

# FRUITA/MESA COUNTY



Save Land



Make \$\$\$



Build Homes

## USER MANUAL



MARCH 2006

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# Introduction

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## Purpose

The **Transfer of Development Rights/Credits (TDR/C's)** program is a planning tool for managing growth in Mesa County and Fruita. The purpose of the TDR/C Manual is to provide an information resource to Mesa County and Fruita landowners regarding the Fruita/Mesa County TDR/C Program. The Fruita/Mesa County TDR/C Program seeks to encourage landowners in designated “**sending areas**” to forego or limit development of their property by transferring their property’s Development Rights/Credits to a designated “**receiving area**”.

The TDR/C Program is completely voluntary, providing landowners an alternative to developing property using conventional methods. The TDR/C Manual is intended to be used and interpreted in conjunction with both City of Fruita and Mesa County land use policies and regulations, including the City of Fruita 2020 Community Plan, the City of Fruita Land Use Code, the Mesa Countywide Master Plan, and the Mesa County Land Development Code.

This *Introduction* introduces the reader to the concept of TDR/C's and explains how the Fruita/Mesa County TDR/C Program was developed. Additional sections on *Sending Areas* and *Receiving Areas* provide specific details on how and where landowners in Fruita and the surrounding unincorporated Mesa County area can participate voluntarily in the TDR/C Program. Illustrations, charts, maps, definitions, examples and sample formats are provided for ease of use. Answers to Frequently Asked Questions, sample worksheets and other reference materials are found in the *Appendix*.

## Concept

The Transfer of Development Rights/Credits is based on the legal premise that the ownership of land is a “bundle of rights” and abilities. Included in this bundle are water rights, mineral rights, and, the ability to develop land. The ability to develop land under local zoning and subdivision regulations has a market value, just as water or mineral rights have a market value.

Development rights/credits may be separated from one property and transferred to another, much like a water right may be transferred from agricultural to domestic use. A TDR/C program establishes a framework to

## Introduction

match landowners that are eligible to transfer (sell) Development Rights/Credits with land developers that desire to acquire (purchase) Development Rights/Credits.

Landowners that are eligible to transfer Development Rights/Credits are located within designated “sending” areas, while properties that are eligible to accept additional Development Rights/Credits are located in designated “receiving” areas. A sending area is typically land that is determined to remain undeveloped, such as prime agricultural land, an open space buffer between growing communities or an area with significant natural features. Receiving areas are typically vacant land parcels in urban areas with available infrastructure and services that can accommodate higher density development.

A TDR/C program thus provides an institutional mechanism for landowners in sending areas to receive compensation for either not developing or limiting the development of their property, and an opportunity for landowners in receiving areas to obtain a higher return on investment through developing at an increased density.

A TDR/C Program is established by public policy within municipal comprehensive and/or county master plans, and codified within a municipal ordinance and/or county resolution. The implementation of a TDR/C program by local government officials occurs through such tools as development code updates, intergovernmental agreements and procedural manuals.

## Background

The preparation of the Mesa County/Fruita TDR/C Program and this manual is the culmination of efforts over the past several years to establish a mechanism that will encourage the retention of agricultural lands in Mesa County and the protection of open lands between Fruita and Grand Junction. Both the Mesa County Master Plan and the City of Fruita Community Plan 2020 provide a public policy foundation for the creation of a TDR/C Program as a tool for accomplishing these objectives.

Beyond a public policy foundation, the establishment of a TDR/C Program requires three fundamental components: 1) an intergovernmental agreement between Fruita and Mesa County providing a framework for coordinating the program, 2) updates to the City of Fruita Land Use Code and the Mesa County Development Code regulating the programs implementation, and 3) a manual outlining the details on how to use the program.

The Colorado Department of Local Affairs awarded a Colorado Heritage Program grant to Fruita and Mesa County to assist in preparing these TDR/C Program components.

## Contact Information

To participate in the Fruita/Mesa County TDR/C Program or for additional information, please contact:

Fruita Community Development Department (970) 858-0786  
bb@fruita.org

Mesa County Planning and Development Department (970) 244-1867  
mclrange@mesacounty.us

Landowner Planning and Conservation Assistance Team (970) 254-0541

Mesa Land Trust (970) 464-5750

# Definitions

## *Base Density*

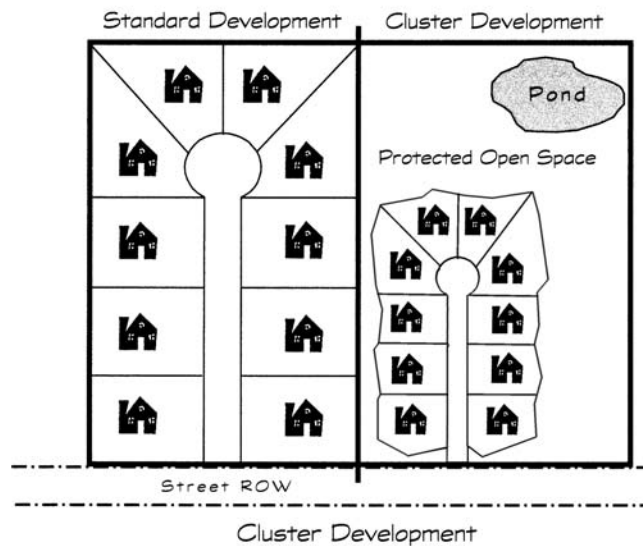
The maximum number of dwelling units possible, per acre, on a parcel of land within a zoning district.

## *Bonus Density*

The additional number of dwelling units permitted on a parcel of land beyond the maximum possible within a zoning district.

## *Cluster Development*

A design technique that concentrates buildings in specific areas on a site to allow the remaining land to be used for recreation, common open space, the preservation of environmentally sensitive areas or agricultural uses.



***Conservation Easement***

A deed restriction placed on property that restricts its owner to specific limited uses of the property, typically agriculture or as passive, private open space.

***Deed Restriction***

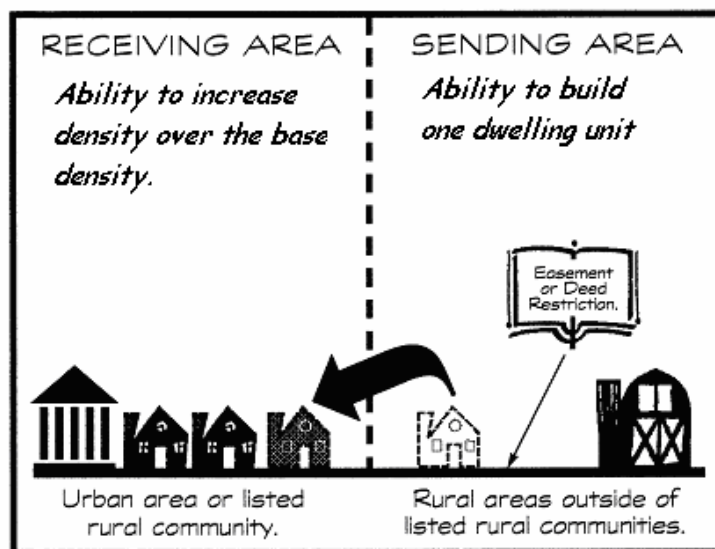
A legal document, recorded with the County Clerk describing restricted activities on a sending site, which may or may not include a conservation easement.

***Receiving Area***

An area designated in urban or urbanizing areas with available infrastructure and services that can accommodate higher density development as shown on the map in the “Receiving Areas” section of this manual.

***Receiving Site***

An eligible property located within the Receiving Area. Eligibility shall be determined by criteria found in the City of Fruita, Land Use Code.



***Transferable Development Rights/Credits***

## ***Sending Area***

An area designated for limited development or to remain undeveloped, such as prime agricultural land, the Cooperative Planning Area (Buffer Zone) and/or an area with significant natural features as shown on the map in the “Sending Areas” section of this manual.

## ***Sending Site***

An eligible property located within the Sending Area. Eligibility shall be determined by criteria found in the Mesa County Land Development Code.

## ***Transferable Development Right/Credit (TDR/C)***

A Development Right/Credit which has been severed or extinguished from a Sending Site by deed restriction, conservation easement, or other legal instrument authorized by law and the recording of that instrument, and which is transferable to a specified Receiving Area.

## ***TDR/C Certificate***

A transferable certificate issued by Mesa County evidencing the legal right of the holder thereof to use such certificate to obtain additional bonus density on a Receiving Site, subject to and in accordance with the City of Fruita Land Use Code.

## ***Transfer Ratio***

The value of one TDR/C relative to its use on a Receiving Site. The transfer ratio shall be 1:7 for each single (1) TDR/C, seven (7) additional dwelling units are eligible as Bonus Density on a qualified Receiving Site. The ratio shall be 1:8 for each single (1) TDR/C, eight (8) additional dwelling units are eligible as Bonus Density on a qualified Receiving Site if credit is obtained from the Buffer Zone. The transfer ratio is expected to be reviewed every two years for compatibility with market conditions.



# Sending Areas

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## Location

Sending Areas are unincorporated parcels of land, any part of which may be located within:

- 1) generally one to three miles of the City of Fruita's proposed 201 Sewer Service Area as identified in the 2002 Fruita Community Plan, or
- 2) the Fruita/Grand Junction/Mesa County Cooperative Planning Area, (Buffer Zone) established by Intergovernmental Agreement between Mesa County and the Cities of Fruita and Grand Junction, and
- 3) the Mesa County Agricultural/Forestry/Transition (AFT) zoning district or any Mesa County Urban Residential zoning district, or
- 4) certain Industrial/Commercial areas, excluding those areas located in the "**floodway**" as determined by FEMA Flood Insurance Rate Maps. Lands located within the **100 year "floodplain"** are acceptable.

See the TDR/C Sending Areas Map.

## Procedure

A landowner in a Sending Area may voluntarily sell the Development Rights/Credits to a landowner of a **Receiving Site**, at a market value established by the landowner and the buyer. First, a **deed restriction** is recorded with the Mesa County Clerks Office, limiting the future development potential of the **Sending Site**. A **TDR/C certificate** is then issued by the Mesa County Planning Department identifying the number of TDR/C's, and the book and page number of the recorded deed restriction. Future development of a Sending Site is then limited to the remaining density not extinguished by the sale of one or more TDR/C's, and is subject to **cluster development** standards under the Mesa County development review process.

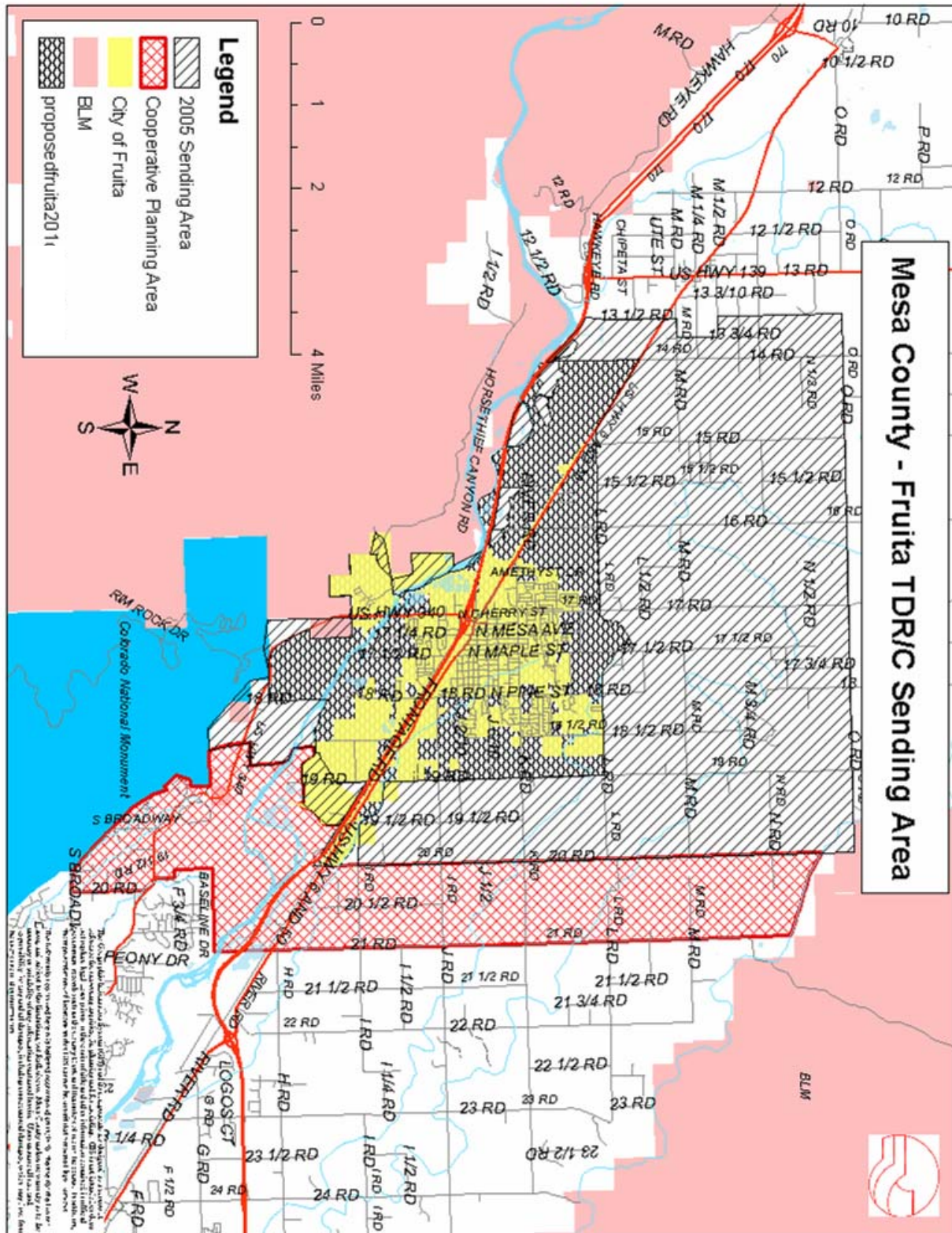
An owner or an agent of a Sending Site interested in participating in the TDR/C Program should contact the Mesa County Planning Department (970-244-1867) to review an estimate of the TDR/C's that may be sold, and the associated future site development requirements that may apply on the subject property.

## Criteria

The following criteria are applicable to all Sending Sites:

1. An eligible property must be located in the AFT zoning district, Urban Residential, Commercial, or an Industrial zoning district not located in the floodway and shown on the Sending Area Map.
2. The minimum lot size for an eligible property within a Sending Area is ten (10) acres in the AFT and AF35 zoning districts, or five (5) acres in an Urban Residential, Commercial and Industrial zoning district, excluding the floodway.
3. A landowner within a Sending Area shall be eligible to receive one (1) TDR/C per five (5) acres placed under deed restriction.
4. The deed restriction may include a **conservation easement**. The amount of density transferred shall correspond to an equal amount of density severed/extinguished from the Sending Site.
5. A portion of the land within a Sending Site may still be eligible for future development if any development rights/credits have been retained on the property. Such future development may occur using cluster development techniques as set out in Section 6.4.4 of the Mesa County Land Development Code.
6. The issuance of TDR/Cs from the Sending Site must be evidenced by a Transferable Development Right/Credit Certificate issued by the Mesa County Planning Department.
7. In order to issue the TDR/C Certificate, a Deed Restriction signed by the owner of record from which Transferable Development Rights/Credits are being transferred must be presented to the Mesa County Planning Department, and shall clearly identify:
  - a. the transferee;
  - b. the transferor;
  - c. the legal description of the Sending Site from which the TDR/Cs are being transferred; and
  - d. the number of TDR/Cs being transferred from the Sending Site.

8. The deed restriction must be recorded in the real property records of the County clearly stating the number of development rights/credits that have been transferred. The deed restriction or conservation easement shall be perpetual.
9. Landowners in the Sending Area, choosing not to participate in the TDR/C Program retain the option to develop their property as provided for by the Mesa County Land Development Code.



**SUMMARY MATRIX OF TDR/C PROGRAM**

Sending Area Zoning	Number of credits per 5 acres protected	Bonus units per credit from Sending Area	Minimum eligible Sending Site size
AFT and AF35	1 credit	7 units	10 acres
Any Urban Residential Zone	1 credit	7 units	5 acres
AFT and AF35 in the Buffer Strip	1 credit	8 units	10 acres
Industrial zoned floodplain sites in the Sending area (not including the “floodway”)	1 credit	7 units	5 acres
Commercial and industrial zoned sites in the Sending area.	1 credit	7 units	5 acres

# Receiving Areas

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## Location

Receiving Areas are generally located in the Rural Residential zoning district within the incorporated boundaries of the City of Fruita. Property zoned Rural Residential is located generally between CR 18.5 and CR 19, south of L Road, east of Big Salt Wash, and south of Interstate Highway 70. Certain vacant properties within the Community Residential and South Fruita Residential zoning districts are also eligible as receiving sites. The TDR/C Receiving Areas Map more specifically identifies the locations of eligible receiving sites.

## Procedure

Existing zoning limits the development potential of properties within a Receiving Area to a **base density**. For a landowner to increase density beyond that allowed as base density, “bonus” density is required. **Bonus density** may be obtained only through the acquisition of one or more TDR/C’s from a landowner of a Sending Site. Each TDR/C Certificate has a **transfer ratio** of 1:7; for every TDR/C, seven (7) dwelling units can be proposed to be used as bonus density. If the TDR/C Certificate comes from land inside the Buffer Zone, then the transfer ratio of 1:8 can be used.

The acquired TDR/C’s may be used on a Receiving Site, subject to the approval of a PUD through the City of Fruita development review process. No rezoning to a higher density will be permitted within a Receiving Area without the use of TDR/C’s.

An owner or an agent of a Receiving Site interested in participating in the TDR/C Program should contact the City of Fruita Community Development Department (970-858-0786) to obtain an estimate of the bonus density that may be achieved, and the associated site development requirements that may apply on the subject property.

## Criteria

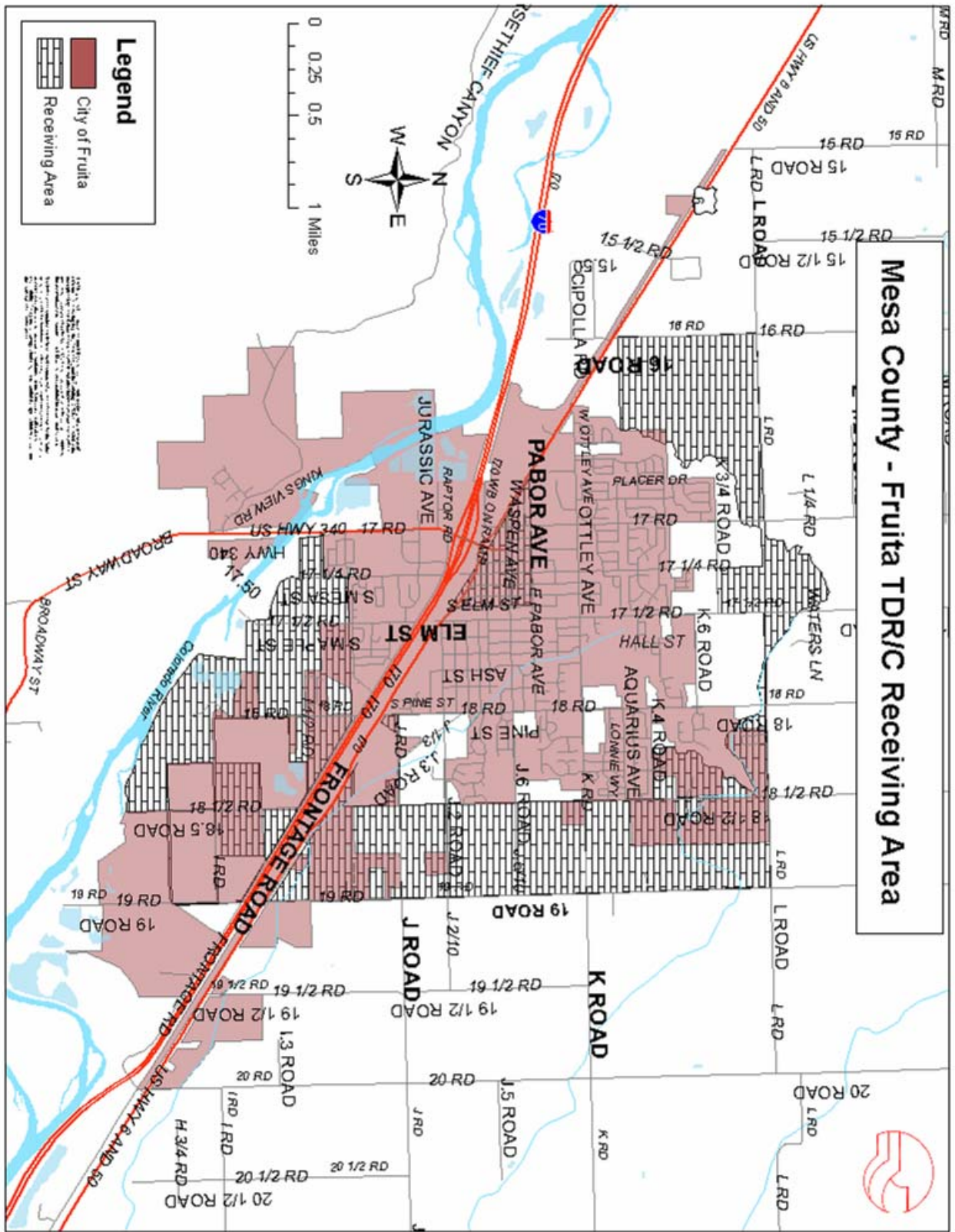
The following criteria are applicable to all Receiving Sites:

1. For a parcel to be developed at a density greater than the base density allowed by either the underlying Rural Residential zoning

district or the Community/South Fruita Residential zoning district (as applicable), the landowner must obtain development rights/credits from a property within the Sending Area.

2. All parcels developed at a density greater than that allowed by either the underlying Rural Residential zoning district or the Community Residential zoning district must be developed as a Planned Unit Development (PUD) under section 17.17 of the Fruita Land Use Code.
3. For all parcels to be developed in a Receiving Area with underlying Rural Residential zoning:
  - a. The base density is a minimum of three (3) acres per dwelling unit (without sewers) or two (2) acres per dwelling unit (with sewers).
  - b. The bonus density is up to a maximum of two (2) dwelling units per acre (with sewers). However for land located between 18.5 Road and 19 Road from L Road south to I-70, designated "Rural Residential" in the Fruita Community Plan 2020, can be increased to four (4) dwelling units per acre.
4. For all parcels to be developed in a Receiving Area with underlying Community/South Fruita Residential zoning:
  - a. The base density is two (2) dwelling units per acre.
  - b. The bonus density is up to a maximum of four (4) dwelling units per acre.
5. All PUD's developed with bonus density achieved through TDR/C's shall be compatible with adjacent land uses and in conformance with the City of Fruita Community Plan 2020 and Section 17.17 of the City of Fruita Land Use Code regulations adopted May, 2004.
6. Landowners choosing not to participate in the TDR/C Program retain the option to develop their property at the base density as provided for by the City of Fruita Land Use Code.







# Appendix A

## Answers to Frequently Asked Questions

### *What would be the benefit of becoming a sending site?*

An owner of a sending site can receive payment for keeping their property just the way it is, or for limiting its future development. The value of TDR/C's is market-driven.

### *Where can I find out if anyone is interested in buying TDR/C certificates?*

TDR/C certificates are sold on the open market, at a price you negotiate with a buyer. Check with the City of Fruita Community Development Department for information on area developers that may be seeking additional density for a proposed project.

### *Where can I find out who has TDR/C certificates they want to sell?*

Check with the Mesa County Planning Department for information on area landowners that have expressed an interest in selling TDR/C certificates.

### *If I purchase TDR/C certificates, am I the only one that can use them or can I sell them to someone else?*

TDR/C certificates can be used by anyone, subject to project approval.

### *How long is a purchased, but unused, TDR/C certificate good for?*

A TDR/C Certificate remains valid until canceled by the City of Fruita when fully used in connection with a project in the Fruita Receiving Area or if for some reason the Program is no longer in effect or until the Program's termination.

***Can development rights/credits be transferred from other County sending sites not in the Fruita area to a receiving site in the Fruita area?***

No. TDR/C certificates used for a receiving site within the receiving area shown on the Receiving Area Map in this manual must originate from the sending area shown on the Sending Area Map in this manual.

# Appendix B

## TDR/C Worksheet

Owner/Project: \_\_\_\_\_

Address/Location of Site: \_\_\_\_\_

Assessor's Parcel Number: \_\_\_\_\_

Background Information: \_\_\_\_\_

### *Sending Site*

Total Acres\*: \_\_\_\_\_ Zoning District: \_\_\_\_\_

Total Possible TDR/C's Eligible\*: \_\_\_\_\_ TDR/C's

Total TDR/C's Requested: \_\_\_\_\_ TDR/C's

Remaining Potential Development\*\*: \_\_\_\_\_ Dwelling Units

Deed Restriction Only? Yes \_\_\_\_\_ No \_\_\_\_\_

Conservation Easement Also? Yes \_\_\_\_\_ No \_\_\_\_\_

Site Within Cooperative Planning Area? Yes \_\_\_\_\_ No \_\_\_\_\_

### *Receiving Site*

Total Acres\*: \_\_\_\_\_ Zoning District: \_\_\_\_\_

Base Density: \_\_\_\_\_ Dwelling Units/Acre

Bonus Density Allowed By Zoning: \_\_\_\_\_ Dwelling Units/Acre

Total TDR/C's To Be Used: \_\_\_\_\_ TDR/C's

Transfer Ratio: 1:7 or 1:8 (Buffer Zone)

Total Bonus Number of Units Proposed: \_\_\_\_\_ Dwelling Units

- \*Subject to verification through property survey at landowner's expense.
- \*\*Subject to approval by Mesa County pursuant to the Mesa County Land Development Code

# Appendix C

## Sample Deed Restriction -

### **DECLARATION OF RESTRICTION OF DEVELOPMENT AND EASEMENT**

This Declaration of Restriction of Development (“Declaration”), in the nature of a restriction on the use of land for the purpose of preserving productive agricultural land and open space condition includes the grant of an easement for enforcement purposes, is made this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and among \_\_\_\_\_, husband and wife, of \_\_\_\_\_, hereinafter called the “Grantors”; and MESA COUNTY, COLORADO, offices located at 544 Rood Avenue, Grand Junction, Colorado, 81501, hereinafter called “County”.

#### BACKGROUND:

A tract of land located \_\_\_\_\_, in the County of Mesa, Colorado, containing approximately \_\_\_\_ acres (the “Property”), was conveyed to \_\_\_\_\_ by deeds recorded in the Office of the Clerk and Recorder for Mesa County, Colorado, in Book \_\_\_\_\_, Page \_\_\_\_\_. The Property is more fully described in Exhibit “A” which is attached hereto and made a part hereof.

The General Assembly of the State of Colorado, by Act C.R.S. §30-28-401 authorized counties to establish a program of transferable development rights/credits and to permit landowners to sell and purchase such development rights/credits. The County of Mesa has, through the Mesa County Land Development Code, Section 9.8 (“Code”) and Intergovernmental Agreements with the City of Fruita, MCA 2002-152, and any amendments (“IGA’s”), established a program of transferable development rights/credits (“TDR/Cs”).

As part of its regulations regarding transferable development rights/credits established by the Code and IGA's, landowners who sell transferable development rights/credits must totally and permanently restrict future residential and industrial development of the tract from which the rights/credits are sold or transferred. Grantor desires to transfer \_\_\_\_\_ transferable development rights/credits (TDR/Cs) associated with the Property, and this restriction of development rights is granted in compliance with the Grantee's regulations and to insure the preservation of the Property for agricultural use. The Grantor will be issued certificates for the \_\_\_\_\_ TDR/C credits by the Grantee upon recording of this Declaration.

NOW, THEREFORE, in consideration of the foregoing and intending to be legally bound, the undersigned Grantors grant and convey to the County an easement (the “Easement”) on the Property, the purpose of which is to assure that the Property will be retained forever in its agriculture and open space condition and to prevent any future development of the Property that will impair the agricultural and open space values of the Property. To carry out this purpose the following restrictions are hereby recorded against the Property.

ARTICLE I. COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS GOVERNING USE OF THE PROPERTY

With the preceding Background paragraphs incorporated by reference and intending to be legally bound, Grantors declare, make known, and covenant for themselves and their heirs, legal representatives, and assigns, that the property shall be restricted to agricultural and directly associated uses as hereafter defined and to those uses specifically authorized herein. However, more restrictive applicable State and local laws, including but not limited to the provisions of the Code and any applicable Intergovernmental Agreements, including the IGA's listed above as the same may exist from time to time, shall prevail in the determination of permitted uses and development of the land subject to these restrictions.

1. Agricultural uses of land are defined for the purpose of this instrument as the use of land for the production of plants and animals useful to man, including, but not limited to, forage, grain and field crops; pasturage, dairy products, poultry and poultry products; other livestock and fowl and livestock and fowl products, including the breeding and grazing of any or all such animals; bees and apiary products, fruits and vegetables of all kinds, nursery, floral and greenhouse products; silviculture; aquaculture; and the primary processing and storage of the agricultural production of the Property and other similar and compatible uses. Agricultural uses of land shall not include a sod or turf removal.

2. Directly associated uses are defined as customary, supportive and agriculturally compatible uses of farm properties in Mesa County, and are limited to the following:

(A) The direct sale to the public of agricultural products produced principally on the Property.

(B) Any and all structures contributing to the production, primary processing, direct marketing and storage or agricultural products produced principally on the Property.

(C) Structures associated with the production of energy for use principally on the Property including wind, solar, hydroelectric, methane, wood, alcohol fuel and fossil fuel systems and structures and facilities for the storage and treatment of animal waste produced on the Property.

(D) The provision or production for sale, by persons in residence, of incidental agricultural goods, services, supplies and repairs and/or the conduct of traditional trades and the production of sale of home occupation goods, arts and crafts, so long as these uses remain incidental to the agricultural and open space character of the farm and are limited to occupying existing residential and/or principally agricultural structures on the Property.

(E) Structures and facilities associated with irrigation, farm pond impoundment and soil and water conservation.

(F) The accommodation of tourists and visitors within existing residential structures on the Property so long as this use is incidental to the agricultural and open space character of the Property, and allowed by the Code.

(G) Other similar uses approved upon written request of Mesa County.

3. Grantors acknowledge that \_\_\_\_\_ dwelling(s) presently exists on the Property. No other residential structures are permitted on the Property, except \_\_\_\_\_ additional dwellings may be constructed on and subdivided from the Property if:

(A) Any development that is allowed pursuant to this Declaration shall be limited to \_\_\_\_\_ acres of the Property, and

(B) The location of the residential structures and their driveways will not significantly harm the economic viability of the Property for agricultural production.

(C) Any future development, including subdivision, different uses, construction of structures, etc. shall be subject to approval pursuant to the Mesa County Land Development Code. Any allowance of possible development in the future is not intended to grant nor comment on the possibility of approval by the Mesa County Board of County Commissioners, or its agent such as the Planning and Development Director.

4. Any activity on or use of the Property inconsistent with the purpose of this Declaration or the Code is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

(A) Institutional, industrial and commercial uses other than those uses described in Article I.1 and I.2 above are prohibited.

(B) The commercial extraction of minerals by surface mining and the extraction and removal from the Property of topsoil are prohibited. The extraction of subsurface or deep-mined minerals, including natural gas and oil, and the noncommercial extraction of minerals, including limestone, shale and other minerals for on-farm use, shall be permitted subject to compliance with the Mesa County Land Development Code, but may occupy, at any time, no more than one percent (1%) of the total surface acreage.

(C) Use of the Property for the dumping, storage, processing or land-filling of nonagricultural solids or hazardous wastes generated off-site is prohibited, excepting the use of organic non-agricultural solid waste generated off-site for fertilizer and tillage subject to the written approval of the County.

(D) Commercial and/or nonpassive recreational development and use involving structures or extensive commitment of land resources (*i.e.* golf courses, racetracks, and similar uses) shall be prohibited. Equine breeding and training facilities shall not be interpreted to be commercial recreational uses for the purposes of this paragraph.

(E) New dwellings and residential uses except as permitted by Article I.3 above.

(F) Any other commercial use as defined by the Code.

5. It is the intention of the Grantors to promote agricultural production and open space on the Property. No subdivision of the Property shall be permitted except for subdivisions permitted by Article I.3 above, which must comply with all applicable governing regulations, including, but not limited to, the Mesa County Land Development Code. Grantors shall provide written notice to the County of Grantors' intent to subdivide lots from the Property for the dwellings permitted by Article I.3 above. Notwithstanding the foregoing, this restriction shall not apply to lands transferred in connection with eminent domain proceedings or by deed in lieu of condemnation.

6. Signs, billboards and outdoor advertising may not be displayed on the Property; provided, however, that signs may be displayed in conformity with the Code to state only the name of the Property and the name and address of the occupant, to advertise an on-site activity permitted herein, and to advertise the Property for sale or rent.

7. Agricultural lands shall be managed in accordance with sound soil and water conservation practices in a manner which will not destroy or substantially and irretrievably diminish the productive capability of the Property. However, there shall be no limitations or prohibitions on any agricultural production or farming methods.

8. The parties recognize that this Declaration and Easement cannot address every circumstance that may arise in the future, and the parties agree that the purpose of the Easement is to preserve the Property predominantly in its present condition, and to protect or enhance the Property’s agricultural and open space values. Without limiting the preceding covenants and restrictions, any use or activity which is not reserved in this Article I and which is inconsistent with the purposes of the Declaration or which materially threatens the purposes of the Declaration or Easement is prohibited.

ARTICLE II ENFORCEMENT OF RESTRICTIONS

1. If the County determines that a violation of the terms of this Declaration and Easement has occurred or is threatened to occur, the County shall give notice to the Grantors, their heirs, legal representatives, or assigns. The written notice shall specify the violation or threatened violation and demand action necessary to cure the violation, including but not limited to restoration of the Property injured to its prior condition in accordance with a plan approved by the County, which approval shall not be unreasonably withheld.

2. The County, its successors and assigns, shall have the right to enforce these restrictions by injunction and other appropriate proceedings in equity and at law. Grantors specifically acknowledge that the County, its successors and assigns, shall have the right to require Grantors, their heirs, legal representatives and assigns, to restore the Property to its condition existing before the commission of any violation of this Declaration and Easement.

3. The County shall have the right to refuse to grant any permit or approval for a use or structure which would violate the provisions of this Declaration and Easement.

4. Nothing contained in this Declaration and Easement shall be construed to entitle the County to bring any action against Grantors, their heirs, legal representatives, and assigns, for any injury to or change in the condition of the Property resulting from causes beyond Grantors’ control, including, without limitation, fire, flood, storm, and acts of trespassers that Grantors could not have reasonably anticipated or prevented, or from any prudent action taken by Grantors under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes. In the event the terms of this Declaration and Easement are violated by acts of trespassers that Grantors could not have reasonably anticipated or prevented, Grantors agree that the County shall have the right to pursue enforcement actions against the responsible parties.

5. Any cost, except monitoring, notices and inspections, incurred by the County in enforcing the terms of this Declaration and Easement against Grantors, including, without limitation, costs of suit and attorneys’ fees, and any cost of restoration necessitated by Grantors’ violation of the terms of this Declaration and Easement, shall be borne by the Grantors.

6. This Declaration and Easement shall, upon recordation, constitute an acceptance by the Grantors, their successors, heirs, and assigns, that the County has the right to enforce this Declaration and Easement without further action.

ARTICLE III GENERAL PROVISIONS

1. No right of public access is provided for, nor will result from, the recordation of these restrictions.

2. Representatives of the County, its agents, successors or assigns, may enter upon the Property at reasonable times and in a reasonable manner for the purpose of inspection and enforcement of the terms of this Declaration and Easement upon prior written notice to Grantors at their last known address; provided that, except in cases where the County determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Declaration and Easement, such entry may be immediately.

3. The restrictions contained herein shall apply to the land as an open space and agricultural preservation easement in gross in perpetuity. The covenants, terms, conditions and restrictions of this Declaration and Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective legal representatives, heirs, successors and assigns and shall continue as a servitude running in perpetuity with the Property.

4. If circumstances arise in the future such as to render the purposes of this Declaration and Easement impossible to accomplish, this Declaration and Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Grantors have considered the possibility that the uses prohibited by the terms of this Declaration and Easement may become more economically valuable and permitted uses and that neighboring properties may be in the future put to such prohibited uses.

5. Upon written request by Grantors the County shall, within thirty (30) days, execute and deliver to Grantors, or to any party designated by Grantors, any document which certifies, to the best of the County's knowledge, Grantors' compliance with Grantors' obligations under this Declaration and Easement or which otherwise indicates the status of this Declaration and Easement. Such certification shall be limited to the condition of the Property's of the most recent inspection by the County. If Grantors request a more current certification, the County shall conduct an inspection within thirty (30) days after receiving Grantors' request for such inspection, at Grantors' expense.

6. If the Easement is taken, in whole or in part, by the exercise of the power of eminent domain, the County shall be entitled to compensation in accordance with applicable law.

7. Grantors agree to incorporate the terms of this Declaration and the Easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantors further agree to give written notice to the County of the transfer of any interest at least ten (10) days prior to the date of such transfer. The failure of Grantors to perform any act required by this paragraph shall not impair the validity of this Declaration and the Easement or limit its enforceability in any way.

8. Grantors shall hold harmless, indemnify and defend County, and its elected and appointed officials, officers, employees, and agents, (collectively "Indemnified Parties"), from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands or judgments, including without limitation reasonable attorneys' fees and costs of defense, arising from or in any way connected with: (a) a violation or alleged violation of any State or Federal environmental statute or regulation including, but not limited to, the Act of October 18, 1998 (P.L. 756, No. 108) known as the Hazardous Site Cleanup Act, and statutes or regulations concerning the storage or disposal of hazardous or toxic chemicals or materials; and (b) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition or other matter related to or incurring on or about the Property, unless due to the negligence of any of the Indemnified Parties.

9. Nothing in this Declaration and Easement shall be construed as giving rise to any right or ability of the County to exercise physical or managerial control over day-to-day operations of the Property, or any Grantors' activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended.

10. Grantors shall retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property, including the maintenance of adequate comprehensive general liability insurance coverage and the payment, as and when due, of all real estate taxes.



11. Notwithstanding provisions hereof to the contrary, if any, Grantors shall be solely responsible for complying with all federal, state and local laws and regulations in connection with the conduct of any use of the Property or the erection of any structure permitted hereunder, and Grantors shall be solely responsible for obtaining any required permits, approvals and consents from the relevant governmental authorities in connection therewith.

12. The County shall record this Declaration and Easement in a timely fashion in the Office of the Clerk and Recorder in and for Mesa County, Colorado, at the expense of the County.

13. If any provision of this Declaration and Easement, or the application thereof to any person or circumstances, is found to be invalid, the remainder of the provisions of this Declaration and Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

14. The provisions of this Declaration and Easement shall not be deemed to interfere with, abrogate, annul, supersede or cancel any easements, covenants, restrictions or reservations contained in any deeds or other agreements affecting the Property.

15. Grantors are seized of the Property in fee simple title. Grantors have the right to grant and convey this Declaration and Easement. The Property is free and clear of any and all liens and encumbrances except liens for taxes not yet due and payable and mortgage or deed of trust liens that are subordinate to this Declaration and Easement by virtue of any executed form of Joinder of Mortgagee attached hereto and incorporated herein.

16. The Grantors on behalf of themselves, their successors, heirs, and assigns, hereby agree that the County may assign its rights and obligations under this Declaration and Easement to an organization that is a public entity, or to an organization that is qualified to continue the purposes of this Declaration and Easement.

TO HAVE AND TO HOLD the Declaration and Easements and rights/credits set forth in this Declaration unto the County, its successors and assigns, forever.

IN WITNESS WHEREOF, GRANTORS, THE COUNTY has executed this Declaration of Restriction of Development and Easement on the day and year first above written.

WITNESS:

\_\_\_\_\_  
Grantor

\_\_\_\_\_  
Grantor

COUNTY OF MESA

Attest: \_\_\_\_\_  
Clerk

By: \_\_\_\_\_  
Chair

STATE OF COLORADO        )  
  )ss  
County of Mesa                )

On this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me, the subscriber, a notary public in and for the aforesaid state and county, came the above-named Grantor, \_\_\_\_\_, know to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he/she executed the foregoing Declaration of Restriction of Development and Easement for the purposes contained therein.

WITNESS my hand and official seal  
My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

STATE OF COLORADO        )  
  )ss  
County of Mesa                )

On this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me, the subscriber, a notary public in and for the aforesaid state and county, came the above-named Grantor, \_\_\_\_\_, know to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he/she executed the foregoing Declaration of Restriction of Development and Easement for the purposes contained therein.

WITNESS my hand and official seal  
My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

EXHIBIT "A"

# Appendix D

## Sample TDR/C Certificate

*Transferable Development Right/Credit Certificate*

*This Certificate is issued for and represents ONE Transferable Development Right/Credit out of a total of \_\_\_\_\_ Transferable Development Rights/Credits recognized for and derived from the following real property in Mesa County (herein after, "the sending site"):*

*At Book No. \_\_\_\_\_ Page No. \_\_\_\_\_*

*and is also identified as Mesa County Assessor's Parcel Number \_\_\_\_\_.* Upon execution and recordation of this Certificate in the real property records of Mesa County, Colorado, in accordance with the Mesa County Transferable Development Rights/Credits Regulations, the ONE Transferable Development Right associated with the Sending Site as represented by this Certificate shall be completely severed and extinguished in perpetuity from the Sending Site, and shall not be eligible for any use related to development on the Sending Site but may be transferred to a Receiving Site as the City of Fruita may approve pursuant to the City's Regulations.

*Issued to \_\_\_\_\_ Date Issued \_\_\_\_\_*

*Certificate Owner's Signature \_\_\_\_\_ Notary Public \_\_\_\_\_*

*Mesa County Planning Director \_\_\_\_\_ My Commission Expires \_\_\_\_\_*

*Chair, Board of County Commissioners \_\_\_\_\_ (Notary Seal)*