

# Article 6



## Planned Development Districts

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#### 6-100 Introduction and Purposes

- A. A Planned Unit Development (PUD), as authorized by C.R.S. 24-67-101 et seq., as amended, may be permitted in any area of the unincorporated county.
  1. The PUD is an entire development concept and shall be reviewed as a whole.
  2. Any modifications to a PUD shall result in a review by the Director, and, if found to be a substantial modification, amendment of the approved PUD development plan shall be required.
- B. Planned Unit Developments are formulated in order to encourage the flexibility in the development of land that may be necessary to permit adjustment to changing public and private needs; to foster the ability to provide development patterns which are more compatible with and effective in meeting such needs; to promote the more efficient use of land so as to preserve and enhance the natural characteristics and unique features of a property; to improve the design, character and quality of new development; to encourage integrated planning to achieve the objectives of the Boulder County Comprehensive Plan; to preserve open areas; to facilitate the adequate and economical provision of streets and utilities and to reduce the burden on existing streets and utilities by more efficient development; and to conserve the value of land. The PUD is an entire development concept and shall be reviewed as a whole. Modifications to a PUD shall result in a review and amendment of the approved Sketch Plan.
- C. Besides the general PUD, specific types of PUDs include the Nonurban Planned Unit Development (NUPUD), the Noncontiguous Nonurban Planned Unit Development (NCNUPUD), the Mountain PUD, and the Transferred Development Rights PUD (TDR/PUD).

- D. In addition to those purposes outlined within these Regulations, NUPUD, NCNUPUD, and TDR/PUD submission, review, and action shall be guided by the following objectives:
  - 1. To accomplish the preservation of those lands identified within the Boulder County Comprehensive Plan as agricultural lands of National, Statewide, and Local Importance and other valuable agricultural lands; to accomplish such preservation through the strategic and planned location of subdivided lots.
  - 2. To accomplish the preservation of those natural and cultural resources as identified in the Cultural and Environmental Resources Elements of the Comprehensive Plan; to accomplish such preservation through the strategic and planned location of subdivided lots.
  - 3. To offer density bonus as an incentive to discourage the development of valuable agricultural and other resource lands in Boulder County.
  - 4. To offer the NUPUD and TDR/PUD processes as a viable alternative to municipal annexation for development purposes.
  - 5. To stabilize nonurban land values.
  - 6. To create a process for platting unsubdivided land whereby agricultural property owners may realize profits from the conveyance of portions of their land or the development rights from that land without being forced to sell large or entire agricultural tracts.
  - 7. To provide for subdivided lots of such size, location, design, and orientation to minimize future demands for services while providing opportunities for the support of a variety of lifestyles.

## **6-200 General Requirements for all Planned Unit Developments**

- A. The parcel being considered for a PUD must be a legal building lot.
- B. Any proposed PUD, or substantial modification to an approved PUD, is subject to the requirements of this Article and the public hearing process defined in Article 3 of this Code.
- C. Any proposed plat for a NUPUD or NCNUPUD must meet the applicable general requirements included in Section 6-300 for all PUDs as well as the specific requirements for that type of PUD as described below. A TDR/PUD is not subject to the requirements of 6-300, but is subject to the specific requirements of Section 6-700, below.
- D. Any common areas proposed within a PUD shall be included within the overall area covered by the development plan.
  - 1. Each lot or interest within the PUD shall be deemed as a unit granting to the parcel owner a proportionate undivided interest in the common area in perpetuity, with such restrictions as may be consistent with the unified development plan of the PUD.
  - 2. There shall be a plan, which shall also be a deed restriction by covenant or otherwise, in perpetuity, binding the PUD owners to the maintenance of the common areas.
- E. No PUD shall be approved without a plan setting forth the provisions for unified development of the PUD, including but not necessarily limited to easements, covenants and restrictions relating to use, location, and bulk of buildings and other structures; intensity of use or density of development; utilities; private and public streets, ways, roads, pedestrian areas, and parking facilities; common (or dedicated) open spaces; and other public facilities.
- F. A PUD must be maintained during construction and occupation under unified development control or a unified development plan.
- G. Ownership and maintenance of the common areas designated for the enjoyment of residents shall be the responsibility of a homeowners association and/or architectural control committee pursuant to appropriate covenant, unless a different arrangement is determined to be adequate.
- H. No PUD shall be approved without the written consent of the landowner whose properties are included within the PUD.
- I. The proposal shall be in accordance with the Comprehensive Plan, and any applicable intergovernmental agreement affecting land use or development;

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## 6-300 Planned Unit Development

- A. Any use, or combination of uses allowed in the underlying zoning district may be included in a PUD. The uses permitted in the PUD must be specifically defined and approved as a part of the unified development plan controlling the PUD.
- B. There is no minimum area requirement or maximum density for a PUD; however the PUD must meet the standards and conditions for approval in Section 6-1000, below.
- C. Unless otherwise specifically described in the PUD development plan the following bulk requirements will be applied:
  - 1. For Commercial and Business uses
    - a. Front yard setback...60 feet
    - b. Side yard setback...0 or 12 feet
    - c. Rear yard setback...20 feet
    - d. Maximum building height...50 feet
  - 2. For Industrial uses
    - a. Front yard setback...60 feet
    - b. Side yard setback...0 or 12 feet
    - c. Rear yard setback...20 feet
    - d. Maximum building height...50 feet
  - 3. For Residential uses
    - a. Front yard setback...35 feet
    - b. Side yard setback...7 feet
    - c. Rear yard setback...15 feet
    - d. Building height...30 feet unless a lower or higher height is justified by the unique characteristics of the particular site; in no event, however, shall any residential structure exceed 35 feet in height.

## 6-400 Nonurban Planned Unit Development

- A.** Purpose: A residential PUD consisting of subdivided land which may allow for an increase in density from one dwelling unit per 35 acres up to one unit per 17.5 acres on a minimum of 320 acres in order to preserve agricultural, environmental, or open space resources. The mechanism to preserve these resources is a conservation easement held by Boulder County on that portion of the subdivided land platted as an outlot, which may not be developed for residential use.
- B.** Requirements
- 1.** Area
    - a.** A NUPUD must contain an area of at least 320 acres, of which 75% or more is covered by one or more of the following designations identified for preservation in the Boulder County Comprehensive Plan: agricultural lands of state or national significance, designated open space, critical wildlife habitats and corridors, critical plant associations and rare plant sites, natural landmarks and natural areas, wetlands, and archeological sites; or
    - b.** A NUPUD may contain an area of 35 up to (but not including) 320 acres if the following circumstances are met:
      - (i)** 75% or more of the area is covered by one or more of the designations listed in subsection (a), above; and
      - (ii)** the proposed area is contiguous along at least one-sixth of its perimeter to a NUPUD or other subdivided land with a plat recorded on or before August 17, 1994; and
      - (iii)** the proposed area is composed entirely of parcels created on or before August 17, 1994 which are in the same ownership (including legal heirs) as existed on or before August 17, 1994; and
      - (iv)** the proposed units are clustered with the development in the contiguous NUPUD or other subdivided land, except where the applicant can show that clustering would significantly diminish the viability of the designated area (as per (i) above); and
      - (v)** the residences to be constructed on the proposed subdivided lots do not exceed 2,500 square feet above grade; or
    - c.** A NUPUD may contain an area of 35 up to (but not including) 320 acres also if the following circumstances are met:
      - (i)** 75% or more of the area is covered by one or more of the designations listed in subsection (a), above; and
      - (ii)** the area is within one mile of an existing municipality, or is entirely included within the Rural Preservation area of the East Central Boulder County Intergovernmental Agreement, in which case it does not have to meet (i) above, except that no NCNUPUD shall be approved in the Rural Preservation area; and
      - (iii)** the residences to be constructed on the proposed subdivided lots do not exceed 2,500 square feet above grade; or
    - d.** A NUPUD may contain an area of 35 up to (but not including) 52.5 acres provided that the proposed area is composed entirely of parcels created on or before August 17, 1994 which are in the same ownership (including legal heirs) as existed on or before August 17, 1994, and provided that the residences to be constructed on the proposed subdivided lots do not exceed 2,500 square above grade.
    - e.** NUPUD applications may be proposed only on lands in the Agricultural, Rural Residential, Suburban Residential, or Multifamily zoning districts.
  - 2.** Uses Allowed
    - a.** Any use, or combination of uses, allowed in the underlying zoning district may be included in a NUPUD. The uses permitted in the NUPUD must be specifically defined and approved as a part of the development plan, with the following requirements:
      - (i)** Outlot...Agricultural uses, and accessory agricultural structures
      - (ii)** Subdivided Lots...Single family residential units, homestead units, open or intensive agricultural uses, and any use requiring special review.

3. Homestead Units
  - a. Any existing dwelling which is determined to be historically significant, contributing to the rural character of the county, or which has been lived in by the same person since March 22, 1978 may be counted as a dwelling unit in addition to the one unit per 17.5 acres allowed though the approval of a NUPUD. These homestead units must have been built and used in full conformance with existing County regulations.
  - b. The area around any existing dwelling may be platted as a separate subdivided lot from the outlot and shall be counted as part of the developed portion of the NUPUD.
  - c. The homestead, if approved, shall be permitted as long as the original structure remains. The unit of density is lost if demolished. Alteration of more than 50% of the original structure is not permitted. If the structure is lost through a casualty or accident, it may be restored to its original size and appearance, or to an appearance approved by the County as contributing to the rural character of Boulder County. If a homestead in the Floodplain Overlay District is lost through flooding, the home may be restored only if relocated outside the Floodplain Overlay District, if approved by the BOCC through a replat of the NUPUD.
4. Density and the Developed Area
  - a. The overall density of the NUPUD shall not exceed one dwelling unit per 17.5 acres. Any fraction of a unit of density shall be rounded down to the next whole number.
  - b. All residential improvements, including, but not limited to, subdivided lots, residential roads, recreation areas, water systems, and waste facilities, to be used by the residential area, shall be considered as part of the developed area of the NUPUD.
  - c. In no case shall the developed area of a NUPUD exceed 25% of the total area of the NUPUD. However, the Board of County Commissioners, after review by the Planning Commission, may reduce the allowable developed area to no less than 15%, if it is determined that a reduction is justified by the unique characteristics of the particular site, including but not necessarily limited to the existence of designated agricultural lands or environmental resources.
5. Subdivided Lot and Use Design
  - a. The subdivided lots created through the NUPUD process should be located on the least productive agricultural land and in such a manner as to have little impact on any environmental or open space resource area located on the parcel. The subdivided lots shall also be located outside any known hazard area.
  - b. The subdivided lots shall be clustered in such a manner to make efficient use of land resources and infrastructure. The subdivided lots and dwelling units in the NUPUD should also be clustered with respect to dwellings on surrounding properties. The impact on the existing uses and the rural character of the area must be included in the consideration of the number of units allowed in a cluster including undeveloped lots.
  - c. Subdivided lots should be located nearest to utilities and roads to minimize the amount of construction and the loss of agricultural land, unless this directly conflicts with 6-400 (B)(5)(a) or other preservation goals.
  - d. Where technically feasible, joint or common water and/or sanitation systems should be used.
6. Undeveloped Area (Outlot)
  - a. The undeveloped area should be platted as a single outlot, unless an existing ditch, physical feature, or road separates the preserved area in such a way as to make a single use of the property infeasible. The existence of a historic site, wildlife habitat, or other resource would also allow for the platting of separate outlots.
  - b. The area set aside for trail easements and peripheral roads may be considered as part of the outlot.
  - c. The outlot may be owned jointly by the owners of the subdivided lots, a single lot owner, Boulder County, any municipality, or other party.

## 6-401 Continued Agricultural Use

- A. An inventory and history of agricultural production must be provided as part of the application for a NUPUD which proposes agricultural use of the outlot. This must include soils survey information, information regarding water rights owned and used, and the availability of water for irrigation purposes.
- B. In order to maintain and implement the goals and policies of the Environmental Resource Element of the Comprehensive Plan, the following objectives shall apply.
  1. Maintain soil stability through the use of appropriate vegetative cover to prevent soil loss due to wind and water erosion.
  2. Maintain water use at a non-erosive rate of application. This section shall not require the owner of the outlot to acquire water and commence irrigation when the outlot has not been irrigated in the previous 10 years.
- C. If the proposed outlot does not meet the resource preservation objectives, the Board may require a resource preservation plan be submitted prior to recording the final plat. If, in the future, the outlot does not meet the resource preservation objectives a plan to meet these objectives shall be required pursuant to the terms of the conservation easement.

## 6-500 Noncontiguous Nonurban Planned Unit Development

- A. Purpose: A Noncontiguous Nonurban Planned Unit Development (NCNUPUD) is a NUPUD which allows for a transfer of density from a sending area to a receiving area in order to protect specific agricultural, environmental, or open space resources.
- B. A NCNUPUD is a type of NUPUD and shall meet the NUPUD requirements, except as modified by the following additional requirements.
  - 1. Noncontiguous parcels included within the NCNUPUD must be within the same water service area or water and/or sanitation district, school district, and fire district/response area, unless provisions to mitigate any development imbalances created by the transfer of residential development are accepted and approved by Boulder County.
  - 2. There will be less negative impact and a greater benefit from the proposed NCNUPUD, in comparison to individual NUPUDs on the parcels, as measured by the criteria in this Article and in the *Boulder County Comprehensive Plan*.
  - 3. The land proposed for preservation must meet one of the following:
    - a. At least 90 percent of the land proposed for preservation under the conservation easement must be identified either as significant agricultural land of National Importance in the Comprehensive Plan.
    - b. A majority of the land must be proposed open space or a significant natural or cultural feature noted on the Environmental Resources Map of the Comprehensive Plan.
    - c. A majority of the land must be determined to have significant environmental resource or open space value (i.e., scenic area/corridor or community buffer) supported by the Open Space goals and policies of the Comprehensive Plan.
  - 4. The cumulative impact of units transferred into an area must not result in a significant change in the nonurban character of the area. For receiving parcels greater than 35 acres, no transfer shall be permitted which creates a density greater than 6 units per 35 acres, excluding the homestead units. In the case of parcels less than 35 acres, a transfer may result in a density of four units per 35 acres excluding the homesteads.
  - 5. Areas proposed for inclusion in conservation easements from which dwelling units are being transferred shall not be located within adopted Community Service areas and or other areas which Boulder County believes are likely to be annexed and developed within municipalities without approval by such municipalities.
  - 6. Sending Area
    - a. The sending area shall contain a significant agricultural, environmental, or open space resource which is in the best interest of the residents of Boulder County to preserve.
    - b. Sending area lands in the Forestry district shall consist of 175 contiguous acres and may transfer one dwelling unit per 35 acres. The sending area shall include an environmental or cultural feature or area identified for preservation by Boulder County, and be dedicated to the County in fee unless the County determines that a conservation easement is adequate protection for the resources identified for preservation.
    - c. Sending area lands in the districts where NUPUDs are allowed, as specified above, may consist of any parcel of 35 acres or more and may transfer two dwelling units per 35 acres.
    - d. If dwelling units remain on a sending area, the area of land remaining for development shall be reduced in proportion to the percentage of development which has been transferred.
  - 7. Receiving Area
    - a. No more than 50 percent of the receiving area shall be used for development, unless further restricted below.
    - b. A receiving area which contains lands designated in the Comprehensive Plan as Agricultural lands of Nationwide Importance, a natural or cultural resource, or proposed open space shall not be permitted unless:
      - (i) no more than 25 percent of the receiving area is used for residential development; and
      - (ii) the development shall in no way be detrimental to the continued agricultural use of the remaining preserved area, to any significant natural or cultural resource, or to the open space values which support the proposed open space designation.



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8. Banking of Unutilized Density
    - a. Units not utilized in an NCNUPUD application may be held and used in a subsequent application as follows:
      - (i) The unused units shall not exceed the units used or platted for development on the receiving parcel of the original application.
      - (ii) The unused units shall be platted in a block on the receiving parcel as a part of the final plat; the block shall be clearly identified on the plat as to its purpose, and configured in such a manner so that it is not possible to develop the banked units on the receiving site, without amendment to the original PUD.
      - (iii) Any subsequent application to use and develop the banked units shall be evaluated with regard to the impact of additional density on the receiving parcel identified in that application.
      - (iv) The County shall be required to recognize the platted but unused units only to the extent that a development proposal for the units may be submitted and subsequently approved under the land use regulations of Boulder County in affect at the time of that subsequent application.
      - (v) The benefits of preservation of the larger land area which is accomplished by the banking of units must clearly outweigh the benefits of approving a development which preserves a smaller area, and leaves the unused density on the sending parcel, when considered with respect to the goals of preservation of agricultural lands, environmental resources and/or open lands.
  9. Additional Notice Requirements
    - a. In addition to the notice requirements in Section 3-204 the following shall apply:
      - (i) For NUPUDs comprised of noncontiguous parcels, notice shall be provided to all owners and addresses within one-half mile of the boundary of the parcels proposed to receive transferred units. The title/property owner report, prepared for a NCNUPUD shall reflect the names and addresses of the owners and address of properties within one-half mile of the boundary of the parcels to receive building lots.
      - (ii) After the approval of a NCNUPUD, a sign which complies with the Boulder County Sign regulations, shall be placed in a visible location on the receiving parcel, which indicates the number of dwelling units approved for the parcel.

## 6-600 Mountain Planned Unit Development

- A. Purpose: Mountain Planned Unit Developments may be permitted in the Forestry zoning district in order to minimize service and management costs of lands located in mountain areas; to provide flexibility and to accommodate personal desires in the sale of mountain properties; to encourage the retention of large areas of mountain land in forestry uses by allowing the conveyance of small land parcels; to provide flexibility in the location of residential lots in mountain areas; and, to provide a means of development sensitive to environmental concerns and existing capital services, such as roads.
- B. Mountain PUDs shall meet both the PUD requirements and the following additional requirements.
  - 1. The Mountain PUD shall include an area of not less than 70 acres.
  - 2. The overall density of the Mountain PUD does not exceed one dwelling unit per 35 acres.
  - 3. Conservation easements, or other acceptable means, are applied to prevent further subdivision or development of lands committed for forestry or other open uses.

## 6-700 Transferred Development Rights Planned Unit Development

- A. Purpose: To promote county-wide preservation of agriculture, rural open space and character, scenic vistas, natural features, and environmental resources for the benefit of the residents of Boulder County. The preservation and maintenance of these resources will be ensured by encouraging county wide land use planning including the perpetuation of large areas of generally contiguous properties suitable for agricultural use through the transfer of development rights from parcels suitable for preservation to properties meeting the criteria for development.
- B. Designation of Areas to be Preserved: The sending sites to be preserved and protected through the application of this article are those designated on the Boulder County TDR Sending Sites Map, the Niwot Sending and Receiving Area Map, and areas designated through Intergovernmental Agreements with municipalities in Boulder County.
- C. Areas to be Developed Utilizing Development Rights Transferred From a Sending Site: The areas which are suitable for development using the density transferred from the sending sites must meet the criteria and standards for approval defined in 6-700(E), (G), and K below as applicable. These areas are referred to as receiving sites.
- D. Zoning Requirements: The uses approved as part of a TDR/PUD shall be limited to the following:
  - 1. Residential and nonresidential density, uses, minimum lot area, minimum receiving land area, building height, and yard requirements shall be determined at the TDR/PUD sketch plan approval. The receiving site will include 2 units per 35 acres plus the density transferred to the site.
  - 2. Residential TDR/PUDs: Residential development rights may be transferred from any designated sending site in the A, RR, ER, and SR zoning districts, to any approved residential receiving site meeting the applicable criteria for receiving sites under these regulations. The maximum allowable total units within a residential TDR/PUD shall be 200.
  - 3. Residential/nonresidential TDR/PUDs: Residential development rights may be transferred from any designated sending site in the A, RR, ER, and SR zoning districts, and converted to nonresidential uses and density on any receiving site in the B, C, LI, and GI zoning districts which meets the applicable receiving site criteria under these regulations. The sketch plan for a nonresidential TDR/PUD shall establish the ratio of nonresidential floor area to be developed on the receiving site, to the number of residential development rights being sent. In establishing this ratio, the effect of the proposed nonresidential floor area shall be of no greater impact to the surrounding area than would the equivalent amount of residential development which is transferred into the site. In evaluating the land use impact of the proposed nonresidential floor area, the impacts considered shall include but not be limited to traffic and circulation patterns, compatibility with adjoining development and land uses, and the effect on designated open space, environmentally sensitive lands, and critical wildlife habitats or corridors.
- E. Development Criteria for Receiving Sites which Accept Transferred Development Rights
  - 1. In order to be eligible for additional density from development rights, a property-owner must apply for and receive approval to plat a TDR/PUD on the parcel.
  - 2. Adequate facilities and services must be provided to serve a TDR/PUD development. Receiving sites shall be subject to any school impact fee in effect and to any other requirements, such as phasing of the project, necessary to mitigate the impact of new students on overcrowding of schools, or to assure that other facilities and services are adequate and available to serve the TDR/PUD.
  - 3. Defined Subareas for transfer - For every TDR/PUD, 75% of the total number of development rights needed to complete the project must be acquired from designated sending sites located in the same subarea as the proposed receiving site unless the applicant proposes a specifically defined and identified sending area which is designated by the BOCC in the TDR/PUD approval.



- F. Development Criteria for Sending Sites from which Development Rights are Transferred**
1. Parcels eligible for the density transfer option must be located within approved sending areas, as depicted on Boulder County TDR Sending Sites Map, the Niwot Sending and Receiving Area Map, or any map adopted through an Intergovernmental Agreement with a municipality in Boulder County.
  2. In no case shall the developed acreage of a sending site exceed 5% of the total area of the sending site, and the conservation easement shall cover all of the sending site area.
  3. The conservation easement, pursuant to C.R.S. 38-30.5-101 through 38-30.5-110, or other acceptable means are effected to prevent further subdivision or development of lands committed for agriculture or other open uses.
  4. Units which have been expressly banked as unutilized density through an approved and recorded NUPUD or NCNUPUD, may be eligible to participate in a TDR/PUD if the Commissioners determine that participation enhances the preservation of the sending site, and otherwise furthers the purposes of this Section 6-700 and the Comprehensive Plan. Any such banked units which are not proposed or approved for use in a TDR/PUD, can still be platted as part of an NUPUD or NCNUPUD application provided that all regulations in effect at the time of the application are met.
  5. Units which have not been expressly banked as required in the preceding subsection, and which are merely units not utilized in or approved as part of a NUPUD or NCNUPUD application, may not be held and used as part of a TDR/PUD.
  6. Units proposed for transfer from sending sites which have been acquired in fee by a governmental entity for the preservation purposes listed in Section 6-700(A), above, or from sending sites encumbered by a conservation easement held by a governmental entity for the preservation purposes listed in Section 6-700(A), above, will be eligible for participation in a TDR/PUD only if the Commissioners determine that the proposal for participation enhances the preservation of the sending site and otherwise furthers the purposes of this Section 6-700 and the Comprehensive Plan. If such a determination is made, participation in a TDR/PUD will not require a separate conservation easement to be granted to the County over the sending site, unless the Commissioners determine that a separate easement is necessary to assure the long-term preservation of the sending site on substantially the same terms as the Conservation Easement form approved by the County for use in these TDR/PUD regulations. A public hearing shall be held prior to the sale of development rights from open space.
- G. Standards and Conditions of Approval for Development on a Receiving Site: A PUD utilizing transferred development rights shall be approved only if the Board of County Commissioners finds that the proposed development meets the following standards and conditions:**
1. The proposed TDR/PUD must be adjacent to and compatible with adjoining development and land uses, as well as compatible with the land uses designated for the area in adopted municipal master or comprehensive plans.
  2. The proposal must be located adjacent to a major arterial, collector, or transit route.
  3. Except as provided in 6-700(G)(7), below, receiving sites shall not be located on national significant agricultural land, designated open space, environmentally sensitive lands, or critical wildlife habitats or corridors, as identified in the Comprehensive Plan.
  4. Within any residential TDR/PUD not more than 5% of the total land area may be developed for structural nonresidential uses.
  5. Within any residential TDR/PUD, the nonresidential portions of the TDR/PUD will not be issued a Certificate of Occupancy until such time as 75% of the residential portions of the development are complete.
  6. The proposed development shall include, where appropriate, methods to contribute to the costs for the provision of capital facilities including schools.
  7. Exceptions to the above approval criteria may be granted by the Board of County Commissioners if the following conditions apply:
    - a. The proposed project is located within an approved Community Service Area, or
    - b. The proposed project is located adjacent to existing subdivided land which is developed at greater than rural density or is a platted subdivision within a municipality.
- No exception shall alter receiving sites as designated in the Niwot Area or in an approved TDR IGA.

**H. Development Standards for Sending Sites**

1. Principal and accessory uses will be determined through the establishment of a conservation easement pursuant to the provisions of this Article following a form approved by Boulder County.
2. Property owners choosing not to participate in the transfer of development program still may utilize the use by right of one residential unit per 35 acres.
3. The potential number of development rights available for transfer from sending sites and the number of building lots permitted on sending sites participating in the transfer density program is as follows:
  - a. For parcels between 35 and 52.49 acres
    - (i) two development rights can be sent; OR
    - (ii) one unit may be sent AND one unit may be built on site, but only if specifically approved by the Commissioners based on a finding that the proposal enhances the preservation of the sending site and otherwise furthers the purposes of this Section 6-700 and the Comprehensive Plan.
  - b. For parcels between 52.5 and 69.9 acres
    - (i) three development rights can be sent; OR
    - (ii) two units may be sent AND one unit may be built on site, but only if specifically approved by the Commissioners based on a finding that the proposal enhances the preservation of the sending site, and otherwise furthers the purposes of this Section 6-700 and the Comprehensive Plan.
  - c. For parcels between 70 and 87.49 acres
    - (i) four development rights can be sent; OR
    - (ii) three rights can be sent AND one unit may be built on site.
  - d. For parcels between 87.5 and 104.9 acres
    - (i) five development rights can be sent; OR
    - (ii) four rights can be sent AND one unit built on site.
  - e. For parcels between 105 and 122.49 acres
    - (i) six development rights can be sent; OR
    - (ii) five rights can be sent AND one built on site.
  - f. For parcels between 122.5 and 139.9 acres
    - (i) Seven development rights can be sent; OR
    - (ii) six development rights can be sent AND one built on site.
  - g. For parcels 140 acres and larger
    - (i) two development rights per 35 acres can be sent; OR
    - (ii) any combination of transfer and on site development which does not exceed two units per 35 acres transferred or one unit per 70 acres on site (i.e., on 140 acres there could be the transfer of 6 units and the construction on site of 2 units).
4. Sending sites which have deliverable agricultural water rights in an annual average amount of 1½ acre feet per acre or more attached to, available for use on, or used on a significant portion (generally considered to be 75%) of the property, for at least 5 years prior to August 17, 1994, shall receive an additional unit of density for each 35 acres irrigated. This may be exercised only through the sending of that unit to a recognized receiving site. This additional unit shall be made available if the owner provides the County an undivided interest in the water rights which have been historically applied to the sending site as set forth in this subsection.
5. Verification of sending site acreage through a survey will be required if the property is within 5% of the minimum acreage needed to be eligible for a development right.

**I. Procedure for Obtaining Transferred Development Rights**

1. Development rights may be transferred to an approved receiving site only after the applicant obtains a Development Right Certificate for each right to be utilized from an eligible sending site.
  - a. A Development Right Certificate will be issued by the Boulder County Land Use Department upon the conveyance of a Conservation Easement to the County on the sending site. A Conservation Easement will not be required only under the circumstances provided in Section 6-700(F)(6), above.
  - b. The Conservation Easement, which defines the limitation on the development of the sending site, including the number of development rights severed from that parcel, shall be recorded in the real property records for that sending site at the office of the Boulder County Clerk and Recorder.
  - c. Any remaining development rights shall be built only after the sending parcel goes through the proper process for establishment of location of buildings or lots as follows:
    - (i) Development of one right must be on the undivided sending site and requires Site Plan Review (see Article 4-800).
    - (ii) Development of two or three rights requires a Subdivision Exemption (see Article 9) if separate lots are being created, or PUD approval if separate lots are not being created.
    - (iii) Development of more than three rights requires a Subdivision Regulations and/or PUD approval, as applicable, if separate lots are being created, or PUD approval if separate lots are not being created (see Articles 5 and 6).
2. The receiving site may be established by a conceptual plan, including location, size and general development parameters, submitted by the applicant and approved by the Board of County Commissioners after review and recommendation by the Planning Commission. A sketch plan will be required following the conceptual plan approval or in lieu of submittal of a conceptual plan.
3. A TDR/PUD approval shall also require a preliminary plan which shall be submitted by the applicant and approved by the Board of County Commissioners after review and recommendation by the Planning Commission.
4. The final plat will only plat and record the number of subdivided lots for which all of the development rights have been acquired and documented by Development Right Certificates.
  - a. Prior to the acquisition of all development rights approved on a receiving parcel, the final plat will only define the rights utilized in each block. Building permits will not be issued for development using those rights platted in blocks until an amendment to the TDR/PUD, including an amended final plat converting the blocks into subdivided lots, is approved.
  - b. Improvements directly related to the block for which some or all of the subdivided lots have been platted, must be complete or adequately guaranteed prior to the issuance of building permits.

**J. The following parcels will not be considered for a TDR/PUD receiving site:**

1. Parcels of less than 35 acres, unless
  - a. they are adjacent to an approved sending site or an approved conservation easement so that the total land area committed to agricultural or other open space use is at least 35 acres; or
  - b. they are located within a municipal community service area or municipal influence area as described in the *Boulder County Comprehensive Plan* or a jointly adopted intergovernmental agreement between Boulder County and the relevant municipality, subject to the concurrence and approval of that municipality.
2. Any parcel of less than 35 acres meeting the criteria of Sections 6-700(1)(a) or 6-700(1)(b), above, which is located more than one-half of a mile away from a municipal boundary, shall not be developed at a gross density of more than one unit per acre.
3. A subdivided lot shown on a plat recorded prior to August 17, 1994, the date of the first public notice of Planning Commission consideration of these regulations.
4. Parcels of LESS than 70 acres created after August 17, 1994, will only be eligible for development rights at the base density of the zoning district in which the parcel is located. No additional development rights may be granted to those parcels.

- K. The following additional requirements shall apply within the Niwot Sending and Receiving area:
  1. No more than a total of 93 units shall be received within the potential Niwot Receiving Areas.
  2. Units may be sent to Niwot receiving areas only from sending areas designated on the Niwot Sending and Receiving map as sending areas and only in the following ratios:

**Table 6-700-K-2**

Sending Area	Percentage Eligible to be sent into Niwot Receiving Areas
1A	100%
1B	100%
2	70%
3A	70%
3B	50%
4A	50%
4B	33%
4C	50%
5	100%

Remaining development rights may be used in receiving sites if approved outside of the Niwot Receiving Area.

3. Any development approved within receiving area R2 shall incorporate a buffer along Highway 52.
4. Any units approved within receiving area R4 shall be compatible with the agricultural character of existing adjacent development.

## 6-800 Conservation Easement

- A. Before the Board of County Commissioners may approve a NUPUD, a NCNUPUD, or a TDR/PUD the applicant shall agree to grant to Boulder County a deed of conservation easement in gross pursuant to Article 30.5 of Title 38, C.R.S., as amended, protecting the preserved land from development in accordance with the approved conservation values. Conservation easements encumbering required outlots shall provide for long-term preservation and appropriate management of the property's conservation values and shall be granted in perpetuity, subject to transfer or termination only pursuant to the express terms of these regulations and the governing conservation easement.
- B. The conservation easement shall include the following terms:
  1. The easement shall limit future County termination of the easement to situations where:
    - a. the termination is consistent with the current Comprehensive Plan and this Code; and
    - b. the termination is consistent with a management or land use plan contractually agreed to by the County and another interested governmental entity or entities.
  2. If termination of the conservation easement is proposed, the County may require compensation in an amount sufficient to offset any loss of public benefit resulting from the proposed easement termination. Determination of the amount and form of compensation shall be made on a case-by-case basis by the Board.
  3. If transfer of the conservation easement is proposed, the recipient of any transferred interests must be a governmental entity, or a charitable organization, defined as a "qualified organization" under Section 170(h) of the Internal Revenue Code of 1986, as amended.
  4. The parcel preserved by the conservation easement shall be managed as a single agricultural unit, unless multiple outlots are approved or to separate areas of the parcel or parcels that are unsuitable for agricultural uses. These areas would include natural areas, wildlife preserves, trails, or other identified environmental or open lands resources.
  5. The conservation easement for a TDR/PUD sending site shall include a reference to the extinguishment of the development rights transferred off that site. If additional rights are transferred after the recordation of the conservation easement, the easement shall be amended to reflect the extinguishment of those additional rights and the amendment shall be recorded.

## 6-900 Coordination With Other Provisions and Processes

- A. If review and approval under the Subdivision Regulations is necessary, review of an application under this article shall be carried out simultaneously, and under the same application, referral, notice, and public hearing procedural requirements as is provided for sketch plan review in Article 5 of this Code.
- B. In cases where special use approval is required for a proposed use, review of the PUD application under this article shall be carried out simultaneously with the special use review as provided for within Article 4 of this Code.
- C. Recordation of the development agreement shall vest the owner's property rights for a period of three years, unless a longer vesting period is approved as authorized in Section 3-207 of this Code.

## 6-1000 Standards and Criteria for Approval of a Planned Unit Development

- A. The PUD shall be approved only if the Board of County Commissioners finds that the development meets the following standards and criteria:
  1. the development achieves the purposes of the PUD and the Comprehensive Plan when development at one unit per 35 acres would interfere with or be counter to those purposes;
  2. the PUD would be a benefit through the provision of interconnected open space, conservation of environmental features, aesthetic features and harmonious design, and/or energy efficient site design;
  3. the development will not have a material adverse impact on the surrounding area and will be in harmony and compatible with the neighborhood (compatibility includes but is not limited to size, scale, mass, architectural design, and landscaping);
  4. the proposal fully complies with the minimum zoning and Subdivision Regulations requirements set forth in this Code;
  5. the development will be in accordance with the Comprehensive Plan, and any applicable intergovernmental agreement affecting land use or development;
  6. the project will be served by adequate facilities including streets, fire protection, water and sanitation;
  7. the PUD results in no significantly greater burden on present and projected public facilities and services than development at one unit per 35 acres;
  8. undue traffic congestion or traffic hazards will not result from the proposed PUD; roadways, existing and proposed, are suitable and adequate to carry anticipated traffic within the proposed PUD and in the vicinity of the proposed PUD;
  9. the development will not cause significant air, water, or noise pollution;
  10. detrimental conditions will not result due to development on excessive slopes or in geologic hazard areas;
  11. the soil and drainage conditions are of a sufficiently stable nature to support development, including whatever sewage disposal treatment is used;
  12. fire hazards will not be created or increased;
  13. the PUD will not adversely affect any land of significant historical, cultural, recreational or aesthetic value;
  14. the benefits of preservation of the larger land area which is accomplished by the banking or transfer of units shall clearly outweigh the potential impacts of approving a development which preserves a smaller area; and
  15. the PUD will not otherwise be detrimental to the health, safety, or welfare of the present or future inhabitants of Boulder County.
- B. Upon approval of the PUD, the Board of County Commissioners may impose reasonable conditions or safeguards to insure compliance with these regulations.

## 6-1100 Modifications to an Approved Planned Unit Development

- A. A substantial modification, removal, or release of the provisions of the PUD shall only be permitted by the Board of County Commissioners, following review and a public hearing held in accordance with the provisions of Article 3 of this Code.
- B. The modification shall be consistent with the efficient development and preservation of the entire PUD; shall not affect, in a substantially adverse manner, either the enjoyment of land abutting or across a street from the PUD, or the public interest; and, is not granted solely to confer a special benefit upon any person.