

**BOARD OF COUNTY COMMISSIONERS OF GUNNISON COUNTY
RESOLUTION NO. 47 SERIES 2009**

**A RESOLUTION AMENDING THE GUNNISON COUNTY LAND USE RESOLUTION
CONCERNING THE ADDITION OF A
VOLUNTARY RESIDENTIAL DENSITY TRANSFER SECTION TO THE RESOLUTION**

WHEREAS, the *Gunnison County Land Use Resolution* ("the Resolution"), Section 1-113, details a process for initiation, review and Board of County Commissioners' action on proposed amendments to the *Resolution*; and

WHEREAS, pursuant to the *Resolution*, Section 1-113, the Geographic Information Services Department initiated and the Gunnison County Planning Commission has completed review of certain proposed amendments regarding residential density transfer, which amendments are proposed to be in the *Resolution*, Section 1-104F., Section 13-108F.1 and 2, Section 14-101, section 14-200, Section 14-201, and Section 14-202 (the "Proposed Amendments") as required by the *Resolution*, and

WHEREAS, on July 10, 2009, the Gunnison County Planning Commission recommended approval of the Proposed Amendments as reflected in the Planning Commission's written Recommendation forwarded to the Board of Commissioners on July 24, 2009 (the "Recommendation"); and

WHEREAS, the Gunnison County Attorney and Geographic Information Services Department (GIS) Manager subsequently reviewed the Recommendation and submitted further recommended changes to the Board in a memorandum dated August 11, 2009, which has also been reviewed and considered by the Board; and

WHEREAS, on September 22, 2009, the Board of County Commissioners conducted a duly-noticed public hearing on the Proposed Amendments, the Recommendation, and the further recommendations of the Gunnison County Attorney and GIS Manager; and

WHEREAS, pursuant to Section 1-113 of the *Resolution* the Board of County Commissioners have evaluated the Proposed Amendments, the Recommendation, and the further recommendations of the Gunnison County Attorney and GIS Manager using the following criteria:

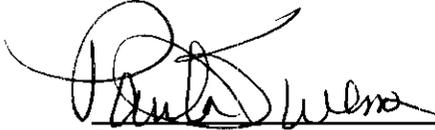
- Consistency of the proposed amendment with any applicable comprehensive plan adopted by Gunnison County;
- Changed conditions, including the economy of Gunnison County;
- Effect of the proposed amendment on the natural environment;
- Community needs;
- Development pattern;
- Changes in applicable law;
- Public health, safety and welfare;
- Compliance with any applicable intergovernmental agreements adopted by Gunnison County.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Gunnison County, Colorado, that the Board hereby adopts the amendments to the *Gunnison County Land Use Resolution* as included in the attached "Exhibit A."

THIS RESOLUTION AND THE APPROVAL GRANTED HEREBY shall not be effective unless and until a copy is recorded in the Office of the Clerk and Recorder of Gunnison County.

INTRODUCED by Commissioner Starr, seconded by Commissioner Channell, and passed on this 3rd day of November, 2009.

BOARD OF COUNTY COMMISSIONERS


Paula Swenson,
Chairperson


Jim Starr,
Commissioner


Hap Channell,
Commissioner

ATTEST:


Gunnison County Clerk and Recorder
Deputy



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EXHIBIT A

Note: Underline language is new to the *Resolution*; ~~struck through~~ language is deleted from the *Resolution*.

CHANGES TO SECTION 1-104: F.:

F. TERM OF PERMIT.

1. **TERM IS THREE YEARS FOR MOST LAND USE CHANGE PERMITS.** Unless expressly extended pursuant to Section 1-104: ~~G: Requirements for Extension of Term of Permit~~, the term of a Land Use Change Permit shall be three years from its effective date.
2. **LARGE PARCEL INCENTIVE PROCESS (LPIP) IS PERPETUAL.** The term shall extend in perpetuity for permits that have been granted pursuant to Division 14-100: Section 14-102: Large Parcel Incentive Process.

CHANGES TO SECTION 13-108: F. 1. and 2. (Open space requirements)

~~F. MAJOR IMPACT PROJECTS. Except as exempted by Section 13-108: B: Exemptions, the requirements of this Section shall apply to specific Major Impact projects as follows:~~

F. MAJOR IMPACT COMMERCIAL AND INDUSTRIAL USES. (Formerly 13-108: F.

1) Unless otherwise required by this *Resolution* or other adopted policy or regulation of Gunnison County to contribute a prorated share to the purchase and maintenance of open space, and/or developed recreation areas, commercial and industrial uses that are classified as Major Impact projects pursuant to Section 7-101: *Projects Classified as Major Impact* shall provide open space by including landscaping elements pursuant to Section 13-111: *Landscaping and Buffering*, and setbacks from property lines pursuant to Section 13-104: *Setbacks from Property Lines and Road Rights-of-Way*.

G. ~~MAJOR IMPACT RESIDENTIAL USES. (Formerly 13-108: F.2.) A minimum of 30 percent of any proposed residential subdivision or multiple-family development consisting of five or more lots or residences shall be permanently set aside for public, private, or common developed and/or undeveloped open space, except that the amount of open space may be proposed to be decreased by the applicant, and approved or conditionally approved by the Board when the proposed project complies with Section 10-102: Locational Standards for Residential Development and Section 10-103: Residential Density, and when: shall be reduced to 15 percent when the proposed project conforms to the requirements of Division 14-200: Residential Density Transfer Program.~~

- 1.) a. ~~PAYMENT IN LIEU. Payment is made by the applicant pursuant to any adopted County policy or regulation, to a fund whose purpose is to purchase or maintain dedicated open space areas or other public benefit; or~~
- 2.) b. ~~DEVELOPMENT IS LOCATED WITHIN A MUNICIPAL THREE MILE PLAN AREA OR CONNECTED TO A CENTRAL WASTEWATER TREATMENT FACILITY. The~~



development is located within a municipal Three Mile Plan area, or is connected to a central wastewater treatment facility; or

- 3.) e. ~~PUBLIC LANDS SURROUND THE PROPOSED DEVELOPMENT.~~ Public lands significantly surround the proposed development, and any significant impacts of the proposed development on those lands are mitigated by the applicant. In determining whether impacts require mitigation, the County shall consider, but shall not necessarily be bound by, the comments of the agency in whose jurisdiction the public lands are located; and
- 4.) d. ~~PROPOSED OPEN SPACE IS COMPATIBLE WITH EXISTING AREA DEVELOPMENT.~~ The open space of the proposed development is compatible with that of existing development within the impact area.

[All remaining paragraphs will be appropriately renumbered.]

CHANGES TO ARTICLE 14:

ARTICLE 14: LARGE PARCEL INCENTIVES PROCESS

SECTION 14-101: PURPOSES

The purposes of this Article is are to provide alternatives to the minimum subdivision open space requirements incentives to Land Use Change Permit applicants to go beyond the minimum requirements of this Resolution and to permanently conserve private lands that have value in open space, agriculture, wildlife habitat, wetlands or watershed protection by significantly limiting development preserve and enhance open space, and to protect and promote agricultural uses.

LARGE PARCELS SUBJECT TO DEVELOPMENT PRESSURE. There are in Gunnison County large tracts of private land, including productive agricultural land, that are subject to increasing pressures to be divided and sold for development. County regulation and incentives that encourage appropriate development of that land as a whole will foster orderly planning and will provide significant public benefits, including maintenance of the open character of rural Gunnison County, continuation of agriculture in Gunnison County, and preservation of wildlife habitat, wetlands and watersheds in Gunnison County.

EXPEDITED ALTERNATIVES TO 35-ACRE TRACT EXEMPT SUBDIVISION APPROPRIATE.

The County is precluded by C.R.S. 30-28-101 (10) (c) (1) from regulating the subdivision of land into parcels all of which are 35 acres or greater in size. It is appropriate and in the public interest that the developers and owners of those large tracts of private land be given reasonable incentives to submit to County review and regulation an application for the division and development of large tracts as an alternative to the statutory 35-acre exemption described in C.R.S. 30-28-101 (c)(1).

[The Large Parcel Development Process is renumbered to become Division 14-100, but otherwise remains unchanged.]

[The following Division is new and added in its entirety.]

DIVISION 14-200:
RESIDENTIAL DENSITY TRANSFER PROGRAM

- A. **PURPOSE.** The purpose of this Division is to provide an effective and equitable tool to conserve ranchlands used in agricultural operations and other valuable natural lands, and to help protect those lands from development impacts.
- B. **METHOD.** The Residential Density Transfer (RDT) program transfers units by providing the option of increased density through reduced open space in a new subdivision in exchange for cash payment to Gunnison County for the purchase of undeveloped land and/or conservation easements in areas where lower density development is desirable.
- C. **APPLICABILITY.** Any Land Use Change Permit application involving residential subdivision or multiple-family subdivision consisting of five or more residential lots or residences ("Qualifying Development") may include a RDT pursuant to this Division.
- D. **REDUCTION OF OPEN SPACE REQUIREMENTS FOR QUALIFYING DEVELOPMENT.** The amount of open space required of a Qualifying Development pursuant to Section 13-108: G. *Residential Uses* may be reduced from 30 percent to 15 percent when the proposed project conforms to the standards of this Division.

SECTION 14-201: CALCULATING RESIDENTIAL DENSITY TRANSFER AMOUNT AND PAYMENT OF FEES

The calculation of RDT amount and payment of fees shall be as follows:

- A. **VALUE ACQUISITION.** The RDT requirement is determined by calculating a percentage of the value increase given to land when a Qualifying Development is approved. Values used in this calculation shall be based on the non-agricultural land market value, as determined by the Gunnison County Assessor using mass appraisal techniques ("Mass Appraisal Value"). Specifically, the RDT amount equals 10 percent of the sum of the Mass Appraisal Value for all residential lots in the subdivision (A) minus the Mass Appraisal Value that existed for the subject property before the subdivision approval (B).

$$\begin{array}{rcc}
 & & \text{A} \\
 & & \text{SUM OF MASS} \\
 & & \text{APPRAISAL VALUE} \\
 \text{RDT} & = 10\% \times & \left(\text{FOR ALL RESIDENTIAL} \right. \\
 \text{CALCULATION} & & \text{LOTS IN QUALIFYING} \\
 & & \text{DEVELOPMENT} \\
 & & \text{B} \\
 & & \text{MASS APPRAISAL VALUE} \\
 & & \text{OF PROPERTY BEFORE} \\
 & & \text{THE QUALIFYING} \\
 & & \text{DEVELOPMENT WAS} \\
 & & \text{APPROVED} \\
 & & \left. \right)
 \end{array}$$

- B. **EXCLUDED LOTS.** Lots used exclusively for essential housing pursuant to Division 9-600: *Essential Housing* or mobile home units pursuant to Section 9-203: *Mobile Home Communities* shall be excluded from the RDT requirement calculation.

- C. MIXED DEVELOPMENT.** When residential and non-residential uses are located on the same lot, the calculation of (B) shall be accomplished by multiplying the Mass Appraisal Value of the property before the subdivision approval by the percentage of the lot containing or attributable only to residential use.
- D. TIMING.** The RDT amount shall be calculated by the County and be secured via an agreement acceptable to the County Attorney's Office prior to recording the final plat. When the Assessor value is unavailable before the final plat is ready for recording, the Board of County Commissioners shall establish a preliminary lot value to calculate an initial RDT amount that will serve until the Assessor values are available. Lot value estimates shall be calculated by averaging the current Mass Appraisal Values of the most similar lots available, as recommended by the Assessor and subject to approval by the County Attorney.
- E. FINAL CALCULATION.** When an initial RDT amount is used, the County shall notify the applicant when the final Mass Appraisal Values become available. At that time and in accordance with the County-approved agreement, adjustments to the RDT amount, RDT compliance method, and security shall be made, subject to approval by the County Attorney, to ensure the RDT requirements are fully met. The final calculation shall only be used when it decreases the RDT amount and the difference shall be reimbursed or recalculated.
- F. RDT PAYMENT.** At the discretion of the applicant, either all or a portion of the RDT amount shall be paid before the final subdivision plat is recorded, or incrementally with the sale of individual lots. Cash received before the plat is recorded shall qualify for a 10 percent early payment discount. When the incremental payment method is chosen, the amount apportioned to lots shall be relative to lot value and shall be paid at the close of sale on the lot.

SECTION 14-202: STANDARDS FOR USE OF TDR FUNDS

- A. RDT REQUIREMENT COMPLIANCE.** Monies collected by Gunnison County pursuant to the RDT program shall be placed into a segregated interest bearing account. Gunnison County shall use funds received pursuant to this Division solely for the purchase of a qualifying conservation easements, restrictive covenants, or fee simple lands located in Gunnison County that permanently conserves private lands that have value in open space, agriculture, wildlife habitat, wetlands, or watershed protection by significantly limiting development; and
- B. RDT FUNDS EXPENDITURE APPROVAL.** Funds acquired by the County through the RDT program shall not be expended without prior written approval of the Board of County Commissioners.

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