

Appendix XXII.1



Gallatin County Transferable Development Credit Petition Requirements

Each *Petition for Allocation of Transferable Development Credits (TDCs)* must, in addition to a completed Petition as provided below, provide the Zoning Enforcement Agent with the following:

- Proof of ownership of the land(s) upon which the landowner desires to have TDCs allocated.
- A completed real estate appraisal conducted by a real estate appraiser licensed under the laws of the State of Montana. The appraisal must use accepted techniques to appraise the reduction in market value associated with the mandatory placement of the Transferable Development Credit Allocation Overlay (TDCA Overlay). Refer to Art. XXII, Sect. 2
- A notarized form indicating from each party holding a mortgage, trust indenture, or other security interest in the land upon which TDCs are to be allocated that the holder of the security interest has consented to the allocation of TDCs and to placement of the TDCA Overlay for a period of 40 years.
- Any applicable application fee.



Petition for Allocation of Transferable Development Credits (TDCs)

I, _____, being of sound mind and fully cognizant of my rights and obligations under the laws of the State of Montana, on this ____ day of _____, 20__, do hereby voluntarily submit this petition to the Gallatin County Board of County Commissioners requesting said Board to have its Zoning Enforcement Agent allocate Transferable Development Credits (TDCs) so that I, and any others with whom I hold the parcels involved in the allocation, may use, hold, or transfer said TDCs in the same ownership as I hold title to the property upon which the TDCs are to be allocated.

By signing this petition I understand the number of TDCs to be allocated is subject to a final determination by the Zoning Enforcement Agent and is based upon a formula included in **Article XXII** of the *Gallatin County Part II Zoning Regulations*, which I have reviewed.

By signing this petition I also understand a Transferable Development Credit Allocation Overlay will be automatically placed upon my property that prevents development of my property not in conformance with the applicable zoning from occurring on that parcel until the expiration of the restriction unless otherwise authorized by the *Gallatin County Part II Zoning Regulations*.

By signing this petition I further understand that transfers made by me and any use of TDCs must be in compliance with all applicable zoning requirements and I may be responsible for all fees and costs associated with any subsequent transfers.

By signing this petition I further recognize I am solely responsible for compliance with any federal, state, or local taxation requirements.

By signing this petition I further recognize the real estate appraisal and all information contained therein becomes, at the time of submittal of this petition, a public document to be held in the offices of the Gallatin County Planning Department available for inspection by the public.

Name

DATE: _____

INSERT NOTARY

Note: Where a parcel is owned by more than one landowner in joint ownership, each landowner must sign their name to the petition in the same form as on the deed indicating ownership and each must have their signature notarized. Where a parcel is owned by an entity such as a corporation, partnership, or limited liability company, the signatory must indicate the capacity in which they sign and provide evidence of their authority to sign.

Appendix XXII.2



Notice of Transferable Development Credit (TDC) Allocation and Zoning Restriction

Notice is hereby given that on _____, _____, 20____, I, _____, Zoning Enforcement Agent for Gallatin County, under the authority granted to me by the Gallatin County Board of County Commissioners, did allocate and issue to _____, owner(s) of the below described real property, Gallatin County Transferable Development Credit (TDC) No. _____ through _____.

The issuance of the above numbered Transferable Development Credits was attributed to the following described real property:

Insert legal description of tract(s) included.

I further give notice that at the time of issuance of the above TDCs I applied a land use zoning restriction in the form of the Transferable Development Credit Allocation Overlay (TDCA Overlay) to the above described real property. Development of the above described real property can only be made in compliance with said zoning overlay and the *Gallatin County Part II Zoning Regulation*.

Name
Zoning Enforcement Agent

DATE: _____

Insert Notary

Appendix XXII.3



Gallatin County Transferable Development Credit Certificate

Certificate # 20XX-XXX

I, _____, on this ____ day of _____, 20__, being duly appointed Zoning Enforcement Agent for Gallatin County and being fully authorized by the Gallatin County Board of County Commissioners, do hereby issue this Transferable Development Credit (TDC) Certificate to _____ to be held by said person(s) in the same manner and title as the above named person(s) hold fee title to the following described real property:

INSERT LEGAL DESCRIPTION OF THE REAL PROPERTY

This Certificate does not provide any rights not authorized by law and evidences one (1) Transferable Development Credit (TDC) that may be freely held, sold, transferred, or otherwise conveyed by the above named persons only by compliance with the requirements and restrictions of the *Gallatin County Part II Zoning Regulation*. The use of a TDC in a designated zoning district may only be done by compliance with the requirements and restrictions of the *Gallatin County Part II Zoning Regulation*, the Montana Subdivision and Platting Act, if applicable, and any other applicable federal, state, or local law.

Name
Gallatin County Zoning Enforcement Agent

DATE: _____

Insert Notary

DRAFT

Appendix XX.4



**Gallatin County
Transfer of Transferable Development Credit**

I, _____, being of sound mind and fully cognizant of my rights and obligations under Montana law, on this _____ day of _____, 20____, do hereby state I am the legal owner of Transferable Development Credit(s) No. _____ through No. _____ originally allocated to real property in Gallatin County as indicated by Gallatin County Clerk and Recorder document number _____. I hereby transfer all my right, title, interest, and ownership in Gallatin County Transferable Development Credit(s) No. _____ through No. _____ to the following recipients:

Recipient Name(s): _____

Recipient Mailing Address: _____

Recipient Phone Number: (____) _____

By transferring the above numbered TDCs, I recognize I have informed the recipient(s) named above that the use, consumption, retirement, or subsequent transfer of the above TDCs must comply with all applicable requirements of the *Gallatin County Part II Zoning Regulation*, the Montana Subdivision and Platting Act, and any other federal, state, or local law.

Name

DATE: _____

Insert Notary

This transfer of the above numbered TDC(s) is not valid unless signed below by the Gallatin County Zoning Enforcement Agent.

Name
Gallatin County Zoning Enforcement Agent

Date: _____

Appendix XXII.5



**Gallatin County
Notice of Retirement of Transferable Development Credit**

I, _____, being of sound mind and fully cognizant of my rights and obligations under Montana law, on this _____ day of _____, 20____, do hereby state I am the legal owner of Transferable Development Credit(s) No. _____ through No. _____.

The above TDCs were allocated on _____, 20__ to _____ as evidenced by Gallatin County Clerk and Recorder document number _____.

Having obtained the attached approval for the use and consumption of the TDCs from the Gallatin County Zoning Enforcement Agent, I hereby retire Gallatin County TDC No. _____ through _____ relinquishing all any further right or entitlement I, my heirs, or my successors in interest may have to use of said TDCs in Gallatin County.

Name

DATE: _____

Insert Notary

Appendix XXII.6



Examples for TDCs Under the *Partial Allocation Rule*

The intent of the *Partial Allocation Rule* is to implement the Growth Policy by providing flexibility and development options after the allocation of TDCs while still maintaining the integrity of the TDC program and the underlying zoning. The *Partial Allocation Rule* states that the construction or development of any Residential Dwelling Unit or the creation of any new Tract of Record on the lands subject to the Transferable Development Credit Allocation (TDCA) Zoning Overlay shall require the retirement of the commensurate number of TDCs. The *Partial Allocation Rule* is explained in further detail by the following examples:

Scenario 1: 80-Acre Tract of Record in the AG-160 Zoning Sub-District.

Example 1: Construction of a Residential Dwelling Unit on a Tract of Record Subject to the TDCA Zoning Overlay

Landowner A has an undeveloped 80-acre tract of record in the AG-160 zoning sub-district and is interested in having TDCs allocated to his property. Landowner A follows the process described in [Art. XXII, Sect.2](#), resulting in 10 TDCs being allocated to his property in exchange for voluntarily accepting certain restrictions on the construction of new or additional Residential Dwelling Units and/or Tracts of Record on the subject property for a period of 40 years, as memorialized by the placement of Transferable Development Credit Allocation (TDCA) Zoning Overlay.

In year three, Landowner A decides that he would like to build a Residential Dwelling Unit on the existing 80-acre tract. The TDCA Zoning Overlay allows a Residential Dwelling Unit to be built on the property because it is authorized by the underlying zoning as the 80-acre parcel existing prior to adoption of the AG-160 zoning sub-district; however, the *Partial Allocation Rule* requires Landowner A to retire one of the TDCs he was allocated in order to construct the Residential Dwelling Unit. After retiring the subject TDC, Landowner A has nine TDCs left and 37 years remain until the expiration of the TDCA Zoning Overlay.

Example 2: Family Transfer on a Tract of Record Subject to the TDCA Zoning Overlay

This example starts where the preceding example (Example 1) left off; Landowner A has an 80-acre tract of record with one Residential Dwelling Unit and continues to hold nine TDCs.

It is now year 15 of the TDCA Zoning Overlay and Landowner A wants to give a tract of land to each of his two children utilizing the family transfer exemption. While the underlying zoning ([Art. III, Sect. 3.01](#)) allows for one Residential Dwelling Unit per 160 acres, and the existing 80-acre tract is already developed, [Art. III, Sect. 3](#) exempts new tracts of land created via family transfers from the baseline density requirement, thus Landowner A may create a five-acre tract of record for each of his two children. The *Partial Allocation Rule* applies, and requires Landowner A to retire two of the TDCs he was allocated to compensate for the Residential Dwelling Unit that will be built on each of the two family transfer parcels. Landowner A now has seven TDCs left and 25 years remain until the expiration of the TDCA Zoning Overlay.

Example 3: Removal of the TDCA Zoning Overlay Prior to Expiration of the Term Restriction

This example starts where the preceding example (Example 2) left off; Landowner A has a 70-acre tract of record with one Residential Dwelling Unit and continues to hold seven TDCs. It is now year 20 of the TDCA Zoning Overlay and Landowner A sells three TDCs to a developer and continues to retain four TDCs.

In year 25 of the TDCA Zoning Overlay, the underlying zoning changes from one unit per 160 acres to one unit per 20 acres. Landowner A would like to do a minor subdivision so that he could sell off two 20-acre pieces of his property (and keep a 30-acre piece), but is unable to do so because of the TDCA Zoning Overlay. Landowner A discusses the *Partial Allocation Rule* with the Planning Department. Assuming the *Partial Allocation Rule* is still applicable, it allows landowners enough flexibility to explore other development options so long as they retire the appropriate number of TDCs.

The allocation of 10 TDCs to Landowner A's property was based on Landowner A's voluntary decision to forego certain development opportunities on his 80-acre property for a period of 40-years. Developing at the density allowed by the current zoning (one unit per 20 acres) and selling off two 20-acre tracts would consume half of the property the TDC allocation was originally based on, thus in order to be eligible to create the two 20-acre tracts, Landowner A would need to retire half of the TDCs he was originally allocated. Since Landowner A was originally allocated 10 TDCs, he would need to retire five TDCs.

As a result of the decisions Landowner A has made over the previous 25 years, he only has four TDCs. Landowner A finds and secures a TDC from another party in order to retire a total of five TDCs and remove the TDCA Zoning Overlay from 40-acres of his property. (Note that Landowner A must go through subdivision review to create the two 20-acre tracts to sell). The TDCA Zoning Overlay remains on the balance of Landowner A's property (the 30-acre parcel he retained) and the two family transfer parcels until the expiration of the TDCA Zoning Overlay in year 40.

Scenario 2: 160-Acre Tract of Record in the AG-160 Zoning Sub-District

Example 4: Development of a Rural Cluster Development Project on Land Subject to the TDCA Zoning Overlay

Landowner B has a 160-acre tract of record in the AG-160 zoning sub-district with an existing farmstead. Landowner B is interested in having TDCs allocated to her property. She follows the process described in **Art. XXII, Sect. 2**, resulting in 20 TDCs being allocated to her property in exchange for voluntarily accepting certain restrictions on the construction of new or additional Residential Dwelling Units and/or Tracts of Record on the subject property for a period of 40 years, as memorialized by the placement of Transferable Development Credit Allocation (TDCA) Zoning Overlay. One TDC was automatically retired by the existing farmstead, thus Landowner B has 19 TDCs to work with. In year one, Landowner B sells four TDCs to a developer and retains a total of 15 TDCs.

In year 10, Landowner B decides to investigate doing a Rural Cluster Development (RCD) Project, but is unable to do so because of the TDCA Zoning Overlay. Landowner B discusses the *Partial Allocation Rule* with the Planning Department. The *Partial Allocation Rule* allows landowners enough flexibility to explore other development options so long as they retire the appropriate number of TDCs.

Based on the characteristics of her property, the RCD process determines she would be eligible for a density of one unit per 40-acres; instead, she decides she would like to do a three-lot RCD project (the farmstead, plus two additional Residential Dwelling Units). Under the *Partial Allocation Rule*, to do the RCD Project, she must retire TDCs commensurate with the proposed use. At a density of one unit per 40 acres, the RCD project would utilize 120 acres of her 160-acre property, thus 75% of the TDCs she was originally allocated, or 15 TDCs total must be retired in order for her to do the RCD project. One TDC was already retired for the existing farmstead when the TDCs were originally allocated. That TDC must be factored into the equation, and since the farmstead will be part of the RCD project, she must retire 14 additional TDCs.

As a result of the decisions Landowner B has made over the previous 10 years, she has retained 15 TDCs. Landowner B goes through RCD zoning and subdivision review processes and when she is ready to get final plat approval of the RCD project, she retires the 14 TDCs. The TDCA Zoning Overlay is lifted from the appropriate 120-acres of the subject property and is replaced by the RCD Zoning Overlay. The TDCA Zoning Overlay remains on the 40-acres of Landowner B's property not included in the RCD project until the expiration of the TDCA Zoning Overlay in year 40. Landowner B retains one TDC.

Appendix XXII.7



Gallatin County Transferable Development Right Petition Requirements

Each *Petition for Transfer Transferable Development Rights (TDRs)* must, in addition to a completed Petition as provided below, provide the Zoning Enforcement Agent with the following:

- Completed and signed Application for Transfer of TDRs.
- Proof of ownership of the land(s) for which the landowner desires to transfer the zoning entitlement.
- A notarized form indicating from each party holding a mortgage, trust indenture, or other security interest in the land upon which TDRs are to be allocated that the holder of the security interest has consented to the allocation of TDRs and to placement of the DRR Overlay in perpetuity.
- Any applicable application fee.



Petition for Transfer of Transferable Development Right (TDRs)

I, _____, being of sound mind and fully cognizant of my rights and obligations under the laws of the State of Montana, on this ____ day of _____, 20__, do hereby voluntarily submit this petition to the Gallatin County Board of County Commissioners requesting said Board to have its Zoning Enforcement Agent review and determine whether the parcels indicated below are eligible for a Transferable Development Right(s) (TDRs) so that I, and any others with whom I hold the parcels involved in the proposed transfer, may sell, transfer, convey, or use, consume, and retire said TDRs on a property approved by Gallatin County in compliance with the requirements of the *Gallatin County Part II Zoning Regulation*.

By signing this petition I also understand the Development Right Removal Zoning Overlay will be automatically placed upon my property upon the conveyance of the TDR(s) restricting further development of the property in perpetuity unless otherwise authorized by the *Gallatin County Part II Zoning Regulation*.

By signing this petition I further understand that transfers made by me and any use of TDRs by any other person must be in compliance with applicable zoning requirements and I may be responsible for all fees and costs associated with the transfers of any TDRs.

By signing this petition I further recognize I am solely responsible for compliance with any federal, state, or local taxation requirements.

Name

DATE:

INSERT NOTARY

Note: Where a parcel is owned by more than one landowner in joint ownership, each landowner must sign their name to the petition in the same form as on the deed indicating ownership and each must have their signature notarized. Where a parcel is owned by an entity such as a corporation, partnership, or limited liability company, the signatory must indicate the capacity in which they sign and provide evidence of their authority to sign.

DRAFT

Appendix XXII.8



**Gallatin County
Transfer of Transferable Development Right**

I, _____, being of sound mind and fully cognizant of my rights and obligations under Montana law, on this _____ day of _____, 20____, do hereby state I am the legal owner of Transferable Development Right(s) No. _____ through No. _____.

The above TDRs are attributed to the following real property:

Insert legal description

I hereby transfer all my right, title, interest, and ownership in the above Gallatin County Transferable Development Right(s) to the following recipients:

Recipient Name(s): _____

Recipient Mailing Address: _____

Recipient Phone Number: (____) _____

The above TDRs have been transferred previously as indicated on Gallatin County Clerk and Recorder document number _____ and _____.

By transferring the above numbered TDRs, I recognize I have informed the recipient(s) named above that the use, consumption, retirement, or subsequent transfer of the above TDRs must comply with all applicable requirements of the *Gallatin County Part II Zoning Regulation*, the Montana Subdivision and Platting Act, and any other federal, state, or local law.

Name DATE: _____

Insert Notary

This transfer of the above numbered TDR(s) is not valid unless signed below by the Gallatin County Zoning Enforcement Agent.

Name Date: _____
Gallatin County Zoning Enforcement Agent

Appendix XXII.9



Notice of Transfer of Transferable Development Right (TDR) and Zoning Restriction

Notice is hereby given that on _____, _____, 20____, I, _____, Zoning Enforcement Agent for Gallatin County, under the authority granted to me by the Gallatin County Board of County Commissioners, did approve and authorize _____, and _____, owners of the below described real property, to transfer all (if portion, indicate the number transferred out of total) legally authorized zoning entitlements existing as of this day

The issuance of the above numbered Transferable Development Rights was attributed to the following described real property:

Insert legal description of tract(s) included.

I further give notice that at the time of approval of the transfer of the above TDRs I applied a land use zoning restriction to the above described real property in the form of the Development Right Removal Overlay (DRR Overlay). Development of the above described real property can only be made in compliance with said zoning overlay and the *Gallatin County Part II Zoning Regulation*.

Name
Zoning Enforcement Agent

DATE:_____

Insert Notary.