administrator to be promptly recorded in the chain of title for the sending parcel with the Blaine County Recorder.
- C. An application shall be in the form prescribed by the Administrator, and shall contain such information as deemed necessary to verify parcel size and applicable density, and existing uses as a basis for certifying the number of development rights. This information shall include, but is not limited to:

1. A map of the proposed sending parcel based on a survey if available or a map prepared in a professional manner on an assessor's map of the parcel if no recent survey is available.
  2. The legal description and parcel numbers of the sending parcel.
  3. A copy of the deed showing that the applicant is the owner of record of the sending parcel.
  4. The number of single family residences existing on the sending parcel excluding employee housing or accessory dwelling units.
- D. A certification fee as may be prescribed by resolution of the Board.

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

- A. No development rights from a sending parcel may be transferred, or offered for transfer or sale, until they have been duly certified as provided herein.
- B. In order to validly convey or transfer certified development rights from a sending parcel, a TDR Easement shall be recorded against the sending parcel and the grantee of the development rights shall receive a Deed of Transfer of the development right from the grantor, the owner of the sending parcel.
- C. A TDR Easement shall be duly signed by the owner of the sending parcel and Blaine County by and through the Board, and promptly recorded by the County with the Blaine County Recorder. Nothing herein shall preclude grantees in the addition to the County being made a party to such easements. A separate TDR easement shall be executed for each development right that is transferred, and the Administrator shall designate each



such TDR Easement with a distinctive instrument or serial number and shall maintain records of all such TDR Easements.

D. The TDR Easement shall be in a form approved by the Board and shall contain the following provisions:

1. All of the serial numbers of the transferable development rights that have been certified by the Administrator on the sending parcel which is the subject of the TDR Easement.
2. A covenant on the sending parcel, or part thereof from which development rights have been transferred, that all residential development rights have been removed from the parcel and that only the other permitted, accessory or conditional uses listed in the underlying zoning district, if any, shall be allowed.
3. A covenant that all provisions of the TDR Easement shall run with and bind the sending parcel in perpetuity<sup>1</sup> in favor of the County and any other grantees and may be enforced by any of said grantees.
4. A statement that nothing in the restrictions shall be construed to convey to the public a right of access or use of the property and that the owner of the property, his/her heirs, successors and assigns shall retain exclusive right to such access or use subject to the terms of the TDR Easement.
5. If only a portion of the transferable develop rights of a sending parcel is being transferred, then a survey map of the entire parcel must be recorded with the Blaine County Recorder. The map must show the actual area on the sending parcel that is being protected by the transfer of development rights. That portion

of the sending parcel protected by a TDR easement shall contain a statement that all residential development rights except for one (1) dwelling unit per one hundred sixty (160) acres or fraction thereof have been removed from this portion of the parcel and that only the other permitted, accessory or conditional uses listed in the underlying zoning district, if any, shall be allowed.

6. The written consent of all lien holders and other parties with an interest of record in the sending parcel.
  
- E. The Deed of Transfer of development rights shall be in the form prescribed by the Board. The grantee of the deed shall promptly record the same with the Blaine County Recorder, which recordation shall appear in the chain of title of the sending parcel.
  
- F. The Deed of Transfer shall specify the number of transferable development rights conveyed or transferred from the sending parcel and shall only be valid when signed by the owner of the sending parcel, containing the provisions established by the Board for such a document, and recorded along with the original TDR Easement against the sending parcel.
  
- G. A Deed of Transfer shall contain:
  1. A legal description and map of the sending parcel(s);
  2. A covenant that all provisions of the Deed of Transfer shall run with and bind the sending parcel and shall be enforced by the Board;
  3. The names of the Grantor and the Grantee of the development right;
  4. A covenant that the Grantor grants and conveys to the Grantee a specified number of certified development rights from the sending parcel, including the serial

numbers of the individual certificates for each development right to be transferred from the sending parcel;

5. Proof of ownership of the sending parcel;
6. If the transferor is not the owner of the sending parcel, the recorded instrument numbers of the TDR easement and the original Deed of Transfer, with the names of the Grantor and Grantee of such deed;
7. A covenant by which the Grantor acknowledges that the Grantor has no further use or right of use with respect to the development rights being transferred;
8. The certification of the number of transferable development rights on the sending parcel and copies of the appropriate certificates of those rights issued by the Administrator pursuant to this Chapter;
9. Proof of the execution and recordation of a TDR Easement on the sending parcel; and
10. The signature of the Administrator's staff member who has reviewed the Deed of Transfer for completeness.

**10-10-8: RESPONSIBILITY:** The Grantor and the Grantee named in a Deed of Transfer shall have the responsibility to supply the information required by this Chapter, to provide a proper instrument of transfer and to pay all costs of its recordation, in addition to any other fees required by this section.

**10-10-9: INTERMEDIATE TRANSFER:** Development rights may be transferred to an intermediate transferor or broker and held for a period of time as provided by law before they are permanently affixed or made appurtenant to a receiving parcel. All such intermediate transfers shall be affected by a Deed of Transfer duly recorded with the Blaine County Recorder.

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

A. The transfer of a development right to a receiving area established pursuant to §10-10-4(A) 1 or 2:

1. shall become affixed or appurtenant to a specific receiving area parcel upon approval by the County of a plat pursuant to the provisions of Title 10, Chapter 4, Blaine County Code;

2. shall result in a minimum lot size of no less than one (1) unit per one (1) acre or a maximum density of no more than one (1) unit per two and one-half (2.5) acres<sup>2</sup>;

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

4. shall, once the plat is recorded, become permanently affixed to the receiving parcel

B. A Deed of Attachment of Development Right, in the form prescribed by the Board, shall be recorded with the Blaine County Recorder indicating the permanent attachment of any development rights to the receiving area plat or lot(s) and shall include the names of the initial Grantor of each development right affixed or made appurtenant to the receiving parcel, the instrument number of the original Deed of Transfer, the name of the last Grantee of record of each development right affixed or made appurtenant to the receiving

parcel, and the serial numbers of the individual certificates for each such development right.

**10-10-11: EFFECT OF THE TRANSFER OF DEVELOPMENT RIGHTS:** After development rights have been transferred from a sending parcel, the following shall apply:

- A. The sending parcel may be used only for the other nonresidential, accessory or conditional uses permitted in the underlying zone district, except that one dwelling unit per one hundred sixty (160) acres may be maintained or developed on the sending parcel after transfer of development rights. That portion of the sending parcel protected by a TDR easement may be used only for the other permitted accessory or conditional uses and shall not be included in establishing the base density of any land proposed to be subdivided.
- B. All certified transferable development rights and the value of such rights shall be deemed for all other purposes to be appurtenant to the sending parcel until such rights are transferred by a recorded Deed of Transfer.
- C. Nothing in such restrictions shall be construed to convey to the public a right of access or use of a sending parcel; the owner of the sending parcel and the owner's heirs, successors and assigns shall retain the exclusive right to such access or use subject to the terms of the TDR Easement.
- D. The use of a parcel from which development rights have been transferred remains subject to the other restrictions of the underlying zone district.

E. A property owner may designate only a portion of his property as a TDR sending area. Portions that are not so designated shall retain the base density permitted in the underlying zone district.

**Section 2.** It is the intention of the Board of County Commissioners that each separate provision of this Ordinance shall be deemed independent of all other provisions herein, and it is the further intention of said Board that if any of the provisions of this ordinance be declared to be invalid, all other provisions thereof shall remain valid and enforceable.

**Section 3.** This Ordinance shall be in full force and effect from and after its passage, approval, and publication.

Regularly passed, approved, and adopted by the Board of County Commissioners of Blaine County, Idaho, this 29 day of June, 2006.

BOARD OF COUNTY COMMISSIONERS OF BLAINE COUNTY, IDAHO

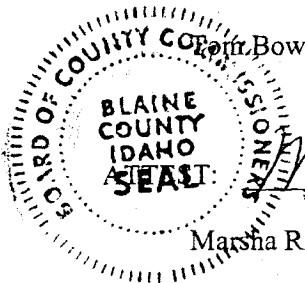
Sarah Michael

(seal) Sarah Michael, Chair

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Dennis Wright, Commissioner

Ben Bowman

Ben Bowman, Commissioner



Marsha Riemann  
Marsha Riemann, Clerk