The Gallatin County Growth Policy Implementation Program

Proposed Incentive Programs for Participation in Transferable Development Credits and Rural Cluster Development

November, 2008

Introduction:

After years of study and discussion, the County Commission has determined a blend of incentives and regulations, and an integrated rather than piecemeal approach to address growth and change, are essential for Gallatin County to achieve the overarching goals of its citizen-shaped *Growth Policy*. A key element of this effort is recognition that rural landowners provide enormous benefit to all of us through important agricultural operations and, along with them, open space, wildlife habitat and a rural beauty and cultural heritage. We all benefit from their stewardship.

Recognizing and appreciating this, the *Growth Policy Implementation Program* provides proposed options for rural landowners to (i) subdivide using a cluster development provision, and (ii) to realize value from their land holdings without selling or developing them by selling transferable development credits. The Commission believes rural landowners must have these and other options. These options are balanced in the *Implementation Program* with a proposed density regulation for unzoned areas that will keep the County's rural areas largely rural, while steering growth to our existing communities and their edges where it makes the most sense and is most affordable for growth to occur.

A significant part of the program is a proposed incentive package that includes a **Transfer of Development Opportunities (TDO) program** and the **Rural Cluster Development (RCD) program**. This document provides more detail on ideas to create incentives for landowners to participate in both programs[1]. First, the document discusses two potential TDO incentive options: (i) allowing developers opportunities to increase density in certain areas above the baseline if Transferrable Development *Credits* (TDCs) are purchased or transferred from rural landowners and retired; and (ii) providing publicly funded financial offsets to developers for required off-site public transportation, water or wastewater infrastructure. This document also then presents incentives for participation in the RCD Program and incentives to use Transferrable Development *Rights* (TDRs) to reorganize grandfathered development entitlements to lessen the impact of development in the rural areas of the County.

The specific requirements and processes for realizing density bonuses through the use of TDCs is proposed to be described in the appropriate receiving area zoning regulation. In addition, as discussed below, the TDC infrastructure offset program would most likely be implemented year to year through establishment in the County yearly fiscal budget. Management of both

[1] As explained in *The Gallatin Growth Policy Implementation Program: an Overview*, TDOs include Transferable Development Credits (TDCs) and Transferable Development Rights (TDR). Both are voluntary market-based mechanisms designed to allow rural landowners to realize value from the their property without selling or otherwise developing.

programs would be through the Gallatin County Planning Department with policy oversight by the Gallatin County Commission.

Incentives for Participating in the Transferrable Development Credits Program

Increased Density in Receiving Areas:

The Gallatin County Implementation Program has identified several proposed growth areas (known as "receiving areas") where subdivision density may be increased above the established baseline density through the purchase and retirement of TDCs. To do so, each receiving area zoning district would have a corresponding range of allowable densities: a "baseline density" and a "maximum density." For example, in the AS district of the Gallatin County/Bozeman Area Zoning District, a landowner may develop their property into 20-acre parcels (the baseline density) contingent upon subdivision approval without obtaining and retiring any TDCs. If a landowner desires to increase density above this baseline up to the maximum density, TDCs may be obtained and retired. Thus, in this example, the maximum density in the AS district could be increased to one residential dwelling unit for every five acres if TDCs were purchased and the subdivision adequately mitigates the impact on local services, the natural environment, and adjacent properties. The difference between one unit per 20 acres and one unit per five acres is this "range of allowable densities."

The heart of this incentive is the ability to maximize densities within this "range of allowable densities" through the retirement of TDCs. Absent the retirement of TDCs, a landowner is only authorized to develop at the baseline.

Gallatin County TDC Infrastructure Offset Program:

The Commission generally believes the role of government is to encourage new development in and around our existing communities, where accessible infrastructure can best utilize the public's scarce tax dollars. While the voluntary TDC program is one way the *Implementation Program* encourages this, the Commission also recognizes the option to purchase TDCs is an additional expenditure in the development process. Providing financial offsets for developer dollars expended on public transportation and public water/wastewater treatment facilities that extend beyond the development could lessen the additional expense of purchasing and retiring TDCs.

Using a *proposed* TDC infrastructure offset program, Gallatin County can play a role in new development as a partner helping to plan for and finance much needed civic infrastructure. This program could provide a very real incentive for a developer to purchase TDCs, and the County's financial contribution to required infrastructure creates a much needed public/private partnership. This type of financial partnership results in new residents who choose to live in developments created through the purchase of TDCs indirectly paying rural landowners for the stewardship they provide, and the public at large benefitting from new civic infrastructure.

Since the offset program, at inception, would most likely use public funds, it should be designed to provide significant public benefits, thus the following qualifications could exist for participation: (1) to be eligible, the project must be located in an area designated by the Commission as a growth area; (2) the number of TDCs purchased for use in the subject development project must exceed an established threshold; and (3) the infrastructure for which the offset is requested must provide a direct benefit to the general public, beyond just benefiting the future residents of the project being developed.

While there is no denying this program depends upon the Commission's annual budget decisions and the fiscal health of the County, the financial offset could, at first, be designed to *exceed* a dollar-for-dollar contribution. In theory, an offset contribution exceeding a dollar-for-dollar contribution could create a much stronger incentive for developers to purchase TDCs from rural landowners, thus fostering increased demand. This is based on an assumption that not only will a developer benefit by being able to maximize density (thus potentially reducing the per lot cost of constructing their proposed neighborhood while achieving additional units to sell) but the developer will also, through the offset program, receive an additional payment from the County in excess of their initial investment in TDCs. Through both these incentives (additional density and the offset reimbursement), the theory goes, a developer will be more inclined to purchase TDCs. Following are two examples of how this proposed program could work:

<u>Example 1:</u>
As part of a project meeting the qualification described above, a developer purchases $400,000 in TDCs. As part of the subdivision review process, the Commission requires the developer to make certain improvements to public wastewater and transportation infrastructure. Both of these improvements will provide a direct benefit to the public. Based on the County's offset program, the developer may be eligible for a total of $440,000 in reimbursement. Following are hypothetical situations for how the reimbursement process would work:

Public Wastewater Improvements: The subject project will connect to an existing public wastewater treatment system, and as part of the approval process, the developer is required to replace a section of an existing sewer trunk line with a larger pipe. The subject sewer trunk line has long been a limiting factor for development in the area and without increasing the size of this sewer pipe, neither the subject project nor other properties in the area could connect to the existing public wastewater treatment system. The cost of replacing the sewer pipe is $500,000, but only $300,000 of that expense is directly attributable to the project. The developer would be eligible to request $300,000 in offset funding. The remaining $200,000 the developer spent would be eligible for proportionate reimbursement as other properties in the area, taking advantage of increased sewer capacity, are developed.

Transportation Improvements: As part of the same development, the subject project is required to widen and pave a short segment of road that is in disrepair, and realign a hazardous intersection immediately adjacent to the project. These improvements not only benefit the subject project, but also benefit other properties in the area and the traveling public as a whole. The total cost of the transportation infrastructure improvements is $300,000, but only $200,000 of that expense is directly attributable to the project. Since the developer is already asking for $300,000 in offset funding for improvements to the sewer line and the developer would also be eligible for $140,000 in offset funding for the transportation infrastructure improvements, the developer is eligible to request a total of $440,000 in offset funding. Again, the developer could potentially be reimbursed through proportionate reimbursement or other mechanisms for the $100,000 portion of the transportation infrastructure improvements that were not directly attributable to the project.

As shown, the intent of any TDC offset program is that it must work in conjunction with other incentive programs. Currently, Gallatin County is working to develop such a proportional reimbursement program.[2] The following is an example of how the TDC offset program could work in conjunction with proposed proportional reimbursement program for public transportation infrastructure.[3]

[2] Currently, the Gallatin County Planning Department is working with the Gallatin County Commission and the County Attorney's Office to draft enabling regulations within the Gallatin County Subdivision Regulations. The program will, under specific criteria and formulas, allow a developer installing public transportation infrastructure to be eligible for certain payments from other developers directly benefitting from the investment made by the first developer.

[3] Public Transportation Infrastructure is proposed to be defined as "Transportation related facilities dedicated to the public or for which a public access easement has been granted outside of a platted subdivision or transportation related facilities within a platted subdivision indicated as a Collector or Arterial by a County adopted transportation plan that are necessary to serve existing present or future development. This may include but is not limited to necessary relocation of utilities; construction of roads, bicycle and pedestrian facilities, street lighting, signage, traffic control devices, traffic calming devices, or other similar transportation related infrastructure."

Example 2:

A developer in a growth area maximizes the available density by purchasing $400,000 worth of TDCs. The developer is then eligible for an offset payment of up to $440,000. The Commission recognizes safety issues related to the primary access road and requires ½ mile of the public access road to be improved prior to final plat. The improvements include installing new road base, pavement, adding bicycle lanes, and improving storm water drainage. The improvements cost $1,000,000 and the developer decides to install the improvement on their own.

Next, to determine how much of the cost of the improvements could qualify for the offset, the Commission would need to determine the percentage of the costs directly attributable to the subdivision. Because TDCs were purchased to increase density, the offset is available for the costs of certain qualifying infrastructure directly related to the subdivision. To determine this, as part of the subdivision review process, the developer's traffic analysis estimated the development's impact to the road to account for 60% of the traffic at full build out. This calculates to a $600,000 share directly attributable to the subdivision. Assuming the *entirety* of these improvements provide a direct public benefit, the developer will be eligible to receive reimbursement of up to for $440,000 of improvements.

Since the developer spent $1,000,000 on the road improvements and received the TDC offset payment of $440,000, the developer has received reimbursement for only a portion of their initial investment in the road. To receive contribution for their investment over and above that attributable to their proposed neighborhood, the developer could petition the Commission for involvement in the proportional reimbursement program. This would allow payment from other subdividers who benefit from improvements made to the public road. In this scenario and under current ideas for proportional reimbursement, the developer would be eligible for $400,000 in payments since their project attributed 60% of the traffic on the road ($1,000,000 investment less $600,000 in their own share equals $400,000 eligible for reimbursement).

Thus, under a scenario where the TDC offset program and the proportional reimbursement program would work in combination, the developer would be able to potentially recover all but $160,000 of their initial investment in the road improvements.

If proportional reimbursement programs are established for other types of public infrastructure the developer may be able to offset those costs, too. Trails, parks, water/wastewater systems, and other similar infrastructure that benefits the public could be included in a proportional reimbursement program in the future. It is important to note, however, that at this time, proportional reimbursement is being developed only for public transportation infrastructure.

Finally, it is also important to note a limitation in TDC offset program. At first, it is proposed the Gallatin County Commission could fund the program through its annual budgeting process. Initially, there is no doubt this would provide only a limited amount of funding until a more permanent funding source was created. This funding would require a specific administrative program to be established and could be available to developers yearly on a first come-first serve basis with, for example, applications accepted in the early fall. Once the total available funds are expended for that fiscal year, no more offset funds would be available until the following fiscal year. Thus, there is no guarantee a developer will be able to take advantage of these offsets in any given year. However, in most situations, the land development process takes between three and five years, and thus there could be ample opportunity over the course of several years for a developer to participate in the program, especially if projects are phased. The Commission can also arrange the program in a manner such that developers may still be eligible to compete for offset funds for several years after the platting of their project.

Creating Better Development Patterns Through the Use of Transferrable Development *Rights*.

Immediately before the Montana legislature amended the Subdivision and Platting Act in 1993 to require subdivision review for creation of lots up to 160 acres in size, many large landowners split their acreage into 20 acre parcels. Throughout Gallatin County, much undeveloped land exists in this pattern, and it is the Commission's intent to provide incentive for these landowners to transfer one or more grandfathered entitlements to a project meeting the proposed Rural Cluster Development design standards.

The Commission realizes there is little incentive for a large landowner to transfer their grandfathered entitlements, especially given the always-present market for 10, 20, or 40 acre parcels in Gallatin County. In order to create incentives for landowners to develop these properties in ways that provides more open space for agricultural uses, the Commission, through the proposed AG-160 zoning district, seeks to grant additional development rights when these grandfathered entitlements are transferred to clustered projects on different properties. Additional development rights will be granted on a sliding scale depending on the number of grandfathered entitlements transferred: five to ten development rights transferred results in the granting of an additional development right; 11 to 15 rights transferred results in the granting of two additional development rights; more than 15 rights transferred results in the granting of three additional development rights.

Also, the Commission wishes to provide further incentive for transferring grandfathered entitlements to clustered projects by shortening the timeframe for review of the new development. RCD projects utilizing transferred entitlements could only require subdivision review, rather than initial RCD zoning review, thus allowing the development process to proceed at a much faster rate.

Incentives to Use the Rural Cluster Development Program:

In the proposed AG-160 rural zoning district, the RCD program is one of the methods available to create actual density above the baseline of one residential dwelling unit per 160 acres. The following is a list of those incentives:

1. Opportunity to increase density;
2. Use of RCD with TDC: the "Partial Allocation Rule";
3. Use of RCD for non-contiguous parcels under the same ownership;
4. County assistance with project design;
5. Alternative design and improvement standards; and
6. Flexibility in ownership of required open spaces.

Opportunity to Increase Density:

Since the base density in the proposed rural zoning district could be established at one residential dwelling unit/tract of record per 160 acres, a project meeting RCD standards could provide a maximum of up to one residential unit per 40 acres. A RCD eligible for the maximum density bonus will quadruple the allowable baseline density.

Alternate Design and Improvement Standards:

The RCD program provides the ability of a landowner to deviate from the standard requirements of the Gallatin County Subdivision Regulations including alternate lot shapes, the possible reduction in width of interior subdivision right of way, waiver of requirement to pave interior roads, extension of allowable cul-de-sac length, and possibly a single access to the RCD project provided concerns over the provision of emergency services are satisfied.

Combination of an RCD project with a TDC project:

Under the current RCD proposal, landowners may use a combination of an RCD project with the sale of TDCs to maximize benefit from both programs. It is important to note that the number of TDCs allocated to a property must be adjusted to account for the acreage of land developed in the RCD project.

Use of RCD for Non-Contiguous Parcels under the Same Ownership: Under certain restrictions, a landowner who has more than one parcel in Gallatin County could use the acreage of both parcels for a determination of the allowable density while constructing the RCD project on only one of the parcels – the one which will have greater overall compliance with the *Growth Policy*. The other parcel would have a permanent restriction placed on it preventing future parcel development.

County Assistance with Project Design:

To help a landowner meet their goals and minimize their upfront costs, the County will make available to the landowners, at the landowner's request, assistance in the design of the preliminary RCD project sketch. This assistance provides a landowner consultation and support through the early stages of conceptualizing their project. It would not replace specific environmental or platting requirements needing the expertise of a licensed engineer or surveyor. The site analysis report prepared as part of the RCD review process can also be used to supplement any environmental assessment required for the subdivision review process. Both of these may result in a substantial cost savings to the landowner.

Alternatives for Ownership of Required Open Spaces:

As currently proposed, the RCD program allows maximum flexibility in how the required open space will be owned. A landowner can retain the open space, allow the open space to be contained in a developable lot (thus transferring ownership of a portion of the required open space to the owner of each lot), or have the ownership held by a Property Owners Association. The manner of ownership will be determined by the preference of the landowner conducting the RCD project and can be tailored to meet their specific needs.

Summary/Conclusion

The above programs, including the TDC infrastructure offset and TDC density bonuses, and the RCD incentives, when combined with existing programs such as the Open Lands Bond, and others to be developed in coming years[4], could provide sufficient inducement for developers to continue investing in housing and commercial development in growth areas. These programs could also provide ample incentive for rural landowners to possibly refrain from development

[4] In 2006, the Commission convened the "Growth Policy Implementation Working Group," a forum of developers, builders, real estate professionals, planners, and other interested citizens. The mission was "To recognize existing challenges to development in Gallatin County and identify inactive-based solutions that, when implemented, will promote development in existing growth areas." The groups identified several existing challenges and developed a list of possible incentives. For more information on the incentives identified by this group and to see a legal analysis for these incentives (letter sent from Marty Lambert, Gallatin County Attorney, to former County Planning Director Jennifer Madgic, April 27, 2006) please contact the Gallatin County Planning Department.

or to develop in such a manner that allows them to retain the majority of their holdings and stay on the land. The combination of all these options and incentives moves toward a greater balance of the benefits and responsibility we all have as Gallatin County continues to grow. As such, these programs include all Gallatin County landowners in the effort to implement the shared vision that is the Gallatin County Growth Policy.