

**CHAPTER 18.76**  
**TDR TRANSFERABLE DEVELOPMENT RIGHTS OVERLAY ZONE**

**18.76.010: CREATED:**

There is hereby created a transferable development rights (TDR) overlay zone which may be applied to parcels of land in accordance with the provisions of this chapter. When applied to specific property, the TDR overlay zones shall be denominated as a sending site (TDR-S) or a receiving site (TDR-R) as set forth in section [18.76.045](#) of this chapter. (Ord. 2005-16, 11-16-2005, eff. 11-16-2005)

**18.76.020: PURPOSE:**

The purposes of the TDR overlay zone are to:

A.Promote the preservation of agricultural lands, rural open space, scenic vistas, critical and sensitive lands, natural hazard areas, and natural features which are designated by the Mapleton City general plan as important to preserve, and for the benefit of the citizens of Mapleton City;

B.Discourage development in areas deemed hazardous and in areas where delivery of city services may be difficult to provide; or have extraordinary costs in servicing an area, such as hillsides and mountainsides;

C.Provide compensation to the owners of property from which development rights are transferred;

D.Provide a method whereby development rights may be transferred from sending sites to receiving sites in order to accomplish the purposes set forth in subsections A, B, and C of this section. (Ord. 2005-16, 11-16-2005, eff. 11-16-2005)

**18.76.030: APPLICABILITY:**

The procedures and requirements of this chapter shall apply to the creation and transfer of development rights from sending sites to receiving sites. However, no property lying outside of the current corporate boundaries of Mapleton City shall be eligible for consideration of a transferable development sending site. (Ord. 2005-16, 11-16-2005, eff. 11-16-2005)

**18.76.040: DESIGNATION OF SENDING AND RECEIVING AREAS:**

A.The parcels of real property which may be preserved and protected by the transfer of development rights from such parcels are those located within a sending area designated by the Mapleton City general plan, or as described in this section. Those parcels of real property which are suitable for using development rights transferred from sending sites are those parcels located within a receiving area designated by the Mapleton City general plan. In no case shall an area be designated as a receiving area within any previously platted subdivision or land that has previously received a change in the zone designation to a higher density zoning level.

B.Receiving areas shall be located exclusively within the A-2, RA-1, planned residential community (PRC) and specific development plan (SDP) zones.

C.With exception to the PRC and SDP zones, a TDR-R zone change shall not accompany

any other rezone proposal. Therefore, there shall be no simultaneous rezones to include an "up zoning" and a TDR-R overlay zone. (Ord. 2005-16, 11-16-2005, eff. 11-16-2005)

**18.76.045: DESIGNATION OF SENDING AND RECEIVING SITES ON ZONING MAP:**

Each sending site from which a development right is transferred shall be denominated on the official zoning map by using the suffix "TDR-S" in combination with the underlying zoning designation of the property. However, if sending site is property that is proposed to be deeded to the city, the land will be given the open space and parks (OS-P) zone designation. Each receiving site to which a development right is transferred shall be denominated on the official zoning map by using the suffix "TDR-R" in combination with the underlying zoning designation of the property. (Ord. 2005-16, 11-16-2005, eff. 11-16-2005)

**18.76.050: APPLICATION REQUIREMENTS FOR A TRANSFER OF DEVELOPMENT RIGHTS CERTIFICATE:**

A. An eligible landowner or authorized representative must provide the following:

1. Name, address and telephone number of applicant and applicant's agent, if any;
2. Proof of ownership of the sending property;
3. Metes and bounds written legal description and plat prepared within ninety (90) days of the date of application by a licensed surveyor;
4. Written description of the physical characteristics of the property;
5. Site plan which illustrates existing or proposed dwellings, historic structures, easements or other encumbrances; and
6. The administrative fee relative to a transfer of development rights as established by the department of planning and zoning ("the department"). (Ord. 2005-16, 11-16-2005, eff. 11-16-2005)

**18.76.060: TRANSFERABLE DEVELOPMENT RIGHTS; CREATION; SENDING SITES:**

A. Development rights shall be created and transferred only by means of documents, including a conservation easement, and a severance of TDR credit certificate ("certificate of sending credits"), which meet the requirements of this chapter.

B. In order to be eligible to transfer one or more development rights from a parcel of property, such property shall be located within a sending area. If such property is located within the CE-1 zone, all property lying within this zone and owned by the same person or related persons, as defined in section 1031 of the internal revenue service code, shall be designated a sending site at the same time, whether the entire parcel is one parcel, contiguous parcels, or noncontiguous parcels. The owner of such property shall apply for and receive approval to have the property placed in the TDR overlay zone, pursuant to rezoning procedures set forth in this title.

1. Upon rezoning approval:

- a. The property shall be shown on the official zoning map as a sending site by

denominating it as a TDR-S overlay zone;

b. A certificate of sending credits shall be issued to the property owner by the city recorder, pursuant to subsection B2 of this section, indicating the total number of development rights which may be transferred from the property; and

c. The property owner shall be eligible, after complying with subsection B2 of this section, to transfer development rights from the property in accordance with the requirements of this chapter.

2. No transferable development right certificate of sending credits shall be issued, until payment of an administrative fee determined by the planning department, and no development right shall be transferred, unless and until a conservation easement is recorded among the land records of Utah County, Utah, as required by section [18.76.100](#) of this chapter on the property from which such development right originates.

3. After recordation of the easement, a landowner shall request that the city recorder issue the record owner of the property a certificate of sending credits. Such certificate shall only be assigned in the name of the record owner and only for the total number of credits assigned to the property.

C. Development rights attached to a particular sending site shall be determined and transferred by applying the following rules:

1. Any sending site density bonus created by the application of this chapter shall be utilized only on a receiving site.

2. Within all zones except the critical environment (CE-1) zone:

a. The total number of development rights which may be created for a sending site shall be equal to the site's base zone density.

b. The number of development rights to be transferred at any one time may be determined by the sending site owner so long as the total number of rights transferred does not exceed the total number of development rights associated with the sending site. For example, if a property owner has ten (10) development rights in the zone designation where the property is located, no more than ten (10) development rights can be transferred. There shall be no additional density bonus except as allowed in this section.

3. Within the critical environment (CE-1) zone:

a. The total number of development rights which may be created for a sending site shall be equal to the site's base zone density plus a density bonus granted pursuant to either subsection C3a(1) or C3a(2) of this section (but not both):

(1) If a sending site owner transfers only the development rights associated with the site, the density bonus shall be equal to three (3) times the site's base zone density. Thus, by way of example and not limitation, a property owner who transfers only the development rights from a sending site having a base zone density of ten (10) dwelling units would obtain a total of thirty (30) TDRs, illustrated as follows:

Base zone density:	10	TDRs (1 dwelling unit equals 1 TDR)
Density bonus:	20	TDRs

Total 30 TDRs

(2) If a sending site owner transfers fee title of the site to Mapleton City Corporation or the sending site owner is Mapleton City Corporation, the density bonus shall be equal to five (5) times the site's base zone density. Thus, by way of example and not limitation, a property owner who transfers development rights only from a sending site having a base zone density of ten (10) dwelling units would obtain a total of fifty (50) TDRs, illustrated as follows:

Base zone density:	10	TDRs (1 dwelling unit equals 1 TDR)
Density bonus:	40	TDRs
Total	50	TDRs

b. All development rights associated with property zoned CE-1 in a sending site shall be transferred at one time.

c. A parcel of land within the CE-1 zone may qualify as a sending site with the incentive bonuses established in subsection C3a(1) or C3a(2) of this section only if the sending site parcel is the same parcel as it existed as of December 15, 1998. Any parcel which has been subdivided, developed, or on which a structure has been built after December 15, 1998, shall not qualify for the incentive bonuses established in subsection C3a(1) or C3a(2) of this section. It is the intent of this chapter to cause owners of potential sending sites within the CE-1 zone to decide either to develop all or some portion of the potential sending sites, or to receive the incentive bonus by transferring all development rights off of the land, but not to allow for both, or some degree of both.

D. The transfer of any development rights from a sending site shall be evidenced by a notice recorded among the land records of Utah County, Utah, in a form approved by the city council, after receiving a recommendation from the planning commission. Such notice shall indicate:

1. The total number of development rights which may be transferred from the sending site;
2. The number of development rights actually transferred at the time the notice is recorded;
3. The number of development rights remaining; and
4. Notice to any potential buyer of the sending site that:
  - a. Any remaining development rights may have been transferred from the property; and
  - b. The buyer should contact Mapleton City officials to determine the number of development rights, if any, remaining on the sending site. (Ord. 2005-16, 11-16-2005, eff. 11-16-2005)

**18.76.070: TRANSFERABLE DEVELOPMENT RIGHTS; RECEIVING SITES:**

A. Transferable development right receiving sites shall be limited to the A-2, RA-1, PRC and SDP zone designations exclusively.

1. All areas shall be eligible to increase the density with the use of TDRs by no more than doubling what the underlying zone designation allows.

B. In order to transfer one or more development rights to a parcel of property, such parcel shall be located within a receiving area. The owner of such parcel shall apply for and receive approval to have the property placed in the TDR overlay zone pursuant to rezoning procedures set forth in this title. In no case shall a receiving site rezoned be approved in any previously platted subdivision. Upon rezoning approval:

1. The property shall be shown on the official zoning map as a receiving site by denominating it as a TDR-R overlay zone,
2. The property owner shall be eligible to transfer development rights to the property in accordance with the requirements of this chapter, and
3. A certificate of receiving credits shall be issued upon payment of an administrative fee determined by the planning department, to the property owner by the city recorder indicating the total number of development rights which may be transferred to the property in accordance to subsection A of this section.

The city council, after receiving a recommendation from the planning commission, may approve a subdivision or a concept plan for a receiving site at a density which equals the base zone density plus the number of development rights which will be transferred to such site. Notwithstanding the foregoing, the development density of a receiving site shall not be increased above the maximum density recommended for such site by the Mapleton City general plan. Any density bonus applicable to a receiving site shall not exceed density limitations established by the general plan. In no case shall the overall density exceed double of what the underlying zone designation would allow.

C. No site shall be designated as a receiving site unless the planning department commission finds that the site has or will have adequate public facilities and other resources to accommodate the increased development authorized by the transfer of development rights from the sending district. (Ord. 2005-16, 11-16-2005, eff. 11-16-2005)

#### **18.76.080: DEVELOPMENT APPROVAL PROCEDURES:**

The following development approval procedures shall apply to new developments within the A-2 and RA-1 zone designations:

A. A request to utilize development rights on a receiving site shall be in the form of a preliminary subdivision plan submitted in accordance with regulations contained in title 17 of this code or a site plan submitted in accordance with regulations contained in this title.

B. In the event a receiving site is proposed to be subdivided, a site plan shall be submitted and approved in accordance with the provisions of this chapter at the same time a preliminary subdivision plan is submitted.

C. The city council, after receiving a recommendation from the planning commission, shall approve a request to utilize development rights on a receiving site if the request:

1. Does not exceed the density limitations permitted by subsection [18.76.070B](#) of this chapter;
2. Is in accordance with the provisions of this chapter;

3. Is in accordance with the subdivision and site plan regulations contained in [title 17](#) of this code and this title;
4. Is consistent with other recommendations of the Mapleton City general plan; and
5. Achieves a desirable development compatible with both site conditions and surrounding existing and proposed future development.

D.A final plan for a subdivision or a site plan which uses transferred development rights shall contain a statement setting forth the development proposed, the zoning classification of the property, the number of development rights used, and a notation of the recordation of the conveyance required by section [18.76.100](#) of this chapter. (Ord. 2005-16, 11-16-2005, eff. 11-16-2005)

**18.76.090: DEVELOPMENT STANDARDS:**

A.The following development standards shall be applicable to receiving sites in the A-2 and RA-1 zones:

1. Each development in a TDR-R overlay zone shall conform to the development standards and permitted uses as required by the underlying zone, except as may be modified by the provisions of this chapter. In such case, the standards of this chapter shall apply.

2. If density proposed on a receiving site exceeds the density permitted by the underlying zone as per subsection [18.76.070A](#) of this chapter, density, lot sizes, and other development standards shall be determined by the city council, after receiving a recommendation from the planning commission, as part of the subdivision and/or site plan review process. In making a determination of final density, the city council shall:

- a. Consider the subdivision and site plan provisions of title 17 of this code and this title,
- b. Consider whether a proposed plan has a design which:

(1) Provides a range of housing types;

(2) Takes advantage of existing topography and other natural features;

(3) Achieves a mutually compatible relationship between the proposed development and adjoining land uses; and

(4) Implements the policies set forth in the Mapleton City general plan, and

c. Make findings regarding the matters set forth in subsections A2a and A2b of this section.

B.The following development standards shall be applicable to sending sites:

1. The uses permitted on a sending site shall be those uses allowed by the base zone applicable to the site, except as diminished by the transfer therefrom the development rights and by the terms of any conservation easement applicable to the site.

2. Any development request which is made for a sending site shall conform to the subdivision and site plan provisions of [title 17](#) of this code and this title and the following additional requirements of this subsection B.

3. The total number of dwelling units which may be constructed on a sending site shall be

the number of units allowed by the base zone density existing on the property when the property is designated as a sending site minus all development rights transferred therefrom, excluding any density bonus that may be applicable to the site.

- a. Any sending site density bonus created by the application of this chapter shall be utilized only on a receiving site.
  - b. No dwelling units may be constructed on a sending site located in a CE-1 zone where all development rights have been transferred from the property.
4. Maximum lot size within any developable area shall be not greater than the minimum lot size of the underlying zone.
  5. The impact on existing uses and the rural character of the area shall be included in the consideration of the number of units allowed. Any new lots adjacent to an existing subdivision, or subdivision lot(s), shall be required to have the same lot size to that which is adjacent to the proposed lot(s) within the TDR receiving site development.
  6. Residential lots shall be located adjacent to existing utilities and roads to minimize the amount of construction and loss of agricultural land, unless such location directly conflicts with the preservation goals set forth in the Mapleton City general plan or this chapter.
  7. Where technically feasible, joint or common water and/or sanitation systems shall be used. (Ord. 2005-16, 11-16-2005, eff. 11-16-2005)

**18.76.100: CONSERVATION EASEMENT REQUIRED:**

This section shall apply only to properties where the development rights have been transferred from the property, but the ownership of the property remains private.

A.A conservation easement shall be established on each sending site from which development rights are transferred.

1. In CE-1 zones and in situations where all development rights attached to a sending site are transferred, the easement shall cover the entire sending site.
2. If only a portion of the development rights attached to a sending site are transferred, the area of the easement shall be the same as the total area of all the lots which could otherwise be established on the site but for the transfer of development rights.

B.The conservation easement required by this chapter shall be in a recordable form approved by the city attorney and shall meet the requirements of section 57-18-1 et seq., of the Utah code. The conservation easement shall also include the following terms:

1. The holder of the easement shall be Mapleton City, another governmental entity, or a charitable organization which:
  - a. Qualifies as being tax exempt under section 501(c)(3) of the internal revenue code; and
  - b. Is organized in whole or in part for the purpose of accepting and managing conservation easements.
2. The easement shall require that the easement area shall be maintained as it exists when the easement is created, including natural areas, wildlife preserves, trails, or other identified environmental or open land resources. Notwithstanding the foregoing, the city

council, after receiving a recommendation from the planning commission, may approve the construction of improvements upon finding such improvements will be in harmony with the purposes of the easement and intent of this chapter.

3. The easement shall include a reference to the extinguishment of the development rights transferred from the sending site. If additional rights are transferred after the recordation of a conservation easement, the easement shall be amended to reflect the extinguishment of those additional rights and shall be recorded thereafter.

4. All parties who have a declared interest in the property, recorded on the books of the Utah County recorder, must consent to the granting of a conservation easement.

C.If the holder of a conservation easement proposes to transfer the easement to another entity, the recipient of any transferred interest shall meet the requirements of this section.

D.Any instrument purporting to convey a conservation easement pursuant to this section, but that the city has not indicated its approval on the instrument is void, and shall not be recorded or accepted by the city recorder for recording at the county recorder's office. (Ord. 2005-16, 11-16-2005, eff. 11-16-2005)

#### **18.76.105: NOTIFICATION:**

A.The city shall notify the county tax assessor of a transfer of development rights within thirty (30) days of:

1. The approval of a transfer of development rights pursuant to subsection [18.76.100B4](#) of this chapter;
2. The issuance of a certificate pursuant to subsection [18.76.070B3](#) of this chapter. (Ord. 2005-16, 11-16-2005, eff. 11-16-2005)

#### **18.76.110: COORDINATION WITH OTHER PROVISIONS AND PROCESSES:**

A.If subdivision review and approval is necessary, review of an application under this chapter shall be carried out simultaneously, and under the same application, referral, notice, and public hearing procedural requirements as is provided for a site plan review as set forth in this title.

B.In cases where a conditional use permit is required for a proposed use, review of an application under this chapter shall be carried out simultaneously with the conditional use permit review as set forth in this title. (Ord. 2005-16, 11-16-2005, eff. 11-16-2005)

#### **18.76.115: SAVINGS CLAUSE:**

This section, or any provision thereof, shall not invalidate any completed transfer of development rights pursuant to any earlier statute, ordinance, or regulation if said transfer was valid at that time. (Ord. 2005-16, 11-16-2005, eff. 11-16-2005)

#### **18.76.120: EXPIRATION AND APPLICABLE ACTION:**

A.Section [18.76.060](#), "Transferable Development Rights; Creation; Sending Sites", of this chapter will expire on December 31, 2010, after which time no application for the sending site (rezone application) will be accepted by Mapleton City.

B.Once an application is made for a TDR sending site (TDR-S) overlay zone, and the city council has taken action to rezone the property, the applicant/property owner has six (6)

months to transfer title of the property to Mapleton City, or if applicable, file the required conservation easement necessary to gain the TDR certificates. If no attempt by the property owner/applicant to convey title or have the conservation easement recorded, then the city council shall consider the application "expired" and shall have the authority to rezone the property back to its original zone designation, and minus the TDR-S overlay zone. The property owner/applicant may receive an additional six (6) month extension if such an extension is found by the city council to be warranted. It shall be the property owner/applicant's responsibility to apply for said extension. (Ord. 2005-16, 11-16-2005, eff. 11-16-2005)

#### **18.76.125: DEFINITIONS:**

**BASE ZONE DENSITY:** The maximum number of dwelling units permitted by the zoning classification of a sending or receiving site and not including any density increase resulting from an overlay zone.

**COMPATIBLE:** Once the city council has granted a TDR-R overlay rezone on a parcel, and the rezoned parcel meets all other requirements under the city's ordinances, "compatible" includes among other planning and design issues, street size, street alignment and design, curb, gutter and sidewalk design, traffic flow issues, delivery of service issues such as size and location of pipes for culinary water, pressurized irrigation and sewer, surface water drainage and trail system. "Compatible" does not refer to lot size beyond the requirements identified separately under this chapter.

**DEVELOPMENT RIGHTS:** The potential for the improvement of a legally established parcel of real property, measured in dwelling units, existing as a result of the zoning classification of the parcel. One development right shall be equal to the authority to establish and maintain one dwelling unit.

**RECEIVING AREA:** A geographic area designated by the approved and adopted Mapleton City general plan within which one or more receiving sites may be located.

**RECEIVING SITE:** A legally created parcel of real property which has been zoned TDR-R and to which development rights are transferred in accordance with the requirements of this chapter.

**RECEIVING ZONE:** A zone designation wherein transferable development rights can be applied.

**SENDING AREA:** A geographic area designated by the approved and adopted Mapleton City general plan within which one or more sending sites may be located.

**SENDING SITE:** A legally created parcel of real property which has been zoned TDR-S and from which development rights are transferred in accordance with the requirements of this chapter.

**SEVERANCE OF TRANSFER OF DEVELOPMENT RIGHTS (TDR) CREDIT CERTIFICATE ("CERTIFICATE OF SENDING CREDITS"):** The certificate issued by the city recorder that represents the total number of development credits recognized for and derived from the sending site that may be transferred.

**TRANSFER OF DEVELOPMENT RIGHTS:** The conveyance of one or more development rights by deed, easement, or other legal instrument to another parcel of land

in accordance with the requirements of this chapter. (Ord. 2005-16, 11-16-2005, eff. 11-16-2005)