PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
MARCH 31, 2011

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will hold its regularly scheduled meeting at the Marsac Municipal Building 445 Marsac Avenue, Park City, Utah for the purposes and at the times as described below on Thursday, March 31, 2011.

Closed Session
3:00 p.m. Property and litigation

Work Session
4:15 p.m. Council questions/comments
4:30 p.m. Transfer of Development Rights Overlay Zone pg 25
5:50 p.m. Break

Regular Meeting
6:00 p.m.
I ROLL CALL

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

III PUBLIC INPUT *(Any matter of City business not scheduled on agenda)*

IV CONSENT AGENDA *(Items that have previously been discussed or are perceived as routine and may be approved by one motion. Listed items do not imply a predisposition for approval and may be removed by motion and discussed and acted upon under "Additional Discussion – Agenda Items")*

1. Consideration of Professional Service Agreement in a form approved by the City Attorney with Bowen Collins and Associates for design and construction management services related to the Phase 3 of Bonanza Drive in the amount of $106,175. pg 4

2. Consideration of Contract Change Order No. 4 with Bowen Construction Company for additional construction services related to the construction of the SR-248 Comstock Tunnel in an amount not to exceed $272,721 pg 14

3. Consideration of Professional Service Agreement, in a form approved by the City Attorney, with Brown and Caldwell for professional services related to the federal and state requirement to permit the existing discharges at Judge Tunnel, Spiro Tunnel and Prospector Drain and Biocell in an amount not to exceed $67,400 pg 21

V NEW BUSINESS *(New items with presentations and/or anticipated detailed discussions)*

1. Consideration of an Ordinance approving the First Amendment to the Silver Baron Lodge at Deer Valley, Phase II, record of survey plat, located at 2800 Deer Valley Drive East
   (a) Continuation of public hearing
   (b) Motion to Continue to April 7, 2011

2. Consideration of amendments to the Land Management Code considering adding Chapter 2.24, Transfer of Development Rights Overlay Zone and related amendments to Chapter 6, Master Planned Developments; and Chapter 15, Definitions pg 25
   (a) Continuation of public hearing
   (b) Possible action

VI ADDITIONAL DISCUSSION – AGENDA ITEMS

VII ADJOURNMENT

Closed Session - Personnel

A majority of members may meet socially after the meeting. If so, the location will be announced by the Mayor. City business will not be conducted. Pursuant to the Americans with Disabilities Act, individuals needing special accommodations during the meeting should notify the City Recorder at 435-615-5007 at least 24 hours prior to the meeting. Wireless internet service available in the Marsac Building on Wednesdays and Thursdays – 4 p.m. to 9 p.m.

Posted: 03/28/11
See: www.parkcity.org

Note: This future meeting schedule is TENTATIVE and subject to change.
PARK CITY COUNCIL TENTATIVE MEETING SCHEDULE

April 2011

7	BFO, revenue policy, CIP budget, property tax – work (90 min)
	Delivery ordinance update - work
	Recycling Contract for Parks and Main St – work - TP (10 min)
	Ordinance approving the First Amendment to the Silver Baron Lodge at Deer Valley, Phase II, record of survey plat, located at 2800 Deer Valley Drive East
	Addendums to facility leases extending terms – Library and Education Center, and Miners Hospital
	Solar Feasibility Study – Contract Award - TP
14	**No meeting**
18	Special Meeting – Interview Interim Appointment Applicants
21	Monthly budget update
	Quarterly goal update
	Outdoor dining
	Mine Hazard Ordinance
	Appointment of Interim Council Seat
22	*Quarterly manager's meeting*
28	Outdoor dining leases

May 2011

5	**Tom gone**
12	Monthly budget update
	PC-SLC Bus Service (45 min)
	Pavement management
19	**No meeting - Liza gone**
26	

June 2011

2
9
16
23
30

July 2011

7
14
21
28

Pending Items:

RAB and PAAB interviews - June
U S Postal Service gang boxes in Old Town

City Council
Staff Report

Subject:	**Professional Service Agreement for Bonanza Drive Phase 3 Design**
Author:	**Matthew Cassel, P.E., City Engineer**
Department:	**Engineering**
Date:	**March 31, 2011**
Type of Item:	**Administrative**

Summary Recommendations:
The Council should authorize the City Manager to execute the Professional Service Agreement in a form approved by the City Attorney with Bowen Collins and Associates for design and construction management services related to the Phase 3 of Bonanza Drive in the amount of $106,175.

Topic/Description:
This professional service agreement with Bowen Collins and Associates is to provide design and construction management services for the third phase of the Bonanza Drive reconstruction. The third phase of this project includes:

- ✓ Irrigation and landscaping on City property (designed as part of Phase 2 and incorporated into this package with some modifications),
- ✓ Road striping (designed as part of Phase 2 and incorporated into this package),
- ✓ Design of additional way finding and safety signage,
- ✓ Design of colored concrete turn lanes,
- ✓ Design of two to three planters within the roadway,
- ✓ Design of the Rail Trail/Iron Horse walkability pedestrian bridge across Poison Creek,
- ✓ Design of some small miscellaneous items along the corridor such as trail connection adjustments.

Background:
In January 2008, H. W. Lochner completed the Bonanza Drive Corridor and Pedestrianization Plan. City Council reviewed and approved this concept plan during their January 24, 2008 meeting. The design included raised medians along a short section of Bonanza Drive (near the intersection of Kearns Boulevard), acceleration lanes at Prospector Avenue, “no left turn” restrictions, Bicycle lanes, northbound bus pull-out, trail connection including a pedestrian tunnel at the Iron Horse intersection, pedestrian crossing, consistent 6 foot wide sidewalks, speed limit feedback signs, right turn lane at Iron Horse and lengthened southbound left turn lane at Deer Valley Drive. As part of this work, the existing sewer line was relocated due to the pedestrian tunnel and replaced to SR-248, the existing water line was relocated due to the pedestrian tunnel and a new transmission water line was installed.

The waterline was designed by Bowen Collins & Associates through their contract with the City's Water Department and incorporated into the construction plans. The sewer was also designed by Bowen, Collins and Associates in a separate contract with Snyderville Basin Water Reclamation District (SBWRD) and incorporated in the construction plans.

Because of the size of this project, it was decided early in the design process to break the project into two construction seasons. The first construction season included the installation of the transmission waterline from Deer Valley Drive to Kearns Boulevard and the reconstruction of Bonanza Drive from Deer Valley Drive to a point just north of Upper Iron Horse Drive. The second construction season completed the utilities, completed the pedestrian tunnel and reconstructed the rest of Bonanza Drive and its associated facilities. The project was originally anticipated to be bid as one complete project in June of 2009.

In the spring of 2009, numerous issues still remained unresolved on the project and UDOT indicated they would not proceed with bidding until those issues were resolved. All of the unresolved issues pertain to the second season of construction. To keep the project moving forward, staff decided to split the project into two biddable phases. The first phase was all work associated with the first season of construction and the second phase is all work associated with the second season of construction.

As part of the project, it was necessary to obtain easements from adjacent private property owners. The easements were required for the pedestrian tunnel, the ramps to the tunnel, and the relocation of the Poison Creek culvert which extends beyond the existing Bonanza Drive Right-of-Way. As part of the easement negotiations, these owners proposed improvements, which included the installation of two (2) to three (3) planter islands located within the turning lanes of Bonanza Drive and the installation of colored concrete turning lanes along the Bonanza Drive corridor. During the June 17, 2010 meeting, City Council directed staff to return in 2011 or 2012 with a contract to add the center planter boxes and colored concrete turning lanes within the Bonanza Drive corridor from Kearns Boulevard to Deer Valley Drive. It was estimated that the cost for construction for these planters and colored concrete turning lanes was approximately $325,000.

The Council has approved funding for this project as follows:

Capital Project cp0097 (Bonanza Drive Reconstruction) initially contained $2,593,671 for the project and our Water Department provided funding for the new transmission waterline. Additional monies in the amount of $1,072,616 were encumbered through UDOT's STP Small Urban Funds Program and up to $2,773,087 may be allocated in the walkability bond. SBWRD also provided funding for the replacement of their sewer line. Design services, construction management services, soft costs and the actual construction are all included in the funding package for this project.

Additionally, a request has been made for 2012 capital Improvement funds in the amount of $400,000 to cover the additional cost for the planters and colored concrete turning lanes.

Analysis:
A review committee consisting of Clint Daley and Maria Barndt (Public Works), Jonathan Weidenhamer and Heinrich Deters (Sustainability), Thomas Eddington (Planning) and Matt Cassel and Jennifer Byrd (Engineering) evaluated the 4 submitted Statement of Qualifications (SOQs) from consulting firms as listed below:

FIRM
Alliance/Stanley Engineering
Bowen Collins and Associates
Land Solutions/Alta Engineering
PEC Engineering

The SOQs were evaluated based on the following criteria:

1. Experience on similar projects (25% of total score),
2. Strength of individuals committed to the project (20% of total score),
3. Relevance of the submitted work plan (15% of total score),
4. Communication and public involvement skills (15% of total score),
5. Strength of SOQ addressing Park City concerns (20% of total score), and
6. Other factors (5% of total score)

Bowen Collins and Associates was the top ranking firm and the selection committee determined that short listing firms for interviews were not necessary. The final scope of services and proposed fee were negotiated with Bowen Collins and Associates and is attached.

Department Review:
This report has been reviewed by City Manager, Planning, Public Works, Sustainability, and Legal. All issues have been resolved.

Alternatives:

A. Approve the Request:
This is the staff's recommendation.

B. Deny the Request:
If the request is denied, this final design and construction to dress up Bonanza Drive could not be completed.

C. Continue the Item:
If the Council needs more information the item can be continued, but this would delay our ability to have the project ready for construction at the start of July thus causing us to possibly fight the weather in the fall and early winter.

D. Do Nothing:
This option would make it impossible to properly provide the over-site of the construction.

Significant Impacts:
The construction of Bonanza Drive phase 3 will have mild impacts compared to the last two years of construction. These impacts will be less impactful because the majority of work will allow for two way traffic at all times. These impacts will be minimized through the implementation of a public involvement program which includes notification to businesses and addressing their issues and concerns based on our lessons learned from Phase 2 of the project.

Consequences of not taking the recommended action:
Bonanza Drive is an important commuter link for the City and phase 2 of construction is almost complete. Staff's goal is to have the design completed this spring so we can take advantage of the summer weather to properly complete the work within the Bonanza Drive corridor.

Recommendation:
The Council should authorize the City Manager to execute the Professional Service Agreement in a form approved by the City Attorney with Bowen Collins and Associates for design and construction management services related to the Phase 3 of Bonanza Drive in the amount of $106,175.

Exhibit - Bowen Collins and Associates Scope of Work and Fee

Project Approach

Project Understanding

BC&A has reviewed the RFP and talked with city personnel. We understand the past design and construction phases of the project. BC&A was involved in phase one and phase two of the Bonanza Drive project and worked closely with the city and project consultants throughout design and construction.

Bonanza Drive connects Deer Valley Drive to Kearns Boulevard and is lined with several retail and commercial businesses. This corridor has been impacted by phase one and phase two due to road closures related to construction activities, design modifications to the roadway, and connectivity to adjacent roadways and the trail system. Overall, the intent of the project is to have a completed product that provides safer means of transportation through a pedestrian tunnel, and widened road way with utility improvements and landscape beautification.

Project Approach

One of the critical and most important items in the design and construction process for this corridor is the public involvement plan. BC&A has teamed with Fehr & Peers to develop a public involvement process to help keep the residents and land owners integrated into the project. The public involvement work plan will be submitted to the city for approval and modified as needed throughout the duration of the project.

Visuals are critical for land users to understand the impacts of a project and the projected final design. BC&A provided graphic renderings for phase one and phase two of the project, however, those renderings were developed at a conceptual scale to provide a big picture image of the pedestrian undercrossing. The project team will continue to work with adjacent property owners and land users through the public involvement process with Fehr and Peers. Computer renderings will be generated to better convey the design intent and implement feedback wherever possible.

Task 1 – Public Involvement and Preliminary Design

Fehr & Peers and BC&A understand that providing information to the public early, often and accurately, is essential to a successful project. Roadway improvement and community beautification projects often provide a challenge to local traffic and bicycle/pedestrian circulation and business access. With Fehr & Peers prior involvement on projects along Bonanza Drive, they have a solid understanding of the project area stakeholders and community concerns. Fehr and Peers will work with BC&A and utilize this background to assist Park City in keeping businesses, residents and city officials informed throughout the Bonanza Drive Phase 3 Project.

Public Involvement Work Plan

Establish Stakeholder Contact. Fehr & Peers will build on previous work efforts to create a database of concerned residents, primary stakeholders and neighboring property owners. This stakeholders list will be shared with the city and updated as needed.

BC&A will provide visual graphics that will include 3D computer renderings, examples of plant materials and design guidelines for improvements along Bonanza Drive for the property owners and the city.

Preliminary Design

Collect and Review Existing Information. BC&A is familiar with the design files for Phase 1 and Phase 2 of the project and will work with the City to retrieve the most recent files to incorporate as the base drawings for the project. It is not anticipated that additional survey, roadway design or property ownership information will be needed. It is assumed that this information will be provided to BC&A at no additional cost.

Site Visit and City Staff Meetings. A site visit will be conducted with the city staff to evaluate the existing conditions and understand the scope of the project and final construction of the roadway and undercrossing. BC&A will conduct field reconnaissance at the site to become familiar with project elements and site constraints. For the purposes of this proposal, it is assumed that this task will consist of up to six hours of field investigations.

Understanding the Soils Ordinance. BC&A is familiar with the soils ordinance due to past project experience with the rail trail waterlines and Quinn's Water Treatment Plant project. The project team understands the mitigation measures needed when excavating or impacting areas that lie within the soil ordinance boundary. If soils are impacted they will be disposed of to an appropriate and approved EPA site. The specifications will be written to reflect the sensitivity of the soils and reference will be made to the Park City soil ordinance.

Design. BC&A will prepare a preliminary design that will include the general placement of design elements, identify utility impacts and make the necessary contacts, provide a 50% estimate of probable costs and alternatives if necessary and identify traffic control.

As mentioned in the RFP, the landscape design for the Bonaza Drive project is complete. BC&A will work with the City to incorporate this design into the final drawings and more importantly, BC&A will work directly with the landscape and irrigation city staff to review the plans and make modification to minimize maintenance and improve the overall design. The goal of this task is to incorporate the ideas of the city and integrate the beautification of Bonanza into the surrounding landscape. This task is the most critical element and much thought and care will be taken into incorporating the ideas of those who will maintain the area and the ideas of the adjacent landowners who also have a vision and goal of the corridor.

Task 2 – Final Design and Specifications

BC&A will prepare design drawings and specifications for the project. A sample list of these drawings is shown below. We will prepare up to six copies of design drawings for the project at the 50 and 90 percent review stages. Review comments provided by the City will be addressed in final design drawings.

Sht No.	Description
1	Project Location Map, Vicinity Map and Index of Drawings
2	Standard Legends, Abbreviations and Symbols
3	General Notes, Coordinate Schedule and Roadway Design Element Information
4	Signage and Striping Plan
5-6	Median and Civil Plan Horizontal Control Sheets
7-8	Horizontal Control Plan Traffic Control Plans
10-12	Landscape Plan

12-14	Landscape Irrigation
15-16	Landscape and Park Details
17-18	Plaza Design
19-20	Pedestrian Bridge Design (2)

Project Meetings. BC&A will prepare for and attend a total of five meetings with the City project manager to review preliminary design and final design progress. BC&A will prepare and distribute meeting notes documenting decisions and progress.

Technical Specifications and Contract Documents. BC&A will prepare technical specifications for the project, as well as bid schedules and contract documents. BC&A will prepare CD's of final contract documents for bidding and construction, including technical specifications.

Construction Cost Estimate. BC&A will prepare an engineer's opinion of probable construction cost for the project based on the drawings, specifications, and proposed construction schedule.

Task 3 - Bid Period Services

Pre-Bid Meeting. BC&A will arrange and conduct a pre-bid meeting. The meeting will be a 2-hour meeting with the contractors, the City, and others as needed.

Bid Period Services. Our project team will answer questions from prospective contractors during the bid period. Our project manager will prepare and issue addendums, attend and conduct the bid opening, evaluate submittals and make recommendations and prepare contracts for construction.

Bid Opening. We will attend the bid opening and assist City personnel in tabulating and evaluating the bids and selecting a contractor.

Task 4 - Construction Period Services

BC&A will provide engineering and construction management services for the project during the construction period. Services would include the following:

Pre-Construction Meeting. We will prepare and conduct a pre-construction meeting for the project. Our construction manager will prepare an agenda, conduct the meeting and document the meeting. The meeting will include the contractor, City personnel, and others as needed.

Services During Construction. Our construction manager will process contractor payment requests, review submittals, prepare any needed change orders or field orders, and attend regular on-site progress meetings with the contractor. He will also provide supervision of the construction observation provided by our inspector.

Project Observation. Our on-site inspector will monitor construction progress, inspect the construction, keep a photographic log of construction, prepare inspection logs, maintain record drawing notes, conduct weekly construction progress meetings with the Contractor, and coordinate with the City and our project manager about on-site activities. BC&A will provide monthly construction reports to PCMC and will include the information listed above.

Post Construction. BC&A will use red-lined drawings provided by the Contractor to prepare record drawings for the constructed project. These will be delivered in both hard copy (half-size) and AutoCAD format upon completion of the project. Additionally, a mylar set will be submitted to the City.

Task 5 - Additional Services

BC&A will provide additional services that will include the following subtasks:

- Design of Plaza Adjacent to End of Rail Trail - BC&A will work with the property owners land planner and the city to design a plaza for public use. The plaza will be approximately 50' x 50' in size.
- Design Adjustments (Southwest Corner) - Landscape improvements will be made to the southwest corner, between the power pole and 5' trail located to the west of the tunnel.
- Pedestrian Bridge (East Side) Design - A prefabricated pedestrian bridge will be designed over Poison Creek and will be located approximately 500' east of the plaza.
- Sidewalk and Retaining Wall Design along Wintzer's Property - A 5' sidewalk will be designed as an alternative pathway from the tunnel approach, parallel to the Wintzer's building, connecting at grade to Iron Horse Drive. A retaining wall will be designed to support the cut a slope south of the Wintzer's building.
- Property Owner Meetings and Coordination with Others - A total of 10 meetings will be held with property owners and their land planner to coordinate design efforts and integrate ideas into this design.
- Irrigation and Power Design/Coordination for Wintzer's and Planter - This includes the design and coordination of irrigation to the southwest corner of Iron Horse and Bonanza Drive as well as power needs for planters near the intersection.
- SR-248 and Bonanza Intersection Beautification Design - Pavement treatment will be designed for the intersection to tie into the proposed Bonanza Drive Beautification Concept Plan.
- Trail Spur and Foot Bridge over Poison Creek - The design of a trail from the intersection of Iron Horse and Bonanza to approximately 100' south along Bonanza Drive to the existing sidewalk. A pedestrian bridge will also be designed over Poison Creek.

Other Critical Issues

Understanding the history of the project. BC&A has a good understanding of the history and critical issues that arose during Phase 1 and Phase 2. The project team will work with the City to mitigate and forecast issues before they become problems.

Improvements to the area with need to be directly correlated with utility companies if they are impacted. Ms. Campbell understands the impacts and the necessary steps to avoid conflicts.

Project Approach

QA/QC Process

Ms. Campbell will work closely with Ms. Tsandes to review the design, oversee and answer questions as they arise. Ms. Campbell has been involved with Bonanza Drive project from the beginning and is familiar with the project and issues. She will review the design set for compatibility as it affects the surrounding infrastructure and improvements.

Schedule

We estimate that the design of the project and public involvement to take approximately 6 weeks from notice to proceed. Final design contract documents will be complete and ready for bid by May 15, 2011. It is anticipated that construction will be complete by October 15, 2011; however, we do not anticipate that the construction period will last more than 8 weeks. The construction services task and fee reflects the 8 week construction period. It is also assumed that planting will occur in the fall, prior to October 15th.

Fee *(See Attached for Breakdown and Hourly Rates)*

Park City
Bonanza Drive Phase 3
Man-Hour and Fee Estimate
Last Updated 3/22/11

		Office	Technicians								Subtotal Hours	Subtotal Labor	Subtotal Expenses	Total Cost
	Labor Category	Editor	Tech 4	Pearson	Vyas	Engineer 3	Tsandes	Bagley/Campbell	Structural	Williams				
	Labor Rate	$60	$82	$105	$95	$88	$93	$120	$100	$93				
Task No.	**Task Description**													
1	**Public Involvment and Preliminary Design**													
	Public Involvement						2				**2**	$ 186.00	$872	$ 1,058.00
	Meetings with City		5				8	4			**17**	$ 1,634.00	$282	$ 1,916.00
	Preliminary Design		30			30	30				**90**	$ 7,890.00	$600	$ 8,490.00
	Existing Base Mapping					4					**4**	$ 352.00	$24	$ 376.00
	Construction Cost Estimate					4	2				**6**	$ 538.00	$36	$ 574.00
	Preliminary Design Subtotal	**0**	**35**			**38**	**42**	**4**		**0**	**119**	**$ 10,600.00**	**$1,814**	**$ 12,414.00**
2	**Final Design**													
	Prepare Design Drawings		95			50	50				**195**	$ 16,840.00	$1,230	$ 18,070.00
	Technical Specifications and Contract Documents	10				30	30				**70**	$ 6,030.00	$420	$ 6,450.00
	Construction Cost Estimate					4	2				**6**	$ 538.00	$36	$ 574.00
	Prepare Bidding Documents	5				6					**11**	$ 828.00	$66	$ 894.00
	Meetings with City						8	6			**14**	$ 1,464.00	$264	$ 1,728.00
	Public Meeting						4	4			**8**	$ 852.00	$2,028	$ 2,880.00
	Design Subtotal	**10**	**95**			**90**	**82**	**10**		**0**	**271**	**$ 23,408.00**	**$1,686**	**$ 30,596.00**
3	**Bid Period Services**													
	Pre-Bid Meeting						4			4	**8**	$ 744.00	$108	$ 852.00
	Bid Period Services		4			12	12				**28**	$ 2,500.00	$168	$ 2,668.00
	Bid Opening						4				**4**	$ 372.00	$84	$ 456.00
	Prepare Contracts for Construction					2	2			20	**24**	$ 2,222.00	$144	$ 2,366.00
	Bid Period Subtotal	**0**	**4**			**14**	**22**	**0**		**4**	**40**	**$ 3,616.00**	**$360**	**$ 6,342.00**
4	**Construction Period Services**													
	Pre-Construction Meeting					6	6			6	**18**	$ 1,644.00	$168	$ 1,812.00
	Services During Construction					20	60				**80**	$ 7,340.00	$960	$ 8,300.00
	Public Involvement										**0**	$ -	$4,800	$ 4,800.00
	Project Observation									80	**80**	$ 7,440.00	$2,880	$ 10,320.00
	Monthly Construction Report	10								5	**15**	$ 1,065.00	$90	$ 1,155.00
	Punchlist Walkthrough						4			4	**8**	$ 744.00	$168	$ 912.00
	Post Construction		20							6	**26**	$ 2,198.00	$156	$ 2,354.00
	Construction Services Subtotal	**10**	**0**			**26**	**66**	**0**		**91**	**193**	**$ 17,489.00**	**$8,898**	**$ 29,653.00**
5	**Additional Services**													
	Design of Plaza Adjacent to End of Rail Trail					10	25	5			**40**	$ 3,805.00	$240	$ 4,045.00
	Design Adjustments (Southwest Corner)					10	25	5	5		**45**	$ 4,305.00	$270	$ 4,575.00
	Pedestrian Bridge (East Side) Design					20	15	5	5		**45**	$ 4,255.00	$270	$ 4,525.00
	Sidewalk and Retaining Wall Design along Wintzer's Property					10	10	5	5		**30**	$ 2,910.00	$180	$ 3,090.00
	Property Owner Meetings and Coordination with Others						40				**40**	$ 3,720.00	$740	$ 4,460.00
	Irrigation and Power Design/Coordination for Wintzer's and Planter					2	10	2			**14**	$ 1,346.00	$84	$ 1,430.00
	248 and Bonanza Intersection Beautification Design					5	10	2			**17**	$ 1,610.00	$102	$ 1,712.00
	Trail Spur and Foot Bridge over Poison Creek					10	15	3	5		**33**	$ 3,135.00	$198	$ 3,333.00
	Additional Services Subtotal	**0**	**0**			**67**	**75**	**20**	**20**	**0**	**264**	**$ 25,086.00**	**$2,084**	**$ 27,170.00**
	Total Hours	**20**	**134**			**235**	**287**	**34**	**20**	**95**	**825**			
	Total Cost											**$ 80,199.00**	**$14,842**	**$ 106,175.00**

Expenses include:
Mileage reimbursement at $0.75/mile
Computer/Communications Charge at $6/labor hour
10% Markup on Outside Services

City Council Staff Report

Subject: **Change Order No. 4 for Bowen Construction SR-248 Pedestrian Tunnel Project**
Author: **Matthew Cassel, P.E., City Engineer**
Department: **Engineering**
Date: **March 31, 2011**
Type of Item: **Administrative**

Summary Recommendations:
The Council should authorize the City Manager to execute Contract Change Order No. 4 with Bowen Construction Company for additional construction services related to the construction of the SR-248 Comstock Tunnel in an amount not to exceed $272,721.

Topic/Description:
This requested change order is made up of several components which are itemized on the enclosed change order form titled, *Contract Change Order No 4*, dated 3/1/2011. For the purposes of this Staff Report. The tasks are categorized by the following for discussion purposes;

1. *Addition of topsoil and sod to north side of SR-248 (school property)*
2. *Additional Landscape features; railing, trees and sod replacement*
3. *Miscellaneous Items;*
   Barricade transport for school
   Additional electrical work
   Fix leaky water valve in street.
4. *Pour concrete floor in tunnel*
5. *Cost overruns for;*
   Asphalt In roadway
   Additional dry stack boulder wall
   Earthwork off-haul
   Site berming – embankment
   Concrete flatwork
6. *IES – School security cameras*
7. *Additional time and materials*

Background:
A trail master plan update and walkable/bikeable neighborhood study was prepared by Landmark Design for Park City and completed in early 2007. The purpose of the study was to provide planning and design guidance to improve walking and biking in urban Park City with the intent to establish a clear and detailed list of projects to improve safety, connectivity and efficiency. From the study, a safe passage across SR-248 was ranked as an essential project. A 15 million dollar "walkability bond" was passed by the public in 2007. City Council subsequently allocated funding during the 2008 budget to this project, based on recommendation of the public WALC committee.

The pedestrian tunnel crossing SR-248 is to be located immediately east of Comstock Drive. The project includes the tunnel, stairways to the tunnel, social engineering to encourage pedestrians to use the tunnel, and lighting and ramps to meet ADA requirements. Improvements also include the relocation/modification of an existing sewer, modifications to the storm drain system, design of retaining walls to meet grades on the stairways, ADA ramps and the coordination with dry utility companies for protection, upgrade or replacement of their facilities. Heating of the stairs and video cameras will also be incorporated into the project.

The funding for this project will be provided from Walkability Improvement Bond funds. The total budget for the design and construction is $3,050,000 plus an additional $72,000 for the social engineering efforts for a total project budget of **$3,122,000**. Expenses include:

✓ Design and construction management -	$313,820
✓ Original construction contract bid amount -	$1,051,509
✓ Cost to haul contaminated soils to the repository in Tooele -	$187,709
✓ Utility Costs	$60,177
✓ Change Orders No. 1 to 3 -	$98,534
✓ Change Order No. 4 -	$272,721
Total Project Costs	**$1,984,470**

Any surplus of funds from this project budget will be used for other prioritized walkability projects.

Analysis:
City policy requires City Council approval for accumulated project change orders more than 10% for contracts over $200,000. This change order is a change to the project itself and requires City Council approval. Change orders No. 1 to 3 in a total amount of $98,534 were previously approved by staff (9.4% increase). This change order No. 4 would increase the total contract amount of the project from $1,150,043 to $1,442,764 for a total contract increase of 35.3%.

Analyses of each of the aforementioned “categories” are addressed as follows;

1. Addition of topsoil and sod to north side of SR-248 (school property)
The north entrance to the tunnel across SR-248 is located on school property. The City, in cooperation with the Park City School District had worked out a detailed Memorandum of Understanding identifying necessary improvements and easements that would be required in order to complete the project. The school has participated in the exercising of these improvements and had granted easements as necessary. Included in these improvements was the installation of sidewalks, asphalt pathways and rockery walls. The change of grades required that all of the grass be removed in the project area. The original project scope identified that the area of landscaping should be re-seeded. Due to project delays and schedule of tunnel opening, it was determined that the best solution for the landscaped area would be sod. The main reasons were

aesthetics as well as the nature of school children walking through these areas; causing the seed to not take and creating a mess of the landscaped areas resulting in future cost of cleaning and maintenance. The City engineer, Project Engineer and School District agreed that this would be best for this project if sod were installed in place of seeding.

Upon completing the rough grading on the north side of SR-248 the soil was tested and found to be contaminated. This required that the disturbed areas on the north side of SR-248 were required to be capped with 6 inches of imported topsoil. Staff directed the contractor to cap this area. This additional cost for the topsoil and the sod (with a $2,800 credit for the seeding) was **$45,550**.

2. Additional Landscape features; railing, trees and sod replacement

Included in the design for this project was a landscape/planting plan which outlined the groundcover, bushes, trees and irrigation required to provide aesthetics as well as social engineering to the site (ie. landscape unsafe areas as a deterrent to pedestrians.) At the time of implementation of this plan, City staff met regularly with the landscape architect and landscaper to modify the design in order to better fit the aesthetic and safety requirements of the project. This entailed providing additional trees, fencing and irrigation. The landscaper installed the items identified in this change order (Items #1005-17, 18 and 19) as directed by City Staff. These additional costs totaled **$11,957.23**.

3. Miscellaneous Items;

Barricade transport for school

During the construction of the project, various items evidenced themselves as necessary or cost effective to accomplish as part of Bowen Construction's scope; As pedestrians (namely school children) were re-routed around the construction zones, it became apparent that there were unforeseen problems with the new routes which required further measures to be taken for safety. Barricades installed along the center median of the school driveway were determined to be the solution in order to help direct the children to cross at designated cross-walks. Earthworks Landscaping volunteered the use of several barricades from their stockyard to be used at this location. Although the city was not required to pay for the use of these barricades, costs were incurred with having to purchase "end" pieces and additional barricades to total the required length.

Additional electrical work

Following the selection of the contractor, it was determined that there needed to be additional lights in the tunnel in order to provide adequate lumens since the tamperproof lamps that were specified did not provide the necessary light inside the tunnel. Additional lights and conduit were added.

Fix leaky water valve in street.

During construction, it was necessary to isolate the public waterline, which required the operation of a valve located in the intersection of Comstock and SR-248. Closing and opening this valve caused a leak that continued to get worse following its operation.

Bowen Construction provided a cost to re-pack the valve (resealing the valve to stop the leak) since they were mobilized and had the capability to do so.

Bowen Construction was directed by staff to perform these various tasks and they have included it in this final change order for payment. The additional cost for these miscellaneous items was **$29,003**.

4. Pour concrete floor in tunnel

During the installation of the box culvert under SR-248, there were several storm, gas, power and communication lines that stretched across the culvert. This made installation more difficult since each section had to be maneuvered around the existing utilities as well as the trench shoring. The box culverts went in as planned. However, it was difficult to set them with a smooth bottom floor joint. It was recommended by the engineer and approved by staff to pour a concrete floor in the bottom of the tunnel. This not only provides a smooth, ADA compliant floor but also helped facilitate drainage from snow melt inside the box. The additional cost for this item was **$10,800**.

5. Quantity overruns for;

Asphalt In roadway

During the bidding process, the asphalt bid item was proposed at a unit cost so that additional (or less than) quantities of this item are easily quantifiable. Park City, UDOT and the Park City School District all required that a certain number of lanes stayed open on SR-248 at all times during construction. In order to provide these lanes during each phase, it was necessary to pour additional asphalt to achieve the additional widths needed. There were also sections of asphalt in the road shoulders that were not included in the design to be removed and repaved that failed as a result of heavy traffic during the traffic re-routing. Each of these contributed to a cost over-run of asphalt in the amount of $18,108

Additional dry stack boulder wall

During the time that Earthworks Landscaping was completing the dry stack boulder wall work, they were directed by staff to add walls in order to accommodate grading and landscaping changes as well as provide for a platform required in front of the Rocky Mountain Power Vaults. These additional walls were constructed to also provide a safer environment to the school children that will potentially be playing on or near the walls. Earthworks installed approximately 515 SF of additional wall face.

Earthwork off-haul / Site berming - embankment

In order to accommodate the additional top soil volume and due to modifications in grades, additional earthwork was off-hauled and additional earthwork embankments (berming) were created. An additional 1457 CY of material was off-hauled, and an additional 775 CY of material was re-bermed on site.

Concrete flatwork

As a walkability project, the tunnel and site design included improvements to three of the corners and ramps at the intersection to direct pedestrian movement. During construction, it became apparent that more of the concrete sidewalk sections leading to this intersection needed to be replaced since they were in poor condition. The poor condition was due to age as well as the necessary construction traffic over the walkways during the project. Replacing these older concrete sections with the new also created a better look and aesthetic for the new project. The total additional square footage of sidewalk was 2028 SF.

The additional cost for these quantity over-runs was **$72,255.80**.

6. IES Commercial, Inc. – School Security Cameras
As part of the Memorandum of Understanding (MOU) with the school district, the City agreed to construct, as part of this project, additional site conduit and utility boxes in order to accommodate the installation of security cameras by the school. The school is responsible for the maintenance and monitoring of these cameras – which will be tied to the existing school offices. The City agreed to accomplish this construction since it requires site work in the areas of construction. Rather than bringing in a new contractor to coordinate around Bowen Construction, the site work was added to their contract so that this may be expedited and accomplished with minimal disruption to the schedule and construction of the walkability project. The cost for this additional item was **$13,432.29**.

7. Additional time and materials
As council is aware, the tunnel project schedule extended into the school year and beyond the deadline for which the work within the roadway was to be completed. This created a difficult scenario for all parties since it now required tighter traffic control, additional manpower and coordination with the project team and the school district. With this additional effort, the work was accomplished and the project was completed successfully. On October 7, 2010, Bowen Construction, issued a letter outlining the reasons for the delays in schedule and requested compensation for the additional time that, they felt, was due to unknown existing conditions that could not have been anticipated. Bowens request was for an additional 45 days of manpower, equipment and materials costs, which totaled approximately $253,000.

Upon review by Horrocks Engineers and City Staff, it was agreed that there were several issues that caused delay that were outside of the contractors ability to control. However, upon review of the request, Horrocks Engineers as well as Staff did not feel that the 45 days was warranted and responded as such to Bowen Construction. After a few months of meeting and negotiating, Bowen resubmitted a final request on February 18, 2011, which identified the reasons for delay and quantified the costs incurred as a result. These costs are more closely identified and explained in the attached Change Order No. 4) but can be summarized as follows;

During the south side construction Bowen Construction ran into several utility (gas, power, electric, communications, etc.) conflicts. Although mapped, “Blue-staked,” and discussed with each utility company several times, there were several unknowns and mis-located lines which created a significant amount of coordination, and re-routing work on the contractors part in order to clear the way for the ramps and tunnel. Change Orders were issues for much of this work, however, due to the location of these lines, Bowen needed to work around and de-mobilize from these areas, which caused a delay in schedule. In some instances, it was several weeks of working around a franchise utility company – holding up construction of the walls and grading operations.

The existing 24" storm line on the south side of the tunnel was required to be re-located due to underground constraints. With this relocation, it was suspended over the tunnel and created a delicate situation to work around. At one point, this line failed (prior to final construction of the line) and flooded the tunnel during a significant storm event. Bowen has requested compensation for the additional days added to the construction schedule due to this change in project scope.

Park City has worked closely with Questar Gas Company to coordinated projects throughout the city in an effort to minimize the impacts to the site and to the public by accomplishing their projects at the same time. Oftentimes this requires additional time and effort on the contractor's part in order to coordinate the two projects. Questar used the construction of the tunnel as an opportunity to upgrade a High Pressure and Intermediate High Pressure gas lines in this area. Had they not, future trenching and utility work would have been required once again closing lanes and creating a construction area during Questars work. Bowen experienced delays in working with Questars team as they constructed above and around the recently installed tunnel.

Bowen Construction ultimately requested compensation for 16.5 days of labor, equipment, trench shoring, and equipment rental. Horrocks Engineers and City staff have reviewed the request for 16.5 days and found it to be acceptable. The additional cost for this item is **$89,772.80**.

Department Review:
This request has been reviewed by Public Works, Sustainability, Legal, and the City Manager's office. All issues have been resolved.

Alternatives:

A. Approve the Request:
Approve this Change Order request in the amount of $272,721. This is the staff's recommendation.

B. Deny the Request:
With notice to proceed on several of the items on the requested change order, and due to the fact that the project has been completed, denial would require the City to work further with Bowen Construction in a manner as directed by Council to resolve concerns that Council has regarding the Change Order.

C. Continue the Item:
If the Council needs more information the item can be continued. Staff can provide additional information as needed which may require further coordination with Bowen Construction. Payment has been withheld to Bowen at this point and several sub-consultants are waiting on payment as well. (Pending approval of CO No 4)

D. Do Nothing:

This option would have made it impossible to finalize the completion of the pedestrian tunnel construction in a timely manner.

Significant Impacts:

This contract agreement will have a significant impact on the budget for the project. The original contract was for $1,051,509 and this Change Order request is for $272,721, which is 25.9% of the original contract amount. The funds originally allocated for this project are sufficient to absorb this increase in cost.

Consequences of not taking the recommended action:

The pedestrian tunnel across SR-248 is a high priority project as determined in the 2007 walkability/bikeable neighborhood study. Although the project is complete, had staff not authorized approval and given the contractor direction to proceed on the items in this Change Order, the tunnel project would have been significantly delayed and would not have accomplished the aesthetic that exists today.

Recommendation:

The Council should authorize the City Manager to execute Contract Change Order No. 4 with Bowen Construction Company for additional construction services related to the construction of the SR-248 Comstock Tunnel in an amount not to exceed $272,721.

City Council
Staff Report

Subject: **Professional Service Agreement for Utah Pollutant Discharge Elimination System Permit Application and Support**
Author: **Joan Card, Environmental Regulatory Affairs Manager**
Department: **Sustainability**
Date: **March 31, 2011**
Type of Item: **Administrative**

Summary Recommendation:
Staff recommends Council authorize the City Manager to execute a Professional Service Agreement, in a form approved by the City Attorney, with Brown and Caldwell for professional services related to the federal and state requirement to permit the existing discharges at Judge Tunnel, Spiro Tunnel and Prospector Drain and Biocell. The amount of the Agreement is not to exceed $67,400.00.

Topic/Description:
Contract for Professional Services

Background:
Staff identified a need for engineering and water quality expertise to assist Park City in responding to recent requirements by the U.S. Environmental Protection Agency and the Utah Department of Environmental Quality (UDEQ) to obtain Clean Water Act permits, known as Utah Pollutant Discharge Elimination System (UPDES) permits, for discharges at Judge Tunnel, Spiro Tunnel and Prospector Drain and Biocell to East Canyon and Silver Creeks.

Staff identified the following needs:

- Preparation of applications for UPDES permits for these discharges. These are highly technical applications.
- Preparation of an Anti-Degradation Review. The Clean Water Act and UDEQ policy requires a rigorous analysis of the effects of a discharge on existing water quality and a review of potential alternatives to the discharge.
- Assistance in completing a sampling plan to quantify existing water quality at the sites of the discharges.
- General technical support to obtain the UPDES permits and ensure Park City's interests are met and protected.

After identifying these needs, Park City requested statements of qualifications from qualified consultants.

Analysis:
The City received five statements of qualification for the project. Consistent with the City's purchasing policies, professional service contract are exempt from competitive

bidding. Instead, consultants are chosen by selecting a consulting firm whose expertise, capabilities and past performance best meet the needs of the City. A selection committee was engaged to select a consultant. The selection committee for this contract consisted of Joan Card, Tom Daley, and Jason Christensen. The following criteria were used as guidance in evaluating the statements of qualification submitted.

- Expertise and experience in permitting discharges under the UPDES program or its equivalent in other states, especially individual (not general) permits.
- Expertise in water quality analysis and modeling.
- Knowledge of Park City's environmental history and the three sources identified for permitting.
- Knowledge of and working relationship with EPA Region 8 and Utah DEQ water quality divisions.

Based on the selection criteria, the committee unanimously determined that Brown and Caldwell was the most qualified to provide the required services to Park City.

Staff has provided the Scope of Work and has negotiated the fee with Brown and Caldwell. The Scope of Work is included as Addendum A in the Professional Services Agreement and the fee for the service under this contract is an amount not to exceed $67,400.00.

Department Review:
Legal, Sustainability, and Executive Departments have reviewed this staff report.

Alternatives:

A. Approve the Request:
This is staff's recommendation. Engineering consulting services will assist staff in preparing the required UPDES applications, assist in interactions with regulators and increase the chances of a desirable outcome.

B. Deny the Request:
Denying the request would result in incomplete permit applications and limit Park City's ability to affectively interact with regulators, especially at a technical level.

C. Continue the Item:
This would impair staff's ability to respond to regulators in a timely and effective manner.

D. Do Nothing:
This would have the same impact as denying the request.

Significant Impacts:
Despite a past record of inconsistency in approach to addressing the stream water quality issues at Judge Tunnel, Spiro Tunnel and Prospector Drain and Biocell, EPA and UDEQ have stated clearly that Park City must obtain UPDES permits for these sources. The UPDES application and permitting process involves, to a large degree, technical analysis of water quality and water operations and staff requires the technical

assistance of a qualified service provider to ensure the applications are technically complete, accurate, and ensure the interests of the community. FY11 expenses for EPA issues, including for this proposed contract, will be distributed among the Risk Management Fund and the Water Fund.

Recommendation:
Staff recommends Council authorize the City Manager to execute a Professional Service Agreement, in a form approved by the City Attorney, with Brown and Caldwell for professional services related to the federal and state requirement to permit the existing discharges at Judge Tunnel, Spiro Tunnel and Prospector Drain and Biocell. The amount of the Agreement is not to exceed $67,400.00.

ADDENDUM "A"

SCOPE OF SERVICES

- Evaluation of regulatory issues and constraints, including Federal, State and local regulations, administrative agreements and orders, work plans, reports and other historical records, engineering designs and specifications.
- Evaluate and review, or prepare/draft as needed and directed by Park City, technical documents, plans, studies, reports, engineering designs (stamped by Utah PE), and specifications for management handling, storage and disposal facilities related to mine waste and related soil materials. Designs shall include consideration of capacity needs, siting issues, regulatory constraints, future land use, natural resources and environmental conditions, site construction phasing and scheduling, estimates of cost, and procedures for construction or implementation.
- Evaluate, critique and comment upon design alternatives for outside sources, including review of technical designs and specifications, cost estimates or schedules, considering accuracy, precision, constructability and effectiveness.
- Support Park City in technical negotiations and strategic planning meetings with external stakeholders and environmental agencies at state and federal levels.
- Provide support in development of strategic plans both on short and long term time-frames, based upon broad understanding of local needs, historical context and external agreements.
- Provide support to community relations and meetings.
- Provide labor, materials and equipment to complete environmental, or geotechnical field sampling, surveying, and testing to support and provide information to complete the above services

City Council Staff Report

Subject: Transfer of Development Rights (TDR) Ordinance
Author: Thomas Eddington, Planning Director; Katie Cattan, Senior Planner
Project Number: PL-10-01104
Date: March 31, 2011
Type of Item: Legislative

PARK CITY 1884
PLANNING DEPARTMENT

Summary Recommendation

Staff recommends that the City Council review the proposed Transfer of Development Rights (TDR) ordinance, open a public hearing, and consider approving the TDR ordinance.

Background

The Planning Commission reviewed the Transfer of Development Rights ordinance on November 10, 2010 and December 1, 2010 as work session items. On December 15, 2010 and February 9, 2011, the Planning Commission reviewed TDRs on the regular agenda and opened public hearings during each meeting. During the February 9, 2011 meeting, the Planning Commission sent the positive recommendation to City Council in a four (4) to two (2) vote:

- Adoption of the TDR Ordinance which designated the Bonanza Park area (BoPa) and Snow Creek Commercial area as a receiving zone.
- Include the following areas with corresponding density multipliers within the Sending Overlay Zone, as revised by staff:

	Unit Equivalents UEs	Multiplier	Development Credits	Square Feet Maximum
Alice Claim* Unplatted E/SLO	2.29	.75	1.72	3,440
Alice Claim* Unplatted HR-I	41.51	.5	20.75	41,500
Upper Ridge* Platted HRL	17.65	1	17.65	35,300
Lower Ridge* Platted HRL	7.56	1	7.56	15,120
Treasure Hill MPD	22	2	44	88,000
TOTALS	90.85		90.53	183,360

*Note: Acreage must be verified by certified survey and Park City zoning map

- Add Snow Creek Commercial MPD area to the receiving zone.

The Planning Commission stressed to Staff that they were recommending a positive recommendation with the understanding that a work plan for the BoPa area would be put into place as well. They discussed that a detailed project area plan for the receiving area is imperative to the success of the TDR ordinance. They urged staff to begin working on a form based code ordinance for the receiving area as well. The following work program was in the original recommendation by staff to supplement the TDR ordinance:

- The creation of a complete Project Area Plan for the Bonanza Park district, including:
  - Detailed renderings illustrating the proposed neighborhood
  - Proposed Design Guidelines
  - Estimated square feet of each use in the proposed mixed use development
- The creation of a new zoning designation and/or form based code (possible overlay) for the BOPA area.
- Recommended expansion of the Redevelopment Area and the implementation of a Tax Increment Financing (TIF) district
- Examination of tax abatement opportunities to incentivize local, small scale, mixed use development

On March 10, 2011, the City Council reviewed the Planning Commission recommendation during work session and the regular agenda. The City Council opened a public hearing and continued the public hearing to March 31, 2011. After reviewing the TDR Ordinance and discussing the Planning Commission recommendation, the City Council requested Staff to provide additional analysis on the following:

1. Require Planning Commission review on all developments utilizing development credits in the receiving zones.
2. Require that any height exception within a receiving area utilize development credits for the additional height.
3. Expand Sending Areas to include all of Old Town. Include vacant lots and areas which historic homes could expand within.
4. Add Snow Park (Deer Valley) parking lots and Prospector Square as receiving areas.
5. Decrease the Treasure Hill Sending multiplier.

All previous TDR staff reports are available in the Planning Department and on the website at www.parkcity.org.

Currenty, Summit County is considering preparing a new ordinance for TDRs within the County limits. The County is in the process of hiring an outside consultant to evaluate and write the new TDR ordinance. During this process, the county must evaluate priorities, set goals, define sending and receiving areas, and establish a methodology for the transfers. The county is in the beginning steps of creating a TDR ordinance.

The Park City Staff has completed these initial steps to creating a TDR ordinance. The Staff has considered the benefits of hiring outside consultants and at present would suggest utilizing a consultant solely for analyzing the multipliers in the form of appraisals. These more refined values could be utilized to update the City's proposed TDR ordinance in the future. Staff understands that the values placed within a TDR ordinance are essential to the TDRs success.

Staff Recommendations per City Council Direction

- *1. Require Planning Commission Review of all projects utilizing Development Credits*

  During the March 10, 2011 City Council meeting, the City Council directed staff to require Planning Commission approval of all projects utilizing TDR development credits. Staff has amended LMC Chapter 6 Master Planned Developments to reflect this direction, as follows:

  Master Planned Developments (MPD) are permitted in the GC and LI zones. Per LMC Section 15-6-2, an MPD is required if one of the following is applicable:

  (1) Any Residential project larger than ten (10) Lots or units.
  (2) All Hotel and lodging projects with more than fifteen (15) Residential Unit Equivalents.
  (3) All new Commercial or industrial projects greater than 10,000 square feet Gross Floor Area.
  (4) All projects utilizing Transfer of Development Rights Development Credits.

  During the March 10, 2011 City Council meeting, the City Council directed staff to require Planning Commission approval of all projects utilizing TDR development credits. Staff has amended the proposed ordinance to reflect this direction.

- *2. Require that any height exception within a receiving area utilize development credits for the additional height*

  The Council also directed staff to amend the ordinance to only allow height exceptions within a TDR receiving area if TDR development credits are utilized. Staff has amended the TDR ordinance adding the underlined language:

"Section 15-2.24-7 RECEIVING SITE PROCEDURES.

(A) The following is the Receiving Site procedure that must be followed to receive Transfer Development Credits.

(1) All regulations governing zoning, subdividing, and approval processes remain as currently adopted and amended. If any development within the TDR-R overlay requests a density greater than the Base Zoning, the increased density shall be realized through Development Credits.
(2) Any development requesting higher density than the Base Zoning must be reviewed by the Planning Commission as a Master Planned Development. The Planning Commission shall consider all factors set forth in LMC Chapter 15-6. Within TDR-R overlay, a height exception may only be considered for projects utilizing TDR Development Credits within a Master Planned Development.
(3) Any development requesting the higher densities shall bring evidence of Development Credits in the form of options to purchase, ownership, or joint ventures at the time of Master Plan Development approval and evidence of ownership at time of Development Agreement approval.
(4) Areas may develop at the underlying Base Zoning without purchasing Development Credits. If these properties desire to increase their densities beyond the existing zone, then Development Credits shall be required and the height limitation for the site may be increased from the Base Zoning limits through an MPD for the height exception.
(5) Any development approval process, using Development Credits, shall adhere to the Base Zoning requirements including the Master Planned Development requirements."

Within an MPD application, height exceptions are allowed if certain criteria are met (e.g. no increase in building volume, minimize visual impacts, adequate landscaping, more open space, provision of a transition in roof elements, etc.). Within the new TDR ordinance, a height exception within a receiving overlay district will only be considered with the utilization of TDR development credits. LMC 15-6-5(F) has been amended as follows:

"(F) **BUILDING HEIGHT**. The height requirements of the Zoning Districts in which an MPD is located shall apply except that the Planning Commission may consider an increase in height based upon a Site specific analysis and determination. Height exceptions will not be granted for Master Planned Developments within the HR-1 and HR-2 Zoning Districts. Within the TDR-R overlay zoning district, increased height will only be considered for MPDs utilizing TDR Development Credits. Any massing above the zone height limit shall be limited to use of Development Credits.

The Applicant will be required to request a Site specific determination and shall bear the burden of proof to the Planning Commission that the necessary findings can be made. In order to grant Building height in addition to that which is allowed in the underlying zone, the Planning Commission is required to make the following findings:

(1) The increase in Building Height does not result in increased square footage or Building volume over what would be allowed under the zone required Building Height and Density, including requirements for facade variation and design, but rather provides desired architectural variation;

(2) Buildings have been positioned to minimize visual impacts on adjacent Structures. Potential problems on neighboring Properties caused by shadows, loss of solar Access, and loss or air circulation have been mitigated to the extent possible as defined by the Planning Commission;

(3) There is adequate landscaping and buffering from adjacent Properties and Uses. Increased Setbacks and separations from adjacent projects are being proposed;

(4) The additional Building Height has resulted in more than the minimum open space required and has resulted in the open space being more usable;

(5) The additional Building height shall be designed in a manner so as to provide a transition in roof elements in compliance with Chapter 5, Architectural Guidelines or the Design Guidelines for Park City's Historic Districts and Historic Sites if within the Historic District;

If and when the Planning Commission grants additional height due to a Site specific analysis and determination, that additional height shall only apply to the specific plans being reviewed and approved at the time. Additional Building Height for a specific project will not necessarily be considered for a different, or modified, project on the same Site."

The City Council asked that Staff consider adding requirements rather than incentives. Further requirements for the area can be guided within form based code. Form based codes use physical form as the organizing principle. They foster predictable results in the built environment and a high quality public realm. Staff plans to return to the Planning Commission to begin analysis of form base code within the BoPa area.

- <u>*3. Expand Sending Areas to include all of Old Town. Include vacant lots and areas which historic homes could expand within*</u>

For background reference, the following chart shows the total square footage which could be developed in the receiving zones based on Staff's revised Planning Commission recommendation:

	Unit Equivalents UEs	Multiplier	Development Credits	Square Feet Maximum
Alice Claim* **Unplatted E/SLO**	2.29	.75	1.72	3,440
Alice Claim* **Unplatted HR-I**	41.51	.5	20.75	41,500
Upper Ridge* **Platted HRL**	17.65	1	17.65	35,300
Lower Ridge* **Platted HRL**	7.56	1	7.56	15,120
Treasure Hill **MPD**	22	2	44	88,000
TOTALS	90.85		90.53	183,360

*Note: Acreage must be verified by certified survey and Park City zoning map

Consistent with the TDR purpose statement D which states “protect lands and structures of aesthetic, architectural, and historic significance”, the City Council requested that Staff expand the sending areas to include all of the historic district vacant lots and the unused development potential for properties listed on the Park City Historic Sites Inventory (HSI). This additional sending area is consistent with the General Plan goal of preserving Park City’s historic district as well as preserving overall community character. Non-contributory infill in a historic district can jeopardize the integrity of a historic district.

Numerous cities have utilized TDR ordinances to provide alternatives to infill in historic districts, including Miami and New York City. Each TDR process must tailored to the goals of the community and the existing conditions. Within Park City, preservation of existing historic structures and the historic district are priorities. Staff modified the TDR ordinance to include any vacant, buildable lot of record located within a historic district (e.g. zoning districts HR-1, HR-2, HR-2A, HR-2B, HCB, HRL, HRM, and HRC) or a property listed on the Park City Historic Sites Inventory (HSI) as sending sites. These properties are automatically eligible to sell their unused development rights. The property owner would request a determination letter from the Planning Director for the amount of development credits that could be transferred from the sending site to the receiving site. At the time of transfer, a conservation easement would be placed on the property to protect the historic site/structure or vacant land. The conservation easement would enumerate the protection of the structure and/or land mandating that no future development is allowed.

Staff has amended the ordinance to include all vacant, buildable lots of record located within the historic districts and the 416 sites listed on the Park City Historic Sites Inventory (HSI). Staff estimates that there are approximately 130 vacant, buildable lots (exclusive of Alice Claim, the Ridge Avenue properties, and metes and bounds parcels) within the historic districts. (Exhibit D: Vacant Parcels) The lots must be vacant, buildable lots of record to sell development credits. If an owner has a metes and bound parcel of land, a subdivision must be approved in order to sell development credits. The new overlay district is the TDR - Sending Historic District (TDR-SHD). Within this district, the following development credits are allowed:

- Two (2) Development Credits per existing vacant, buildable lot of record. Buildable lots of record must have street frontage.
- For sites listed on the Park City Historic Sites Inventory (HSI), one (1) Development Credit per 2000 square feet of unused development potential.

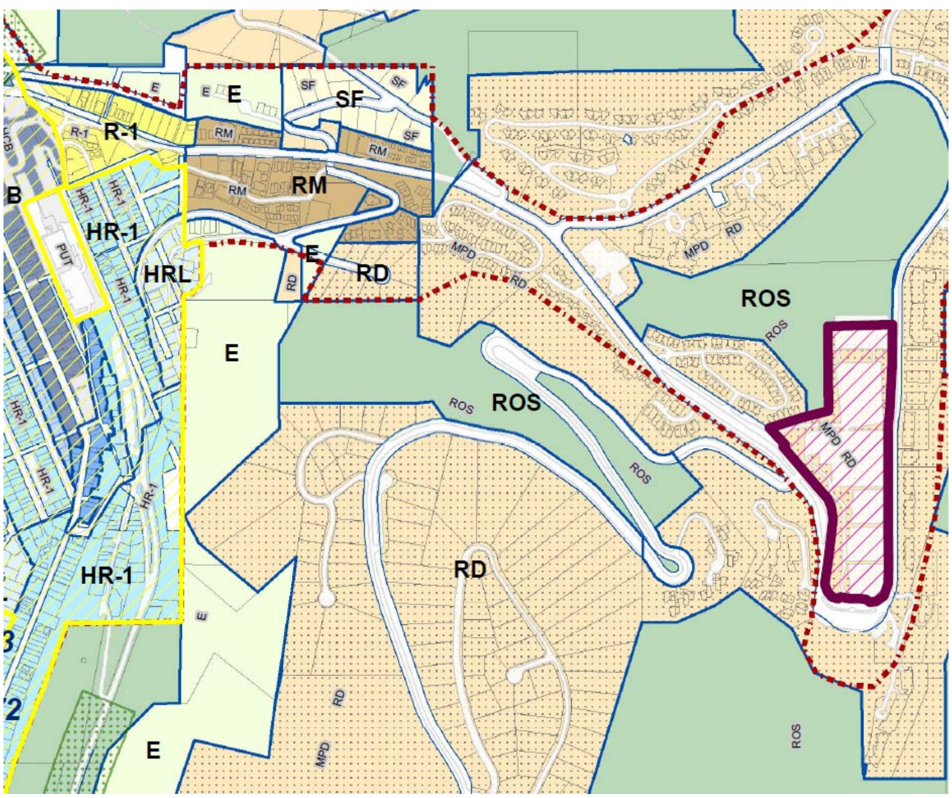
Under the current code, approximately 2300 square feet can be built on a standard HR-1 lot of record (25’x75’). If a 1000 square foot historic structure existed on a lot of record, 1300 square feet of unused development potential would exist. (2300 – 1000 = 1300). This equates to .65 development credits/unit equivalents (1300/2000 = .65) given that a unit equivalent is 2000 square feet. In this example, the owner would record a conservation easement for the existing historic structure and could sell .65 development rights to a developer in a receiving zone. The conservation easement would specify that the historic home must be preserved and could not be expanded in the future.

Due to the variety of lot configurations in the Historic District, each site would be assessed by the Planning Director or designee to quantify unused development potential at the time of request for a Development Credit Determination Letter.

- *<u>4.: Consider adding Snow Park (Deer Valley)and Prospector Square as receiving areas.</u>*

In addition to Bonanza Park and the Snow Creek commercial MPD, the following areas are now proposed to be added as receiving zones:

Snow Park **(***Deer Valley)*



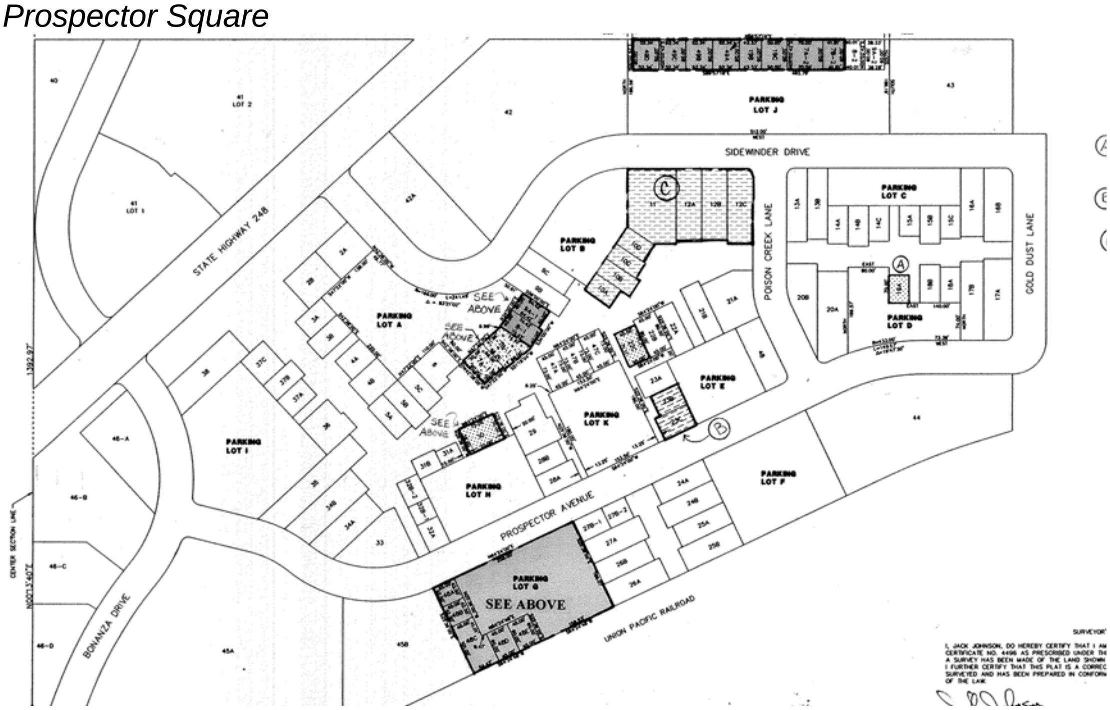
Snow Park Village is part of the Deer Valley MPD. Within the Snow Park parking lots and hotel, there are 210 residential unit equivalents and 21,890 square feet of commercial development allowed. The site area is 14.93 acres. The allowed maximum height pursuant to the DV MPD ranges from 28 to 45 feet. This site is required to utilize the unit equivalent formula for the residential units.

210 residential units (@ 2000 SF each)	=	420,000 sf
Commercial	=	21,890 sf
Total	=	441,890 sf + circulation parking

The Planning Commission did voice some concern for transfers to Snow Park due to the location and the impact on traffic. The Planning Commission was concerned with the additional impacts to traffic throughout town. Any visitor going to Snow Park in the winter must travel through town to get to Snow Park. There was concern that the TDR purpose statement J which states "locate receiving zones to improve future traffic circulation" would not be met with a transfer to Snow Park. Any future development at Snow Park would have to mitigate the impacts to additional traffic within the Master Plan Development (MPD) review.

The current Deer Valley Master Plan would have to be amended in order to obtain additional development credits through the TDR program. At the time of Master Plan Review, changes to the buildable areas and/or height restrictions could be made to allow the additional density. Any modification of the MPD must comply with Chapter 6 of the Land Management Code and be approved by the Planning Commission.

Prospector Square



Prospector Square was originally subdivided in 1974. The area consists of forty-six (46) original lots, many of which have been further subdivided. Density in Prospector Square is calculated as a maximum floor area ratio (FAR) of 2.0. The maximum gross floor area is equal to two (2) times the lot size. For example, a 2000 square foot lot would be allowed a maximum gross floor area of 4000. Lots 2 – 38 have a reduced front, side, and rear yard setback of zero feet (0') unless the lot is located along the Frontage Protection Zone (FPZ). Per the Prospector Square original subdivision, the parking lots are not allowed to have any uses other than parking. Within the General Commercial (GC) zoning district, the maximum height is thirty-five feet (35') from existing grade. The majority of Prospector Square has been developed, with the exception of a few lots. At the request of Council, this area has been added to the TDR overlay district as TDR-RPS.

The Planning Commission would review an amendment to the Prospector Square MPD to transfer development credits into Prospect Square. Through the MPD process, an applicant could request an exception to the 2.0 FAR and height to absorb additional density.

- *5. Consider Decrease in the Treasure Hill Multiplier*

The Planning Staff and the Planning Commission recommended a multiplier of two (2) for each unit equivalent designed per the existing Treasure Hill MPD. A multiplier of two (2) gives the property owner in a sending zone increased value for their development rights. Under the TDR ordinance one (1) residential unit equivalent equates to 2000 square feet of residential space. With a multiplier of two (2), one (1) unit equivalent in a sending zone becomes 4000 square feet of residential development potential in a receiving zone. Also, one (1) commercial unit equivalent equates to 1000 square feet of residential space. With a multiplier of two (2), one (1) unit equivalent in a sending zone becomes 2000 square feet of commercial development in a receiving zone.

Multipliers are utilized in TDR ordinances to incentivize owners in sending zones to send the density to receiving zone and therefore protect valued community assets. In the case of Treasure Hill, the community assets being protected are historic preservation, steep slopes, and view corridors. Incentives are also necessary to balance the value of the sending and receiving areas. A 2,000 square foot ski-in/ski-out property is of higher value than a 2,000 square foot property in the Bonanza Park, Snow Creek or Prospector Square areas of Park City.

During the March 10, 2011 City Council meeting, some members of the City Council requested that staff decrease the Treasure Hill multiplier. Based on the input of City Council and the additional receiving areas, the staff has decreased the multiplier to one and a half (1.5). The City Council may choose to lower the proposed multiplier further, but Staff recommends that Council consider the importance of incentivizing the private market. The City is NOT proposing to be a TDR bank for the program, but rather let the private market transact on its own. Without these incentives, Staff is concerned that the TDR ordinance will not be utilized.

The City Council also requested that Snow Park be included as a receiving zone. The value of development in the Snow Park area is comparable to the value of development in Treasure Hill. This helps to balance the values of the sending and receiving areas. With these additions to the receiving areas, a decrease in multiplier might work in the private market. The values are more comparable.

To address this issue, Staff has amended the ordinance to create different multipliers depending on the receiving zone. Staff has decreased the Treasure Hill multiplier to 1.5 for development credits received in all areas other than Snow Park. There is a multiplier of 1 for Treasure Hill unit equivalents being received in Snow Park.

The ordinance has been amended as follows:

> "Section15-2.24-4 DEVELOPMENT CREDIT DETERMINATION LETTER.
> (A) The total number of Development Credits available to a Sending Site shall be determined as follows:
> (1) TDR - Sending Treasure Hill (TDR-STH). For properties within TDR-STH, <u>one and a half (1.5)</u> Development Credits per existing MPD Unit Equivalent may be calculated <u>for development credits being utilized in receiving areas other than Snow Park. For development credits being utilized in Snow Park one Development Credit per existing MPD Unit Equivalent may be calculated.</u> A maximum of twenty-two (22) MPD Unit Equivalents may be sent from the TDR-STH Sending Site."

If the Council would like a more quantitative analysis for determination of the multipliers, Staff suggests utilizing a more conservative multiplier (1 – 1.25) at present and hiring an outside consultant to do appraisals of the sending and receiving areas. Staff could then return to the Planning Commission and City Council with a recommendation for updated multipliers based upon the appraisals. The current multiplier recommendation is based on estimated value (e.g. quantitative) of the land and the community value (e.g. qualitative) of protecting the sending sites.

<u>Sending and Receiving Area Summary</u>
Sending Areas

	Unit Equivalents UEs	Multiplier	Development Credits	Square Feet

				Maximum
Alice Claim* **Unplatted E/SLO**	2.29	.75	1.72	3,440
Alice Claim* **Unplatted HR-I**	41.51	.5	20.75	41,500
Upper Ridge* **Platted HRL**	17.65	1	17.65	35,300
Lower Ridge* **Platted HRL**	7.56	1	7.56	15,120
Treasure Hill **MPD**	22	1 – 1.5*	22 – 33*	44,000 – 66,000*
SUBTOTAL	**90.85**		**80.68**	**161,360**
Platted Old Town Lots	Approx 130	1.5	195	390,000
Historic Sites	Site Specific	1		
MAXIMUM TOTALS	**220.85**		**275.68**	**536,240**

*Note: Acreage must be verified by certified survey and Park City zoning map
** Total depends on where development credits are received.

There are currently 416 Sites listed on the Park City Historic Sites Inventory. The unused development potential of each site is also included as a Sending Site, but difficult to quantify do to the site specific analysis that is necessary.

<u>Receiving Areas:</u>

Bonanza Park
Snow Creek Commercial Area
Prospector Square
Snow Park

<u>Development Review</u>

Staff has brought the TDR concept to a Development Review meeting in which different City Departments were present as well as utility companies. General feedback during this meeting was that sending density to the Bonanza Park area would be favorable relative to transportation, water, and sewer resources. Increased density will require some expansion of existing infrastructure (water, sewer, roads) but the expansion can be accommodated. Infrastructure in the proposed sending areas is more difficult due to location, slopes, and existing infrastructure.

<u>Public Comment</u>

Previous public comment has included concern for back of house transferring to new areas of town. Within an MPD process, the defined accessory uses (circulation, lobbies, etc) do not count toward the unit equivalent calculation. This exception will continue to apply. One additional letter of support was received from Deer Valley ski resort. (Exhibit D – public comment)

Alternatives

- The City Council may approve the TDR ordinance as proposed or amended; or
- The City Council may deny the TDR ordinance; or
- The City Council may continue discussion on the TDR ordinance to a date certain and provide staff with direction on additional information needed and a clear understanding of the priority of the proposed ordinance.

Staff Recommendation

Staff recommends that the City Council review the attached ordinance, open a public hearing, and consider approving the Transfer of Development Rights Ordinance.

Staff also recommends that the City Council direct staff to hire an outside consultant to begin work on an area plan for the Bonanza Park District and create a Form Based Code for the area. This step is essential to creating a desired outcome of good design, connectivity, and appropriate mass and scale that is in line with the City Goals and City Vision.

Staff also requests direction on hiring an outside consultant for appraisals of the proposed sending and receiving areas.

Exhibits

Ordinance
Exhibit A – Chapter 2.24
Exhibit B – Chapter 6
Exhibit C – Chapter 15
Exhibit D - Zoning map
Exhibit E – Vacant Parcels
Exhibit F – Public Comment
Exhibit G – City Council minutes 03.10.11
Exhibit H – Nation Trust Publication: A Preservationist's Guide to Urban Transferable Development Rights, Jennifer Cohoon McStotts

Ordinance 11-

AN ORDINANCE AMENDING THE LAND MANAGEMENT CODE OF PARK CITY, UTAH, TO CREATE A PROCEDURE TO TRANSFER DEVELOPMENT RIGHTS (TDR) FROM AN AREA LOCATED WITHIN A DESIGNATED SENDING ZONE TO AN AREA WITHIN A DESIGNATED RECEIVING ZONE BY ADDING CHAPTER 15-2.24 AND TO ADD ADDITIONAL SPECIFICATIONS TO MASTER PLANNED DEVELOPMENTS WITHIN OVERLAY RECEIVING ZONES BY AMENDING CHAPTER 15-6 AND TO ADD DEFINITIONS REGARDING TRANSFER OF DEVELOPMENT RIGHTS BY AMENDING CHAPTER 15-15.

WHEREAS, the Land Management Code was adopted by the City Council of Park City, Utah to promote and protect the health, safety and welfare of the present and future residents, businesses, visitors, and property owner's of Park City;

WHEREAS, the Land Management Code implements the goals, objectives and policies of the Park City General Plan and promote Council goals to protect and enhance the vitality of the City's resort-based economy, overall quality of life, historic character, and unique mountain town community; and

WHEREAS, the City reviews the Land Management Code and identifies amendments that address planning and zoning issues, and to align the Code with the Council's goals:

WHEREAS, Chapter 2.24 Transfer of Development Rights (DR) Overlay Zone Regulations, provides procedures, requirements, and specifications regarding the transfer of development rights from designated sending areas to designated receiving areas; and

WHEREAS, Chapter 6 Master Planned Developments, provides procedures, requirements and specifications regarding master planned developments and the City desires additional requirements for master planned developments in receiving areas; and

WHEREAS, Chapter 15 - Definitions, provides definitions of terms used in the LMC and the City desires to add additional terms utilized in the process of transferring development rights; and

WHEREAS, the Planning Commission duly noticed and conducted a public hearing on December 15, 2010 and February 9, 2011 and forwarded a positive recommendation to City Council during the February 9, 2011 meeting; and

WHEREAS, the City Council duly noticed and conducted a public hearing at its regularly scheduled meeting on March 10, 2011 and March 31, 2011; and

WHEREAS, it is in the best interest of the residents of Park City, Utah to amend the Land Management Code to be consistent with the Park City General Plan and to be consistent with the values and identified goals of the Park City community and City Council to protect health, safety, and welfare; to maintain and enhance quality of life for its residents and visitors; preserve and protect the environment, ensure preservation of the community's unique character, and enhance the vitality of Park City's resort economy.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Park City, Utah as follows:

SECTION 1. AMENDMENTS TO TITLE 15 - Land Management Code Chapter 2.24- 1- Transfer of Development Rights Overlay Zone. The recitals above are incorporated herein as findings of fact. Chapter 2.24 of the Land Management Code of Park City is hereby adopted (see Exhibit A). The Planning Director shall resolve conflicts or cross-references from other provisions of the LMC to Chapter 2.24 .

SECTION 2. AMENDMENTS TO TITLE 15 – Land Management Code Chapter 6 – Master Planned Developments. The recitals above are incorporated herein as findings of fact (see Exhibit B). The Planning Director shall resolve conflicts or cross-references from other provisions of the LMC to Chapter 15.

SECTION 3. AMENDMENTS TO TITLE 15 - Land Management Code Chapter 15- Definitions. The recitals above are incorporated herein as findings of fact. Chapter 15 of the Land Management Code of Park City is hereby amended as redlined (see Exhibit C). The Planning Director shall resolve conflicts or cross-references from other provisions of the LMC to Chapter 15.

SECTION 3. EFFECTIVE DATE. This Ordinance shall be effective upon publication.

PASSED AND ADOPTED this 31st day of March, 2011

PARK CITY MUNICIPAL CORPORATION

____
Dana Williams, Mayor

Attest:

____
Janet M. Scott, City Recorder

Approved as to form:

____
Mark Harrington, City Attorney

Exhibit A

TITLE 15 – LAND MANAGEMENT CODE (LMC)
CHAPTER 2.24 - TRANSFER OF DEVELOPMENT RIGHTS (TDR) OVERLAY ZONE REGULATIONS

Section 15-2.24-1 PURPOSE.

The purposes of the Transfer of Development Rights Overlay Zone are:

(A) promote the general health, safety, and welfare of the present and future inhabitants, businesses, and visitors of Park City;
(B) preserve open space, scenic views, environmental areas, steep slopes and sensitive lands;
(C) conserve agriculture, and forest areas;
(D) protect lands and structures of aesthetic, architectural, and historic significance;
(E) retain open space in which healthful outdoor recreation can occur;
(F) improve upon Park City's well established park and trail system;
(G) ensure the owners of preserved, conserved, or protected land may make reasonable use of their property rights by transferring their right to develop to eligible zones;
(H) provide a mechanism whereby development rights may be reliably transferred;
(I) ensure development rights are transferred to properties in areas or districts that have adequate community facilities and infrastructure, including transportation, to accommodate additional development; and
(J) locate receiving zones to improve future traffic circulation;

Section 15-2.24-2 ESTABLISHMENT OF SENDING AND RECEIVING DISTRICTS

(A) The City Council may establish Sending Sites and Receiving Sites as TDR Zoning Districts within the Official Zoning Map by ordinance in the manner of amending the Official Zoning Map pursuant to Section 15-1-7 of this code. The designations "TDR-S" shall be the prefix title for the overlay Zoning District for Sending Sites, the designation "TDR-R" shall be the prefix title of the overlay Zoning District for Receiving Sites.

(B) All vacant lots within the Park City Historic Districts (except for those lots included in SOT1, SOT2, SOT3, and STH) and all sites listed on the Park City Historic Sites Inventory shall be eligible as Sending Sites and shall be an overlay Zoning District referred to as TDR-Sending Historic District (TDR-SHD).

(C) Sending Sites and Receiving Sites shall be consistent with the General Plan and the purpose statements of Chapter 2.24.

Section 15-2.24-3 SENDING SITE ELIGIBILITY.

All properties located within the TDR-S overlay zone are eligible to transfer Development Credits.

Section15-2.24-4 DEVELOPMENT CREDIT DETERMINATION LETTER.

(A) The total number of Development Credits available to a Sending Site shall be determined as follows:

(1) TDR - Sending Treasure Hill (TDR-STH). For properties within TDR-STH, two (2) Development Credits per existing MPD Unit Equivalent may be calculated. A maximum of twenty-two (22) MPD Unit Equivalents may be sent from the TDR-STH Sending Site.

(2) TDR – Sending Old Town1 (TDR-SOT1), Sending Old Town 2 (TDR-SOT2), and Sending Old Town 3 (TDR-SOT3). For properties within TDR-SOT1, TDR-SOT2, and TDR-SOT3, one unit may be calculated per existing minimum lot area within the underlying Zoning District. The total number of units is then multiplied by the following multiplier:

(a) a multiplier of 1 for areas with platted lots; or
(b) a multiplier of ½ for areas in metes and bounds parcels; and/or
(c) a multiplier of ¼ for areas in the Sensitive Lands Overlay

For properties in which two multipliers exist, the multipliers are added together and the total multiplier is applied. For example, a metes and bounds parcel (multiplier ½) within the Sensitive Lands Overlay (multiplier ¼) would apply a multiplier of ¾.

(3) TDR – Sending Historic District (TDR-SHD).

(a) For vacant lots of record in the Historic Districts, two (2) Development Credits per existing lot of record may be calculated.
(b) For sites listed on the historic sites inventory, one (1) Development Credit per 2000 square feet of unused development potential.

(B) If requested, this calculation will be made by the Park City Planning Director or his or her designee in the form of a determination letter. If the calculation results in a fraction it shall be rounded to the nearest hundredth. Such letter will indicate the Development Credits at the time the request is made. The letter is an indication of possible Development Credits that may Transfer. The Development Credits are not Base Zone Density. The number of Development Credits may change if an MPD is amended or expires, or if the LMC is amended. A determination letter is not a binding document and does not grant a vested right.

Section 15-2.24-5 SENDING SITE PROCEDURE.

(A) The following is the Sending Site procedure that must be followed to send Development Credits.

(1) TDR-S property owners may choose to develop their property under Base Zoning, or they may choose to sell, transfer, or joint venture their development rights.
(2) TDR-S fee property owners may request a Development Credit determination letter from the Park City Planning Director.
(3) A TDR-S property owner is eligible to negotiate the sale, transfer, or joint venture of their properties Development Credits.
(4) A Development Credit may only be sold, conveyed, or otherwise transferred by the owner(s) or their legal representative.
(5) The sale, conveyance, or transfer shall occur upon surrender of the Development Credits which authorizes the Park City Planning Director, or designee to Transfer the Development Credits to the stated transferee by reissuing the Development Credits in the transferee's name, and recording a development credit certificate in the real property records of Summit County.
(6) With each transfer or sale, a Conservation Easement and/or deed restriction shall be recorded covering the entire site, or if only a portion of the available Development Credits are sold then the Conservation Easement and/or deed restriction shall cover a proportional amount of the site to be determined by the Park City Planning Director or a designee.
(7) Within TDR-STH, portions of Development Rights may be sent to a Receiving Site. Within the TDR-STH portions of Development Rights up to the maximum of twenty-two (22) MPD unit equivalents may be sent to a Receiving Site overlay Zoning District. Twenty-two (22) MPD Unit Equivalents in the TDR-STH zone equates to forty-four (44) Development Credits in a Receiving Site overlay Zoning District.
(8) Within the TDR-SOT1, TDR-SOT2, and TDR-SOT3 overlay Zoning District, property owners must sell, transfer, or joint venture all of the Development Rights within the overlay zone. Portions of the TDR-SOT1, TDR-SOT2, and TDR-SOT3 overlay Zoning District shall not be developed if any portion of the TDR-SOT1, TDR-SOT2, and TDR-SOT3 overlay Zoning District has been sent to a Receiving Site. An owner of land within the TDR-SOT overlay Zoning District will not be eligible to Transfer Development Credit if they chose to sell or develop any portion of the TDR-SOT1, TDR-SOT2, and TDR-SOT3 overlay Zoning District. The TDR-SOT1, TDR-SOT2, and TDR-SOT2 overlay zoning districts must be transferred in whole.
(9) When all available Development Credits on a Sending Site have been purchased, no Uses other than those enumerated in the Conservation

Easement are allowed. Responsibility for any required maintenance or abatement remains with the fee title owner.

(10) The final Transfer of Development Credits will be completed upon development approval on a Receiving Site and the recording of a deed restriction and/or conservation easement against the Sending Site or if the owner of the Development Credits chooses to forfeit Development Rights and records a deed restriction and/or Conservation Easement to do so.

(11) TDR-S property owners shall notify any lien or mortgage holders of the sale of the Development Credits, and such notification shall be demonstrated by written approval submitted to the City prior to Transfer.

(12) TDR-S property owners shall be responsible for notification of the county tax assessor regarding possible changes in property value.

Section 15-2.24-6 RECEIVING SITE ELIGIBILITY.

All properties located within the TDR-R overlay zone are eligible to receive Transfer Development Credits within the procedures outlined in 15-2.24.7.

Section 15-2.24-7 RECEIVING SITE PROCEDURES.

(A) The following is the Receiving Site procedure that must be followed to receive Transfer Development Credits.

(1) All regulations governing zoning, subdividing, and approval processes remain as currently adopted and amended. If any development within the TDR-R overlay requests a density greater than permitted by the Base Zoning, the increased density shall be realized through Development Credits.

(2) Any development requesting higher density than the Base Zoning must be reviewed by the Planning Commission as a Master Planned Development. The Planning Commission shall consider all factors set forth in LMC Chapter 15-6. Within the TDR-R overlay, a height exception may only be considered for projects utilizing TDR Development Credits within a Master Planned Development.

(3) Any development requesting the higher densities shall bring evidence of Development Credits in the form of options to purchase, ownership, or joint ventures at the time of Master Plan Development approval and evidence of ownership at time of Development Agreement approval.

(4) Areas may develop at the underlying Base Zoning without purchasing Development Credits. If these properties desire to increase their densities beyond the existing zone, then Development Credits shall be required and the height limitation for the site may be increased from the Base Zoning limits through an approved MPD height exception.

(5) Any development approval process, using Development Credits, shall adhere to the Base Zoning requirements including the Master Planned Development requirements.

Section 15-2.24-8 UNIT EQUIVALENTS OF DEVELOPMENT CREDITS

(A) The following is the value of a Development Credit that may be applied to a receiving overlay zone:

(1) One (1) Development Credit is equivalent to one thousand (1,000) square feet of Gross Commercial Floor Area or two thousand (2,000) square feet of Gross Residential Floor Area in the Receiving Site overlay Zoning District.

PARK CITY MUNICIPAL CODE
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TITLE 15 - LAND MANAGEMENT CODE (LMC)
CHAPTER 6 - MASTER PLANNED DEVELOPMENTS

Chapter adopted by Ordinance No. 02-07

CHAPTER 6 - MASTER PLANNED DEVELOPMENTS (MPD)

15-6 -1. PURPOSE.

The purpose of this Chapter is to describe the process and set forth criteria for review of Master Planned Developments (MPDs) in Park City. The Master Planned Development provisions set forth Use, Density, height, parking, design theme and general Site planning criteria for larger and/or more complex projects having a variety of constraints and challenges, such as environmental issues, multiple zoning districts, location within or adjacent to transitional areas between different land Uses, and infill redevelopment where the MPD process can provide design flexibility necessary for well-planned, mixed use developments that are Compatible with the surrounding neighborhood. The goal of this section is to result in projects which:

(A) complement the natural features of the Site;

(B) ensure neighborhood Compatibility;

(C) strengthen the resort character of Park City;

(D) result in a net positive contribution of amenities to the community;

(E) provide a variety of housing types and configurations;

(F) provide the highest value of open space for any given Site;

(G) efficiently and cost effectively extend and provide infrastructure;

(H) provide opportunities for the appropriate redevelopment and reuse of existing structures/sites and maintain Compatibility with the surrounding neighborhood;

(I) protect residential uses and residential neighborhoods from the impacts of non-residential Uses using best practice methods and diligent code enforcement; and

(J) encourage mixed Use, walkable and sustainable development and redevelopment that provide innovative and energy efficient design, including innovative alternatives to reduce impacts of the automobile on the community.

(Amended by Ord. No. 10-14)

15-6 -2. APPLICABILITY.

(A) The Master Planned Development process shall be required in all zones except the Historic Residential (HR-1, HR-2), Historic Residential - Low Density (HRL), and Historic Residential - Medium Density (HRM) for the following:

(1) Any Residential project larger than ten (10) Lots or units.

(2) All Hotel and lodging projects with more than fifteen (15) Residential Unit Equivalents.

(3) All new Commercial or industrial projects greater than 10,000 square feet Gross Floor Area.

(4) All projects utilizing Transfer of Development Rights Development Credits.

(B) The Master Planned Development process is allowed but is not required in the Historic Commercial Business (HCB), Historic Recreation Commercial (HRC), Historic Residential (HR-1) and Historic Residential (HR-2) zones, provided the subject property and proposed MPD include two (2) or more zoning designations.

(C) The Master Planned Development process is allowed in Historic Residential (HR-1) and (HR-2) zones only when:

(1) HR-1 or HR-2 zoned parcels are combined with adjacent HRC or HCB zone Properties; or

(2) The Property is not a part of the original Park City Survey or Snyder's Addition to the Park City Survey and which may be considered for affordable housing MPDs consistent with Section 15-6-7 herein.

(Amended by Ord. Nos. 04-08; 06-22; 10-14)

15-6 -3. USES.

A Master Planned Development (MPD) can only contain Uses, which are Permitted or Conditional in the zone(s) in which it is located. The maximum Density and type of Development permitted on a given Site will be determined as a result of a Site Suitability Analysis and shall not exceed the maximum Density in the zone, except as otherwise provided in this section. The Site shall be looked at in its entirety, including all adjacent property under the same ownership, and the Density located in the most appropriate locations. When Properties are in more than one (1) Zoning District, there may be a shift of Density between Zoning Districts if that transfer results in a project which better meets the goals set forth in Section 15-6-1 herein. Density for MPDs will be based on the Unit Equivalent Formula, as defined in LMC Chapter 15-15, and as stated in Section 15-6-8 herein.

Exception. Residential Density transfer between the HCB and HR-2 Zoning Districts are not permitted. A portion of the

Gross Floor Area generated by the Floor Area Ratio of the HCB Zoning District and applied only to Lot Area in the HCB Zone, may be located in the HR-2 Zone as allowed by Section 15-2.3-8.

(Amended by Ord. Nos. 06-22; 10-14)

15-6 -4. PROCESS.

(A) **PRE-APPLICATION CONFERENCE**. A pre-Application conference shall be held with the Planning Department staff in order for the Applicant to become acquainted with the Master Planned Development procedures and related City requirements and schedules. The Planning Department staff will give preliminary feedback to the potential Applicant based on information available at the pre-Application conference and will inform the Applicant of issues or special requirements which may result from the proposal.

(B) **PRE-APPLICATION PUBLIC MEETING AND DETERMINATION OF COMPLIANCE**. In order to provide an opportunity for the public and the Planning Commission to give preliminary input on a concept for a Master Planned Development, all MPDs will be required to go through a pre-Application public meeting before the Planning Commission except for MPDs subject to an Annexation Agreement. A pre-Application will be filed with the Park City Planning Department and shall include conceptual plans as stated on the Application form and the applicable fee. The public will be notified and invited to attend and comment in accordance with LMC Chapters 15-1-12 and 15-1-21, Notice Matrix, of this Code.

At the pre-Application public meeting, the Applicant will have an opportunity to present the preliminary concepts for the proposed Master Planned Development. This preliminary review will focus on identifying issues of compliance with the General Plan and zoning compliance for the proposed MPD. The public will be given an opportunity to comment on the preliminary concepts so that the Applicant can address neighborhood concerns in preparation of an Application for an MPD.

The Planning Commission shall review the preliminary information to identify issues on compliance with the General Plan and will make a finding that the project initially complies with the General Plan. Such finding is to be made prior to the Applicant filing a formal MPD Application. If no such finding can be made, the applicant must submit a modified Application or the General Plan would have to be modified prior to formal acceptance and processing of the Application. For larger MPDs, it is recommended that the Applicant host additional neighborhood meetings in preparation of filing of a formal Application for an MPD.

For MPDs that are vested as part of Large Scale MPDs the Planning Director may waive the requirement for a pre-Application meeting. Prior to final approval of an MPD that is subject to an Annexation Agreement or a Large Scale MPD, the Commission shall make findings that the project is consistent with the Annexation Agreement or Large Scale MPD and the General Plan.

(C) **APPLICATION**. The Master Planned Development Application must be submitted with a completed Application form supplied by the City. A list of minimum requirements will accompany the Application form. The Application must include written consent by all Owners of the Property to be included in the Master Planned Development. Once an Application is received, it shall be assigned to a staff Planner who will review the Application for completeness. The Applicant will be informed if additional information is necessary to constitute a Complete Application.

(D) **PLANNING COMMISSION REVIEW**. The Planning Commission is the primary review body for Master Planned Developments and is required to hold a public hearing and take action. All MPDs will have at least one (1) work session before the Planning Commission prior to a public hearing.

(E) **PUBLIC HEARING**. In addition to the preliminary public input session, a formal public hearing on a Master Planned Development is required to be held by the Planning Commission. The Public Hearing will be noticed in accordance with LMC Chapters 15-1-12 and 15-1-21, Notice Matrix. Multiple Public Hearings, including additional notice, may be necessary for larger, or more complex, projects.

(F) **PLANNING COMMISSION ACTION**. The Planning Commission shall approve, approve with modifications, or deny a requested Master Planned Development. The Planning Commission action shall be in the form of written findings of fact, conclusions of law, and in the case of approval, conditions of approval. Action shall occur only after the required public hearing is held. To approve an MPD, the Planning Commission will be required to make the findings outlined in Section 15-6-6 herein.

Appeals of Planning Commission action shall be conducted in accordance with LMC Chapter 15-1-18.

(G) **DEVELOPMENT AGREEMENT**. Once the Planning Commission has approved Master Planned Development, the approval shall be put in the form of a Development Agreement. The Development Agreement shall be in a form approved by the City Attorney, and shall contain, at a minimum, the following:

(1) A legal description of the land;

(2) All relevant zoning parameters including all findings, conclusions and conditions of approval;

(3) An express reservation of the future legislative power and zoning authority of the City;

(4) A copy of the approved Site plan, architectural plans, landscape plans, Grading plan, trails and open space plans, and other plans, which are a part of the Planning Commission approval;

(5) A description of all Developer exactions or agreed upon public dedications;

(6) The Developers agreement to pay all specified impact fees; and

(7) The form of ownership anticipated for the project and a specific project phasing plan.

(8) A list and map of all known Physical Mine Hazards on the property, as determined through the exercise of reasonable due diligence by the Owner, as well as a description and GPS coordinates of those Physical Mine Hazards.

The Development Agreement shall be ratified by the Planning Commission, signed by the City Council and the Applicant, and recorded with the Summit County Recorder. The Development Agreement shall contain language, which allows for minor, administrative modifications to occur to the approval without revision of the agreement. The Development Agreement must be submitted to the City within six (6) months of the date the project was approved by the Planning Commission, or the Planning Commission approval shall expire.

(H) **LENGTH OF APPROVAL**. Construction, as defined by the Uniform Building Code, will be required to commence within two (2) years of the date of the execution of the Development Agreement. After construction commences, the MPD shall remain valid as long as it is consistent with the approved specific project phasing plan as set forth in the Development Agreement. It is anticipated that the specific project phasing plan may require Planning Commission review and reevaluation of the project at specified points in the Development of the project.

The Planning Commission may grant an extension of a Master Planned Development for up to two (2) additional years, when the Applicant is able to demonstrate no change in circumstance that would result in unmitigated impacts or that would result in a finding of non-compliance with the Park City General Plan or the Land Management Code in effect at the time of the extension request. Change in circumstance includes physical changes to the Property or surroundings. Extension requests must be submitted prior to the expiration of the Master Planned Development and shall be noticed and processed with a public hearing according to Section 15-1-12.

(I) **MPD MODIFICATIONS**. Changes in a Master Planned Development, which constitute a change in concept, Density, unit type or configuration of any portion or phase of the MPD will justify review of the entire master plan and Development Agreement by the Planning Commission, unless otherwise specified in the Development Agreement. If the modifications are determined to be substantive, the project will be required to go through the pre-Application public hearing and determination of compliance as outlined in Section 15-6-4(B) herein.

(J) **SITE SPECIFIC APPROVALS**. Any portion of an approved Master Planned Development may require additional review by the Planning Department and/or Planning

Commission as a Conditional Use permit, if so required by the Planning Commission at the time of the MPD approval.
The Planning Commission and/or Planning Department, specified at the time of MPD approval, will review Site specific plans including Site layout, architecture and landscaping, prior to issuance of a Building Permit.

The Application requirements and review criteria of the Conditional Use process must be followed. A pre-Application public meeting may be required by the Planning Director, at which time the Planning Commission will review the Application for compliance with the large scale MPD approval.

(Amended by Ord. Nos. 06-22; 09-10; 11-05)

15-6 -5. MPD REQUIREMENTS.

All Master Planned Developments shall contain the following minimum requirements. Many of the requirements and standards will have to be increased in order for the Planning Commission to make the necessary findings to approve the Master Planned Development.

(A) **DENSITY**. The type of Development, number of units and Density permitted on a given Site will be determined as a result of a Site Suitability Analysis and shall not exceed the maximum Density in the zone, except as otherwise provided in this section. The Site shall be looked at in its entirety and the Density located in the most appropriate locations.

Additional Density may be granted within a Transfer of Development Rights Receiving Overlay Zone (TDR-R) within an approved MPD.

When Properties are in more than one (1) Zoning District, there may be a shift of Density between Zoning Districts if that transfer results in a project that better meets the goals set forth in Section 15-6-1.

Exception. Residential Density transfers between the HCB and HR-2 Zoning Districts are not permitted. A portion of the gross Floor Area generated by the Floor Area Ratio of the HCB Zoning District and applied only to Lot Area in the HCB Zone, may be located in the HR-2 Zone as allowed by Section 15-2.3-8

Density for MPDs will be based on the Unit Equivalent Formula, as defined in Section 15-6-8 herein.

(1) **EXCEPTIONS**. The Planning Department may recommend that the Planning Commission grant up to a maximum of ten percent (10%) increase in total Density if the Applicant:

(a) Donates open space in excess of the sixty percent (60%) requirement, either in fee or a less-than-fee interest to either the City or another unit of government or nonprofit land conservation organization approved by the City. Such Density bonus shall only be granted upon a finding by the Planning

Director that such donation will ensure the long-term protection of a significant environmentally or visually sensitive Area; or

(b) Proposes a Master Planned Development (MPD) in which more than thirty percent (30%) of the Unit Equivalents are employee/ Affordable Housing consistent with the City's adopted employee/ Affordable Housing guidelines and requirements; or

(c) Proposes an MPD in which more than eighty percent (80%) of the project is open space as defined in this code and prioritized by the Planning Commission.

(B) **MAXIMUM ALLOWED BUILDING FOOTPRINT FOR MASTER PLANNED DEVELOPMENTS WITHIN THE HR-1 AND HR-2 DISTRICTS**.

(1) The HR-1 and HR-2 Districts sets forth a Maximum Building Footprint for all Structures based on Lot Area. For purposes of establishing the maximum Building Footprint for Master Planned Developments, which include Development in the HR-1 and HR-2 Districts, the maximum Building Footprint for the HR-1 and HR-2 portions shall be calculated based on the conditions of the Subdivision Plat or the Lots of record prior to a Plat Amendment combining the lots as stated in Section 15-2.3-4.

(a) The Area of below Grade parking in the HR-1 and HR-2 zones shall not count against the maximum Building Footprint of the HR-1 or HR-2 Lots.

(b) The Area of below Grade Commercial Uses extending from a Main Street business into the HR-2 Subzone A shall not count against the maximum Building Footprint of the HR-2 Lots.

(c) The Floor Area Ratio (FAR) of the HCB Zoning District applies only to the HCB Lot Area and may be reduced as part of a Master Planned Development. The FAR may not be applied to the HR-1 or HR-2 Lot Area.

(d) The Floor Area for a detached, single car Garage, not to exceed two-hundred and twenty square feet (220 sf) of Floor Area, shall not count against the maximum Building Footprint of the HR-2 Lot.

(C) **SETBACKS**. The minimum Setback around the exterior boundary of an MPD shall be twenty five feet (25') for

Parcels greater than one (1) acre in size. In some cases, that Setback may be increased to retain existing Significant Vegetation or natural features or to create an adequate buffer to adjacent Uses, or to meet historic Compatibility requirements. The Planning Commission may decrease the required perimeter Setback from twenty five feet (25') to the zone required Setback if it is necessary to provide desired architectural interest and variation. The Planning Commission may reduce Setbacks within the project from those otherwise required in the zone to match an abutting zone Setback, provided the project meets minimum Uniform Building Code and Fire Code requirements, does not increase project Density, maintains the general character of the surrounding neighborhood in terms of mass, scale and spacing between houses, and meets open space criteria set forth in Section 15-6-5(D).

(D) **OPEN SPACE**.

(1) **MINIMUM REQUIRED**. All Master Planned Developments shall contain a minimum of sixty percent (60%) open space as defined in LMC Chapter 15-15 with the exception of the General Commercial (GC) District, Historic Residential Commercial (HRC), Historic Commercial Business (HCB), Historic Residential (HR-1 and HR-2) zones, and wherein cases of redevelopment of existing Developments the minimum open space requirement shall be thirty percent (30%).

For Applications proposing the redevelopment of existing Developments, the Planning Commission may reduce the required open space to thirty percent (30%) in exchange for project enhancements in excess of those otherwise required by the Land Management Code that may directly advance policies reflected in the applicable General Plan sections or more specific Area plans. Such project enhancements may include, but are not limited to, Affordable Housing, greater landscaping buffers along public ways and public/private pedestrian Areas that provide a public benefit, increased landscape material sizes, public transit improvement, public pedestrian plazas, pedestrian way/trail linkages, public art, and rehabilitation of Historic Structures.

(2) **TYPE OF OPEN SPACE**. The Planning Commission shall designate the preferable type and mix of open space for each Master Planned Development. This determination will be based on the guidance given in the Park City General Plan. Landscaped open space may be utilized for project amenities such as gardens, greenways, pathways, plazas, and other similar Uses. Open space may not be utilized for Streets, roads, driveways, Parking Areas, commercial Uses, or Buildings requiring a Building Permit.

(E) **OFF-STREET PARKING**.

(1) The number of Off-Street Parking Spaces in each Master Planned Development shall not be less than the requirements of this code, except that the Planning Commission may increase or decrease the required number of Off-Street Parking Spaces based upon a parking analysis submitted by the Applicant at the time of MPD submittal. The parking analysis shall contain, at a minimum, the following information:

(a) The proposed number of vehicles required by the occupants of the project based upon the proposed Use and occupancy.

(b) A parking comparison of projects of similar size with similar occupancy type to verify the demand for occupancy parking.

(c) Parking needs for non-dwelling Uses, including traffic attracted to Commercial Uses from Off-Site.

(d) An analysis of time periods of Use for each of the Uses in the project and opportunities for Shared Parking by different Uses. This shall be considered only when there is Guarantee by Use covenant and deed restriction.

(e) A plan to discourage the Use of motorized vehicles and encourage other forms of transportation.

(f) Provisions for overflow parking during peak periods.

The Planning Department shall review the parking analysis and provide a recommendation to the Commission. The Commission shall make a finding during review of the MPD as to whether or not the parking analysis supports a determination to increase or decrease the required number of Parking Spaces.

(2) The Planning Commission may permit an Applicant to pay an in-lieu parking fee in consideration for required on-site parking provided that the Planning Commission determines that:

(a) Payment in-lieu of the on-Site parking requirement will prevent a loss of significant open space, yard Area, and/or public amenities and gathering Areas;

(b) Payment in-lieu of the on-Site parking requirement will result in preservation and rehabilitation of significant Historic Structures or redevelopment of Structures and Sites;

(c) Payment in-lieu of the on-Site parking requirement will not result in an increase project Density or intensity of Use; and

(d) The project is located on a public transit route or is within three (3) blocks of a municipal bus stop.

The payment in-lieu fee for the required parking shall be subject to the provisions in the Park City Municipal Code Section 11-12-16 and the fee set forth in the current Fee Resolution, as amended.

(F) **BUILDING HEIGHT**. The height requirements of the Zoning Districts in which an MPD is located shall apply except that the Planning Commission may consider an increase in height based upon a Site specific analysis and determination. Height exceptions will not be granted for Master Planned Developments within the HR-1 and HR-2 Zoning Districts. Within the TDR-R overlay zoning district, increased height will only be considered for MPDs utilizing TDR Development Credits. Any massing above the zone height limit shall be limited to use of Development Credits.

The Applicant will be required to request a Site specific determination and shall bear the burden of proof to the Planning Commission that the necessary findings can be made. In order to grant Building height in addition to that which is allowed in the underlying zone, the Planning Commission is required to make the following findings:

(1) The increase in Building Height does not result in increased square footage or Building volume over what would be allowed under the zone required Building Height and Density, including requirements for facade variation and design, but rather provides desired architectural variation;

(2) Buildings have been positioned to minimize visual impacts on adjacent Structures. Potential problems on neighboring Properties caused by shadows, loss of solar Access, and loss or air circulation have been mitigated to the extent possible as defined by the Planning Commission;

(3) There is adequate landscaping and buffering from adjacent Properties and Uses. Increased Setbacks and separations from adjacent projects are being proposed;

(4) The additional Building Height has resulted in more than the minimum open space required and has resulted in the open space being more usable;

(5) The additional Building height shall be designed in a manner so as to provide a transition in roof elements in compliance with Chapter 5, Architectural Guidelines or the Design Guidelines for Park City's Historic Districts and Historic Sites if within the Historic District;

If and when the Planning Commission grants additional height due to a Site specific analysis and determination, that additional height shall only apply to the specific plans being reviewed and approved at the time. Additional Building Height for a specific project will not necessarily be considered for a different, or modified, project on the same Site.

(G) **SITE PLANNING**. An MPD shall be designed to take into consideration the characteristics of the Site upon which it is proposed to be placed. The project should be designed to fit the Site, not the Site modified to fit the project. The following shall be addressed in the Site planning for an MPD:

(1) Units should be clustered on the most developable and least visually sensitive portions of the Site with common open space separating the clusters. The open space corridors should be designed so that existing Significant Vegetation can be maintained on the Site.

(2) Projects shall be designed to minimize Grading and the need for large retaining Structures.

(3) Roads, utility lines, and Buildings should be designed to work with the Existing Grade. Cuts and fills should be minimized.

(4) Existing trails should be incorporated into the open space elements of the project and should be maintained in their existing location whenever possible. Trail easements for existing trails may be required. Construction of new trails will be required consistent with the Park City Trails Master Plan.

(5) Adequate internal vehicular and pedestrian/bicycle circulation should be provided. Pedestrian/ bicycle circulations shall be separated from vehicular circulation and may serve to provide residents the opportunity to travel safely from an individual unit to another unit and to the boundaries of the Property or public trail system. Private internal Streets may be considered for Condominium projects if they meet the minimum emergency and safety requirements.

(6) The Site plan shall include adequate Areas for snow removal and snow storage. The landscape plan shall allow for snow storage Areas. Structures shall be set back from any hard surfaces so as to provide adequate Areas to remove and store snow. The assumption is that snow should be able to be stored on Site and not removed to an Off-Site location.

(7) It is important to plan for trash storage and collection and recycling facilities. The Site plan shall include adequate Areas for trash dumpsters and recycling containers, including an adequate circulation area for pick-up vehicles. These facilities shall be enclosed and shall be included on the site and landscape plans for the Project.

Pedestrian Access shall be provided to the refuse/recycling facilities from within the MPD for the convenience of residents and guests.

No final site plan for a commercial development or multi-family residential development shall be approved unless there is a mandatory recycling program put into effect which may include Recycling Facilities for the project.

Single family residential development shall include a mandatory recycling program put into effect including curb side recycling but may also provide Recycling Facilities.

The recycling facilities shall be identified on the final site plan to accommodate for materials generated by the tenants, residents, users, operators, or owners of such project. Such recycling facilities shall include, but are not necessarily limited to glass, paper, plastic, cans, cardboard or other household or commercially generated recyclable and scrap materials.

Locations for proposed centralized trash and recycling collection facilities shall be shown on the site plan drawings. Written approval of the proposed locations shall be obtained by the City Building and Planning Department.

Centralized garbage and recycling collection containers shall be located in a completely enclosed structure, designed with materials that are compatible with the principal building(s) in the development, including a pedestrian door on the structure and a truck door/gate. The structure's design, construction, and materials shall be substantial e.g. of masonry, steel, or other materials approved by the Planning Department capable of sustaining active use by residents and trash/recycle haulers.
The structures shall be large enough to accommodate a garbage container and at least two recycling containers to provide for the option of dual-stream recycling. A conceptual design of the structure shall be submitted with the site plan drawings.

(8) The Site planning for an MPD should include transportation amenities including drop-off Areas for van and shuttle service, and a bus stop, if applicable.

(9) Service and delivery Access and loading/unloading Areas must be included in the Site plan. The service and delivery should be kept separate from pedestrian Areas.

(H) **LANDSCAPE AND STREET SCAPE**. To the extent possible, existing Significant Vegetation shall be maintained on Site and protected during construction. Where landscaping does occur, it should consist primarily of appropriate drought tolerant species. Lawn or turf will be limited to a maximum of fifty percent (50%)

of the Area not covered by Buildings and other hard surfaces and no more than seventy-five percent (75%) of the above Area may be irrigated. Landscape and Streetscape will use native rock and boulders. Lighting must meet the requirements of LMC Chapter 15-5, Architectural Review.

(I) **SENSITIVE LANDS COMPLIANCE**. All MPD Applications containing any Area within the Sensitive Areas Overlay Zone will be required to conduct a Sensitive Lands Analysis and conform to the Sensitive Lands Provisions, as described in LMC Section 15-2.21.

(J) **EMPLOYEE/AFFORDABLE HOUSING**. MPD Applications shall include a housing mitigation plan which must address employee Affordable Housing as required by the adopted housing resolution in effect at the time of Application.

(K) **CHILD CARE**. A Site designated and planned for a Child Care Center may be required for all new single and multi-family housing projects if the Planning Commission determines that the project will create additional demands for Child Care.

(L) **MINE HAZARDS**. All MPD applications shall include a map and list of all known Physical Mine Hazards on the property and a mine hazard mitigation plan.

(Amended by Ord. Nos. 04-08; 06-22; 09-10; 10-14; 11-05)

15- 6- 6. REQUIRED FINDINGS AND CONCLUSIONS OF LAW.

The Planning Commission must make the following findings in order to approve a Master Planned Development. In some cases, conditions of approval will be attached to the approval to ensure compliance with these findings.

(A) The MPD, as conditioned, complies with all the requirements of the Land Management Code;

(B) The MPD, as conditioned, meets the minimum requirements of Section 15-6-5 herein;

(C) The MPD, as conditioned, is consistent with the Park City General Plan;

(D) The MPD, as conditioned, provides the highest value of open space, as determined by the Planning Commission;

(E) The MPD, as conditioned, strengthens and enhances the resort character of Park City;

(F) The MPD, as conditioned, compliments the natural features on the Site and preserves significant features or vegetation to the extent possible;

(G) The MPD, as conditioned, is Compatible in Use, scale, and mass with adjacent Properties, and promotes neighborhood Compatibility, and protects residential neighborhoods and Uses;

(H) The MPD provides amenities to the community so that there is no net loss of community amenities;

(I) The MPD, as conditioned, is consistent with the employee Affordable Housing requirements as adopted by the City Council at the time the Application was filed.

(J) The MPD, as conditioned, meets the Sensitive Lands requirements of the Land Management Code. The project has been designed to place Development on the most developable land and least visually obtrusive portions of the Site;
(K) The MPD, as conditioned, promotes the Use of non-vehicular forms of transportation through design and by providing trail connections; and

(L) The MPD has been noticed and public hearing held in accordance with this Code.

(M) The MPD incorporates best planning practices for sustainable development, including energy efficient design and construction, per the Residential and Commercial Energy and Green Building program and codes adopted by the Park City Building Department in effect at the time of Application.

(Amended by Ord. Nos. 06-22; 10-14)

15-6-7. MASTER PLANNED AFFORDABLE HOUSING DEVELOPMENT.

(A) **PURPOSE**. The purpose of the master planned Affordable Housing Development is to promote housing for a diversity of income groups by providing Dwelling Units for rent or for sale in a price range affordable by families in the low-to-moderate income range. This may be achieved by encouraging the private sector to develop Affordable Housing.
Master Planned Developments, which are one hundred percent (100%) Affordable Housing, as defined by the housing resolution in effect at the time of Application, would be considered for a Density incentive greater than that normally allowed under the applicable Zoning District and Master Planned Development regulations with the intent of encouraging quality Development of permanent rental and permanent Owner-occupied housing stock for low and moderate income families within the Park City Area.

(B) **RENTAL OR SALES PROGRAM**. If a Developer seeks to exercise the increased Density allowance incentive by providing an Affordable Housing project, the Developer must agree to follow the guidelines and restrictions set forth by the Housing Authority in the adopted Affordable Housing resolution in effect at the time of Application.

(C) **MIXED RENTAL AND OWNER/ OCCUPANT PROJECTS**. When projects are approved that comprise both rental and Owner/occupant Dwelling Units, the combination and phasing of the Development shall be specifically approved by the reviewing agency and become a condition of project approval. A permanent rental housing unit is one which is subject to a binding agreement with the Park City Housing Authority.

(D) **MPD REQUIREMENTS.** All of

the MPD requirements and findings of this section shall apply to Affordable Housing MPD projects.

(E) **DENSITY BONUS**. The reviewing agency may increase the allowable Density to a maximum of twenty (20) Unit Equivalents per acre. The Unit Equivalent formula applies.

(F) **PARKING**. Off-Street parking will be required at a rate of one (1) space per Bedroom.

(G) **OPEN SPACE**. A minimum of fifty percent (50%) of the Parcel shall be retained or developed as open space. A reduction in the percentage of open space, to not less than forty percent (40%), may be granted upon a finding by the Planning Commission that additional on or Off-Site amenities, such as playgrounds, trails, recreation facilities, bus shelters, significant landscaping, or other amenities will be provided above any that are required. Project open space may be utilized for project amenities, such as tennis courts, Buildings not requiring a Building Permit, pathways, plazas, and similar Uses. Open space may not be utilized for Streets, roads, or Parking Areas.

(H) **RENTAL RESTRICTIONS**. The provisions of the moderate income housing exception shall not prohibit the monthly rental of an individually owned unit. However, Nightly Rentals or timesharing shall not be permitted within Developments using this exception. Monthly rental of individually owned units shall comply with the guidelines and restrictions set forth by the Housing Authority as stated in the adopted Affordable Housing resolution in effect at the time of Application.

(Amended by Ord. Nos. 06-22; 09-10)

15-6-8. UNIT EQUIVALENTS.

Density of Development is a factor of both the Use and size of Structures built within a project. In order to allow for, and to encourage, a variety of unit configurations, Density shall be calculated on the basis of Unit Equivalents. Unless otherwise stipulated, one (1) Unit Equivalent equates to one (1) single family Lot, 2,000 square feet of Multi-Family Dwelling floor area, or 1,000 square feet of commercial or office floor area. A duplex Lot equates to two (2) Unit Equivalents, unless otherwise stipulated by the Master Planned Development (MPD). The MPD may stipulate maximum Building Footprint and/or maximum floor area for single family and duplex Lots. Residential Unit Equivalents for Multi-Family Dwellings shall be calculated on the basis of one (1) Unit Equivalent per 2,000 square feet and portions of Unit Equivalents for additional square feet above or below 2,000. For example: 2,460 square feet of a multi-family unit shall count as 1.23 Unit Equivalents.

Affordable Housing units required as part of the MPD approval, and constructed on Site do not count towards the residential Unit Equivalents of the Master Plan. Required ADA units do not count towards the residential Unit Equivalents.

Support Uses and accessory meeting space use Unit Equivalents as outlined in Section 15-6-8(C) and (D) below.

(A) **CALCULATING RESIDENTIAL UNIT SQUARE FOOTAGE**. Unit square footage shall be measured from the interior of the exterior unit walls. All bathrooms, halls, closets, storage and utility rooms within a unit will be included in the calculation for square footage. Exterior hallways, common circulation and hotel use areas, such as lobbies, elevators, storage, and other similar Areas, will not be included. Common outdoor facilities, such as pools, spas, recreation facilities, ice-skating rinks, decks, porches, etc. do not require the Use of Unit Equivalents.

(B) **LOCKOUTS**. For purposes of calculating Unit Equivalents, Lockouts shall be included in the overall square footage of a unit.

(C) **SUPPORT COMMERCIAL WITHIN RESIDENTIAL MASTER PLANNED DEVELOPMENTS**. Within a Hotel or Nightly Rental condominium project, the Floor Area of Support Commercial uses may not exceed five percent (5%) of the total Floor Area of the approved residential Unit Equivalents. Any unused support commercial floor area may be utilized for meeting space Uses.

(D) **MEETING SPACE**. Within a Hotel or Condominium project, Floor Area of meeting space may not exceed five percent (5%) of the total Floor Area of the approved residential unit equivalents. Any unused meeting space floor area may be utilized for support commercial uses within a Hotel or Nightly Rental Condominium project.

(E) **COMMERCIAL UNIT EQUIVALENTS**. Commercial spaces, approved as a part of a Master Planned Development, shall be calculated on the basis of one (1) Unit Equivalent per 1000 square feet of Net Leasable Floor Area, exclusive of common corridors, for each part of a 1,000 square foot interval. For example: 2,460 square feet of commercial Area shall count as 2.46 Unit Equivalents.

(F) **RESIDENTIAL ACCESSORY USES**. Residential Accessory Uses include typical back of house uses and administration facilities that are for the benefit of the residents of a commercial Residential Use, such as a Hotel or Nightly Rental Condominium project and that are common to the residential project and are not located within any individual Residential unit. Residential Accessory Uses do not require the use of Unit Equivalents and include, but are not limited to, such Uses as:

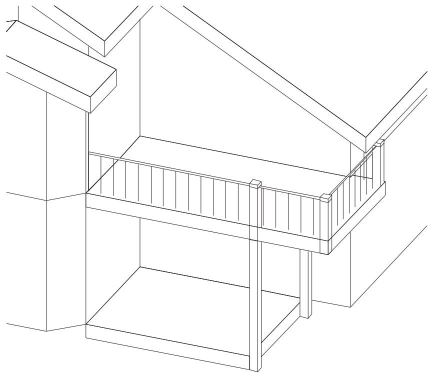
Ski/Equipment lockers
Lobbies
Registration
Concierge
Bell stand/luggage storage
Maintenance Areas
Mechanical rooms and shafts
Laundry facilities and storage
Employee facilities
Common pools, saunas and hot tubs, and exercise areas not open to the public
Telephone Areas
Guest business centers
Public restrooms

Administrative offices
Hallways and circulation
Elevators and stairways

(G) **RESORT ACCESSORY USES**. The following Uses are considered accessory for the operation of a resort for winter and summer operations. These Uses are incidental to and customarily found in connection with the principal Use or Building and are operated for the convenience of the Owners, occupants, employees, customers, or visitors to the principal resort Use. Accessory Uses associated with an approved summer or winter resort do not require the Use of a Unit Equivalent. These Uses include, but are not limited to, such Uses as:

Information
Lost and found
First Aid
Mountain patrol
Administration
Maintenance and storage facilities
Emergency medical facilities
Public lockers
Public restrooms
Employee restrooms and Areas
Ski school/day care facilities
Instruction facilities
Ticket sales
Equipment/ski check
Circulation and hallways

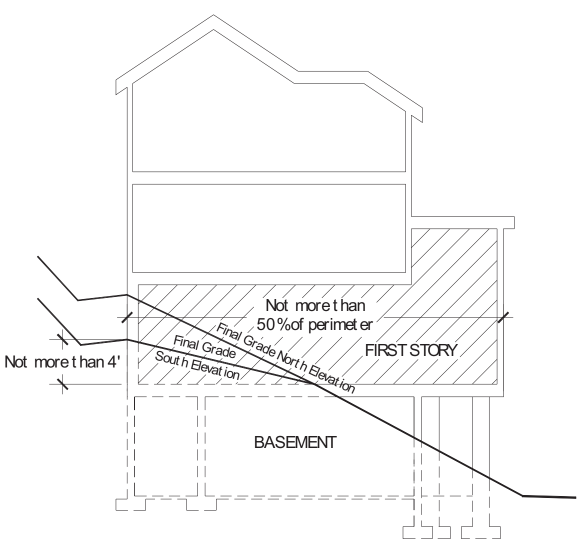
(Amended by Ord. Nos. 06-22; 09-10; 10-14; 11-05)



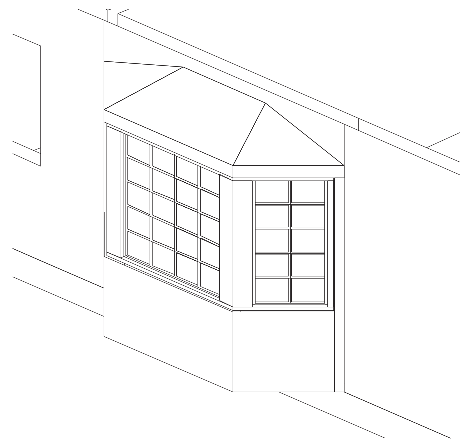
1.23. **BAR**. A Business that primarily sells alcoholic beverages for consumption on the premises; includes Private Clubs.

1.XX. **BASE ZONING.** Existing zoning without the addition of the Transfer of Development Rights overlay zone.

1.24. **BASEMENT**. Any floor level below the First Story in a Building. Those floor levels in Buildings having only one floor level shall be classified as a Basement, unless that floor level qualifies as a First Story as defined herein. See First Story.



1.25. **BAY WINDOW**. A window or series of windows forming a recess or bay from a room and projecting outward from the wall. A Bay Window does not include a window directly supported by a foundation.



1.26. **BED AND BREAKFAST INN**. A Business, located in an Owner or on-Site manager occupied dwelling, in which up to ten (10) Bedrooms are rented nightly or weekly, and where one (1) or more meals are provided to the guests only, the price of which is usually included in the room rate. Bed and Breakfast Inns are considered a lodging Use where typical lodging services are provided, such as daily maid service.

1.27. **BEDROOM**. A separate room designed for or used as a sleeping room.

1.28. **BILLBOARD**. A separate room designed for or used as a sleeping room.

1.29. **BLANK WALL**. A wall of a Building faced with a single material of uniform texture and color on a single plan with less than thirty percent (30%) of the surface of the wall as openings or windows.

(A) **Commercial Use, Support**. A Commercial Use oriented toward the internal circulation of a Development, for the purpose of serving the needs of the residents or users of that Development, and not Persons drawn from Off-Site.

(B) **Commercial Use, Resort Support**. A Commercial Use that is clearly incidental to, and customarily found in connection with, the principal resort Use, and which is operated and maintained for the benefit or convenience of the Owner, occupants, employees, customers of, or visitors to, the principal Use.

1.54. **COMMON AREA**. Facilities and yards under Common Ownership, identified within projects, for the Use and enjoyment of the residents.

1.54. **COMMON OWNERSHIP**. Ownership of the same Property by different Persons.

1.56. **COMPATIBLE OR COMPATIBILITY**. Characteristics of different Uses or designs that integrate with and relate to one another to maintain and/or enhance the context of a surrounding Area or neighborhood. Elements affecting Compatibility include, but are not limited to, Height, scale, mass and bulk of Building, pedestrian and vehicular circulation, parking, landscaping and architecture, topography, environmentally sensitive Areas, and Building patterns.

1.57. **CONDITIONAL USE**. A land Use that, because of its unique characteristics or potential impact, is allowed only if certain measures are taken to mitigate or eliminate the potential impacts.

1.58. **CONDOMINIUM**. Any Structure or Parcel that has been submitted to fractionalized Ownership under the provisions of the Utah Condominium Ownership Act.

1.59. **CONSERVATION ACTIVITY**. A process to restore, enhance, protect, and sustain the quality and quantity of ecosystems and natural resources.

1.XX **CONSERVATION EASEMENT**. An easement, covenant, restriction, or condition in a deed, will, or other instrument signed by or on behalf of the record owner of the underlying real property for the purpose of preserving and maintaining land or water areas predominantly in a natural state, scenic, or open condition, or for recreational, agricultural, cultural, wildlife habitat, or other use or condition consistent with the protection of open land. Conservation easement(s) granted from the Transfer of Development Rights Ordinance shall be subject to The Land Conservation Easement Act, Sections 57-18-1 (et seq.), Utah Code Annotated, 1953 as amended.

1.60. **CONSTITUTIONAL TAKING**. Final Actions(s) by the City to physically take or exact private real Property that requires compensation to the Owner because of the mandates of the Fifth or Fourteenth Amendment to the Constitution of the United States, or of Article I, Section 22, of the Utah Constitution.

1.61. **CONSTRUCTION ACTIVITY**. All Grading, excavation, construction, Dwelling Units and/or non-residential units and the land Area.

1.73. **DESIGN GUIDELINE**. A standard of appropriate activity that will preserve the Historic and architectural character of a Landmark, Building, Area, or Object.

1.74. **DETACHED**. Completely separate and disconnected. Not sharing walls, roofs, foundations, or other structural elements.

1.75. **DEVELOPABLE LAND**. That portion of a Master Planned Development or Cluster Development within the Sensitive Lands Overlay that is designated for Density.

1.76. **DEVELOPER**. The Applicant for any Development.

1.77. **DEVELOPMENT**. The act, process, or result of erecting, placing, constructing, remodeling, converting, altering, relocating, or Demolishing any Structure or improvement to Property including Grading, clearing, Grubbing, mining, excavating, or filling of such Property. Includes Construction Activity.

1.78. **DEVELOPMENT AGREEMENT**. A contract or agreement between an Applicant or Property Owner and the City pursuant to the provisions in this Code and used as an implementation document for Master Planned Developments.

1.79. **DEVELOPMENT APPROVAL APPLICATION**. Includes any Application for any Development approval including, but not limited to Grubbing, Grading, an alteration or revision to an approved MPD, Conditional Use permit (CUP), zoning or rezoning, Subdivision, or annexation. The term "Development Approval Application" shall not include any Building Permits associated with construction within an approved Subdivision or on an existing platted Lot unless otherwise specified.

1.XX **DEVELOPMENT CREDIT.** A credit measured in Unit Equivalents that denotes the amount of density on a Sending Site which may be transferred.

1.XX **DEVELOPMENT CREDIT CERTIFICATE**. The certificate issued by the Planning Director of Park City that represents the total number of development credits recognized for and derived from the sending site that may be transferred.

1.XX **DEVELOPMENT RIGHT**. The right held by a fee simple property owner to build on a legally established parcel of real property. This right is limited by applicable zoning ordinances.

1.80. **DISABLED CARE**. A long-term care residential facility for disabled Persons, Persons suffering from a physical or mental impairment that substantially limits one (1) or more of a Person's major life activities, including a Person having a record of such an impairment or being regarded as having such an impairment.

1.81. **DISSIMILAR LOCATION**. A location that differs from the original location in terms of vegetation, topography, other physical features, and proximity of Structures.

1.82. **DWELLING**.

space or Structure, Lot improvement, or other facility for which the City may ultimately assume responsibility, or which may effect a City improvement.

1.195. **PUBLIC USE**. A Use operated exclusively by a public body, to serve the public health, safety, or general welfare.

1.196. **QUALIFIED PROFESSIONAL**. A professionally trained Person with the requisite academic degree, experience, and professional certification or license in the field or fields relating to the matter being studied or analyzed.

1.197. **QUASI-PUBLIC USE**. A Use operated by a private nonprofit educational, religious, recreational, charitable, or philanthropic institution, serving the general public.

1.XX. **RECEIVING SITE.** A Parcel of real property denoted as a receiving site in the Transfer of Development Rights Overlay Zone, as shown on the Park City zoning map. A receiving site is the site to which Development Credits may be transferred.

1.198. **RECONSTRUCTION**. The act or process of depicting, by means of new construction, the form, features, and detailing of a non-surviving Site, landscape, Building, Structure or object for the purpose of replicating its appearance at a specific period of time and in its Historic location.

1.199. **RECREATION EQUIPMENT, OUTDOOR**. Playground equipment and accessory park related amenities, such as swing sets, slides, jungle gyms, sand boxes, picnic tables, volleyball nets, baseball backstops, basketball standards, frisbee golf holes, soccer goals, and similar amenities.

1.200. **RECREATION FACILITIES**.

(A) **Recreation Facilities, Commercial**. Recreation Facilities operated as a Business on private or public Property and open to the public for a fee.

(B) **Recreation Facilities, Private**. Recreation facilities operated on private Property and not open to the general public. Including Recreation Facilities typically associated with a homeowner or Condominium association, such as pools, tennis courts, playgrounds, spas, picnic Areas, similar facilities for the Use by Owners and guests.

(C) **Recreation Facilities, Public**. Recreation facilities operated by a public agency and open to the general public with or without a fee.

1.201. **RECYCLING FACILITY**. A building, structure or land area used for the collection, processing or transfer of recyclable materials such as glass, paper, plastic, cans, or other household scrap materials.

(A) **Recycling Facility, Class I**. Recycling containers totaling up to 60 cubic yards of capacity per residential lot or business used for the collection and temporary storage of recyclable materials such as glass, plastic, aluminum, mixed metals, fiber, and cardboard. These facilities are generally, but not limited to the use by a specific residential neighborhood, civic facility, or commercial business park, and

(A) Park City Municipal Corporation or Venue name and/or logo provided said information does not exceed twenty percent (20%) of the display area; and/or

(B) Master Festival Event identification provided said information does not exceed twenty percent (20%) of the display area, and is not displayed for more than two (2) weeks unless otherwise approved as part of the Master Festival License.

1.218. **SATELLITE RECEIVING STATION**. Any apparatus or device designed for the purpose of transmitting and/or receiving radio, television, satellite microwave, or other electromagnetic energy signals between terrestrially and/or orbitally based Uses. This definition includes but is limited to what are commonly referred to as satellite earth stations, satellite microwave Antennas, TVRO's or dish Antennas. This definition does not include conventional television Antennae.
1.219. **SBWRD**. Snyderville Basin Water Reclamation District.

1.220. **SCREEN OR SCREENED**. The act, process, or result of visually and/or audibly shielding or obscuring a Structure or Use from adjacent Property by Fencing, walls, berms, densely planted vegetation or other landscaping features.

1.221. **SECONDARY LIVING QUARTERS**. An Area within a main dwelling which is used by the Property Owner or primary tenant as a dwelling for the private Use of the Property Owner's relatives, domestic help, caretakers, nursing staff, house guest, or similar user.

1.XX. **SENDING SITE**. A parcel of real property denoted as a sending site in the Transfer of Development Rights Overlay Zone, as shown on the Park City zoning map. A Sending Site is the Site from which Development Credits may be Transferred.

1.222. **SENSITIVE LAND**. Land designated as such by a Sensitive Lands Analysis and as reflected on the Official Zoning Map.

1.223. **SENSITIVE LANDS ANALYSIS**. A comprehensive analysis performed by a qualified professional(s) that examines, identifies, and delineates on a map and in a written report all Areas of a Property deemed to be environmentally and aesthetically important to the community as expressed in the Park City General Plan, including, but not limited to, Steep Slopes, Very Steep Slopes, Significant Ridge Line Areas, wetlands, streams and lakes, wildlife habitat Areas, entry corridors, Vantage Points, Significant Vegetation, and Wildfire/ Wildland Interface Zones.

1.224. **SENSITIVE OR SPECIALLY VALUED SPECIES**. Federally Threatened and Endangered Species; State of Utah Threatened and Endangered Species; State of Utah Species of Concern as identified in the document; animals and plants of special concern to the Park City Community as identified in the General Plan and in need of special protection.

1.225. **SETBACK**. The required minimum distance between a Building Pad and the closest of the following:

1.265. **TIMESHARE PROJECT**. Any Property that is subject to a Timeshare Instrument, including a Timeshare Conversion.

1.266. **TIMESHARE SALES PRESENTATION**.

(A) An offer to sell or reserve a Timeshare Interval;

(B) An offer to sell an option to purchase a Timeshare Interval;

(C) The sale of a Timeshare Interval, or an option to purchase a Timeshare Interval; or

(D) The reservation of a Timeshare Interval, whether the Timeshare Interval is located within or without the State of Utah.

1.267. **TIMESHARE UNIT**. That unit of Property and time where possession and Use are allowed under a contract from seller to purchaser, excluding Private Residence Club units.

1.268. **TIMESHARE USE**. Any contractual right of exclusive occupancy created by a Timeshare Instrument which does not fall within the definition of "Timeshare Estate", including, without limitation, a vacation license, general partnership interest, limited partnership interest, vacation bond, or beneficial interest in a trust, and the documents by which the right of exclusive occupancy is transferred, excluding Private Residence Club Use.

1.XX. **TRANSFER**. Any action which results in the sale, exchange, or joint venturing of development credits from one property to another property.

1.269. **TRANSFERRED DEVELOPMENT RIGHT (TDR) OPEN SPACE**. That portion of a Master Planned Development, PUD, Cluster Plan or other Development plan from which Density is permanently transferred. This Area may be either Natural or Landscaped Open Space.

1.270. **TRANSPORTATION SERVICES**. A Business involving transit operations, taxis, shuttle services, rental cars, or similar transit-related services.

1.271. **UDOT**. Utah State Department of Transportation, an agency that maintains and regulates State Highways.

1.272. **UNIFORMITY RATIO**. The ratio between the average and minimum light distribution or luminance across a given Area.

1.273. **UNIT EQUIVALENT**. The Density factor applied to different sizes and configurations of Dwelling Units and commercial spaces.

1.274. **USE**. The purpose or purposes for which land or Structures are occupied, maintained, arranged, designed, or intended.

(A) **Use, Intensity of**. The maximum number of residential units, or commercial, or industrial space within a specified land Area designated for that purpose.

1.275. **VANTAGE POINTS**. A height of five feet (5') above a set reference marker in the following designated Vantage Points

1.281. **ZONE HEIGHT**. The base Building height permitted in the Zoning District prior to Application of any allowable height exceptions.

1.282. **ZONING DISTRICT**. An Area identified on the Official Zoning Map to which a uniform set of regulations applies as set forth herein, which districts are co-terminus with, and which are designed to implement the Park City General Plan.

1.283. **ZONING MAP, OFFICIAL**. The map adopted by the City Council depicting the geographic scope of the City's land Use designations.

(Amended by Ord. Nos. 02-07; Ord. No. 02-38; 04-39; 05-01; 06-86; 07-25; 07-55; 08-07; 09-05; 09-09; 09-10; 09-14; 09-23; 09-40; 11-05)

15-15-2. LIST OF DEFINED TERMS.

-A-
Access
Accessory Apartment
Accessory Building
Accessory Use
Active Building Permit
Administrative Permit
Affordable Housing
Agent
Agriculture
Allowed Use
Alteration, Building
Ancillary Structure
Anemometers and Anemometer Towers
Antenna
Antenna, Test Drive
Antenna, Enclosed
Antenna, Freestanding
Antenna, Roof Mounted
Antenna, Temporary
Antenna, Wall Mounted
Apartment
Applicant
Application
Application, Complete
Architectural Detail
Area or Site
Attic

-B-
Bakery
Balcony
Bar
Base Zoning
Basement
Bay Window
Bed and Breakfast Inn
Bedroom
Billboard
Blank Wall
Block
Boarding House
Building
Building, Attached
Building, Detached
Building, Main

Property, Storefront
Property Line
Property Line, Front
Property Owner (see Owner)
Public Improvement
Public Use

-Q-
Qualified Professional
Quasi-Public Use

-R-
Receiving Site
Reconstruction
Recreation Equipment, Outdoor
Recreation Facilities, Commercial
Recreation Facilities, Private
Recreation Facilities, Public
Recycling Facility
Recycling Facility, Class I
Refractive Light Source
Regulated Use
Rehabilitation
Residential Use
Resort Support Commercial
Restaurant
Restaurant, Drive-Through
Restoration
Resubdivision
Retail and Service, Commercial-Auto Related
Retail and Service, Commercial-Major
Retail and Service, Commercial-Minor
Retail and Service, Commercial-Personal Improvement
Ridge Line Area
Riding Stable, Commercial
Right-of-Way
Road, Collector
Road Classification
Road Right-of-Way Width

-S-
Salt Lake City 2002 Winter Olympic Games Olympic Legacy Displays
Satellite Receiving Station
SBWRD
Screen or Screened
Secondary Living Quarters
Sending Site
Sensitive Land
Sensitive Land Analysis
Sensitive or Specially Valued Species
Setback
Sexually Oriented Businesses
Significance
Significance, Period of Historic
Significant Ridge Line Area
Significant Site
Significant Vegetation
Single Family Subdivision
Site
Site Development Standards
Site Distance Triangle
Site Suitability Analysis
Sketch Plat
Slope
Slope, Steep
Slope, Very Steep
Spacing
Special Event
Storefront Property (see Property, Storefront)
Story
Stream
Stream Corridor
Street
Street, Public
Streetscape
Streetscape, Architectural
Structure
Studio Apartment
Subdivision
Subdivision, Major

PARK CITY 1884

Park City Zoning Map with TDR Zones Detail

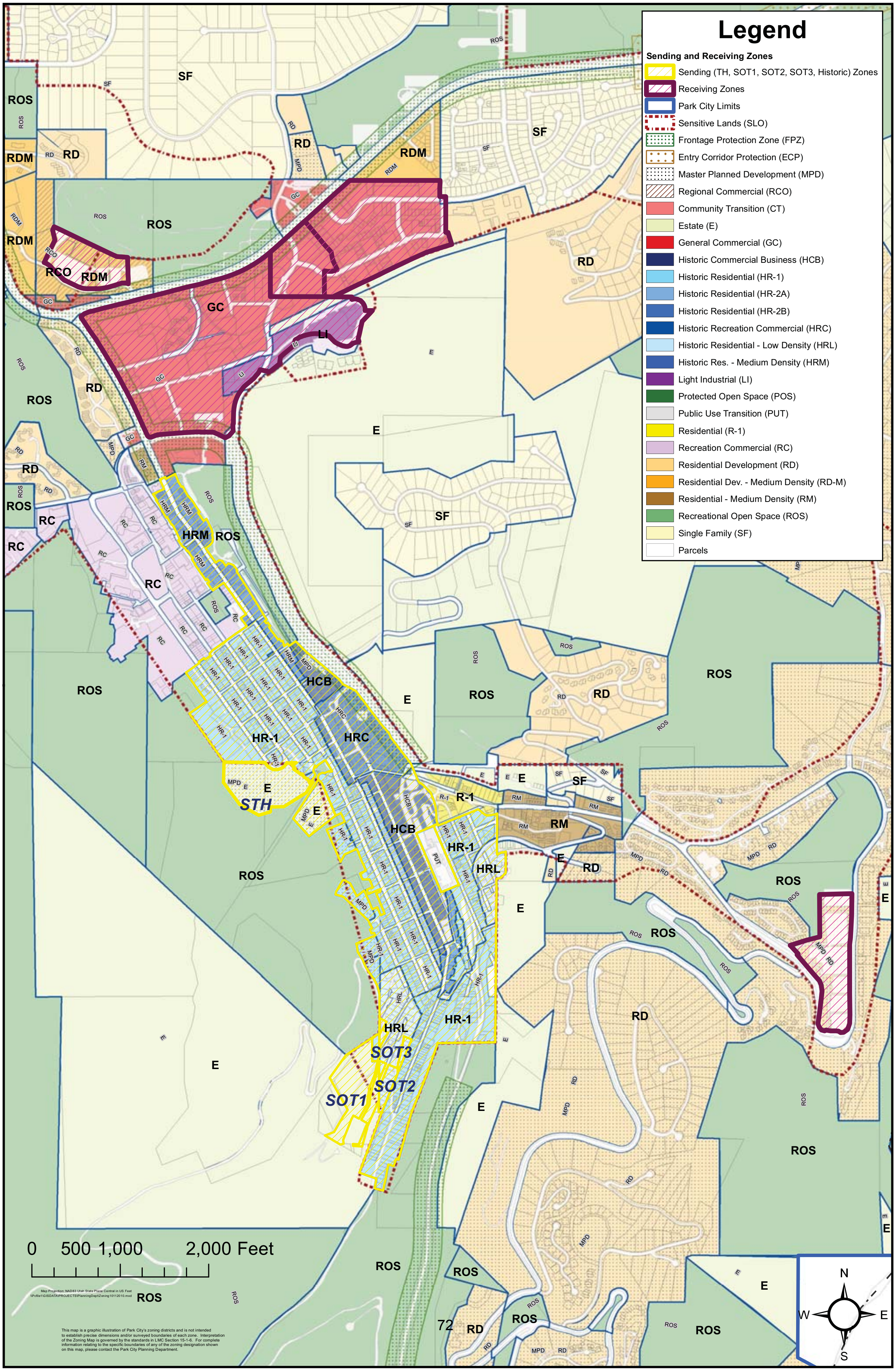


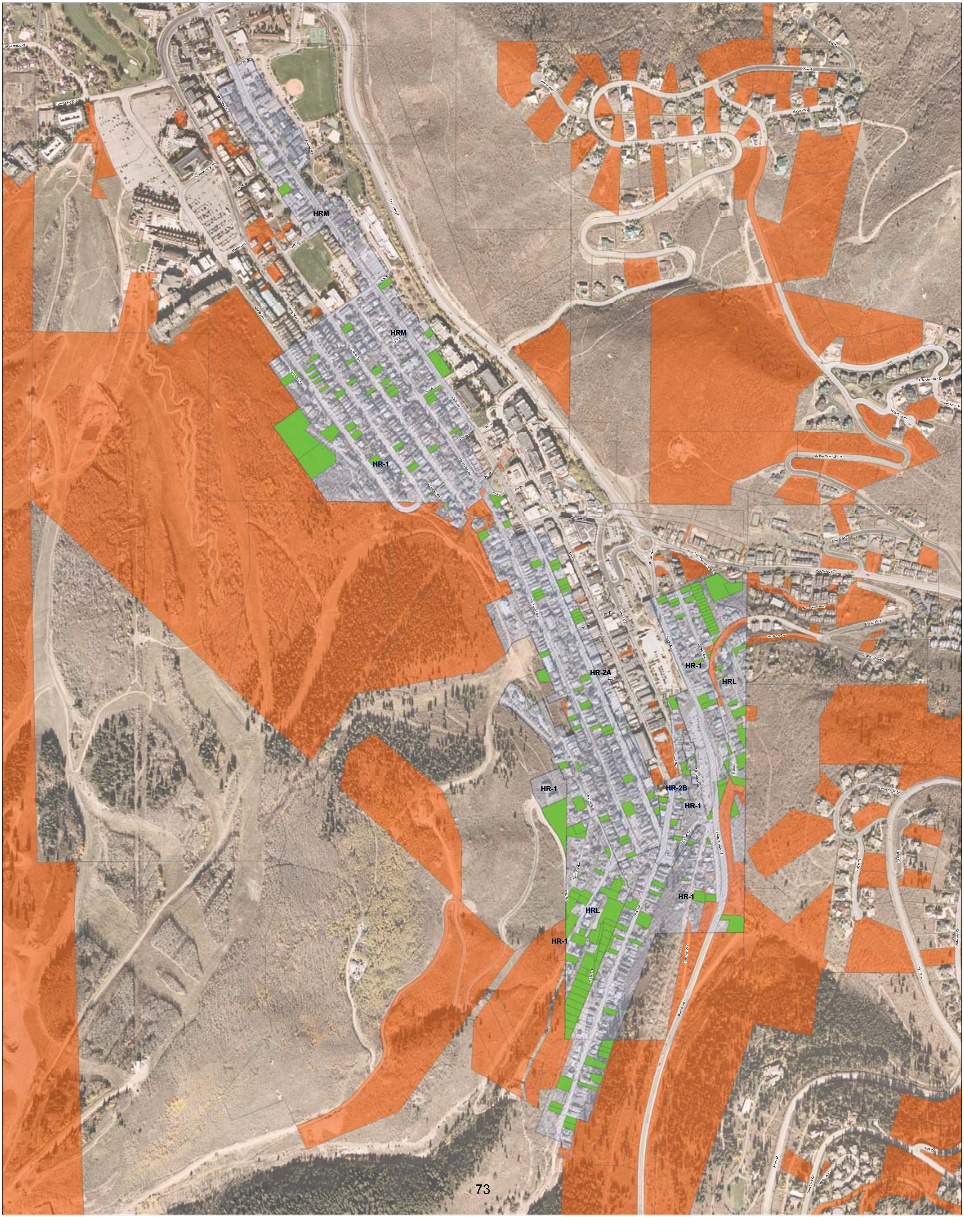
Exhibit E: Undeveloped Parcels

Historic Residential Zones And Undeveloped Parcels*

*Based on $0 - 20K improved value, 2006 aerial photo, and not city owned, schools, churches, or rights of way.

Legend

- Undeveloped Within Historic District (212 parcels, 19.722 acres)
- Undeveloped
- Historic Residential Zones
- parcels



From: Bob Wells
To: Thomas Eddington; Katie Cattan
Cc: Lessing Stern; Bob Wheaton
Subject: Proposed TDR Ordinance
Date: Monday, March 14, 2011 3:20:28 PM

Tom and Katie - This will follow up our brief discussions re the subject. Deer Valley requests that its Snow Park Village parcel (approximately 15 acres - present day skier parking lots) be included in the proposed TDR overlay zone. The parcel is identified in the existing Deer Valley MPD. As I understand the proposed ordinance, inclusion in the overlay zone would not grant any new rights to the potential receiver, it just indicates that Staff, Planning Commission and Council have concluded that the designated areas have a potential as a receiver area. Any approvals of TDRs would be required to be processed as MPDs. What inclusion in the overlay zone would accomplish is to eliminate a process where the proposed receiving area first or at least concurrent would have to apply for a zone change to get included in the overlay. This seems to be overwork and unnecessary. While this request is related to Snow Park Village, I am not sure why most commercial or resort related zones in the City should not be overlaid as potential receivers so as to eliminate the extra step in the process for consideration in a TDR transaction. If the process gets too complicated it will die by its own sword.

Please let me know if any questions or if I have erred.

Bob Wells

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and if it doesn't move out of Rules it should be stopped. Mayor Williams expressed his appreciation of other cities defending Park City on this issue and there are many people to thank.

3. Transfer of Development Rights Overlay Zone. Planner Katie Cattan explained that on November 10, and December 1, 2010, the Planning Commission held work sessions on TDRs and on December 15, 2010, held a public hearing on the draft ordinance. On February 3, 2011 during Council Visioning the TDR concept was discussed and on February 9, 2011, the Planning Commission forwarded a positive recommendation to the City Council. She explained that the purpose of the TDR process is put a mechanism in place to protect a community's assets by placing development in other areas. During the December 1, 2010 Planning Commission work session, there were quite a few sending and receiving areas proposed on Treasure, Ridge, Alice Claim pieces and the affordable housing project across from Marsac Avenue. Receiving areas included Deer Valley and Bonanza Park. On December 15, 2010 staff was asked to return with a simplified approach and the receiving area became Bonanza Park while Treasure, Alice Claim and Ridge Avenue were extended as sending areas. On February 9, 2011, staff returned to the Planning Commission and recommended to send half of Treasure which was the number one concern of the public in terms of compatibility and protection of views. Ms. Cattan commented that the one area that the Commission and staff felt comfortable designating as receiving was Bonanza Park.

She displayed a rendering of the build-out of Bonanza Park with three story buildings totaling 432,000 square feet which is half of Treasure. The Mayor pointed out that the scenario represents 100% underground parking and everything existing going away; the reality of this happening is slim. Ms. Cattan agreed; it is all underground parking and 30% open space which is mostly setback area. The build-out here would never work commercially. In response to a question from Alex Butwinski, Ms. Cattan stated that 30% open space is required for redevelopment projects and 60% for other projects. The Mayor also noted that the result is also based on the multiplier. Ms. Cattan advised that the Commission agreed to a multiplier of 2 for Treasure with a 10% transfer. During the February 9, 2011 meeting, the Planning Commission made a recommendation to include the Alice Claim, upper and lower Ridge and Treasure Hill; existing platted lots have a multiplier of 1 for each unit equivalent with the underlying minimum square footage area allowed for a lot in that zone. Metes and bounds parcels have a multiplier of .5, would be applied and located within the SLO and would be added to either the metes and bounds parcel or the platted lot.

She stated that the Planning Commission recommended 90 development credits or a total of 183,000 square feet that could transfer to Bonanza Park. The Snowcreek commercial area was also added which has a maximum density of 90,500 square feet. The goal is to protect historic preservation, view corridors, open space, wildlife, and steep slopes. Thomas Eddington explained that the Planning Commission asked staff to study Bonanza Park because using the existing GC Zone is less than ideal. He discussed using a form based planning approach to gain a better understanding of the design of a development. The Commission also wanted more detailed planning schemes for Bonanza so that a streetscape could be better understood. Staff was directed to create a set of design guidelines for the area and explore creating a tax increment financing district to incentivize the type of development desired. He felt that progressive base zoning would allow the City to be more creative in addressing the receipt of density. The reason for forwarding the more simplistic TDR ordinance was to get it going and to test the market. Mr. Eddington stated that the multipliers could be changed.

The Mayor spoke about incentivizing developments to provide trails and open space over the years which made projects bigger and over time these amenities became requirements for new development. He referred meeting with the Sweeneys on Treasure for over a year and there was never mention of a 2:1 multiplier, but rather a 50% build or zero option. He feared promoting the perception that if 50% of the density is moved, the Sweeneys will receive 400,000 square feet somewhere else by removing 250,000 off Treasure. Mark Harrington emphasized that the ordinance shouldn't have anything to do with the direct negotiations with the Sweeneys; it is simply enabling an incentive to shift density from one area of town to another from a planning perspective. The multiplier should be based on economics as it relates to the policy to incentivize and not relate to specific deals under consideration in the backdrop. Mr. Eddington explained the reason for the 2:1 and a 10% transfer is because the value of a credit on Treasure is higher than Bonanza Park and it may take 3:1 to move density off of Treasure Hill or Old Town lots. This formula is not set in stone and the market needs to be tested. Ms. Cattan explained that if the incentive is not sufficient, the tool will never be used. Mr. Butwinski stated that the multiplier doesn't concern him because the incentive to move any density off of Treasure is a good thing. The Mayor clarified his concern to be expectations of developers regarding entitlements. Mr. Kernan felt it would be helpful to know the per square foot values of various areas of town and 2:1 may simply represent an even trade for the developer because of the difference in values in the sending and receiving zones. The Mayor pointed out that no one knows for sure now if the multipliers are correct and they may hurt the City in future negotiations because of assigned multiplier values. Mr. Eddington acknowledged that the values are not exact and are based information obtained from tax records and assessments. They are not static and can change and he suggested completing a more thorough per square foot economic analysis of various parts of town to formulate better numbers. Cindy Matsumoto suggested using a range but Mr. Eddington explained that as a matter of fairness, the sender and receiver should have definitive numbers. Alex Butwinski felt that the TDR tool makes sense and could help in negotiations. He discussed the goal of getting density off Treasure but the Mayor emphasized that a transfer results in putting additional density in receiving areas which concerns him.

Mark Harrington pointed out that that should be his concern at a policy level, regardless of Treasure. There are two ways to do this and normally it is done the opposite way because most cities are reacting to a project. When there is a deal with terms, the proposal has to be sent back through a planning process with the Planning Commission and the City Council. The pressure is on the Planning Commission members who know the whole time that the terms of the deal are dependent upon their affirmative action. It is not a pure planning process. Adopting an ordinance now may or may not affect the substance of Council's negotiations with the Sweeneys, but it is a purer planning process. Policy questions are addressed City-wide and clarify where and when density should be transferred to facilitate a better community and a better development pattern consistent with the infrastructure and the policy goals of Council. He emphasized that it is better to go through a process now to evaluate areas to incentivize.

The Mayor commented on the 10% which he felt was a low percentage to get this amendment through as compared to something like 30%. Thomas Eddington agreed that it was felt that 10% would be better accepted and the Planning Commission had concerns about moving too much density to Bonanza Park. Katie Cattan noted that the first step is setting up receiving and sending zones. The second step is determining the number of development credits in the sending zone and the third step is receiving MPD approval from the Planning Commission, if required. Smaller applications wouldn't have to go through the Planning Commission process but she pointed out the large lots on the map which made the Planning Commissioners comfortable with the idea that they have control. The transfer of density would not occur until something was approved in the receiving zone and then the transfer occurs.

Planning Commissioner Charlie Wintzer disclosed that he owns property in the Bonanza Park area. There was discussion about not including Treasure because of on-going negotiations with the City, but Planning Commissioners wanted to proceed and felt that 10% of Treasure is a small enough number and won't significantly change the neighborhood. The amount of Treasure as well as the multiplier can be renegotiated when a MPD is submitted and reviewed. He cautioned not getting too hung up on Treasure and urged members to decide if they want the tool or not and if so, find a way to approve it. The Mayor agreed but noted that over the past 30 years there have been hundreds of units that have been built mainly in the Snyderville Basin through an incentive program with the perception of providing a community benefit. These were not TDRs but trades and over time, the benefits became codified and were applied as requirements to developments. Mayor Williams stated he is cautious and wants to be careful about expectations of values. Mr. Wintzer shared his concern and relayed that staff was charged with inventorying the town and did not feel that 10% of Treasure in Bonanza Park is feasible. Incentivizing people to redevelop by reducing the amount of open space in half creates problems. The Mayor again spoke about prompting unrealistic expectations. Charlie Wintzer believed the difficulty in accepting the tool is that Treasure is in front of the negotiation team and he again urged members to concentrate on making the tool work and then direct the planning staff to examine sending and receiving zones. Right now, 10% does not represent enough density to worry about.

Mr. Harrington advised that legislation includes standards and should not be negotiated on a case by case basis and there is the ability to go through the process to legislatively amend the ordinance separately. He explained that some of the problem Summit

County experienced was the criticism by the state that the process was handled on an individual basis and as a result of the state audit there is clear direction to have specific receiving zones, formulas and an administrative process which does not provide for a case-by-case determination. This tool can not be used on an ad hoc basis and the process has to be a fair and legislatively created. However, he agreed with Mr. Wintzer that the ordinance is not static. There was concern that the state legislature was going to further restrict municipalities' ability to implement these types of programs so staff wanted to get something in front of the Planning Commission and Council in case something happened this legislative session. It has not, so the Council has more time to work these issues out but it is an essential tool and staff encourages members to move forward. Mr. Harrington explained that the enabling legislation defines limits and adds to the tool box but if members do not want to pursue it, that decision should be made clear now. Mr. Wintzer stated that if this ordinance is adopted, the Council is committed to transfer 183,000 square feet from Treasure which is a relatively small amount but qualifies to be reviewed under the MPD process.

Joe Kernan pointed out the difference in value per square foot in Bonanza Park and Treasure which may change in the future. Mr. Butwinski recalled the Commission discussing the first 10% at 2:1 but the second 10% set at a different multiplier like 1.5:1. Mr. Wintzer concurred and advised if members are worried about the multipliers, remove them or make them 1:1. He hoped these transfers are reviewed in a MPD process so design and density are examined together and Council at that time may decide to change the multiplier. He again stated that more density will not fit in Bonanza Park than what is allowed and he doesn't see a community need for it, however he feels the ordinance is worth having as a tool. Mr. Wintzer would like the ordinance on the books so it can be further refined and again suggested a 1:1 multiplier.

Liza Simpson pointed out that the motivation last January to get the ordinance adopted no longer exists. She asked why 10% was decided when the Commission has the MPD process to work through issues. Planner Katie Cattan explained that when the Commission made a positive recommendation to forward the ordinance to the City Council, it was clearly understood that staff would return with a form-based code. If a project meets the requirements of a MPD (more than 15 hotel rooms, more than 10,000 square feet of commercial, or more than 10 residential lots), it would have to go through that process. Mr. Wintzer noted that it would have to go through the MPD process, but the square footage is part of the density. Mark Harrington interjected that it is treated as a transferred development credit which would entitle the applicant to ask for it and the burden will be on the City to disallow it. The project is not fully vested but the owner is allowed to ask up to the maximum which was a legitimate concern of Commission members.

In response to comments made by Cindy Matsumoto, Mr. Wintzer stated that this is a tool for the City but also for the development community who may do a better job at fitting density in a design. Mr. Eddington commented that the Commission asked staff to conduct a detailed analysis on other potential receiving areas to relieve Bonanza Park. Charlie Wintzer noted that Snowcreek is another area that could potentially accept density. The Mayor commented on the feasibility of undergrounding all parking in Bonanza Park and a maximum of three stores. Selecting 10% may not work in transferring density from a project area with five stories with surface parking to Bonanza Park. Cindy Matsumoto understood that this is just a tool and if a large project applies for a MPD then the ordinance can be amended. Katie Cattan clarified that this ordinance places a maximum transfer of 22 unit equivalents from the Treasure Project so if Council wanted to increase the number, the LMC would have to be amended to change the maximum to a higher number prior to the MPD process. Thomas Eddington acknowledged Ms. Matsumoto's interest in receiving more detailed information on the receiving zone before amending the ordinance. Mark Harrington stated that that is an option but ideally appropriate limitations should be provided for in the ordinance and application of the ordinance should not be done on a case by case basis. Council retains the ability to amend the ordinance but that is not ideal.

Alex Butwinski pointed out that the draft doesn't mandate transferring 10% to Bonanza Park; it provides 10% to whoever will take it. He relayed that there was a considerable discussion about Snowcreek where a lot of density could be hidden. The Alice Claim pieces could go to Bonanza Park or Snowcreek. He encouraged not spending too much time on specifics and recommended changing the multiplier from 2 to 1 to proceed with the ordinance. Mayor Williams stated that he understands that 1:1 could potentially result in no incentive and perhaps a formula of 1:1.25 is more appropriate.

Mr. Harrington asked if there areas in town members are comfortable with facilitating additional density. If members are not comfortable with this approach, he advised not proceeding but not letting the fear factor drive planning. This is a proactive opportunity to incentivize change that the LMC currently does not allow. He then asked what enabling mechanism Council wants to use to incentivize; is it a height increase in those zones, is it a multiplier, is it something else? With these two approaches, Council may be better able to focus on the policy debate. Notwithstanding, Council always has the ability to amend the LMC and reconsider something different in the future.

Liza Simpson referred to the Mayor's comments about incentives gradually morphing into code requirements and asked staff to return with some information on requiring the use of TDRs for things like additional height. Rather than focusing on doubling square footage, she suggested clarifying what developers will be required to do before any additional height is obtained through the MPD process. The Mayor acknowledged that the work on this concept is complex and he wants to be very careful in terms of protecting receiving areas. Ms. Simpson pointed out that the ordinance doesn't clearly identify the goals of the program and suggested that every steep lot in Old Town be on the sending list. Mr. Wintzer relayed that there was discussion about making all of Old Town a sending zone but room for density in Swede Alley was recognized. The draft should include other areas that might be able to receive density like Deer Valley, Prospector, etc. Mr. Wintzer encouraged Council to move slowly. See regular meeting minutes.

IV WORK SESSION NOTES AND MINUTES OF MEETING OF FEBRUARY 17, 2011

Liza Simpson, "I move we approve the work session notes and minutes of February 17th". Alex Butwinski seconded. Motion carried.

Alex Butwinski	Aye
Candace Erickson	Absent
Joe Kernan	Aye
Cindy Matsumoto	Aye
Liza Simpson	Aye

V NEW BUSINESS *(New items with presentations and/or anticipated detailed discussions)*

Consideration of amendments to the Land Management Code considering adding Chapter 2.24, Transfer of Development Rights Overlay Zone and related amendments to Chapter 15, Definitions – The Mayor opened the public hearing; there were no comments from members of the audience. Cindy Matsumoto, "I move that we continue the public hearing to March 31st - Liza Simpson seconded. Motion carried.

Alex Butwinski	Aye
Candace Erickson	Absent
Joe Kernan	Aye
Cindy Matsumoto	Aye
Liza Simpson	Aye

Cindy Matsumoto stated she would like staff to look at including Old Town as a sending area as it may be a good way to incentivize owners not to build to the maximum and Ms. Simpson spoke about selling Historic District square footage. She felt it important that the Planning Commission review all of density transfers, at least initially, whether they are associated with an MPD or not. Joe Kernan asked staff to explore incentives and multipliers for historic homes so density can be moved elsewhere. Ms. Simpson stated that she would also like to focus on Council's priorities at an upcoming meeting which may lead to a more concrete discussion on what the multipliers should be, if any.

Planning Commissioner Charlie Wintzer referred to the purpose statement in the draft ordinance. Ms. Simpson explained that she is concerned about the specificity of calling out the Alice Claim lot, for instance, as a sending area with the only receiving zone being Snowcreek and Bonanza when she knows there are others. Even knowing that this type of ordinance will need to be tweaked, she prefers a broader ordinance. Alex Butwinski stated that different incentives may be needed for Old Town to be designated as a sending zone. Mr. Wintzer interjected that sensitive lots defined in the Historic District would be a higher priority than typical lots. Thomas Eddington added that staff is considering layering the map with GIS and SLO zoning and then addressing the multiplier. Ms. Simpson felt that incentives for residential and commercial would be distinct. Katie Cattan stated OT1, OT2, and OT3, Alice Claim Ridge, Upper Ridge, and Lower Ridge were created specifically with borders around them so that owners would not sell off the most developable portions of those lots resulting in 10 more lots there that really aren't developable because they are between Ridge Avenue and the back of someone's house on Daly Avenue. Staff wanted to make sure that it was *all or none* in those situations and urged members not to change the way that portion of it is set up for the larger subdivision. She explained that the Planning Commission asked staff to return on December 15, 2010 with areas around the periphery of Old Town that are large enough to be subdivided in the future and she understood Council's interest in in-fill lots throughout the Historic District. Mayor Williams added that knowing the number of in-fill lots would be helpful and probably most of the lots remaining are on steep or sensitive lands. Mr. Wintzer suggested including redevelopment lots.

Liza Simpson understood the goal of the TDR program is to transfer density in already dense areas. Old Town is an anomaly because its historic density was comprised of 900 square foot houses on an Old Town lot while the recent building pattern has been to maximize the density on the lot, build setback to setback and to the height limitation. Katie Cattan agreed that in-fill construction is jeopardizing our Historic District. Mark Harrington suggested exploring an alternative methodology which is mirrored after the oldest program in the county. The original TDR program in New York City had nothing to do with density; it was based on biometrics and specifically addressed height transfers for historic sites. He explained that historic sites could sell their height to someone else and Council may consider a hybrid approach. Liza Simpson again expressed that since time is no longer an issue that a comprehensive review can be accommodated and perhaps in a joint meeting with the Planning Commission.

Cindy Matsumoto stated that she is interested in the suggestion of transferring square footage from the Historic District. Joe Kernan mentioned that lower Park Avenue is an important area to preserve and location or visibility may be criteria for sending areas. In response to a comment from Alex Butwinski, Mark Harrington explained that once the ability to transfer density is codified, most people have a reasonable expectation to obtain approval if they comply with the terms of the enabling legislation. Mr. Butwinski believed this issues discussed by the Planning Commission.

Mayor Williams stated that he is more uncomfortable with assigning 1 as a multiplier than 1:2 because of vesting and he questioned the feasibility of transferring 10% from Treasure to Bonanza Park. Mr. Eddington urged members to consider the base zoning in Bonanza and Charlie Wintzer pointed out that the model for the area tonight illustrates the worst scenario and perhaps staff can return with some good options; maybe there is room for more density. Ms. Simpson preferred *fully formed* legislation rather than approaching this with the presumption that it can be amended. Mr. Wintzer stated that Commissioner Strachan voted against the ordinance based on that reason. Ms. Cattan relayed that the Planning Commission would like to see more research from staff but would like the tool in the toolbox.

She understood consensus to be to include Old Town and the in-fill lots and also heard interest in including the Deer Valley parking lots. Joe Kernan asked that Prospector be included. She noted that during the process, the Planning Commission kept adding more areas to look at and then moved away from adopting the tool because of the amount of research to be done. The MPDs for Deer Valley and Prospector will need to be examined and the expectation should be that amending the ordinance is likely. Mr. Kernan stated he is okay with that. She added that the Planning Commission wanted to consider Prospector but staff had not completed a full analysis on the area. Discussion ensued on creating a 1:1 multiplier with add-ons for certain circumstances. Ms. Simpson suggested framing TDRs like a MPD process where a range of options may be considered.

VI ADDITIONAL DISCUSSION – AGENDA ITEMS

None.

VII ADJOURNMENT

With no further business, the regular meeting of the City Council was adjourned.

MEMORANDUM OF CLOSED SESSION

The City Council met in closed session at approximately 1 p.m. Members in attendance were Mayor Dana Williams, Alex Butwinski, Joe Kernan, Cindy Matsumoto, and Liza Simpson. Candace Erickson was absent and excused. Staff present was Tom Bakaly, City Manager; Tom Daley, Deputy City Attorney; Diane Foster, Sustainability Manager; Joan Card, Legal Counsel; Kathy Lundborg, Water Manager; Jason Christensen, Legal intern; Thomas Eddington, Planning Manager; Michael Kovacs, Assistant City Manager; and Mark Harrington, City Attorney. Liza Simpson "I move to close the meeting to discuss personnel, property and litigation ". Alex Butwinski seconded. Motion carried. The meeting opened at approximately 3 p.m. Liza Simpson, "I move to open the meeting". Joe Kernan seconded. Motion carried.

Alex Butwinski	Aye
Candace Erickson	Absent
Joe Kernan	Aye
Cindy Matsumoto	Aye
Liza Simpson	Aye

The meeting for which these minutes were prepared was noticed by posting at least 24 hours in advance and by delivery to the news media two days prior to the meeting.

Prepared by Janet M. Scott, City Recorder *a national trust publication*

A Preservationist's Guide to Urban Transferable Development Rights

by Jennifer Cohoon McStotts

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Wouldn't it be nice if planners could easily redirect growth and development away from historic resources and toward areas where growth can be readily absorbed?

In 21st-century American land-use planning, there is an increasing trend toward market-based tools—those legal mechanisms driven by supply and demand that (hopefully) accomplish the same goals as traditional land-use regulation more efficiently and with less impairment of private property rights. One such mechanism that has worked particularly well for land conservation is the transfer of development rights (TDRs). TDRs can be equally effective for preservation of the built environment in urban areas, and numerous cities have used TDRs to encourage property owners to preserve their historic landmarks.

The purpose of this booklet is to explain how TDRs can be used to protect historic and cultural resources. Transferring development rights is a flexible tool that can be adapted by local governments to fit a variety of situations. The strength of TDRs comes from being a market-based mechanism; TDRs harness the economic forces of development and growth that threaten important resources and allow preservationists to use those same forces in favor of preservation. This booklet will help preservation advocates understand how TDRs can be used to ease the conflict between growth pressure and historic preservation.

The Concept and History of TDRs

In a nutshell, a preservation TDR means one party—the sender or seller—sells his right to develop a historic property in whole or in part to another party—the receiver or buyer—who can use it to achieve a more intensive use of the property. As part of the bargain, the public gains the protection of the historic resource in the long term, if not permanently.

New York City became the first to adopt TDRs through its 1968 Landmark Preservation Law—the ordinance famously upheld by the U.S. Supreme Court in the *Penn Central* case, one of the first and most important legal victories of the preservation movement. A few other cities and counties followed suit in the 1960s and 1970s, but the first major wave of TDR programs crested in the 1980s when approximately 60 programs (mostly aimed at environmental protection) were created. Only seven of those focused on historic preservation. Today, less than 15 percent of the well-known programs deal exclusively with historic preservation, meaning approximately 20 cities and towns have preservation TDR programs.

Understanding Development Rights

While the details of individual programs vary considerably, every TDR program is based on the same basic concepts of property ownership and market forces. In the United States, owning property actually means you own a volume of space—including the land you stand on, the earth beneath it, and the air above it—as well as certain rights that come with the property. American lawyers and judges call these rights a "bundle of sticks" because each right—such as the right to mine, to harvest, to build on your land, or to exclude trespassers—can be limited, given away, bought, or sold, just like the property itself.

When you rent your property to a tenant, you give that person a stick that represents the right to live there for a certain amount of time in exchange for rent. Even though it is temporary, you are giving the tenant some of your rights as the property owner. Donating a conservation easement on your property is also equivalent to giving some of your sticks (rights) to the institution that holds the easement. Local land-use laws, even zoning laws, limit our property rights by tying up some of those sticks. Laws don't technically take away sticks entirely, however, since a law can always be changed.

When a preservation ordinance places development restrictions on newly designated properties, it binds up some of those sticks (rights) in limitations. What makes a TDR system so powerful is its ability to harness latent rights—the tied-up sticks—on historic or undeveloped properties, and connect them with a demand for development elsewhere without diluting the public benefits of preservation and other land-use laws. Unused rights are transferred to someone who can use them, possibly even someone who needs them to appropriately develop her property.

Cover: San Francisco's TDR program was adopted as part of a larger comprehensive plan in 1985. This incentive program has helped the city maintain its distinctive character.

– Photo by Jennifer Cohoon McStotts.

TDRs – Key Terms

Conservation easement: A legal document limiting the right to develop a piece of land where the right of enforcement is given to the holder of the easement—a nonprofit organization or government agency.

Density bonus: Additional density allowed in a development built using TDRs above and beyond the combination of the underlying land-use laws and the value of the purchased rights. For example, a buyer of development rights might be allowed to build not just the square footage allowed on his lot plus the square footage he purchased from the sender but also an additional 5 percent as an increased incentive to use TDRs.

Development rights: The quantity and quality of development a property owner is entitled to build on her land under existing laws, including local land-use laws.

Downzoning: A reduction in the intensity or size of development allowed under local law, such as the lowering of a height limit or a decrease in the number of units per acre.

Euclidean zoning: Zoning in general is a type of land-use control that regulates the design and use of a community geographically by zone. Euclidean zoning specifically refers to the separation of uses characteristic of early zoning efforts and is named after the seminal *Village of Euclid v. Ambler Realty* case.

Preservation easement: A particular kind of conservation easement used to protect the facade, exterior, and/or interior of a historic building, as well as sometimes the landscape around it.

Receiving parcel: The piece of land (also called a lot or property) on which the transferred development rights are applied. Also referred to as the development lot or growth lot, or in mass, as the receiving, growth, or development area.

Sending parcel: The piece of land—often with a sensitive resource—from which the transferred development rights are severed and on which protection is placed. Some programs call the sending lot the transfer lot or the preservation lot. As a category or in a geographical group, sending parcels are sometimes referred to as the sending, transfer, protection, or preservation area.

TDR or TDRs: Refers to the transfer of development rights or the transferable development rights themselves.

Transfer of development rights: The process of legally removing unused development potential from one property and assigning it to another.

Variance: An administrative exception granted by a local government agency such as a planning commission that allows the applicant to build a structure or complete a development that would otherwise violate the land-use laws.

The right to develop—both what's given up and what's received—can be defined in a number of different ways. The owner of the sending parcel is typically giving up some or all of his rights to build on the property, though he could be giving up any property right—big or small—including the right to pave the site for parking spaces or make certain alterations. The receiving parcel's owner typically gains the right to develop above and beyond what the local law would otherwise allow.

For example, imagine a landowner who resents the perceived loss brought on by new historic district restrictions that limit his right to build a tall building. In a common preservation TDR example, the owner could sell the right to build what he would have if he did not own a landmark minus the size of the landmark itself. Perhaps he could build a ten-story building if it were not for the three-story landmark already located there; the seven-story difference could be transferred to a buyer, who would then be able to build additional stories above the height restriction.

Why Create a TDR Program?

There are at least three common motivations for instituting a preservation TDR program, and they are found singly or in combination.

TDRs as a Preservation Incentive

The first is the desire to create a financial incentive for owners of a historic property either to physically preserve or (where it is voluntary) to agree to designate their historic property locally. Such a program would provide owners with additional financial resources to preserve or rehabilitate their buildings upon the sale of unused development rights or simply encourage designation by making the sale of such rights a possibility. The standards that the preservation work will be held to depend upon the community.

Let's look at how a TDR program works as an incentive in the imaginary town of Encouragement. The downtown height limit is five stories. Mr. Sender's historic warehouse is only three stories tall. The local government would like to give Mr. Sender an economic incentive to volunteer to have his property designated locally and/or to rehabilitate the historic building. Mr. Receiver owns a nearby property in an ideal location for a hotel, but he would like to build a larger building than allowed by the local law.

The local government sees the two different pressures here: the need for a pro-preservation economic incentive for Mr. Sender and the potential for additional economic development on Mr. Receiver's property. TDRs could be used to relocate Mr. Sender's two stories of unused developable space to Mr. Receiver's lot. As a result, Mr. Sender would have the financial incentive to designate his property as historic (or rehabilitate if so required under the program), and Mr. Receiver would be paying to protect a historic building in exchange for his variance from the local law.

TDRs to Mitigate Economic Impact

Second, where historic designation is involuntary, the local government may wish to institute a TDR program to mitigate any economic impact of the designation. Often, historic designation raises or stabilizes property values along with numerous other economic benefits, but it also may downzone the property. Although historic designation has been upheld against takings claims over and over again, local governments may be concerned about the impact of historic designation on property values, particularly in commercial areas, where the historic designation can have the effect of downzoning. The rights lost by downzoning can be converted to transferable rights under a TDR program.

In addition, communities with preservation regulations may be interested in offsetting economic impacts for political reasons, to make involuntary designation more palatable to property owners.

For example, in the fictitious city of Little Relief, the historic downtown will soon be designated as a local historic district with a height limit of five stories. The local government is worried that property owners will object to the downzoning from the current ten-story height limit, even though there are no buildings downtown over five stories. One such property owner, who has the resources to sue, is Ms. Sender, the owner of a successfully rehabilitated warehouse-turned-retail establishment. Mr. Receiver owns a vacant lot nearby, and he would like to build a larger building than allowed by the local law. He isn't the only developer who will be seeking a variance if the downzoning is approved.

The local government understands the concerns of both types of property owners, who are foreseeing lost profits. To mitigate the impact of downzoning, TDRs could reallocate Ms. Sender's unused developable space to Mr. Receiver's lot. For full mitigation, Ms. Sender would be allowed to transfer any rights she had before the downzoning, although Mr. Receiver may be limited in how much he can exceed the new, lower restrictions even with his variance from the local law. On one extreme, Mr. Receiver could be allowed to build out to the previous restrictions (or even bigger) if he buys enough TDRs. Yet, if the community truly wants the average height downtown to be closer to five stories than to ten stories, a ceiling on the application of TDRs may be imposed to ensure greater compatibility.

TDRs as Growth Management

Finally, although TDRs have made their name in environmental protection, their ability to direct growth away from a historic urban core or from significant landmarks is a third and important reason to implement TDRs. Bear in mind, TDRs can be effective, voluntary growth management tools, but they typically do not work as growth controls. The purpose of a transfer is to redirect development, not to stop it.

The imaginary streetcar suburb of Progressville has been experiencing increased growth pressure, and out-of-scale, inappropriately sited projects have begun to affect the town's historic character. Mr. Sender's historic home is on a larger-than-normal lot, and he has been considering demolishing the building in order to build something larger or subdivide the parcel. The local government would like to give Mr. Sender an incentive not to demolish or subdivide, though he has that right under current law. Nearby, Ms. Receiver owns vacant property zoned for low-density residential in an ideal location for apartments.

The local government sees two pressures—the need for a pro-preservation economic incentive for Mr. Sender and the potential for additional economic development and/or affordable housing on Ms. Receiver's property. TDRs could satisfy both sides by reallocating Mr. Sender's unused developable space in the form of housing units to Ms. Receiver's lot. As a result, Mr. Sender would have the financial incentive to preserve his residential property, while Ms. Receiver would be able to satisfy the market demand for housing.

How TDRs Work

The local government's objectives determine what form a TDR program will take. Preservation TDRs typically take one of three forms:

1. **Adjacent-lot TDR**, meaning transfers to contiguous sites, often including lots across the street or cattycorner and sometimes including any contiguous lot connected in a chain of lots under the same ownership;
2. **District-wide TDR**, which means transfer to any property (except those designated as sending) within the district; or
3. **Inter-district TDR**, which requires transfers from a sending district to a receiving district. This type of program is best used to redirect growth, since development occurs outside of the protected area.

Figure 1: This illustration shows a two-story building on a corner lot. Under the current land-use laws, a building on this lot could extend farther back and higher up. The unused space (outlined in dashed black lines) represents the property owner's transferable development rights. In an adjacent-lot TDR system, the owner can transfer those rights to the lots in blue—those lots contiguous to, across from, and cattycorner to the lot. Modified forms of this system would also allow the owner to transfer the development rights to adjacent lots at an angle.

Figure 2: This illustration shows a hypothetical district-wide TDR program. The buildings in black represent the historic landmarks of the community (though there would likely be more in a district this size). The blocks in blue indicate the 20-block area of this zoning district—let's call it the Downtown District. This particular TDR program would allow the landmark property owners to transfer their TDRs—again, shown in dotted black as the volume of space above the buildings up to any height limit—to any other lot in the district except other designated sending properties.

Figure 3: This illustration shows an interdistrict TDR program. Imagine a small town with an intact historic Main Street. The community wants to protect the Main Street character, the views from the major approaches into town, and the early residential district behind the buildings on the north side of Main Street, but all of these property owners have the right to build bigger structures under current zoning laws. TDRs would allow those rights to be transferred to areas away from the main roads on the west and the scenic bridge on the east in order to accommodate the growth in areas out of sight of most tourists. Establishing these different districts—the Main Street and historic residential sending areas versus the younger receiving areas—creates the third type of TDR program, the interdistrict TDR.

Fig. 1

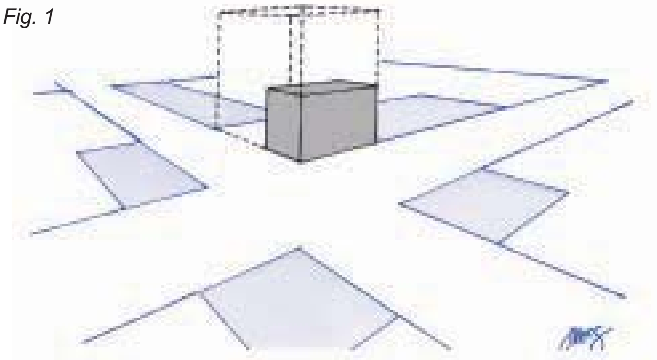


Fig. 2

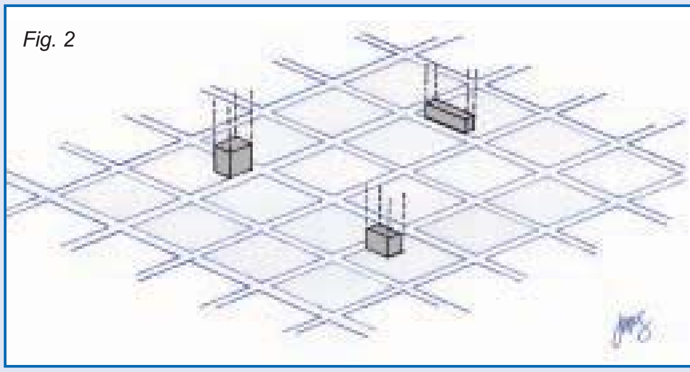
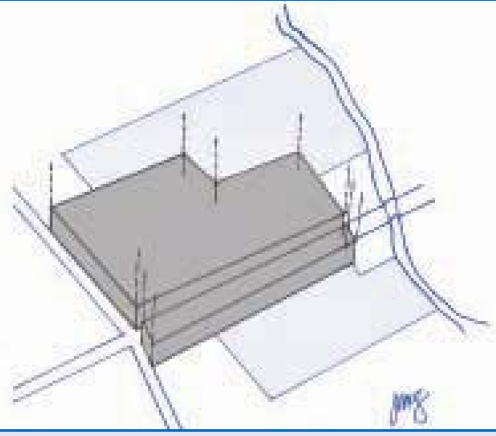


Fig. 3



Do the rights have to be transferred to a lot nearby?

Not at all. One common misconception is that TDRs are only legally defensible for transfers in close geographic proximity (e.g., within 500 or 1,000 feet). The TDR program in Denver, for example, allows rights to be transferred anywhere downtown within a 40-block area. The most common receiving area for preservation TDRs is the remainder of the zoning district within which the historic structure is located. One notable exception is Washington D.C.'s TDR program, which transfers rights from the strictly height-limited downtown outward to the perimeter where height limits are higher and/or more flexible.

Some programs require the unused development rights to be transferred to adjacent, across the street, or cattycorner parcels. The City of Philadelphia, among others, has rejected such a system precisely for the architectural problem it causes of dramatically incompatible scale.

In short, there is no predetermined geographical limit on transfers unless specified under state or local enabling acts. That said, TDRs should be part of a larger planning effort, like any planning tool, and there must be a rational justification for the program, such as a connection between the potential impacts and the selection of sending and receiving areas.

TDRs and Existing Land-use Restrictions

Perhaps the most commonly asked question about TDRs, especially preservation TDRs, is, do the variances given to receiving property owners defeat the purpose of the underlying land-use restrictions? In most cases, the restrictions in the receiving area have to be tighter than the local community actually wants to see (lower heights, smaller volumes, etc.) for two reasons.

If the community really does not want buildings over a certain height or volume, more than a certain number of housing units per acre, or parking garages over a certain size, for example, then it must set the threshold that receiving parcels exceed even lower. Otherwise, the community runs the risk that the TDRs will be used to create something bigger than what is desired.

Second, stricter regulations may help create demand for TDRs, which will spread the incentive to preserve more historic buildings. If market pressures are light and developers are satisfied with the land-use restrictions as they are, TDRs will not provide an incentive for owners of historic properties because they will have no value in the marketplace.

It is worth mentioning that in some communities, nonprofit organizations acquire development rights either to buy a place at the table to determine the shape of the new development or for the purpose of "retiring" the rights—meaning to hold them permanently—rather than to allow them to be applied. This can affect calculations and predictions done to balance of supply and demand, which is discussed further below.

The Supreme Court ruled that Penn Central Transportation Company had not been denied the use of its air rights entirely. It could develop them—subject to the Landmark Preservation Commission's approval—or transfer them to neighboring properties via New York City's early TDR program

– Photograph by Eric Uhlir.

What happened to Grand Central Station's development rights?

After the designation of Grand Central Station as a historic landmark by the New York City Landmark Preservation Commission, the property's owners—Penn Central Transportation Company—applied for certificates of appropriateness from the commission for an addition of more than 50 stories. After they were denied, the owners brought suit claiming numerous constitutional violations. The Supreme Court Justices in *Penn Central* made a point of noting that Penn Central Transportation Company had not been denied the use of its air rights entirely. It could develop them—subject to the Landmark Preservation Commission's approval—or transfer them to neighboring properties via this early TDR program.

In the years after the *Penn Central* decision, the city created a special subdistrict around the station, and rights from Grand Central can be transferred anywhere within this area. Transfers from the Grand Central Station Subdistrict included 75,000 square feet of development rights to the Philip Morris Building on the southwest corner of Park Avenue and 42nd Street in 1979. More recent transfers to the Bear Stearns headquarters in 1998 and two other Madison Avenue sites in 2000 total hundreds of thousands of square feet. Yet, over a million square feet of development rights are still left for the station's owners to transfer.

Can a TDR system work without zoning? Without historic districts?

TDRs can work without traditional Euclidean zoning or traditional historic districts so long as there is enough demand for development on the would-be receiving parcels to create a market for the transferable development rights. In most cases, there has to be some land-use restriction (even if not zoning) that will be lifted or shifted as a result of the transfer in order to create a demand or market for development rights. On the other hand, TDRs can be equally effective with or without historic districts so long as the sending properties are otherwise identified, such as by a landmark ordinance or through a qualitative standard.

Local Government Authority to Enact a TDR Program

As with zoning, historic preservation, and most planning tools, state enabling legislation permitting use of the tool should be in place before a local government enacts a TDR program. This may not be an issue in home rule states, where communities can take on those powers not explicitly withheld or reserved at the state level.

Consult with legal counsel familiar with state laws to determine if authority exists for a TDR program and what legal requirements govern its adoption. Most likely, the legal requirements will be similar to the state's zoning and/or comprehensive planning requirements. In some cases enabling legislation for land use is already broad enough to permit TDRs.

Basic TDR Mechanics

There are five general steps most programs need to follow:

1. Define the rights to be transferred.
2. Provide a mechanism to sever them from the sending property.
3. Transfer them, typically in exchange for money, to another property where the development is better suited.
4. Apply them to the receiving property by a variance from local land-use laws.
5. Place long-term or permanent restrictions on the sending property.

Let's examine each step in greater detail.

1. Define Rights to be Transferred

One of the most important questions in understanding or designing a TDR program is what right the seller will be transferring. Basically, what right will be removed from the sending property?

Theoretically, the seller could be foregoing any right on the property given the current land-use restrictions.

Imagine a historic home located on a substantial lot in an otherwise densely developed urban area. The property owner may be torn between seeking to preserve the integrity of the green space around the building and realizing the potential profit of subdividing and/or developing the unused areas of the parcel. If the local government wishes to create incentives for landowners like this one to protect similar landscapes, it could allow the owner to transfer a right associated with that unused space.

Perhaps the program would allow the sender to transfer the housing units or the area or volume of potential commercial space that otherwise could be built on the lot. Even if the right to build was already limited by local laws, the sender could forego paving the site to make a parking lot and transfer that right to another landowner. Remember, a local government establishing a TDR program can define the rights to be transferred as specifically or broadly as it wants to, from large to small sets of square footage or from housing units to parking spaces. In this situation, selling the potential parking spaces as a development right to another landowner would allow the buyer to build a parking garage or construct underground parking on his own lot.

Regardless, there must be a connection between the threat on the sending resource, the right to be transferred, the potential impacts of development in the receiving area, and the incentive given to the receiver. In the above example, a threatened landscape could be protected by limiting any of a variety of rights.

The important point to remember is that TDR programs can prescribe which rights can be transferable. If the perceived threat in the example was the loss of the building (not the landscape), allowing the owner to sell traditional development rights, such as unused square footage, will alleviate growth pressures more than the transfer of parking spaces.

Calculating Development Rights

The standard method of defining most preservation TDRs is to calculate the difference between the total volume or square footage allowable under the baseline zoning and the total volume of square footage of the existing building. In short, what could be built on the lot minus what is already built there equals the transferable rights—the unused development potential of the lot. Washington D.C., San Francisco, and New York City—three of the more successful preservation TDR programs—all use this method.

One question that must be answered at this stage is whether the calculation will be offset by other development considerations and/or laws outside of the city's control. For example, if soil conditions or state laws make a portion of the lot unbuildable, should the landowner be able to transfer the right to develop that portion of the property as if it were developable? This is less of an issue with preservation TDRs than it is with open space TDR programs, but depending on the objectives of the community, it bears consideration.

Alternatively, a jurisdiction may elect to provide development rights in excess of a 1:1 ratio.

The City of Denver, for example, utilizes this approach. Historic property owners who choose to rehabilitate their buildings can receive a density bonus of four square feet for each square foot of the rehabilitated structure. In essence, they can transfer the right to build a structure four times the size of their landmark building to a developer in the same district. To qualify, the rehabilitation must conform to the Secretary of the Interior's Standards, the standards of the landmark preservation commission, or to the Denver Building Code. (See subsection 59-223(b) of the Revised Municipal Code of the City and County of Denver, Colorado.)

2. Severance and Certification

A landowner can sever and sacrifice property rights of his own accord, such as with the donation of a preservation easement. These are the same rights—in most cases—that the owner transfers in the TDR process. One issue under a TDR program is how to define these rights as something separate from the property itself so that their transfer can be documented. Remember the idea of property rights as a bundle of sticks. Each of those sticks is figuratively stuck in the ground because the rights come with land ownership. Severance is the act of pulling those sticks out of the ground; it is the legal step of separating the right from the property.

The severance procedure can vary between cities, and in some cases, the local government may want to approve or certify the rights to be transferred separately from and prior to the transfer itself. Typically, the administrator for the TDR program issues the property owner a certificate that sets forth the amount and quality of the available transferable development rights. For example, the government might define the transferable rights as one certificate for 50,000 square feet of unused space and allow the owner to transfer all or part of it; alternatively, the same owner could receive 50 indivisible certificates each worth 1,000 square feet of unused space.

The rights must be clearly defined before the transfer so that the owner knows how many and which sticks he's giving away, but at what point does he take the sticks out of the ground? Some communities certify the rights and declare them transferable in advance of the transfer; these systems only require the severance (or sacrifice) to be made legal at the time the rights are transferred and applied to the receiving property. Denver follows this latter technique in its ordinance, which reads: "Upon the issuance of a certificate of undeveloped floor area by the zoning administrator, undeveloped floor area shall be created and shall be an independent right in the owner to whom the certificate is issued and may be transferred. Such transfer need not be made appurtenant to another zone lot until a permit is requested using the undeveloped floor area." (Subsection 59-223(b)(3)f.5.) It is worth noting that the Denver certificate of undeveloped floor area

Several buildings in Denver, Colo., have taken advantage of the city's TDR program including the Navarre Building (pictured here), the Denver Athletic Club, and the Odd Fellows Hall.

– Photograph by Seth Wilcher.

reads: "The future development of this property is physically limited as a result of this certification."

In contrast, other communities issue the certificate only after the property owner has duly recorded a deed restriction or some sort of permanent protection into the chain of title for the property (see the section below on protection). This early protection requirement withholds from property owners the physical papers they will need to sell their rights until the rights are legally severed by other means.

3. Transfer Procedures

The transfer of development rights is essentially a private transaction, though in most TDR programs—preservation and environmental conservation alike—the transaction is supervised or even approved by the local government. For example, although certificates remain in a government registry, negotiation over price is a private affair.

Here is another important distinction between different types of TDR programs—those with concurrency requirements and those that treat TDRs as commodities.

Concurrency requirements are rules built into the design of the TDR program and its ordinances that force the transfer of TDRs to occur at the same time as the application for the variance from the local land-use laws. A developer seeking to use TDRs to build above a height restriction, for example, would be required to find a willing sender at the same time he proposes his development and requests the variance from the height restriction. The challenge this creates is a disincentive for the developer because there are increased transaction costs in finding a seller willing and ready to sell at precisely the right time.

Depending on motivations, community interest, and taxation issues, the community may choose to treat TDRs as commodities, meaning they can be purchased by anyone, and bought, sold, or even held freely, and there is no rule requiring concurrency between transfer and development. This model better accommodates the desires of interested nonprofits, alleviates timing concerns, favors the developer's schedule, and permits the operation of TDR banks. (For an explanation of TDR banks, see page 12.)

How much are TDRs going to sell for? The answer depends on a number of different factors:

- What rights will be surrendered?
- How much is the protected property worth, as is and as fully developed under the local law?
- How much would a comparable preservation easement be worth?
- How much will the property's assessed value for tax purposes be reduced as a result of the transaction?
- What is the ratio of development to unused rights on the sending parcel?
- What rights are gained by the receiver?
- What is the profit to be gained by the variance or bonus that comes with applying the TDRs to the receiving property?
- What would the developer be willing to pay for the variance or bonus? What would a reasonable impact fee be for the increased development?
- How much development pressure is on the community—both the sending and receiving areas?

Depending on the characteristics of the property and the factors listed here, TDRs can sell from between 25 percent to 90 percent of the property's estimated value if it were fully developed. Again, the importance of a balanced system both in terms of program success and in price setting cannot be underestimated.

4. Application—Buyer's Incentive

The transferred rights can be used to lift or shift any development restriction. The most common mechanism gives the receiver additional square footage or increased volume, but other programs provide additional housing units, grant bonus floor-area-ratio, or raise the height restriction. Essentially, transferred development rights are useable by the recipient for whatever purpose the community decides they are worth, because it is the local land-use ordinances—the TDR ordinance specifically—that determine how the rights will be applied to the property.

One important aspect to keep in mind during program design is that the bonus—whatever it may be—needs to be an incentive for the receiver; hence, it must be something receiving developers want enough to pay for it. With environmental protection TDRs—especially those programs in underdeveloped areas—this can be easier to accomplish if development pressures are strong and TDRs can make a substantial difference in the amount of development allowed. The challenge in preservation TDRs—especially those in developed areas—is that the difference for the developer between building with and without the TDRs is not always as substantial as under conservation TDR programs because the sending parcel is already developed.

The Chattahoochee Hill Country—a 40,000-acre area of undeveloped land south of downtown Atlanta—adopted a TDR program in the spring of 2003. The principal goal of the program was to redirect growth pressures in the area to nodes designated for increased development. For that reason, the entire community was designated as a sending area except for the receiving area nodes.

In this situation, no downzoning was required—the entire community was zoned for 1:1 development, meaning one house per acre. That underlying zoning was kept, and landowners in either the sending or receiving areas can develop to those specifications without special permission. However, landowners in the receiving area can develop up to 14 units per acre. For each additional unit a developer wishes to build, he must acquire one TDR, meaning one acre somewhere else will be protected—one unit, one acre. Here, the development pressure is strong and the bonus substantial enough that vast amounts of land can be conserved.

That is not to say that the incentive cannot be compelling for developers receiving TDRs under a preservation program. Careful thought—and research—must be given to what developers want and need in the potential receiving areas. In addition, it is often most effective if there are a limited number of ways in which developers can receive the bonuses they seek. For example, if because of an overall height cap, a developer can earn the same increased floor-area ratio by either purchasing TDRs or by designing the building with plazas, pedestrian-friendly features, and other amenities, many developers will choose the latter option as easier and more efficient, especially if those amenities are something they likely would have built anyway.

Local landmarks such as the Alcazar Theater, shown here, are eligible to sever and transfer their development rights under the city of San Francisco's TDR program.

– Photo by Jennifer Cohoon McStotts.

San Francisco

San Francisco's TDR program just celebrated its 20th year and is considered one of the most prolific programs, with dozens of transfers in its illustrious record. The program's success is due to a number of critical details.

First, the program was adopted as part of a larger comprehensive plan in 1985, simultaneously with the designation of the downtown's architecturally significant buildings—an assembly now numbering more than 250 buildings, each of which is a sending parcel. Part of that plan includes strict architectural controls on these significant structures, creating an adequate supply of TDRs.

Second, rights can be transferred from any of those architecturally significant buildings to any other lot in the zoning district. The only exception is that contributing and significant properties cannot also be receiving parcels.

Third, and perhaps most important, with the trio of the comprehensive plan, historic designations, and TDR program also came the downzoning of the downtown area. This reduction in density created an incentive for transfers (and therefore preservation) because no other mechanism exists by which developers can exceed the density restrictions set by the plan.

Funds generated from Seattle's TDR programs helped pay for Benaroya Hall, home of the Seattle Symphony.

– Photograph by David Lipe.

5. Permanent Protection

After the rights are defined, severed, transferred, and applied, the final question that remains is how the sending property will be protected. This can be accomplished in one of two ways: a deed restriction, such as an easement, or a recorded agreement between the sender and the municipality.

These documents are recorded in the chain of title to prevent the development of the sending property in violation of the forfeited rights. Either a deed restriction or recorded agreement will accomplish the same goal of preventing the property owner from using the rights she transferred, though the latter runs a certain risk. The drawback to the recorded agreement is that it can be voided; if the property owner and government officials both change their position on the protection of the historic building, an agreement can be rescinded, while other more permanent deed restrictions cannot. Some communities have avoided this problem by requiring a third party—such as a preservation-oriented nonprofit organization—to sign the agreement as well, meaning the agreement cannot be voided as easily.

Still other communities require the sending property owners to donate preservation easements to qualified organizations. Most conservation TDR programs require permanent easements to be recorded as part of the transfer process. Surprisingly, some preservation TDR programs do not require permanent protection.

Decisions regarding the degree of protection that will be required are political and, obviously, variable. The advantage of conditioning the use of TDRs on the donation of a preservation easement is the permanence it affords (although easements can be dissolved and lifted in extreme circumstances). Temporary protection, such as short-term or conditional easements, is easier to negotiate and require. Also, it is possible that temporary protection is a better, more flexible reflection of the market's demand. Some communities have chosen to limit the restriction on the sending property to the same length of time the bonus or receiving project exists, which affords the transfer a temporary, though long-term, quality that a preservation easement does not have.

Other temporary protections vary. The sending sites in Seattle's TDR program, for example, are downtown buildings with less than baseline density that are either historic buildings, affordable housing, or compatible infill development. The development rights are quantified in square footage, specifically the difference between a baseline of floor-area-ratio and the landmark's square footage.

In the Seattle, the sending building must be restored or rehabilitated to qualify to transfer the unused development rights. Historic theaters have priority in the process, and the city-created TDR bank has been very successful, as have its arts-related TDR programs, especially in funding construction of the Benaroya Symphony Hall. For the first 12 years of the Seattle TDR program, the city was the sole purchaser of rights, which came from historic buildings as well as low-income housing. Later, these rights and others from major performing arts facilities would be sold to developers and the funds used for rehabilitation and new construction.

Furthermore, the city requires the sending and receiving site owners to record an agreement that the landmark will be preserved for the life of the new building. As a result, the Seattle TDR program requires both rehabilitation and long-term protection. Some critics believe that despite Seattle's noteworthy success stories, the program is, overall, flawed because the baseline floor-area-ratio from which the TDRs are taken is too low and the historic preservation TDRs require additional reviews that are not required for other density bonuses, such as affordable housing (which is where Seattle's program is most prolific). In addition, a proximity restriction on transfers within retail areas (the development rights must be transferred on the same block) is considered too limiting by some.

Beyond the common requirement of a deed restriction, Philadelphia, for example, has an additional safeguard to ensure the preservation of the sending site. When the TDRs are sold, all proceeds are placed into an escrow or trust account for future maintenance or rehabilitation of the historic building. The work is then reviewed by the Philadelphia Historical Commission. Only a small minority of the programs require sending property owners to use the proceeds for rehabilitation, and some, like Seattle, require the sending site to be rehabilitated in advance.

Balancing Supply and Demand

To be successful, a TDR program must be carefully balanced in both supply and demand. The balance can be thrown off by a number of factors:

The sending area is too limited.
If there are too few historic landmarks to provide development rights for buyers whose ability to develop relies on TDRs, then development in a receiving area could occur at a less-than-desirable pace. Sizing the sending and receiving areas carefully and the use of build-out models will help to avoid this problem. Keep in mind that the ratio at which rights are exchanged does not have to be 1:1. A small sending area can supply a large receiving area if each TDR is worth a substantial amount of development to the buyer, such as if the rescue of one significant building allows the construction of additional square footage at a 1:2 or 1:5 ratio.

Senders are unwilling to transfer.
It is possible but rare that the owners of the sending properties may be unwilling to transfer their rights. Some may see greater financial benefit in retaining their development rights, while others may be reluctant to support a particular development without having a voice in its design, and others may be opposed to the increased density on principle. Because TDR exchanges are interpersonal transactions, there is always a possibility that personal issues and politics may affect the market. Understanding the community and delineating a sufficient and diverse sending area will help address this problem

The receiving area is too limited.
Perhaps worse than insufficient supply is insufficient demand. If the receiving area is not large enough to create adequate demand for transferred rights, then sending property owners will have less of an incentive to preserve. This is obviously a problem where TDRs are being relied upon as a motivator or as mitigation for the economic impact of historic district or landmark designation, because the TDRs won't have economic value.

The receiving area is overdeveloped.
This problem is not one of quantity but rather quality. For example, TDR programs that require senders to transfer the rights to an adjacent lot should first examine the intensity of existing development around landmark buildings. If most are already surrounded by substantial development, either there will be a lack of interest in the incentive, or worse, the program will backfire and create an incentive for adjacent landowners to build higher or larger in order to use the TDRs, possibly demolishing their buildings in the process. The same can be true of district-wide or inter-district TDR programs.

There is no growth in the receiving area.

Further causes of insufficient demand include poor selection of receiving areas or an overestimation of development pressures in the receiving areas. If there is insufficient demand to buy development rights because of a temporary downturn in the market, the major danger will be the loss of an incentive to historic property owners.

Alternatively, if the TDR program is primarily a mitigation measure, then such owners are already prevented from altering or demolishing their properties; the problem of restless or litigious landowners without a place to sell their TDRs can be easily solved by a TDR bank (see below). If the program has been designed to create an incentive for designation or rehabilitation, then insufficient demand for TDRs will lead to less preservation activity.

If the problem is a lasting disinterest in development in the receiving areas, then the TDR program is not functioning as it should, either because the choice of receiving areas was poor for any of a variety of reasons or because other aspects of the program (such as its procedures) are flawed. One possibility in this situation is to redefine the receiving area or alter the program to increase the incentive to develop in those areas; this choice will vary based on the situation. In contrast, if the problem is a temporary downturn in the market—where development has declined throughout the community, not just in particular areas—it is likely better to wait out this cycle in the economy.

TDR Banks

TDR banks facilitate the purchase and sale of TDRs. Some banks may surpass the role of intermediary between conservation-minded sellers and pro-development buyers by buying TDRs from ready sellers and holding them until willing buyers arrive on the market. The banks are typically nonprofit institutions supported by revolving funds and donors. Sometimes a local government itself may serve as the bank.

The types of entities that can serve as TDR banks as well as how they can and should operate are typically issues determined by state TDR enabling legislation. In the absence of such guidance, either a nonprofit organization or an agency of the local government can serve as the bank, so long as there is no conflict of interest and nothing to prohibit it in state law. Some systems allow any conservation or preservation nonprofit to hold TDRs, which eliminates the need for a formal bank while allowing nonprofits to play an important part in the process. As a result, preservation groups can guide new development using the rights they sell, support the cause of preservation directly by protecting sending parcels, and often stabilize a sluggish market. A bank or other TDR holder on its own, however, is never a guaranteed way to balance supply and demand.

Some nonprofit organizations, including but not limited to TDR banks, purchase development rights to "retire" them, meaning to take them off the market and prevent that development permanently. One issue that is not clear legally is what these nonprofit groups can or must do in order to "retire" the rights; is it enough if the certificates are destroyed or an official announcement made? It isn't settled in every state whether rights can officially be retired or destroyed by a holder who seeks to dissolve those rights. For the most part, nonprofit organizations seeking to do this may, in the future, still be able to resell those rights, though to this author's knowledge, no one has yet tried.

Purchase of Development Rights Programs

TDR banks hold development rights until a willing buyer comes along, shifting administrative costs from the seller and buyer to the bank operator. Purchase of Development Rights programs (PDR), in contrast, involve acquisition of development rights by the local government to "retire" those rights. In PDR programs, perpetual easements or other permanent deed restrictions are required because the rights will never be returned to the sender or applied by a receiver.

Along with this advantage of permanence, PDR programs can be administratively simpler than TDRs, especially if executive officials can set aside a portion of the budget for PDRs or if the purchases are funded by grants. Nonetheless, PDRs have the disadvantage of requiring public funding for conservation, taking the issue away from the market. In addition, they work best for purposes of mitigation and do not work as a growth management tool, since the rights will not be applied elsewhere.

TDRs and Teardowns

One particularly appealing feature of TDRs for preservationists is how they can be used to calm the teardown trend. For the purposes of this booklet, a "teardown" is not just any demolition but specifically the destruction of an older home to build a larger, incompatibly-scaled home. Teardowns are not a result of growth pressure per se because the new development that replaces older, modest single family houses is still a single family residence. A community becomes no denser as a result of teardowns, the buildings just get bigger.

Unfortunately, no one solution exists for the teardown problem; TDRs are just one potential tool in the preservationist's arsenal. Depending on the community, they can be effective either as an incentive to landowners not to succumb to teardown pressure or as a mitigation measure if a historic neighborhood is downzoned in terms of house size to prevent teardowns and over-scaled additions. Even a single inappropriate or incompatibly-scaled addition or new home can disrupt one block's streetscape. The effectiveness of TDRs, however, may be limited without broad participation. Some holdouts may choose to demolish and rebuild after most of the block is protected by the TDR program. Property values are generally diminished by this sort of intrusion.

Finally, a TDR program for protecting historic residential neighborhoods threatened with teardowns requires (1) that the neighborhood be designated as a sending area and (2) that there be a receiving area able to accept the increased development. Adjacent-lot TDRs and district-wide TDRs are inappropriate in this case, while interdistrict TDRs will be most effective.

The Role of Unified Lot Zoning

As explained earlier, adjacent-lot TDRs are programs which require that the unused development rights be transferred to a lot contiguous to, across from, or cattycorner from the sending lot. One variation on this system is unified lot zoning (ULZ), a.k.a. combined lot development or lot merger. The ULZ approach brings urban design principles into play and essentially eliminates the transfer step while accomplishing similar goals to adjacent-lot TDRs. In fact, New York City's TDR program evolved out of its merged lot zoning technique.

Under ULZ, adjacent lot owners apply to the local government to be treated as a single lot for the purposes of applying land-use laws. The form and size of the new building can be quite different because the development can be clustered as if the lots were legally merged into one.

The advantage of ULZ is it provides a simplified process similar to project or design review with increased control by the local government. (Some communities choose to monitor development rights transfers or have increased design review over the application of development rights, especially in urban areas but not all do.) In our scenario, for example, the local government might place a limit on design and height to control the possible incompatibilities of scale that can result from ULZ treatment.

Why would property owners want to pursue ULZ? The advantages are quite similar to TDRs; in most cases, there will be a private cash exchange or transfer of some other benefit to the owner of the landmark property "transferring" the undeveloped density. Such bargaining will be totally private and uncontrolled in a ULZ system, and permanent protection is not typically required, though the city does record the unification.

Why would the local government want to pursue ULZ instead of TDR? ULZ offers the local government more control over the final product that arises from development adjacent to and around significant landmarks. Overall height, scale and massing can be controlled more closely, as can other finer details of the design, under ULZ but are not typically so closely watched under TDR. One disadvantage that remains is the same major disadvantage as adjacent-lot TDRs. Transferring density or development rights to a contiguous lot can create sharp disparities in scale or volume between the historic building and the new development in the absence of sensitive design or powerful review. The counter argument is that ULZ allows for a more involved design review process aimed at compatibility in which the landmark property owner also has a voice—an element missing from TDRs unless the landmark owner demands control as a condition of the transfer.

Downzoning and the Transfer of "Existing Development" Rights

Downzoning is not always necessary for the creation of a TDR program, nor is it always necessary for the program's success. If existing land-use restrictions are already structured in such a way as to create adequate supply of and demand for TDRs, and if lifting and shifting those restrictions is acceptable to the community and parallel with its objectives, then the existing zoning can be left alone. For example in Fulton County, Ga., downzoning was not necessary because the community was satisfied to take the chance that landowners would build either to the new densities available with TDRs or to the previous standards. Whether it is necessary in your community is a question to be answered by your planners and your citizens.

In rare circumstances, a community will downzone and non-historic obsolete buildings that no longer conform to the land-use laws will be left, larger than the new buildings around them. While such buildings could be grandfathered in (or amortized out), the community may instead want to give the landowner an incentive to replace the obsolete building with a code compliant, smaller building. TDRs give them the ability to do that, as they did in Santa Barbara, Calif. There, the city allowed such landowners to transfer the difference between the old building and the new building to another site free of the city's development quota system. Such programs are referred to as Transfer of Existing Development Rights.

Voluntary TDRs

One motivation for TDRs is to encourage or create incentives for designation and/or rehabilitation, and in this way, most programs function as an active incentive promoting the community's goals and plans, including preservation. Some TDR programs, however, serve as passive incentives for preservation. In such cases, TDRs aren't about growth management or active preservation; they aim to provide an option to local residents who already have an interest in and tendency toward conservation or preservation but are seeking a greater incentive than the deduction available for an easement donation. The local government (or TDR bank) can capture those transferable development rights, which can then give them an increased degree of control later over developments that would seek to buy and use those TDRs. Seattle has done this with numerous projects created using rights the city collected in small increments over more than a decade.

Lessons from the Field

Beyond the theory and scholarship on TDRs, important lessons can be learned from actual TDR programs.

1. Integrate TDRs into a comprehensive plan.

The most successful programs do not approach TDRs as a tool solely for preservation. Rather, they combine consideration of historic preservation concerns with other community issues such as growth, aesthetics, housing, and so forth. This is not to say that TDRs cannot be adopted separately from a full comprehensive planning effort and succeed, but like any planning or preservation tool, they rely on the research and deliberation that comes from comprehensive community planning.

Some of the most active programs, such as San Francisco, were adopted simultaneously with and as a part of a greater plan. Likewise, the Seattle program was also adopted with a new downtown plan. Timing, however, is not always the key. Some programs, like New York City's TDR system, were adopted independently and have proven successful as a means of furthering the community's greater economic and growth goals and adapting to changing conditions in the city.

2. Keep infrastructure in mind.

One key point to remember here is the relationship between TDRs and infrastructure. Receiving sites logically may require additional infrastructure to meet the demands resulting from increased density. Some TDR programs have faltered because they failed to take into account this need and did not have adequate infrastructure in place and new infrastructure could not be added as needed.

For example, in Cape Elizabeth, Maine, in the 1980s, receiving sites had to be able to connect to the public sewer but were not given special consideration under the town's growth-neutral policy that limited sewer connections based on lot frontage. The sewer policy was amended in the 1990s to connect more lots, and the TDR program was amended to allow sites with on-site sewage disposal to be receiving sites as well. With maximum density bonuses of greater than 200 percent and adequate infrastructure (now), the program will likely be more successful in the future.

3. Don't put too much trust in the market.

In some communities, the success of a TDR program will always be measured in quantity—the number of transfers, or the number of buildings protected—rather than quality—the benefits the projects generate and the significance of the buildings that were saved. Communities concerned with quantity should not depend on the market alone to make the program work. Temporary downturns have been known to cast programs in a negative view in the public's eye, but as market-based tools, TDR programs are at the whim of the market.

For communities using TDRs as an incentive to designate (or rehabilitate), relying on the market is too risky for the resources. Having a TDR bank that functions as a willing buyer can compensate for a sluggish market, though communities like San Francisco have chosen not to create TDR banks precisely to avoid interfering in the market's influence on pricing.

Planners and preservationists should be prepared to fight for high quality development and preservation in the early uses of the TDR program. This will accomplish two goals. First, high profile transfers for projects that community can be proud of will convince citizens of the program's success in terms on quality. Second, these early efforts will set a precedent for future projects.

4. Use a simple formula for calculating TDRs and limitations.

The most effective systems use the simplest ratios for applying TDRs, such as 1:1 or 1:4. Most of the successful programs, from New York to San Francisco, use a 1:1 transfer ratio, such as for each square foot of unused space, one square foot is added to the receiving parcel. Some calculate TDRs in larger units, such as 100 or 250 square feet, but still use a simple ratio. Keep in mind, the easier a system is to understand, the easier it is to use, and the more likely it will be used!

That's not to say that a 1:1 ratio is the only answer, nor does it mean there should not be a clear cap on how many rights can be transferred. Refer back to the City of Denver, which goes beyond the standard method of calculating TDRs. In Denver, historic property owners who rehabilitate receive a density bonus of four square feet per square foot of the rehabilitated structure. The 1:4 ratio of this bonus is still fairly clear, as is the cap on receiving TDRs: no receiver can increase the development by more than six times the lot size. This establishes a clear but relative ceiling on development using TDRs, as do similar caps based on floor-area-ratio.

5. Keep the process simple.

As with any planning tool, the more streamlined the process is the more effective and appealing it will be. The timing of key steps in the process, for example, should not be burdensome. Receivers should not be required to secure the transferred development rights before preliminary project approval. If possible, municipal approval of the transfer itself (though not the project) should be ministerial or administrative in order to avoid additional review requirements; a well-prepared ordinance will make transfer approval unnecessary. If timing proves to be a hurdle, the procedure should be changed or a TDR bank created, so there will be as few gaps between the participants and their goals as possible.

One challenge TDR programs sometimes neglect to deal with is the issue of landowner cooperation, especially with multiple sellers. If the ratio of transfers is such that multiple properties' worth of TDRs must be required to attain the receiver's incentive, the increased difficulty of timing the transactions and negotiating with multiple sellers may prove greater than the incentive and stop potential buyers in their tracks.

The TDR program of Brisbane, Calif., is an excellent example of how small towns can use TDRs and how even programs with enormous potential can be held back by overly complex procedures. Brisbane has a population of less than 4,000 people, but the resource it was seeking to protect by adopting TDRs was the hillsides and steep slopes in and around the town. These steeper areas are farther from and harder to serve with infrastructure, so they compose the sending area. Flatter areas closer to existing systems are the receiving areas. For every 20,000 square feet of land protected in the sending zone, one additional housing unit can be built on a receiving lot.

Nonetheless, this incentive has not proved strong enough to overcome the procedure's one problem. To acquire the development rights to 20,000 square feet of land would require the cooperation of multiple landowners, a feat no one has yet accomplished. Without a TDR bank, transfers under this procedure are simply too expensive in terms of transaction costs.

6. Know your community.

The calculations, procedures, outreach, and objectives of the TDR program may all be just right, but if the community itself is either opposed to the increased density of receiving area projects or is simply not interested in receiving the bonus, the TDR program will fail.

7. Don't provide too many other alternatives.

As mentioned above, part of San Francisco's success stems from the fact that developers can't achieve increased density without buying TDRs. Where there is no alternative, the incentive to use TDRs is obviously greater.

In contrast, San Diego's Golden Hill TDR program proved to be short lived (1981-1989) because of a lack of consensus about the community's planning goals. It is also clear that San Diego's program didn't create sufficient demand for receivers to buy TDRs.

Under San Diego's program, TDRs could be used to earn a density bonus up to 24 percent, but there were comparable density bonuses for amenities related to other city goals, such as environmental protection and energy conservation, affordable housing, and even specific design features. While these bonuses could combine with TDRs, in reality there wasn't sufficient demand for such densities; the underlying zoning already allowed 43 units per acre.

8. Keep the TDR program up to date with changes in the law.

Atlanta, Ga., created a TDR program in 1980 and amended it slightly to facilitate downtown Atlanta's only transfer—the transfer of 80,000 square feet to an 800,000-square-foot tower adjacent to a local landmark known as The Castle. At the time the ordinance was enacted, and again when it was amended, Georgia had no enabling legislation to permit the program. That alone didn't cause a problem, as the TDR was presumably authorized under the general purview of the state's zoning and planning laws.

However, in 1998 the state passed enabling legislation, which required, among other things: protection of the sending parcel's character that would run with the property (such as an easement); clear procedures for severance, delayed transfer, and exchange; monitoring of the exchange; the rights of the local government and individuals to purchase and hold TDRs; and explanation of the taxation of TDRs. Atlanta's ordinance was missing all of these features, either entirely, in part, or as the law was interpreted to intend them. While the City of Atlanta has begun exploring what needs to be done to update or revise its program, this legal limbo is a strong disincentive to landowners considering using TDRs.

Recipe for Success

There is—unfortunately—no way to guarantee that a TDR program will work. That's the risk of market-based tools and any mechanism that leaves part of its chance for success in the hands of the public. Nonetheless certain elements are essential for a successful TDR program, whether you measure success quantitatively or qualitatively. In addition, certain elements can nurture and support a TDR program including;

1. Supply

If there are not enough TDRs available to transfer, or enough to make the transfers worthwhile, then the program will not be used. The number of TDRs available (and their relationship to the number needed by developers) will directly affect the success of the program. Too few will make transfers cost-prohibitive or too unmanageable to pursue; too many will glut the market, drive down prices, and possibly force buyers to acquire from multiple landowners, which adds time and expense to the process.

Beyond sheer quantity, it is important to remember that senders must have an incentive to sever and transfer their development rights. Some programs have had inadequate activity because senders had more too gain by using their development rights than by transferring them. Strict controls on the sending area and/or lucrative transfer exchanges will keep the supply of development rights steady.

2. Demand

On the flip side of the coin from supply is demand; here the community must be sure that what the bonus developers stand to gain is worth the time, effort, and money of acquiring development rights, which is not always as easy as it sounds. First, time and effort can be reduced by simple, easy procedures (see below), but price will be set by the market. The relationship of supply and demand needs to be such that the price will be reasonable for the bonus received.

Second, the bonus must be something the developer wants and stands to gain in the end. The designers of the TDR program in Birmingham Township, Pa., fell victim to this problem; the restriction that will be lifted with the application of TDRs is the density restriction, but the real estate market and developers are most interested in houses on large lots, hence there is more to be gained from developing without TDRs than with them.

As with supply, both the quantity and the quality of TDR demand must be researched and planned for carefully. Finally, bear in mind that excessive TDR demand may indicate that the receiving areas should be expanded or the transfer ratio should be adjusted, depending on the community's goals.

3. Ease

The third essential element of any TDR program is simple, efficient, easy procedures. For the increasing number of local governments trying to take a one-stop-shopping approach to development, this may be a familiar concept, though a challenge to embrace. It is worth it to be careful in drafting the ordinance, designing the procedures, and even amending them if necessary in order to best facilitate transfers.

Also, try to avoid requiring excessive review at any stage of the process, but especially of the transfer. This is particularly tricky, as one of the advantages of TDR for some communities is the opportunity to have heightened review of projects with greater than average effects on landmarks. This will vary from community to community, but keep in mind that having a TDR program with such clear guidelines that developers can almost be assured approval for projects that meet certain criteria ensures more transfers and therefore more preservation.

Further, the application of the rights isn't the only stage for review, so be careful of excessive oversight from the private parties' perspective. In Georgia, the state enabling legislation has been interpreted to require municipal approval of all transfers, a step most communities wished to avoid to save on administrative costs as well as to facilitate transfers.

Finally, if possible, avoid requiring the cooperation of too many landowners in any given transaction or project. This isn't always possible—and is even more challenging in urban TDR programs where large landowners are less common—but it is an important part of facilitating the TDR process with simple, easy procedures. If the numbers require multiple landowners be involved in most transactions, consider using a TDR bank as intermediary to gather development rights from a variety of landowners and package them for developer application.

4. Adaptability

As most local governments already know, it is impossible to adapt the laws, policies, and procedures to accommodate every scenario. Nonetheless, it is important that the local government monitor the TDR program to ensure it is accomplishing the community's goals and to assess whether it could easily be adapted to be more effective or efficient.

5. Protection

In the absence of specific documentation or in the presence of corruption or mistake, a landmark property could be developed despite the sacrifice of development rights to the receiver. After the development rights have been severed from the sending property and transferred to the receiving parcel, some protection must be put into place to ensure the property is not developed using the transferred development rights. This protection may be temporary (a deed restriction for the life of the receiver's project or a 50-year easement), indefinite (a covenant with the city or county), or permanent (such as a preservation easement). In any case, the sender should not gain the benefit of the transfer as well as the use of his forfeited rights or the public will be the one to lose.

6. Purpose

To return to a question addressed earlier, a community does not need a historic district or even a landmark ordinance to enact TDRs, even for preservation purposes. Furthermore, the TDRs don't need to rely on a preexisting list, nor does the ordinance need to create one. What a successful TDR program needs is a clear definition of what and where the sending and receiving parcels are. In addition, those parcels must be chosen based on rational criteria to support the greater purpose of the program.

Undoubtedly, sending parcels can be defined geographically by delineating a historic district as a sending area, but that is not the only way. The definition of sending parcels can reference an existing designation, such as the National Register of Historic Places or a state-supported list. An important rule when using either of these lists is to reference the list as it exists on the day of the ordinance's passage and to include any new properties added to those lists after review. In addition, consider any consent issues that apply in your state. Additionally, sending properties can be defined qualitatively. For example, the TDR program could include all properties eligible for the National Register as determined by the state historic preservation officer, or any lots with structures totaling less than a certain square footage and older than a certain age.

In the end, the TDR ordinance itself must also have a clear purpose, and all definitions—from sending parcels to the allocation of rights, from receiving parcels to the protection required—must relate to and support that purpose.

7. A Nurturing Environment

A TDR program's success is in substantial part reliant on the community and the environment in which the program is enacted. There are certain characteristics of the environment (political, economic, etc.) in which TDRs are more likely to succeed.

The community—from citizens to developers to leaders—needs to support the purpose of the TDR program and believe in its capacity to work as a planning tool of those goals. Politics—meaning the conservative or liberal composition of the community—are unimportant, because as a pro-preservation, market-based tool, TDRs appeal to a variety of groups. What is important is community consensus and outreach.

The former can be dealt with by appropriate research; in some cases, TDRs will not be appropriate because of the opinions of one or more of those groups that compose the environment for TDRs. Perhaps the leaders are adverse to innovation or the risk involved in market-based tools. Regardless, belief in TDRs and persuasion efforts should not overpower an objective assessment of whether or not the community supports TDRs.

The second aspect of a supportive environment is an informed community, including leaders and developers, as well as preservation nonprofits. In this respect, a clear ordinance and simple program will translate into easy outreach efforts. Potential senders and receivers, as well as preservationists, other advocates, journalists, real estate professionals, and many others in the community should understand the basics of how the community's TDR program will work.

Finally, the third characteristic of a nurturing environment for TDRs is growth. While not every

TDR program must concentrate on growth management, there must be enough growth that some development is going on in the community, especially in the potential receiving area. In the best-designed TDR programs, where the incentive is strongest, developers will use TDRs to build somewhere that they would not have developed otherwise.

Ultimately, if the community on the whole understands and supports the TDR program, and the growth pressure is sufficient, a TDR program will be successful, in that it will generate transfers. What will make the quality of the preservation and the development projects successful depends on the substance of the TDR program as well as underlying land-use regulations. The transfer of development rights is a flexible tool that can direct growth in a variety of forms away from sensitive cultural resources. We'll be seeing it more often in coming years as the second generation of TDR programs comes on the scene.

Further Resources

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