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# **Pima County, Arizona**



## **Transfer of Development Rights Implementation Guide**

**May 2007**



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## Introduction

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In 2005, the State of Arizona authorized county governments to implement programs for the transfer of development rights (TDRs). Pima County has decided to implement a TDR program pursuant to the state enabling act, and an ordinance has been prepared. Over the next several years, the county expects that numerous property owners will want to take advantage of the new TDR program by either buying, holding, or using TDRs.

This document is prepared to assist Pima County staff and the public in understanding how TDRs work in the context of Arizona's state act and the Pima County ordinance. It covers:

- The basic provisions of TDR systems
- Arizona state requirements;
- The Pima County program;
- Procedures used by staff in the TDR process;
- Frequently asked questions; and
- Glossary of terms used in Pima County's program

In addition to reviewing this Implementation Guide, County the Pima County TDR ordinance should be read in detail. In addition, the County will be preparing a manual with more detailed requirements and forms.

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## TDR Programs

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### Basic Information

Transfers of development rights are used to transfer ownership of development potential from lands where development is less desirable to lands where it is more desirable. The land from which development is transferred is generally called the "Sending Property" and the property to which it is transferred is called the "Receiving Property". Ownership of both the sending and receiving properties remain unchanged – i.e. no land is sold. Instead some or all of the ability to develop the selling parcel is "severed" from that parcel and sold to the owner of the receiving property. After the transaction, the owner of the selling parcel can develop less than she could before, and the owner of the receiving property can develop more than before.

The essence of TDR transactions are:

- They are voluntary -- no one is forced to sell or buy;
- The government identifies potential sending and Receiving Areas (not specific sites) and allows owners in those areas to participate;
- The development potential of the sending property is limited through the use of a restrictive covenant;
- The development potential of the receiving property is enhanced in some way; and
- The government does not set the price for TDR transactions.

Although there are over 150 TDR programs functioning in the U.S., the details of those programs vary tremendously. There is no "standard" approach. One reason is that state enabling legislation also varies a lot.

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## The Arizona Statute

A.R.S. 11-821.03 contains several provisions that limit how Arizona counties can use the basic TDR tool. More specifically, it requires that:

- The County must adopt an ordinance to implement the TDR program.
  - There must be a written instrument of transfer signed by both the seller and buyer and their lienholders.
  - Sending areas can include potential noise or accident areas around certain military facilities, natural hazard lands, or environmentally sensitive lands, as decided by the County Commissioners.
  - Development on the sending property must be restricted so that it preserves the characteristic that made it eligible to participate in the transfer program, and the restrictions must run with the land.
  - Receiving areas can include any areas where additional development is consistent with the Comprehensive Plan, but cannot include noise or accident potential areas around certain military facilities.
  - The development potential of the sending and receiving properties without the use of TDRs must be measured as the greatest intensity or use that would be allowed by either the Comprehensive Plan, any specific plan, or the Zoning Ordinance (i.e. the owners get the most generous interpretation of what might have been built without the program, for purposes of calculating what TDRs can be sold or how many need to be used for a proposed new development).
- The County cannot force an owner to get a buy TDRs as a condition of approving a rezoning (although it can rezone land to reflect a voluntary TDR transfer).
  - The County must allow a delay between the date on which the TDR is severed and the date on which it is used (i.e. TDRs do not have to be used immediately).
  - The County must also allow TDRs to be transferred through a development agreement process.

## The Pima County Ordinance

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### Substantive Provisions

Pima County has designed its TDR program within these statutory constraints. In addition, the County ordinance has the following key provisions:

- The Sending Areas include very high value biological and cultural resources identified for acquisition. Future sending areas can also include other important biological and cultural lands, as well as potential noise and accident areas around certain military facilities (as defined in state law).
- The Receiving Areas include areas (generally closer to the cities) where the Comprehensive Plan allows for more intense development and rural areas where development can increase from one residence per 4.1 acres to one residence per 3.3 acres.

- Calculation of development potential on the sending property will not include any development that has already occurred on the sending property or areas that were already subject to restrictions on development through zoning or specific plans.
- Owners of sending properties may sell less than all of the potential development on the parcel, but must restrict development on the same percentage of the undeveloped land as the percentage of potential development transferred (i.e. generalized reductions in density are not allowed, the seller must map areas where no further development will be allowed).
- Development with TDRs on receiving properties must comply with development standards applicable to developments of similar use and density under the zoning ordinance (i.e. they are treated under the standards of the zoning ordinance in zones that allow that use and density, although no rezoning has occurred).
- The County will only recognize TDR sales that have been registered with the Development Services Department, and will not register any sale until the restrictive covenant has been recorded on the sending property.
- TDRs may be sold to third parties who do not intend to use them, and who then resell them to owners of receiving properties for use. Each sale needs to be registered before the County will recognize the new owner or allow the TDR to be used on a receiving parcel.
- Each TDR authorizes the construction of one additional dwelling unit. TDRs

cannot be used to gain additional commercial, institutional, or industrial development potential.

- The purchaser of TDRs must still obtain regular development approvals for the proposed development including TDRs, and if not all the purchased TDRs can be used then the County will return any unused TDRs to the owner/applicant.
- TDRs cannot be used in connection with parcels created through lot splits, only on lots created through subdivision or development plan approval.
- The County does not individually review or authorize any sale of TDRs – they are private transactions – but the County may refuse to register a TDR that does not comply with the ordinance or to approve a TDR development that does not comply with the Comprehensive Plan or applicable standards.
- After the transfer, future land use decisions by the County must be consistent with the intended effect of the transfer – i.e. a later County Commission cannot “give back” development potential to the sending property – if it upzones the sending property the results of the upzoning will be reduced by the number of TDRs transferred.

## Procedures

The implementation of the Pima County TDR system will require staff to administer the following procedures.

- The County will need to adopt the TDR ordinance itself.

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- The County will need to create a TDR Manual with the necessary forms and any administrative regulations deemed necessary to make the system operate smoothly.
  - The County will need to establish a register in which it records the buyers and sellers of TDRs, the dates of sale and resale, and the numbers of the certificates sold or resold in each transaction.
  - The County will develop a standard form restrictive covenant meeting the requirements of the ordinance and make it available to the public. If an owner does not use the County form, the County attorney will need to confirm that it includes the same assurances, which may slow down the process (or require re-recording of a revised covenant).
  - The Comprehensive Plan has been amended to accommodate development in the Receiving Area through the use of TDR's (subject to approval of a subdivision or development plan). For most plan designations, the maximum density is less than allowed for projects reviewed through the rezoning process. There are also minimum densities for TDR developments for many of the plan designations.
  - Owners of both sending and receiving properties may ask staff to confirm whether they may sell or use TDRs, and if so how many TDRs are available for sale or use. Staff must respond to requests in writing within 30 days, and the responses will be valid for three years unless a plan or zone change intervenes. Staff shall keep a register of responses issued.
  - If the owner of a sending property asks the County to register a sale of TDRs, staff will require that the applicant submit the instrument of sale for review, as well as a copy of the recorded restrictive covenant on a County-approved form, a title insurance report for the property, and a map showing the portion of the property to which the restrictive covenant applies and any protected lands or open spaces on adjacent properties.
  - Based on information submitted, County staff will verify (1) that the property is located in a mapped Sending Area, (2) that the sending property has that number of TDRs available for sale (or remaining for sale, if there have been previous sales), (3) that owner of the sending property has recorded a restrictive covenant on the County-approved form against the sending property, (4) that the area restricted from development meets the standards in the ordinance for contiguity with other protected lands and open spaces, and (5) that the restrictive covenant restricts all development on the same percentage of remaining undeveloped land as the percentage of available TDRs sold.
  - When the original sale of TDR's is registered the County will issue one certificate for each TDR sold and add that sale to the register. The certificates will then represent the TDRs for future sales.
  - If the certificates are resold, the sale must be registered again in the name of the new buyer, but new certificates will not be issued.

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- If a certificate owner listed in the registry notifies the County that some certificates have been lost, stolen, or destroyed, the County will issue a public notice that those certificates will be cancelled unless the County receives information that they exist by a date certain. If notice is not received the certificates will be cancelled and new certificates issued to the shown in the registry.
  - If the owner of a receiving property notifies the County of his or her intent to use TDRs to increase the number of dwelling units in a proposed development, the County will inform the owner of the number of TDRs that may potentially be used on the property, based on the number, percentage, or formula stated in the Comprehensive Plan and the TDR ordinance, and that the use of the TDRs is subject to approval of a subdivision or development plan reflecting those TDRs.
  - When the owner of a receiving property submits an application for a subdivision or development plan reflecting the use of TDRs, he or she shall deposit with the County certificates representing the TDRs being used for the development and a title insurance report for the property. The County will confirm that the certificates have not previously been cancelled, and that they identify the applicant as the ultimate buyer of the TDRs, and that all lienholders on the receiving property have also signed the certificate.
  - The County will review the proposed development pursuant to the same standards that would apply in the least intensive zone district allowing the proposed uses and density without the use of TDRs. There are no separate development standards for projects using TDRs.
  - If the County finds that the application does not meet those standards, the County will deny the application and return the certificates to the owner/applicant. If the County finds that only some of the proposed TDRs can be used (i.e. some of the proposed additional units cannot be accommodated due to site or environmental constraints that would have applied independently of the TDR program), the County will approve the development and return any unused certificates to the owner/applicant.
  - Those TDR certificates that are used for the receiving property development will then be cancelled, and name of the development where they were approved will be noted in the TDR register.

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# Frequently Asked Questions

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## 1. General

### What is a Transfer of Development Rights (TDR) Program?

A TDR program allows property owners in designated Sending Areas to transfer the development rights on the property to other properties within designated Receiving Areas. As typically implemented, the owner of the property transferring development rights sells the development rights to a property owner whose property is located within a Receiving Area or to a third party broker who will ultimately sell the development rights to a property owner within a Receiving Area.

### Why is Pima County starting a TDR program?

TDR programs offer an additional tool to achieve the County's planning and growth management goals. They create an additional incentive for protection of sensitive lands such as those with high biological or cultural values by allowing owners of those lands to receive compensation in return for foregoing possible development. The incentives are funded by users of that development potential – rather than by the taxpayers. As a practical matter, buying or downzoning land that the County wants to protect are often not feasible, and TDR's offer an indirect way to protect those lands.

### What areas are designated as Receiving Areas?

Areas designated as Receiving Areas are primarily composed of areas within the urbanizing area of unincorporated Pima County that have potential for significant

additional development but do not presently have the required zoning to that potential development. In addition, there are parcels identified as receiving properties in the rural portion of the County that are in the path of development and that could be developed at slightly higher densities provided that development dedicates areas to be preserved as natural open space.

### Why don't we have the County review and approve each individual transfer?

The fact that TDR markets operate independent of government allows transactions to operate faster and encourages more buyers and sellers to participate. TDR systems that use individual reviews (rather than a system of transfers subject to general rules) generally have significantly fewer transactions.

### How is the price for TDRs established?

Pima County has established the TDR market by designating the Sending and Receiving Areas and the conditions for development. However, the price of TDR's will be established in the private market between buyers and sellers with no involvement from Pima County government except for the maintenance of the TDR register.

### Why doesn't the County set the price for purchase and sale of TDRs?

There is no good reason to do so, and governments are generally bad at setting and predicting prices that work among private buyers and sellers. The achievement of the conservation goals only requires that TDR's be transferred, not that they do so at a certain price.

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### **Why bother with TDR certificates?**

Some TDR systems do not use certificates, but they are usually small systems with few transfers. Arizona's statute requires a system of monitoring sales and use of TDR's, and certificates provide one good way to track the number of TDR's outstanding at any one time and to reduce possible fraud that might occur if a seller tried to sell the same development potential to two different buyers.

### **What is the TDR register?**

The TDR register is a data base maintained by the County that lists the buyers and sellers of TDR's, the location of properties on which TDR's are proposed or have been used, and a list of entities wishing to buy or sell TDR's. The purpose of this last list is to help facilitate contacts between parties who may want to participate in the TDR program; it is voluntary and establishes no obligations on any of the parties involved.

## **2. Sending Areas**

### **Are properties owners within the Sending Areas required to sell their development rights?**

No. The TDR program is completely voluntary. Property owners within the Sending Areas have the right to develop their properties in accordance with the existing zoning on their properties. In addition, property owners still maintain their rights to apply for amendments to the Comprehensive Plan and for rezonings on their properties. The TDR program merely provides another option for property owners.

### **How are the transferable development rights on a sending property calculated?**

The number of development rights on a property is the largest of the potential development allowed under the existing

zoning, the applicable specific plan, or the Comprehensive Plan; existing development is included in the calculation. The number of transferable development rights is calculated by subtracting any existing development on the parcel and incorporating any restrictions related to other ordinances and regulations that govern development such as the Hillside Development Zone and the Floodplain Management Zone.

For example, a 10-acre property zoned RH (Rural Homestead), which requires 180,000 square feet or 4.13 acres per house is planned for Low Intensity Rural (LIR) under the Comprehensive Plan. The existing zoning permits two houses on the property; however, the LIR designation allows for rezoning requests that would allow one house per 3.3 acres; or three houses on the 10-acre parcel. Assume there is one house on the property. The total number of TDR's on the property is one; this is calculated by subtracting the area needed for the existing house (4.13 acres) from the 10 acres. This leaves 5.87 acres which would allow only one additional house at 3.3 acres. But, if the property owner purchased an additional 0.73 acres, he would have the ability to transfer two development rights.

However, if this parcel has an average cross slope of 26 percent, then the number of TDRs that could be transferred is zero. Parcels with average cross slopes of 26 percent require seven acres per house; the parcel in this example is only 10 acres and contains one house, which is all that would be allowed regardless of the Comprehensive Plan designation.

If the parcel described above was zoned GR-1 (and assume not on a steep slope) and planned LIR, the number of TDRs would be nine. The GR-1 zone allows

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approximately one house per acre. Therefore, the ten-acre site has a potential of ten houses, minus the one existing on the property equals nine.

**Can a property owner sever only a portion of the potential TDRs on the property?**

Yes. There is nothing in the ordinance that requires a property owner to sever all of the potential TDRs on the property. In addition, a property owner may, at a future date, sever all or a portion of the remaining TDRs on the property. The only requirement is that the land subject to the restrictive covenant must be contiguous to the land subject to the earlier restrictive covenant.

**Why doesn't the County require sellers to sell all their available TDRs at one time in order to protect more land?**

That would probably decrease participation in the program. Allowing partial sales allows sellers to try the system without risking all their development rights. Some owners would prefer to get some sure compensation now in return for foregoing some of their potential, and then wait to see if prices for TDRs rise in the future and sell more if and when they do.

**Can the portion of the property subject to the restrictive covenant be developed?**

No. By severing the development rights on the property, the property owner is selling the right to develop on that portion of the property subject to the restrictive covenant.

**Can the portion of the property subject to the restrictive covenant be used to calculate future development on the property?**

No. Land subject to restrictive covenants is removed from any calculation of future development.

**Is it possible that the number of transferable development rights can be greater than the permissible development potential for the property?**

Yes, the number of transferable development rights can be greater than what can be developed on the subject property under the property's existing zoning. This is because the number of transferable development rights is calculated based on what could produce the highest number of dwelling units; either the Comprehensive Plan, existing zoning or an approved specific plan. Frequently, the Comprehensive Plan allows for rezoning requests (though approval is not guaranteed) for higher densities than permitted by the existing zoning on the subject property.

For example, a ten-acre parcel zoned RH (which requires 4.13 acres per house) and planned Low Intensity Rural (which allows for rezoning requests to allow one house per 3.3 acres) can transfer up to three development rights (based on the potential under the Comprehensive Plan) but can only place two houses on the property under the existing RH zoning.

**If a property owner sells only a portion of the TDRs on the property, how is future development on the property determined?**

The amount of development rights available for development on the remainder of the property is based on the existing zoning for that portion of the property not restricted from development through a previous transfer of development rights. For example, if a 100-acre property zoned RH and planned Low Intensity Rural has 24 development rights available for development, but the 30 available for transfer, and the owner chooses to transfer half of the available development rights, the

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owner may transfer 15 development rights, provided that 50% (50 acres) of the developable acreage is restricted from further development. On the remaining 50% (50 acres) of the land, the owner may use one half of the development rights that would have been available for development under the existing RH zoning, or 12 development rights.

**How does a property owner in a Sending Area sever development rights?**

A property owner wishing to sell development rights from his or her property would first request the Development Services Department staff to calculate the number of development rights that could be transferred from the property. This calculation is good for three years, provided that there is no further development on the property and no zoning or Comprehensive Plan change; however, this calculation in no way obligates the property owner to sever development rights. Once this calculation is done, the property owner can then record a County-form restrictive covenant on the property showing and describing the area on which development will be restricted. After the restrictive covenant is recorded, the property owner would register the severed TDR's with Development Services Department and receive TDR certificates; the TDR certificates serve as the "legal tender" for future sales to TDR developers. The TDR Manual will explain this procedure in more detail.

**Does a property owner have to sell the TDR's severed from the property immediately and do all the severed TDR's have to be sold at once?**

No, the property owner may hold onto the TDR certificates for as long as desired. While the TDR calculation the property owner receives from Development Services Department expires after three years, the

TDR certificates never expire. The property owner may sell any amount of the TDRs he or she possesses at any one time.

**Does a property owner have to sell TDR's to a property owner owning property within a Receiving Area?**

No. TDR's may be sold to anyone willing to buy them; there are no restrictions on who may buy TDR's. The only restrictions apply to where and how the TDR's may be used. In many jurisdictions, third party entities will buy TDR's for future sales to a developer or TDR brokers will act to bring sellers and buyers together much as realtors act to bring buyers and sellers of real property together.

**Won't those with the least desirable land sell their TDR's first, while the County would prefer that the owners of the most sensitive lands go first?**

This could happen, but since TDR systems are voluntary the County never has the power to force the owners of more sensitive land to sell TDR's anyway. If it wants to, the County could offer further incentives to the most valuable conservation lands by making their TDR's more valuable than others (i.e. creating different classes of TDR's), but this complication is not being introduced at the start of the system; further the lands proposed as sending areas all contain very high resource values so that creating different classes of TDR's does not make sense at this time. Early sales of less desirable TDR's has the side benefit of helping build confidence in the system of purchases and sales and giving County staff experience in administering the system.

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**Can I sell TDR's and also obtain an open space tax credit equal to the value of the development potential sold?**

You should consult legal counsel, but the answer is usually "no". Federal tax rules generally do not allow tax credits for conservation easements if the grantor has already received another financial benefit for protecting the land, and selling TDR's is another form of financial benefit. The seller needs to choose between a federal tax credit and compensation through TDR's.

**What uses are permitted on lands subject to the restrictive covenant?**

Lands subject to restrictive covenants must remain as open space unless the land is in active ranching or agricultural use at the time the restrictive covenant is recorded, in which case those uses may continue.

**Can severed development rights be recaptured?**

No. Whenever a restrictive covenant is recorded, it is non-revocable and applies in perpetuity. This insures that the land from which the development rights are transferred remains in open space uses.

**What if I try to sell TDR's and I can't find a buyer?**

The ordinance does not require the seller to restrict the property before he or she finds a buyer. It allows a seller to record a notice that he or she intends to sell TDR's (in order to warn potential buyers of their land that it may not have all its development rights) while they look for a buyer. If the seller does not find a buyer, he or she can cancel the recorded notice and take the TDR's off the market.

**What if no one wants to sell TDRs?**

Since the sale price is not regulated, there should be some price at which some sellers will sell, and the market is the most efficient

way to find that price. If there are no sales for a long period of time, the County may want to review whether the amount of additional development allowed in the Receiving Areas, and the amount of development allowed per TDR, is adequate. To jump start the market, some counties offer to buy TDRs themselves at a stated price and then make them available for sale at the same price. Other counties do this simply to ensure that usable TDR's are available when owners of receiving properties want to buy them (i.e. they create a TDR "bank" to promote liquidity). However, Pima County does not intend to establish a bank or to get involved in the actual buying and selling of TDR's.

**Won't the sale of TDRs reduce the value of sending properties and the property taxes on those parcels?**

Yes. But it will also increase the value of receiving properties and the property taxes received from those parcels. Further, the seller will have received a financial return from the sale of the development rights.

**Why would a lienholder allow a seller to reduce the value the land that is the collateral for its loan?**

In practice, lienholders consent when the value of the sending property (together with any remaining development rights) is adequate security for the outstanding balance of the loan or they require the owner to spend part of the TDR proceeds to pay down the outstanding balance of the loan.

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### **3. Receiving Areas**

#### **Are property owners within the Receiving Areas required to purchase TDRs in order to develop their properties?**

No. The Arizona enabling legislation requires that the program be completely voluntary. Property owners in Receiving Areas cannot be required to purchase TDRs to develop their property and the purchase of TDRs cannot be required as a condition of rezoning. Property owners within Receiving Areas are free to develop their properties under the existing zoning or to apply for amendments to the Comprehensive Plan or for rezoning.

#### **Will the TDR system mean more development in the Receiving Areas?**

Yes. The system presumes that by adopting the Conservation Lands System and amending the Comprehensive Plan to allow TDR development in some areas the County is reflecting its desires for where growth should occur. This should be resolved at the time the Receiving Areas are designated and the number, percentage, or formula limits on additional development are approved.

#### **Do developers have to use all the TDRs they have purchased on a development?**

No. Developers may use as many TDR's as desired for a project provided that they conform to the conditions of the particular Receiving Area.

#### **Can TDR's be used in any Receiving Area?**

Yes, there is no restriction on where purchased TDRs can be used.

#### **What is the purpose of requiring a minimum density in some Receiving Areas?**

These Receiving Areas are in designated growth areas or in urbanizing areas of unincorporated Pima County where higher densities are planned. Requiring a minimum usage of TDR's insures that the resulting development and densities will conform to the planned land uses and insure a more efficient use of land in these areas.

#### **Can the minimum density requirement be waived for any reason?**

The minimum density requirement can be waived by the Board of Supervisors based on evidence provided by the property owner that environmental constraints on the property prevent conformance to the requirement.

#### **How does one calculate how many TDR's can be used on a Receiving Parcel?**

The number of TDR's that can be used on a Receiving Parcel is based on the Comprehensive Plan, existing zoning, or a specific plan, whichever is greater. The Comprehensive Plan stipulates the maximum density for developments using TDR's; in most cases, this is less than what a property owner may request a rezoning for. The number of TDR's required for a project is then modified by the number of dwelling units permitted under the property's existing zoning or other constraints on the property.

For example, consider a 20-acre vacant, parcel zone SR and planned Medium Intensity Urban (MIU), which allows a density of five residences per acre (RAC) for a TDR project. The development potential of the property under the existing SR zoning is six houses. The maximum number of units permitted on the property for a TDR project is 100 (20 acres times five houses per acre); therefore, the number of

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TDR's needed to develop 100 houses is 94 (100 minus the six allowed under existing zoning). Because the MIU plan designation requires a minimum density of 3 RAC for a TDR project, , then the project would need to include 60 houses, and the developer would need to purchase 54 TDR's.

**Does a TDR development require a rezoning?**

No. The Receiving Areas will be designated on the Comprehensive Plan and will be rezoned, if necessary, by the Board of Supervisors when it adopts the TDR ordinance and maps.

**Do all TDR developments require an approved Subdivision Plat or Development Plan?**

Yes.

**If the final approved Subdivision Plat or Development Plan requires fewer TDRs than initially applied for, what happens to the unused TDRs submitted with the original submittal?**

The unused TDRs will be returned to the owner/applicant.

**Are there conditions on developments using TDRs?**

Yes. Different conditions apply to the different Receiving Areas. They are designed to insure that development mitigates negative impacts to the property or surrounding areas. The conditions are found in Section 18.92.050 of the ordinance.

**What if a developer wishes to develop a project at densities higher than permitted by the Comprehensive Plan for a TDR development?**

A property owner may apply for a rezoning if he or she wishes to develop a project at densities greater than permitted by the Comprehensive Plan for a TDR

development in a Receiving Area. However, the rezoning request must conform to the density and zoning district requirements of the particular plan designation that applies to the property,

**Can a property owner develop a project that combines a portion using TDRs and a portion not using TDRs?**

Yes. However, the portion not using TDRs must go through the regular development process, including plan amendments and rezonings, if necessary. The portions of the projects not using TDRs can either be within or outside of a Receiving Area.

**Can a property owner replat an approved TDR subdivision?**

Yes, provided that the owner provides written notice to all those property owners within the boundaries of the original plat in which the TDRs were used, and those who bought their properties since that approval.

**If the new, replatted subdivision uses less TDR's than the original, what happens to the excess TDR's?**

Certificates representing the unused TDRs will be issued to the owner/applicant.

**Can a replatted subdivision contain more lots than the original?**

Yes, provided that the replat conforms to the Comprehensive Plan and applicable zoning, and that the owner has provided written notice to all owners within the boundaries of the original plat approved for use with TDR's and those who have purchased lots in that area since the prior TDR subdivision approval. The owner also will need to submit TDR certificates for the additional dwelling units.

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**If the property has been previously rezoned, can it use the TDR option instead?**

No. The ordinance specifically states that the conditions of the previous rezoning stay in effect. The reason for this is because the earlier conditions for the rezoning were based on public and staff input on the earlier rezoning.

**What is the process for using TDR's in a development?**

The property owner would first request Development Services Department to determine the number of transferred development rights that can be used on the property. The property owner will then submit a preliminary plat or development plan to Pima County for review. The plat or development plan will note that it is being done using TDR's and the number of TDR lots to be developed. The property owner must also submit TDR certificates equal to the number of TDR dwelling units proposed for development at the time of the submittal of the plat or development plan.

**How can a potential buyer of TDR's check their validity?**

A potential buyer of TDRs can check their validity with Development Services Department.

**Will neighbors of TDR receiving properties get notice of a TDR transfer?**

Yes. The ordinance provides for notice, but the application will be processed the same way that a non-TDR development would be reviewed. Objection to the use of TDR's will not be a ground for denying the application if it meets the Comprehensive Plan and the development standards that would apply to similar development in the least intensive zone district where it would be permitted without TDR's.

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## Glossary of Terms

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The following key terms are defined in, or relate to, the Pima County TDR Ordinance.

**Development rights:** The maximum development that would be allowed on a lot or parcel in the sending property under the Pima County comprehensive plan or zoning code applicable to the sending property in effect on the date this chapter is adopted, whichever provides greater density or intensity of use, or both, respecting the permitted use, area, bulk or height of improvements made to one or more lots or parcels.

**Receiving area:** All those areas of Pima County designated on the Pima County development rights receiving area overlay map attached as Exhibit B to the ordinance.

**Receiving property:** Any lot or parcel, or portion of a lot or parcel, contained in a receiving area, within which development rights are increased under the comprehensive plan, a specific plan, if any, or the zoning code, whichever provides greater density or intensity of use or, if applicable, both, in effect prior to a transfer of development rights and an amendment to the comprehensive plan, specific plan, zoning code, or a rezoning of the property, whichever is required to implement the increase in development rights.

**Restrictive covenant:** A legal document recorded on all or a portion of a sending property that describes and maps where development is restricted or prohibited.

**Sending area:** All those lands designated on the Pima County development rights sending area overlay map attached as

Exhibit A to the ordinance. Each lot or parcel, or portion of a lot or parcel, contained within the sending area designated on that map qualifies as one or more of the following types of lands:

- An “important riparian area”, “biological core management area”, “2005 special species management area”, or “critical landscape connection” designated in the Pima County conservation lands system, each of which qualifies as natural habitat; or
- A “high noise or accident potential zone” of a “military airport” or an “ancillary military facility”, as those three terms are defined in A.R.S. §28-8461; or
- A floodplain, geologic feature, recreation area or parkland, or land that has unique aesthetic, architectural or historic value.

**Sending property:** Any lot or parcel, or portion of a lot or parcel, contained in a sending area.

**TDR certificate:** A document issued by the Pima County Development Services Department that represents one development right severed from a sending property and that can be used to develop residential units on a receiving property.

**TDR registry:** A registry maintained by the Development Services Department of all TDR’s severed and used.