

#### **4.2.3. - Fossil Creek Reservoir Area transferable density units overlay zone.**

A. *Declaration of legislative intent.* This section is intended to enable property owners to develop receiving areas for residential uses at densities greater than would be allowed under existing zoning classifications by voluntarily acquiring transferable density units (TDUs) from sending areas.

This section is also intended to encourage property owners in sending areas to forego development of their such properties or to develop them at lower densities. The transfer of density units is not automatic, and such transfers are only allowed between identified sending and receiving areas and through voluntary participation by property owners.

B. *Declaration of legislative purposes.*

1. To protect and promote the health, safety and general welfare of Larimer County residents;
2. To guide future growth, development and distribution of population density and open space;
3. To implement the goals and objectives of the Larimer County Master Plan, the Fossil Creek Reservoir Area Plan and their subplans and component parts;
4. To promote the preservation and provision of agriculture, rural open space, scenic vistas, natural features, recreation lands and environmental resources;
5. To encourage higher density development in the area included in the Fossil Creek Reservoir Area Plan;
6. To protect lands from activities that would cause immediate or foreseeable danger to significant wildlife habitat or areas containing significant natural vegetation;
7. To regulate the location of activities and developments that may result in significant changes in population density;
8. To provide for phased development of services and facilities;
9. To regulate land use on the basis of its impact on the community or surrounding areas;
10. To otherwise plan for and regulate land use in a manner that promotes planned land use, protects the environment and is consistent with Constitutional rights.

C. *Authority and applicability.*

1. This section is authorized by the following sections of the Colorado Revised Statutes as they now exist or may be amended:
  - a. C.R.S. § 29-20-104; and
  - b. C.R.S. § 30-28-111.
2. This section applies to lands within the Fossil Creek Reservoir Area Plan described by map and legal description in the technical supplement to this code.

D. *Definitions.*

*Receiving area.* Areas designated by description or on a zoning map to which TDUs may be transferred.

*Receiving parcel.* An individual parcel, or group of parcels administered as a single parcel, that has a site-specific plan and a specific number of dwelling units determined for acquisition.

*Sending area.* Areas designated by description or on a zoning map from which TDUs may be transferred.

*Sending parcel.* An individual parcel, or group of parcels administered as a single parcel, that has completed the process for having TDUs assigned to it.

*Transferrable density unit (TDU).* A unit of density, measured as one dwelling unit, that has been established and assigned to a sending parcel.

E. *Receiving area designation and establishment of the Fossil Creek Reservoir Area TDU Zone.*

1. In order to carry out this section, a zoning district classification within Larimer County called the Fossil Creek transferable density unit (TDU) zone is hereby established. The Fossil Creek TDU zone is an overlay zone to be applied together with the underlying zoning district and the Fort Collins GMA district.
2. The Fossil Creek TDU zone is a designated receiving area and is depicted on the Fossil Creek Reservoir Area Plan and in the technical supplement to this code.
3. There are two sub-areas within the Fossil Creek TDU zone called the estate residential area and the mixed use neighborhood area. These subareas are depicted on exhibit "A" (see technical supplement attached to this code).

F. *Regulations for the Fossil Creek receiving area.*

1. Residential development within the Fossil Creek TDU zone must comply with this section and the Fossil Creek Reservoir Area Plan.
2. To develop a parcel in the Fossil Creek TDU zone at a residential density greater than that allowed by the underlying zoning classification, the owner must transfer, in accordance with this section, TDUs from counterpart sending area(s).
3. For each single TDU transferred to a receiving parcel, 1.5 dwelling units are allowed.
4. TDUs may be purchased from any sending parcel or combination of parcels within the counterpart sending area.
5. An owner or agent of a party with a legal interest in a receiving parcel wishing to participate in the TDU program must contact the county planning department to obtain an evaluation of the property and an estimate of the maximum number of dwelling units that may be built on the property.
6. The owner may submit a development plan within the range of the number of dwelling units allowed by the adopted area plan for the site. The actual number of dwelling units (hence the number of TDUs needed to be transferred) is ultimately established by the county commissioners through the development review process and approval of a site specific preliminary plat. No final

plat will be approved until the required number of TDUs are transferred and assigned to the receiving parcel.

7. Any party acquiring TDUs must commit the use of the TDUs to a specific parcel (receiving parcel) and sign all documents required by the TDU administrator so accurate TDU transfer records may be kept. No TDU transaction will be recognized until the documentation is complete.

8. Owners of receiving parcels must develop the entire parcel by purchase of TDUs. An owner may, however, phase development and purchase only the number of TDUs necessary to develop a particular phase. Each phase must be developed consistent with the overall density and development standards for the Fossil Creek TDU zone.

9. Properties located within the Fossil Creek TDU zone may be considered for land division and development for residential use without participation in the TDU program in accordance with the following terms and conditions:

a. The maximum number of dwelling units that may be developed will be based on the underlying zoning and will be calculated as follows: total acres of the subject parcel minus areas within a 100-year-floodway or covered by a body of water, multiplied by 0.5.

b. Dwelling units must be clustered on the site so the cluster meets the density requirements for properties located in the estate residential area or the density requirements for properties located in a mixed-use neighborhood area as defined in the development standards for the Fossil Creek Reservoir Area in the GMA district. Minimum lot sizes may be waived by the county commissioners to allow the required density to be achieved. The remaining undeveloped area on the site must be designated as a future development area. Development of the future development area may only occur through the purchase of TDUs.

c. Development must meet all applicable standards specified in the development standards for the Fossil Creek Reservoir Area in the GMA district.

d. Land divisions must occur as planned land divisions and all rezonings require rezoning to PD planned development district.

10. Dwelling units in the receiving area that meet the county's definition of "affordable housing" are exempt from the TDU transfer requirement.

G. *Voluntary fee-in-lieu-of-TDU transfer.*

1. Any owner of a receiving parcel who is otherwise required to obtain TDUs under this section may voluntarily elect to pay a fee-in-lieu of transferring TDUs if all the following conditions exist:

a. The receiving parcel is 25 acres or less; or, in the alternative, the number of TDUs needed for transfer is ten or less; and

b. The owner of the receiving parcel has demonstrated a good-faith effort to obtain TDUs for transfer and has been unable to do so; and

c. The owner and the county commissioners agree on a reasonable fee-in-lieu of a TDU transfer.

2. The fee-in-lieu amount is based on the value paid by the county or other public entities for

the purchase of conservation easements or similar open-space covenants involving less than a fee interest in the sending area. The fee is calculated by determining a per-acre price for the similar open-space interest, multiplied by 2, multiplied by 75 percent and again multiplied by the number of TDUs for which the fee-in-lieu is paid.

3. Fees under this section must only be used to acquire open-space interests in the sending area.

H. *Development standards.*

1. All development in the Fossil Creek TDU zone must meet standards for the Fort Collins GMA district and standards for the Fossil Creek Reservoir Area contained in the supplementary regulations in subsection 15.2.A.1.

2. Development in the estate residential area of the Fossil Creek TDU zone must also comply with standards of the estate residential area regulations for the Fossil Creek Reservoir Area contained in subsection 15.2.A.1.

3. Development in the mixed-use neighborhood area of the Fossil Creek TDU zone must also comply with standards of the mixed-use neighborhood area regulations for the Fossil Creek Reservoir Area contained in the subsection 15.2.A.1

I. *Sending area designation.*

1. Sending areas are shown by map and legal description in the technical supplement to this code. Sending areas are not overlay zones and do not affect any development potential under existing county regulations.

2. Sending area property owner participation in the TDU program is voluntary.

3. Sending area property owners wishing to participate in the TDU program must contact the TDU administrator. The TDU administrator will review the property in detail and determine the number of TDUs available for transfer. A sending parcel must include the entire tract or parcel owned by the applicant.

4. Designation of sending areas or the determination of the number of available TDUs assigned to a sending parcel does not create any property rights or other vested rights for the sending parcel owner. The county retains the right to alter, amend or eliminate the TDU program at any time, except that any TDUs purchased under this section are vested in the receiving parcel. Any sale of the TDUs is conditioned on the owner and the county commissioners agreeing to a future use covenant for the sending property.

5. Eligibility for participation as a sending parcel and determination of the number of eligible TDUs is a discretionary and administrative procedure carried out by the TDU administrator and the county commissioners. The TDU administrator may seek the advice of the Larimer County Open Lands Board prior to making a determination. The basic allowable TDUs are 114.5 percent of the density allowed by the existing zoning classification. The basic allowable amount may be increased, decreased or a property may be found ineligible based on the presence of conditions stated below:

a. Conditions that may increase the number of TDUs per acre:

- (1) Lands with significant natural resource, scenic or wildlife habitat values.
- (2) Lands that are buffers maintaining community identity or buffers for important community infrastructure or land uses.
- (3) Lands that are to be used for regional trails and/or wildlife migration routes.
- (4) Lands that will be preserved for agricultural purposes.
- (5) Lands that provide outdoor recreation, environmental education or nature observation opportunities near population centers, including areas that expand or provide buffers to existing open-space or park lands.
- (6) Lands with other important values, such as scenic and historic sites that contribute to Larimer County's natural and cultural heritage.
- (7) Lands containing vistas of community importance.
- (8) Intensity of allowed underlying development potential that will be relinquished.
- (9) Areas zoned other than residential.

b. Conditions that may decrease the number of TDUs per acre:

- (1) Parcel size of 40 acres or less.
- (2) Diminished development potential after considering the physical conditions of the site, access, public water and public sewer.
- (3) Location of the property relative to already-developed parcels.
- (4) Existing uses and existing development on the subject property.
- (5) History of approved land divisions, including exemptions, subdivision or minor residential developments.

6. Upon final determination of the number of TDUs eligible for transfer, the participating property owner will receive a certificate stating the number and a draft of the use covenant. The certificated number will be recorded in the TDU administrator's office.

7. The number of allowable TDUs may be revised by the county commissioners on request of the affected property owner.

J. *Regulations applicable to sending parcels.*

1. Determination of the number of TDUs to be transferred from a sending parcel will be evidenced by a certificate that remains in effect for two years. The certificate will automatically renew for additional one-year periods, unless a sale of all or a portion of the TDUs occurs or the certificate is revoked by the county by written notice provided prior to the expiration of any annual time period. The use covenant may include various means to carry out its intent including the conveyance of a conservation easement.

2. After assigning the TDUs to a sending parcel and the issuance of a certificate, the property

owner may offer the TDUs for sale.

3. The owner of a sending parcel may sell all or a portion of the TDUs. Upon sale, the TDUs will be assigned to a specific receiving parcel.

4. Simultaneously with the sale of all or a portion of the TDUs, the owner of the sending parcel must:

a. Sign a use covenant with the county that describes the future use and/or development of the sending parcel. The use covenant must describe the sending parcel by legal description and be recorded in the public records of Larimer County. The covenant must run with the land and controls all future use and/or development of the sending parcel. The use covenant must prohibit unregulated 35-acre development. The use covenant may include various means to carry out its intent including the conveyance of a conservation easement.

b. The terms and conditions of the use covenant must be negotiated and agreed upon by the sending parcel owner and the TDU administrator. Any use allowed through the covenant must be a use-by-right in the existing zoning for the sending parcel. If the owner and administrator cannot agree, the parcel owner and the county commissioners may negotiate. If the commissioners and the owner cannot reach an agreement, the TDU transfer will not occur.

c. The use covenant must be signed by sending parcel owners, lenders and lien holders who have an interest in the sending parcel, the county commissioners and any other party with an interest in the use covenant.

d. The use covenant cannot be changed without approval by the county commissioners using whatever process, including a public hearing, that the commissioners deem appropriate under the circumstances. A decision whether to allow a change in a use covenant is an administrative action by the commissioners and not a quasi judicial action.

e. If the owner transfers additional TDUs after the first sale, a new use covenant must be signed.

5. Where a sending parcel owner retains the right to develop part of her/his property by subdivision into lots pursuant to a use covenant signed before the sale of any TDU's, the division may be made in one of the following ways.

a. Where the total number of lots is equal to or less than the total acreage of the property divided by 35 (rounded down to the nearest whole number) plus one, or six, whichever is less, the owner may use the following process. This process will be considered a subdivision exemption process under C.R.S. § 30-28-101(10)(d) and will be referred to as the TDU exemption process of TDU exemption plat.

1) *Application materials and requirements.* The owner must comply with section 12.1 of this code concerning application materials and requirements.

2) *Process.* All applications for TDU exemption plats require a pre-application conference, concept or sketch plan review and public hearing before the county commissioners. Each of these processes is described in subsection 12.2, development review procedures.

3) *Review criteria.* To approve a TDU exemption plat the county commissioners must find the following conditions exist:

- a) The proposed TDU exemption plat is compatible with existing and allowed uses in the surrounding area;
- b) The newly created parcels meet the minimum lot size required by the applicable zoning district;
- c) The newly created parcels meet the minimum access standards required by the county engineer or the Colorado Department of Transportation, as applicable;
- d) The proposed TDU exemption plat will comply with section 8.1 of this code concerning adequate public facilities with regard to roads, water, sewer, fire protection and drainage;
- e) The proposed TDU exemption plat will not adversely affect special places of Larimer County; and
- f) Applicable transportation capital expansion fees, park fees in-lieu of dedication, school fees and drainage fees will be paid at building permit issuance.

4) *Development agreement.* The proposed TDU exemption plat must include a development agreement which specifies the details of the project and assures completion and maintenance of improvements required to serve the project. A property owners' association and protective covenants may be required if determined to be necessary by the planning director.

b. Where the total number of lots exceeds the number allowed for the TDU exemption process, the land division process appropriate to the location, size and proposed density will apply. If the rural land use process is used, no bonus units will be allowed.

6. A sending parcel owner may withdraw from the TDU program and proceed to develop his/her property so long as he/she has not sold any TDUs. Except as provided in subsection 4.2.3.J.5, any change in use or application for a public hearing for special review, special exception or land division for a sending parcel will be considered a voluntary withdrawal from the TDU program and all sending parcel designations will immediately become void.

A sending parcel owner may elect to sign a use covenant for his/her property prior to the sale of any TDUs. The owner assumes the risk of nonsale of the TDUs that are awarded to the owner in consideration of the use covenant.

#### K. *Administration of TDU program*

1. Prior to sale, TDUs are appurtenant to the sending parcel. Upon the sale of, or other commitment of specific TDUs to an approved development of a receiving parcel, such TDUs become appurtenant to the receiving parcel and may not be revoked by the county without agreement of the receiving parcel owner. TDUs are only transferable upon sale or transfer of the property to which they are attached.

2. The county commissioners will designate a department/staff person (TDU administrator) to administer the TDU program.

3. The TDU administrator performs those duties assigned to it by the commissioners. In addition, the TDU administrator will:

- a. Determine the number of TDUs to be assigned to a sending parcel under guidelines in this section.
- b. Keep a written inventory of all TDUs assigned to sending parcels. The inventory must specify the legal description of the sending parcel and the number of TDUs assigned.
- c. Keep a written inventory of the number of TDUs eligible to be assigned to the Fossil Creek Receiving Area with a subtotal for TDUs actually transferred.
- d. Keep a written inventory of all TDUs assigned to a specific receiving parcel upon the owner of that parcel voluntarily participating in the program. The inventory must specify the legal description of the receiving parcel and the number of TDUs assigned.
- e. Keep a record of TDU sale prices.
- f. Coordinate with TDU buyers and sellers and provide necessary administrative assistance necessary to complete the transactions.

4. The TDU administrator is prohibited from acting as a TDU broker. The TDU administrator is prohibited from, in any manner, participating in the negotiations to establish a TDU sale price.

5. All records of the TDU administrator are open for public inspection and copying. Copying fees are set by the county commissioners.

6. Fees for participating in the TDU program will be specified by county commissioner resolution.

L. *Miscellaneous.*

1. *No severability.* It is the intent of the county commissioners that this section be construed in its entirety and that each subsection is related to the section as a whole. If any provisions of this section are declared invalid, then the entire section is invalid.

2. *Supremacy clause.* This section takes precedence over any conflicting requirement in this code.

(Res. No. 09122006R002, Exh. A, 9-12-2006; Res. No. 08102010R001, Exh. A, 8-10-2010)