

# TRANSFERABLE DEVELOPMENT RIGHTS PROCESS GUIDE

Clear Creek County Planning Department  
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**PURPOSE:** A Transfer of Development Rights involve the shifting of permissible development densities for single-family dwelling units from less suitable development areas to more appropriate sites. Its purpose is to conserve and protect from further degradation the remote areas of the County and minimize potential risk and threat of danger to life and property. Part of the purpose of this process is to ensure that the following will be provided by each application: 1) It must be clearly in the public interest, 2) It must provide a noticeable lessening of impacts on county services and/or the environment. These things are identified in more detail in the Review Considerations.

**DEFINITIONS:**

1. Building or Development Right: the right to build a single-family dwelling unit on a parcel of land which permits such use by virtue of its County approved zoning.
2. Transfer of Development Right: the ability to request to move a building or development right from a less suitable Mining One (M-1) zoned parcel to a more suitable Mining Two (M-2) zoned parcel.
3. Protected Watershed: an ordinance and map as adopted by a municipality under C.R.S. §31-15-707(1)(b) and recorded with the County.
4. C.R.S. §31-15-707(1)(b): authorizes and empowers municipalities to extend their police power jurisdiction beyond their territorial boundaries in order to maintain and protect municipal waterworks and sources of water supply.

**APPLICABILITY:** Development Rights may be transferred from Mining One (M-1) zoned parcels (Sending Site) to Mining Two (M-2) zoned parcels (Receiving Site) only.

**CRITERIA FOR SENDING SITES (*less suitable Mining One (M-1) zoned parcels*):** An application for a Transfer of Development Rights must meet all of the following criteria for the Sending Site.

1. The parcel is a legally constituted patented mining claim and was not illegally subdivided.
2. The parcel must meet the minimum lot size requirement of one acre.
3. The parcel is currently zoned Mining One (M-1).
4. The parcel can comply with it's M-1 zoning designation for, applicable zoning, building, fire, and health codes, rules and regulations.

**CRITERIA FOR RECEIVING SITES (*Mining Two (M-2) zoned parcels*):** An application for a Transfer of Development Rights must meet all of the following criteria for the Receiving Site:

1. The parcel is a legally constituted lot.
2. The parcel is currently zoned Mining Two (M-2).

3. The parcel is not located in an alpine (areas above tree-line) ecosystem.
4. Ability to provide legal access. If access is adjacent to a local, state, or federal right-of-way evidence shall be shown on site plan. If access is provided from a RS2477 right-of-way, written easement or authority shall be provided to cross any public or private properties lying between subject property and public right-of-way.
5. Evidence that a legal water supply is available and suitable to the proposed use(s).
6. Evidence of the physical and legal capability to provide sanitation is available.
7. The parcel currently or can comply with all applicable zoning, building, fire, and health codes, rules and regulations if the application for dual rezoning is approved.
8. The parcel is not located in a Protected Watershed as defined by C.R.S. §31-15-707(1)(b).

**REVIEW CONSIDERATIONS FOR SENDING AND RECEIVING SITES:** The following factors will be the basis for determining the relevant merits of a case when applying for a Transfer of Development Rights:

1. Whether the parcels have adequate building area that would avoid significant natural hazard area subject to avalanches, talus slopes, slide debris fans, as determined by the Colorado Geological Survey.
2. Whether development can avoid impact to significant wildlife habitat including breeding grounds, nesting areas, migration routes, and wintering areas, as determined by the Colorado Division of Wildlife.
3. Whether building envelopes can avoid slopes in excess of thirty percent (30%).
4. Whether the parcels can avoid being located in a subalpine (areas dominated by Engleman spruce and fir) ecosystem.
5. Whether the building envelopes are a minimum of twenty-five (25) feet from the top of the bank of a lake, stream or intermittent stream. Greater distances from such water features may be required based on site specific characteristics.
6. Whether building envelopes are a minimum of twenty-five (25) feet from a wetland area, as determined by the U.S. Army Corp. of Engineers. Greater distances from a wetland may be required based on site specific characteristics.
7. Whether building envelopes can avoid designated 100-year flood plain areas.
8. Whether on-site and off-site access can meet County adopted road design regulations and driveway standards.

9. Whether the parcels are physically accessible from a road currently, or projected to be, maintained by the County, State, Metropolitan District, homeowners association, or other organized assembly.
10. Whether emergency service can be provided without unreasonable risk to emergency service employees or volunteers, as determined by the Sheriff's Office, Clear Creek Fire Authority, and Ambulance.
11. Whether building envelopes can avoid impact to a historical and archaeological site(s) that is on, or has been determined to be eligible for, the state and/or national register of historic places.
12. Whether the size of the parcels are consistent or greater in area to surrounding parcels.
13. Whether evidence can be established that historical mining activities on the parcels will not adversely effect residential uses on the property.
14. Whether the transfer provides an opportunity to reduce visual impacts.

**SUBMITTAL PROCESS FOR TRANSFER OF DEVELOPMENT RIGHTS:** This is a process to transfer Development Rights from less suitable Mining One (M-1) zoned parcels to more suitable Mining Two (M-2) zoned parcels. Such process would constitute a simultaneous rezoning of all involved parcels.

The below submittal process shall apply to all applications:

1. The applicant shall submit one (1) copy of the submittal to the Planning Department.
2. The submittal shall be reviewed in a timely manner for completeness by the Planning Department. The applicant shall be notified of any inadequacies, missing, or incomplete documentation. An incomplete submittal shall not be processed.
3. Once the submittal is determined complete (by the Planning Department), the Planning Department will conduct a site characteristics analysis and perform a site visit to verify these characteristics and determine if the application meets the criteria and considerations for a density transfer.
4. If the application meets the criteria for a Transfer of Development Rights, as specified above, the Planning Department will notify the applicant of the number of copies and content of the submittal required to be provided for distribution.
5. The Planning Department will notify adjacent property owners within 300 feet of the boundaries of the subject parcels and any referral agencies that may be affected by the proposed density transfer. The applicable agencies shall be determined on a case by case basis. The Planning Department shall also notify applicable municipalities when a Receiving Site is located in their three (3) mile planning zone or Protected Watershed.
6. Adjacent property owners and referral agencies shall be given twenty-one (21) working days prior to the Planning Commission public hearing to comment.

7. The Planning Department, at the request of the Planning Commission, will bring the members of the Commission on a site visit.
8. Based upon the submittal documentation, site characteristics analysis, and comments received, the Planning Department will prepare a staff recommendation/report and draft resolution for the Planning Commission public hearing.
9. The Planning Department will publish a notice in a newspaper of general circulation in the county fourteen (14) calendar days prior to the Planning Commission's public hearing. The applicant will be notified of the public hearing date, time, and place.
10. At least fourteen (14) calendar days prior to the Planning Commission public hearing, the applicant shall post and maintain a notice on the parcels under consideration. The notices shall be placed within ten (10) feet of the property line and visible from the right-of-way. Signs will be provided by the Planning Department.
11. During the public hearing, the Planning Commission shall evaluate the submittals, referral comments, staff report, and public testimony, and make a recommendation to the Board of County Commissioners (Board) to approve or deny the application.
12. The applicant may be required to provide additional information prior to the Board public hearing based on conditions/stipulations recommended by the Planning Commission.
13. The Planning Department will publish a notice in a newspaper of general circulation in the county fourteen (14) calendar days prior to the Board's public hearing. The applicant will be notified of the public hearing date, time, and place.
14. At least fourteen (14) calendar days prior to the Board public hearing, the applicant shall modify the notices on the parcels under consideration to include the Board's public hearing information.
15. During the public hearing, the Board shall evaluate the submittals, referral comments, staff report, Planning Commission recommendation, and public testimony, and shall approve or deny the application.
16. The Planning Department will notify the applicant of what is required to finalize the decision of the Board following the public hearing.
17. The applicant shall remove all notices from the parcels under consideration within two (2) weeks following the final decision by the Board or withdrawal of the application.

**GENERAL SUBMITTAL REQUIREMENTS:** In addition to the submittal requirements listed below, the Planning Department may request other materials or information as deemed necessary to adequately review the application. Additionally, for good cause shown, the Planning Department may waive submittal requirements listed below which, in the judgment of the Planning Department, are not pertinent to the application.

- Application Form as provided by the Planning Department. An application must be signed by the owners of both parcels.

- The appropriate fee(s), as established by the Board.
- Deeds or other proof of ownership for the subject properties.
- A notarized letter of authority from the landowner permitting a representative to process the application, if applicant is other than the owner(s) of record.
- Verification of Criteria - a narrative describing that all of the criteria for Receiving and Sending Sites are met.
- Verification of Review Considerations - a narrative describing the relevant merits of a case based upon the review considerations for both Sending and Receiving Sites.
- An Environmental and Safety Assessment Report which includes, at a minimum, an analysis of the following factors, where applicable:
  - Subsidence potential and risk to potential locations of structures.
  - Physical safety hazards associated with open mine workings.
  - Potential for preferential groundwater flow paths via underground workings, including the relationship of any known underground workings to potential locations of onsite ISDS absorption fields and wells, and offsite transport to potential receptors.
  - Any other mining-related hazards or liabilities which could affect suitability as a potential building site.

The report shall include maps of the locations on the property affected or potentially affected by any of the listed factors. Where mitigative measures are indicated to enable all or a part of the property to be suitable for building, the need for these shall be stated.

The report shall be prepared by a qualified professional acceptable to the County. Minimum qualifications include a minimum of a B.S. degree in relevant engineering, physical or natural sciences combined with at least five (5) years of documented professional work experience related to the identification, assessment and mitigation of the mining-related factors listed.

- Zoning requested - a narrative describing what zoning classification is requested for the Receiving and Sending Sites.
- Vicinity Map - submitted on a 8 ½" x 11" sheet of paper, that indicates the location of the subject properties in relation to the general context of the County.
- Location Map - submitted on a 8 ½" x 11" sheet of paper or another size as approved by the Planning Department, that indicates the location of the subject properties in relation to roads, streams, utilities, adjacent parcels and other features.
- Zoning Map - that indicates the existing and proposed zoning of the subject property(s) and the zoning of the adjacent parcels within 300 feet of the boundaries of the parcel(s) proposed for rezoning. Such zoning information may be obtained from the Planning Department.

- Evidence that a legal water supply is available for the Receiving Site as follows:
  - ▶ When the subject property is located within an existing water or special district, a letter of commitment to serve the proposed development stating the amount of water available for use.
  - ▶ If an individual well is proposed, a copy of the State approved permit.
  
- Evidence of the physical and legal capability to provide sanitation for the Receiving Site as follows:
  - ▶ When the subject property is located within an existing sanitation district, a letter of commitment to serve the proposed development stating the capacity to serve.
  - ▶ Where individual sewage disposal systems are proposed, evidence prepared by a Colorado licensed Professional Engineer that the sewage treatment system and leach field will be in accordance with the County Individual Sewage Disposal System regulations.
  
- Scaled Site Plan of the Sending Site - The Drawing shall, at a minimum, depict the following:
  - ▶ Title block, a written and graphic scale, and north arrow designated at true north.
  - ▶ Boundaries of the subject property.
  - ▶ Boundaries of adjacent parcels or portions of those boundaries that are in immediate proximity of the subject property.
  - ▶ All existing structures, roads, driveways, easements, rights-of-way, streams, utilities, structures, and other features.
  
- Scaled Site Plan of the Receiving Site - The Drawing shall, at a minimum, depict the following:
  - ▶ Title block, a written and graphic scale, and north arrow designated at true north.
  - ▶ Boundaries of the subject property.
  - ▶ Topographic information - existing contour lines depicted at intervals as determined by the Planning Department based on topographic conditions. Contour lines may be extrapolated from the USGS quadrangle maps when approved by the Planning Department.
  - ▶ Boundaries of adjacent parcels or portions of those boundaries that are in immediate proximity of the subject property.
  - ▶ All existing structures, roads, driveways, easements, rights-of-way, streams, utilities, structures, and other features.
  - ▶ Existing wells or water supply system and wastewater treatment system.
  - ▶ Depict building envelope proposed, providing accurate dimensions, only when the proposal relies solely or partially on a specific site.
  - ▶ All proposed roads, driveways, and easements.

**ADDITIONAL DOCUMENTATION** (Recommended when box is checked)

It is strongly recommended that the following additional documentation, when checked, are to be included in a submittal application; however, are not required to be deemed complete or to proceed with public hearings.

- Other documentation/analysis may be requested based on use(s) and/or site/location characteristics as follows:

□ \_\_\_\_\_

□ \_\_\_\_\_

□ \_\_\_\_\_  
□ \_\_\_\_\_

**ZONING OF RECEIVING AND SENDING SITES:** As part of the submittal requirements, a narrative describing what zoning classification is requested for the Receiving Site must be provided. The zoning request for the Sending Site should be Mining Two (M-2) since the Development Right will be transferred to a Receiving Site, while the zoning request for the Receiving Site should permit residential development and meet the minimum area requirement for that specific zoning district. Future Mineral extraction potential on the Receiving Site should also be considered when determining the residential zoning designation.

**CRITERIA FOR APPROVAL:** Approval of a Development Right transfer is subject to Findings of Fact established by the Board that:

- (1) the Receiving Site is more suitable for development than the Sending Site(s);
- (2) that the transfer is clearly in the best interest of the county; and
- (3) that the transfer is consistent with the "Purpose" Subsection outlined in Section 1 of the Clear Creek County Zoning Regulations.

If an applicant surmises that their proposal meets all the criteria (as outlined above) but not necessarily a majority of the considerations (as outlined above), or vice/versa, more than one (1) Sending Site may be proposed or may be necessary in order to gain one receiving site. Additionally, if the County believes that the number of Sending Sites proposed is not appropriate to satisfy the Criteria for Approval, the application may not be approved.

**NO GUARANTEE OF TRANSFERABILITY:** Each application will be reviewed on a case-by-case basis. The provisions of these Regulations shall not be interpreted as guarantees of achievable transferability and are not meant to be an entitlement for the applicant regardless of how well it meets the Review Considerations. Each case will be reviewed based on how well it satisfies the Criteria for Approval. Review considerations are used to review an application in order to determine how well the case satisfies the Criteria for Approval. However, the County is not obligated to approve a case regardless of how many review considerations are met. Applications proposing a Transfer of Development Rights shall be subject to all other applicable zoning, building, fire, and health codes, rules and regulations. These other rules and regulations or site-specific conditions may prevent a Transfer of Development Rights case from being approved due to the character of the land or surrounding uses.

**RESTRICTION ON SENDING SITES:** An approved Transfer of Development Rights case shall require that the owner of the Sending Site record a deed restriction, accepted by the County, notifying the public that the parcel has limited Development Rights, and restricting the owner or a future buyer from developing the portions of the land from which the rights were sold for residential uses. The deed restriction shall remain in perpetuity. Additionally, other deed restrictions may be required by the Board of County Commissioners if necessary to satisfy the Criteria for Approval.

**RESTRICTION ON RECEIVING SITES:** The owner of the Receiving Site shall record a deed restriction, accepted by the County, notifying the public that the parcel has limited Development Rights, limited to the uses as identified in the Mining One (M-1) zoning district regulations of the Clear Creek County Zoning Regulations, and, if the approved Transfer of Development Rights case is based on the location of a building envelope, redirecting the owner or a future buyer from building a residential dwelling and associated structure(s) outside of the designated building envelope. The deed restriction shall remain in perpetuity. Additionally, other deed

restrictions may be required by the Board of County Commissioners if necessary to satisfy the Criteria for Approval.

**PROCESSING FEE:** The fee for processing a Transfer of Development Rights case, as adopted by the Board, shall be the same as processing a single rezoning case, no matter how many parcels are under consideration for one single transfer case.

**TRANSFERABLE DEVELOPMENT RIGHTS APPLICATION**

*Application Fee is \$1,730*

CLEAR CREEK COUNTY PLANNING DEPARTMENT  
Post Office Box 2000  
Georgetown, CO 80444  
303/679-2436

OWNER(S) \_\_\_\_\_

MAILING ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

HOME PHONE \_\_\_\_\_ WORK PHONE \_\_\_\_\_

APPLICANT(S) \_\_\_\_\_

MAILING ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

HOME PHONE \_\_\_\_\_ WORK PHONE \_\_\_\_\_

LEGAL DESCRIPTION OF PROPERTY \_\_\_\_\_

1/4 Section & Section-Township-Range or Subdivision-Lot & Block

PARCEL # \_\_\_\_\_ TOTAL ACREAGE \_\_\_\_\_

CURRENT ZONING \_\_\_\_\_ M-2 \_\_\_\_\_ PROPOSED ZONING \_\_\_\_\_

DESCRIBE REASON FOR REQUEST \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I (we) do hereby certify that the information contained in or presented in connection with this application is true and accurate to the best of my (our) knowledge and belief. I (we) do hereby further agree to abide by the agreements, conditions and stipulations that are a part of this request.

I (we) understand that the Planning Department staff will need to go onto my (our) property in order to process this request.

OWNER(S) \_\_\_\_\_ DATE \_\_\_\_\_

OWNER(S) \_\_\_\_\_ DATE \_\_\_\_\_

APPLICANT(S) \_\_\_\_\_ DATE \_\_\_\_\_