

Chapter 34

TRANSFER OF DEVELOPMENT

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34.0 Purpose: This chapter sets forth the provisions for the transfer of residential development rights, residential allocations, and existing development, from one parcel to another as provided in the Goals and Policies, Development and Implementation Priorities Subelement, Implementation Element, Goal #3, Policies 1 -6. The transfer of land coverage is addressed in Chapter 20.

34.1 Applicability: This chapter applies to the transfer of residential development rights, residential allocations, and existing development. All such transfers require TRPA approval. Transfer of a residential development right or residential allocation does not constitute a project approval. Transfers of existing development can occur only in conjunction with a project approval.

34.2 Transfer Of Residential Development Right: A residential development right, as defined in Chapters 2 and 21, may be transferred to another parcel pursuant to the following provisions:

34.2A Vacant Parcel: The parcel from which the development right is transferred shall have a residential development right.

34.2.B Parcel Restriction: The parcel from which the development right is transferred is restricted pursuant to Section 34.5 at the time of transfer.

34.2.C Receiving Area: The parcel receiving the development right shall be in a plan area or adopted community plan, where residential uses are permissible and shall meet the following criteria:

(1) Parcels Eligible To Receive One Or More Development Rights: Parcels located in a plan area or adopted community plan, designated as a receiving area for multi-residential units, shall be eligible to receive one or more development rights; or

(2) Parcels Eligible To Receive One Development Right: The following parcels are eligible to receive one development right:

- (a) One development right may be transferred to a parcel for the purpose of constructing a secondary residence, provided the building site for the secondary residence is in Land Capability Districts 4, 5, 6 or 7; or
 - (b) One development right may be transferred to a parcel that was not assigned a development right provided the parcel has a building site in Land Capability Districts 4, 5, 6 or 7, or, if applicable, is above the initial IPES line of 726.
- 34.2.D Density: The transfer complies with the density of use provisions for the receiving parcel.
- 34.2.E Local Approval: For an inter-county transfer, the approval of affected local governments shall be obtained.
- 34.3 Transfer of Residential Allocations: If, pursuant to Chapter 33, a parcel is assigned a residential allocation, the allocation may be transferred to another parcel, pursuant to the following provisions:
 - 34.3.A Parcel Classification: The allocation transfer is from a parcel determined to be in Land Capability Districts 1a, 1c, 2, 3, or SEZ; shorezone tolerance districts 1, 2, 3, or 4; below the initial IPES line of 726, if applicable; or unsuitable for development due to the inability of the property to meet TRPA or local government development standards.
 - 34.3.B Building Site: The receiving parcel has a building site that is determined to be in Land Capability Districts 4, 5, 6, or 7; or, if applicable, in the top rank under IPES, subject to the limitation in 34.3.C below.
 - 34.3.C IPES Limitation: An allocation shall not be transferred to a parcel that is below the initial IPES line of 726 unless the number of vacant parcels in the top rank at the time of the proposed transfer is less than 1/2 the total inventory in that jurisdiction.
 - 34.3.D Permissible Use: The receiving parcel is in a plan area or adopted community plan where residential uses are a permissible use on the receiving parcel.
 - 34.3.E One Transfer: Subject to the limits in Chapter 33, an allocation may be transferred only one time and shall continue to count against the jurisdiction to which it was originally issued.
 - 34.3.F Local Approval: For an inter-county transfer, the approval of affected local governments shall be obtained.
 - 34.3.G Parcel Restriction: The sending parcel shall be restricted pursuant to Section 34.5 at the time the allocation is transferred.

34.4 Transfer Of Existing Development: Certain elements of existing development may be transferred from one parcel or project area to another, if the receiving parcel is in a plan area or adopted community plan area, designated as a receiving area for existing development. Existing residential development may be transferred to any plan area or adopted community plan where residential use is a permissible use. The transfer of existing development shall not be considered additional development and is exempt from the applicable allocation system.

34.4.A Eligibility: The following elements of existing development shall be eligible for transfer:

- (1) Units Of Use: Units of use may be transferred within the same major use classifications e.g., residential, tourist accommodation, commercial, and recreation. The amount of use transferred shall be measured in appropriate units of use, e.g. residential units, tourist accommodation units, commercial floor area, and PAOTs.
- (2) Land Coverage: Existing land coverage may be transferred pursuant to Chapter 20.

34.4.B Requirements: Transfers of existing development may be permitted subject to the following requirements: §

- (1) The transfer shall be limited to the units of use existing on the parcel from which the development is to be removed;
- (2) The use transferred shall be a permissible use on the receiving parcel as set forth in the plan area statement or adopted community plan;
- (3) The receiving parcel shall comply with the site development provisions established by this Code and the plan area statement for the receiving parcel;
- (4) The findings required for a special use in Chapter 18 shall have been made if the use transferred is a special use in the receiving area;
- (5) The approval of affected local governments shall be obtained;
- (6) The parcel from which the existing development is transferred shall be restricted pursuant to Section 34.5, no later than the time of commencement of construction of the related project;
- (7) All facilities, including building and structures, shall be appropriate for removal considering conformance with TRPA plans and the Code, such as the provisions for historical structures, and affordable housing;
- (8) The proposed transfer shall be evaluated for adverse impacts using the IEC and the addenda developed by TRPA for transfer and shall not be permitted if adverse impacts cannot be mitigated;

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- (9) The receiving parcel shall have a building site that is determined to be in Land Capability Districts 4, 5, 6, or 7; or, if applicable, in the top rank under IPES unless:
 - (i) There is a 25 percent or greater reduction in existing land coverage and restoration on the receiving parcel and there is no increase in vehicle trips, parking, cubic volume of the structures, or adverse impacts; or
 - (ii) The transfer of commercial, tourist, or residential units of use to a site inside a designated community plan area, is from sensitive lands to an equal or less sensitive land capability district, and a reduction of land coverage and restoration occurs at the receiving site or sending site, equal to 300 square feet of land coverage per tourist unit transferred, 1,200 square feet of land coverage per residential unit transferred, or one square foot per one square foot of land coverage of commercial floor area transferred; or
 - (iii) The transfer of commercial floor area from nonsensitive lands to a site inside a designated community plan area results in a reduction of land coverage and restoration on the receiving site or like sensitive lands in the watershed at a ratio of one square foot of transferred floor area to two square feet of land coverage reduced.
- (9) Existing residential development shall not be transferred to any parcel that is below the initial level defining the top rank under IPES (726) unless the number of vacant parcels in the top rank at the time of the proposed transfer is less than 1/2 the total inventory in that jurisdiction.

34.4.C Limitations: The following limitations apply to transfers of existing development:

- (1) Units of use transferred shall have been legally established.
- (2) Transfers of units of use shall not be permitted for development that has become derelict.

34.4.D Verification of Existing Residential Units of Use for Transfer or Banking: Prior to transfer or banking, an existing residential unit of use shall be verified as legally established pursuant to the following criteria:

- (1) At a minimum, an existing residential unit of use shall contain cooking facilities, bathing and toilet facilities, and living and sleeping areas. (2) Residential units of use to be transferred or banked shall have been legally established as verified by County Assessor, local jurisdiction, and utility records:

- (a) The existing residential unit shall have been assessed as such by the County Assessor's office as of October 15, 1986, except for residential units approved under Chapter 33.
- (b) Permits and planning department records shall confirm that the unit is a permitted use and structure.
- (c) To be verified as a legally established unit of use, all utility service connections (e.g., water, sewer, gas, and electrical service) must have been legal as of October 15, 1986, except for residential units approved under Chapter 33.

34.5 Restriction Of Parcels: Restriction of parcels for the purposes set forth in this Code, shall comply with the following requirements:

34.5.A Land Coverage: Parcels from which land coverage has been transferred are subject to provisions of Chapter 20.

34.5.B Residential Allocation Transfer: Parcels from which residential allocations have been transferred shall be permanently restricted from residential development.

- (1) For parcels in private ownership, deed restrictions, or other covenants running with the land, permanently restricting the parcel from residential development shall be recorded by the owner.
- (2) For parcels in public ownership, the public agency shall provide TRPA with binding assurance that the parcel has been permanently restricted from residential development.

34.5.C Existing Development Transfer: For parcels from which units of existing development have been transferred, the structures or facilities accounting for that use shall be removed or modified, consistent with the transfer, and the land restored and maintained in as natural a state as is possible, so as to eliminate the units transferred.

34.5.D Payment Of Bonds and Freedom From Nuisance: The sending parcel shall be free of nuisance and hazard. All bonds, assessments, back taxes, fees and liens affecting the parcel to be restricted pursuant to a transfer under this chapter shall be paid in full.

34.5.E Transfer Of All Existing Development From Sensitive Lands: Parcels in Land Capability District 1a, 1b, 1c, 2, or 3, or SEZ, from which all units of existing development have been transferred, shall be restored pursuant to Subsection 34.5.C and shall be permanently restricted to open space by a deed restriction, or other covenant running with land, recorded by the owner.

- 34.5.F Transfer Of Some Existing Development From Sensitive Lands: Parcels in Land Capability District 1a, 1b, 1c, 2, or 3, or SEZ, from which less than all units of existing development have been transferred, shall be permanently restricted from transferring development back to the parcel by deed restriction, or other covenant running with the land, recorded by the owner.
- 34.5.G Transfer Of Existing Development From Non-Sensitive Lands: Parcels located in Land Capability Districts 4, 5, 6, or 7, from which units of existing development have been transferred, shall document the transfer and be restricted by deed restriction, or other covenant running with the land, recorded by the owner. The restriction shall limit the units of use to any remaining, until or unless:
- (1) A transfer back to the parcel, is approved by TRPA pursuant to this chapter; or
 - (2) An allocation is obtained pursuant to Chapter 33.
- 34.5.H Development Rights Transfers From Sensitive Lands: Parcels in Land Capability District 1a, 1b, 1c, 2, or 3, or SEZ, from which all residential development rights have been transferred, shall be permanently restricted from residential development.
- (1) For parcels in private ownership, deed restrictions, or other covenants running with the land, permanently removing the development rights from the parcel shall be recorded by the owner.
 - (2) For parcels in public ownership, the public agency shall provide TRPA with binding assurance that the development rights have been permanently removed.
- 34.5.I Development Rights Transfers From Non-Sensitive Lands: Parcels located in Land Capability Districts 4, 5, 6 or 7, or parcels at or above the initial IPES line (726), from which all residential development rights have been transferred, shall be restricted from constructing new residential units by deed restriction, or other covenant running with the land, recorded by the owner, but shall be eligible to receive future transfers of coverage or units of use if otherwise permitted in (1) or (2) of Subsection 34.5.G above.
- 34.5.J Consolidation: Where appropriate, TRPA may approve a consolidation of parcels in lieu of a deed restriction for a transfer of a residential development right or allocation, or in addition to a deed restriction, to accomplish the restriction of the parcel consistent with this chapter and other applicable Code provisions.
- 34.5.K Relation To Chapter 38: TRPA shall record the appropriate changes created by transfers in its records pursuant to Chapter 38.
- 34.5.L Sequential Transfers: Residential development rights and allocations may be transferred independently provided that when both the residential development right and an allocation have been transferred

from a parcel, the parcel shall be permanently restricted to open space. Land coverage transfers may also occur independently subject to the provisions of Chapter 20.