16.14.010: PURPOSE:

- A. The purpose of the transfer of development rights (TDR) program is to provide a voluntary, incentive based process for permanently preserving rural resources which provide significant community benefit such as agriculture, open spaces, aquifer recharge for current and future water supply (water recharge area), and a military installation buffer area. The intent of this chapter is to reduce development pressures and minimize development on agricultural lands, habitats, water recharge areas, flood zones and NAS Fallon and associated ranges notification areas by providing landowners a mechanism to sustain existing land uses and develop lands more compatible for urbanization. The TDR provisions are intended to supplement land use regulations, resource protection efforts, open space acquisition programs and to encourage increased residential development density inside designated areas, where those provisions can best accommodate little impact on the natural environment and provide for efficient public services.
- B. The TDR provisions in this chapter shall only apply to "receiving site" development proposals requiring board of county commissioners' approval and "sending site" applications submitted after the enactment hereof. (Bill 2007-I, 2007: Bill 2006-F, 2006)

16.14.020: DEFINITIONS:

COMMUNITY BENEFIT: Recommended by the sending site review committee, planning director, planning commission and approved/determined by the board of county commissioners as a benefit to the community, above and beyond those contributions and items required by the consolidated development code, county ordinances or state statute. Examples are preservation of agricultural lands, historic preservation, wildlife habitat preservation, etc.

CONSERVATION PLAN: A comprehensive land use plan to manage and maintain the long term protection of the sending site property under the easement established from the transfer of the development rights.

DEED RESTRICTIONS: When a development right is sold, a legal restriction is recorded on the sending site giving notice that the development right can no longer be used at that site.

DEVELOPMENT RIGHTS: The difference between the value of the existing use of the parcel (e.g., agricultural) and the value of its potential use (e.g., residential), as permitted by existing law. Thus, development rights indicate the future building potential. Development rights are measured in equivalent residential credits.

EASEMENT, CONSERVATION: A legal agreement between a landowner and an eligible organization that restricts future activities on the parcel, parcels or portion thereof to protect its conservation, agricultural, open space or similar value in perpetuity.

EQUIVALENT RESIDENTIAL CREDIT (ERC): A unit measure, where the residence "represents a permanent building on property" and is designed for single-family, residential use on a specified and designated zone. These are units of measure used to transfer development rights from designated sending sites to designated receiving sites.

NAS FALLON AND ASSOCIATED RANGES NOTIFICATION AREA: Those areas adjoining and surrounding NAS Fallon and its bombing ranges as delineated on a composite map on file at the office of the Churchill County planning department.

RECEIVING SITE: Privately owned property within Churchill County that has been designated in this chapter to accommodate urban development.

SENDING SITE: Privately owned property within Churchill County that has been designated per this chapter to transfer development rights.

TDR CERTIFICATE: A recorded document, issued by Churchill County, listing the number of development rights available from a sending site to be used at a receiving site.

TRANSFER OF DEVELOPMENT RIGHTS (TDR): Refers to a process for protecting land by transferring the "rights to develop" from one area and giving it to another.

WATER RECHARGE AREAS: Areas identified in the water resources plan update or the master plan that provide aquifer recharge for current and future water supplies. (Bill 2007-I, 2007: Bill 2006-F, 2006)

16.14.030: SENDING SITES:

A. For the purpose of this chapter, "sending site" means the portion of the parcel or parcels qualified under subsection B of this section. Sending sites must be a minimum of twenty (20) acres in size and may be located within agriculture (A-5, A-10, RR-20), water recharge, and NAS Fallon and associated ranges notification areas, as designated by the Churchill County master plan and may not be in public ownership. Other areas may be considered on a case by case basis during the site evaluation process if they are special sites with community benefit and are identified as such by the sending site review committee. Sending sites shall be maintained in a natural state, open space suitable for passive recreation, or in agriculture.

- B. A sending site must have properties or characteristics that have a community benefit such as agriculture preservation, retention of surface water rights, water recharge, access and use by the public, military operations compatibility, and would be degraded by increased residential development. The development right of such sites would be used in areas that are better suited for development. A sending site must meet at least one of the following criteria:
 - 1. Designation in the Churchill County master plan.
 - 2. Be located within the NAS Fallon and associated ranges notification areas.
 - 3. Designation in the Churchill County master plan as RR-20, A-10 or A-5, through either:
 - a. Existing zoning of the parcel(s), or
 - b. Identification of proposed rural or resource area or open space sites that meet the definition of open space, per Churchill County master plan.
 - 4. Identification as habitat for federally listed endangered or threatened species in a written determination by Churchill County, Nevada division of wildlife, United States fish and wildlife service, or a federally recognized tribe that the sending site is appropriate for preservation or acquisition.
 - 5. Water recharge areas set aside for the benefit of Churchill County.

Other areas may be considered on a case by case basis during the site evaluation process if they are special sites with community benefit and are identified as such by the sending site review committee.

- C. For the purposes of the TDR program, "acquisition" means obtaining fee simple rights in real property, or less than a fee simple right in a form that preserves, in perpetuity, the community benefit supporting the designation or qualification of the property as a sending site.
- D. If a sending site has any outstanding liens or code violations such as litter, nuisance or dust emissions, the owner/applicant must resolve these violations, including any required abatement, restoration, or payment of civil penalties, before a TDR sending site may be forwarded by the sending site review committee created under section 16.14.080 of this chapter. However, the sending site review committee may forward a recommendation on a TDR sending site with outstanding code violations when the proposal is in the public interest.
- E. For parcels where the entire parcel or a portion of the parcel has been removed from irrigation, and/or stripped of vegetation within six (6) years prior to application as a TDR sending site as determined by the planning department, the sending site applicant must provide an affidavit of compliance with the dust control requirements of title 8, chapter 8.15 of this code and any additional revegetation conditions of their dust permit. If a portion of the parcel has been cleared or graded without any dust permit, that portion shall not be qualified or

certified as a TDR sending site for six (6) years, or until the site demonstrates sustainable, successful revegetation or profitable agricultural production. (Bill 2007-I, 2007: Bill 2006-F, 2006)

16.14.050: TDR CALCULATIONS ON SENDING SITES:

- A. A landowner must have a minimum of twenty (20) contiguous acres to qualify as a sending site unless they are special sites with significant community benefit and are identified as special sites by the sending site review committee.
- B. Existing residential structures that are used by family members or farm employees and are located on a parcel that is under agricultural production may be included in a sending site/conservation easement. A sending site may only include one additional residential dwelling unit if approved by the board of county commissioners. A proposed sending site must exclude sufficient acreage for each proposed residential dwelling and each proposed cluster development building parcel and associated agricultural reservation. ERCs will then be calculated for the remaining acreage.
- C. The number of ERCs a qualified sending site is eligible for shall be determined by applying the TDR sending site base density established in subsection F of this section to the area of the sending site and deducting any portion of the sending site already in a conservation easement or other similar encumbrance and any acreage required for proposed residential dwelling units or cluster developments.
- D. Any fractions of ERCs that result from the calculations in subsection F of this section shall not be included in the final determination of total ERCs available for transfer.
- E. For purposes of calculating the amount of ERCs a sending site can transfer, the amount of land contained within the site shall be determined as follows:
 - 1. If the sending site is an entire parcel, the square footage or acreage shall be determined:
 - a. By the Churchill County assessor's office records; or
 - b. By a survey that has been prepared and stamped by a surveyor licensed in the state of Nevada; or
 - c. By farm service agency (USDA) aerial photos.
 - 2. If the sending site is a portion of a parcel, the square footage or acreage shall be determined by a survey that has been prepared and stamped by a surveyor licensed in the state of Nevada.
- F. For the purposes of the TDR program, the following base densities will be used to calculate ERCs:

- Sending sites designated on the zoning map as A-5, A-10 or RR-20 and in the master plan as outside of the urbanizing area shall be assigned a base density of one ERC per four (4) acres, and
- 2. One ERC per irrigated water righted acre.
- G. For the purposes of the TDR program, the following incentive or bonus densities apply:
 - Sending sites or a portion thereof located within a water recharge area or NAS
 Fallon and associated ranges notification area, or FEMA designated 100-year
 flood zone: 1.5 ERCs per ten (10) acres.
 - 2. Sending sites providing beneficial public access as defined by the county to recreation areas, walking trails, bicycle paths, wetlands, rivers, lakes, state parks, or federal lands: Ten (10) ERCs per parcel.
 - 3. Sending sites/parcels which total one hundred (100) or more acres: One ERC per ten (10) acres.
 - 4. Sending sites may qualify for concurrent or additive bonus categories, for example:

EXAMPLE ERC WORKSHEET	
101 acres of qualifying land including 75 acres of irrigated agricultural land in a water recharge area, with public access to the Carson River	
Base TDRs (subsection F1 of this section)	25
Water right equivalent (subsection F2 of this section)	75
Bonus for water resource protection (subsection G1 of this section)	15
Bonus for beneficial public access (subsection G2 of this section)	10
Bonus for total over 100 acres (subsection G3 of this section)	10
Example TOTAL ERCs	135

H. The number of ERCs that a sending site is eligible to send to a receiving site shall be proposed by the landowner following the above described criteria and subject to final approval by the board of county commissioners.

- I. ERCs from one sending site may be allocated to more than one receiving site and one receiving site may accept ERCs from more than one sending site.
- J. The determination of the number of ERCs a sending site has available for transfer to a receiving site shall be valid for transfer purposes only, shall be documented in a TDR certificate, and shall be considered a final determination, not to be revised due to later changes to the sending site's zoning and/or revisions to this document or process. (Bill 2007-I, 2007: Bill 2006-F, 2006)

16.14.060: DEVELOPMENT LIMITATIONS:

- A. Following the transfer of ERCs from a sending site, the portion of the parcel or parcels not designated in a conservation easement may accommodate residential structures on the buildable portion of the parcel, or parcels. This site must comply and be consistent with land use regulations of that zoning district.
- B. Nonresidential uses on parcels zoned A-5 or A-10 shall be limited as follows:
 - 1. Only those uses directly related to, and supportive of, the criteria under which the site qualified are allowed on the portion of the parcel designated as a sending site. The limitations shall be included in the conservation easement.
 - 2. The portion of the parcel outside the sending site may develop nonresidential uses consistent with the land use district.
- C. When a development right is purchased and subsequently used in a receiving site, the right to build a residential unit on the sending site is "extinguished". (Bill 2007-I, 2007: Bill 2006-F, 2006)

16.14.070: DOCUMENTATION OF RESTRICTIONS:

- A. A conservation easement granted through the TDR program shall be required for land and water contained in the sending site. The conservation easement may be placed on the entire parcel or parcels or only the portion of the parcel or parcels that is qualified as the sending site. The conservation easement deed that includes a legal description of the sending site and a map shall indicate the portion of the parcel or parcels restricted from future residential development, or limitations on future residential and nonresidential development within the conservation easement and the amount of water right. The map must indicate the boundaries of the conservation easement, existing structures and building envelopes. The following restrictions apply:
 - 1. For a sending site zoned A-5 or A-10, the conservation easement shall preclude division of the subject parcel(s) but may permit not more than one additional residential site and accessory dwelling unit if approved by the board

- of county commissioners upon approval and acceptance of the conservation easement deed.
- 2. For a rural nonwater righted sending site, the conservation easement deed shall allow for restoration, maintenance or enhancement of native or established beneficial vegetation. A present conditions report, undertaken by a recognized authority, approved by the sending site review committee, shall be required to document the condition of native or planted vegetation and must be completed prior to approval and acceptance of the conservation easement deed by the board of county commissioners. If residential development will be allowed on the site under the conservation easement deed, the present conditions report shall be used to guide the location of residential development.
- 3. For a sending site qualifying as habitat for federally listed endangered or threatened species, the conservation easement shall be placed on the portion of the parcel or parcels needed for habitat protection. The conservation easement deed shall allow for restoration, maintenance or enhancement of native or beneficial vegetation. If residential development will be allowed on the site under the conservation easement, the presentconditions report shall be used to guide the location of the residential development.
- 4. Up to five percent (5%) of the total acreage encumbered by a conservation easement may be developed in the future exclusively to support agricultural related activities, habitat preservation, or renewable energy production related activities. If these activities no longer require the water appurtenant to the land they have been developed on, the water rights may be sold or transferred by the landowner but only within Basin 101 to another agricultural property, conservation property, Churchill County, Carson Lake and Pasture, or the Stillwater Wildlife Refuge with all properties being within Basin 101, conservation property, Churchill County, Carson Lake and Pasture, or the Stillwater Wildlife Refuge.
- 5. Within two (2) years following approval of the conservation easement deed by the board of county commissioners, the planning director shall ensure that the conservation easement deed is recorded in the office of the county recorder. The planning director shall forward the TDR certificate to the owner of the property. The certificate shall document the total number of TDRs approved for the sending site and shall reference the conservation easement deed file number from the office of the county recorder. (Bill 2007-I, 2007: Bill 2006-F, 2006)

16.14.080: SENDING SITE APPLICATION, REVIEW AND CERTIFICATION PROCESS:

- A. Application Process: Responsibility in preparing a completed sending site application rests exclusively with the applicant. The sending site application must include a site plan that shows the proposed conservation easement and a draft conservation easement deed that includes, at a minimum, the following criteria:
 - 1. A description of the site including assessor's plat maps and aerial photos;
 - 2. A brief description of the site resources, to include appurtenant water rights and public benefit tied to the property and preserved in the conservation easement;
 - 3. A site plan depicting the proposed conservation easement area, existing and proposed residential units, existing and proposed farm buildings, any area already in a conservation easement or similar encumbrance;
 - 4. Assessor's map or maps of the parcel or parcels;
 - 5. Any or all of the following written in conformance with criteria established through a public rule consistent with the Churchill County master plan and appropriate Churchill County ordinances, state statutes and federal laws, if the site is qualifying as habitat for a threatened or endangered species:
 - a. A wildlife habitat conservation plan, or
 - b. A wildlife habitat restoration plan, and
 - c. A wildlife present conditions report; and
 - 6. A completed ERC calculation worksheet for estimating the number of available development rights.

The application must be accompanied with a nonrefundable fee, set by the board, to cover the administrative costs associated with this process.

An application package must be submitted to the planning department for review by the sending site review committee.

B. Sending Site Review Committee:

- 1. Composition: The planning director, or his/her designee, shall serve as the nonvoting chair. The sending site review committee will include three (3) members appointed by the board of county commissioners. Members shall include a minimum of two (2) agriculture representatives and one at large representative such as, but not limited to, agriculture, development, business, or real estate. Appointments will be three (3) year terms, or when a committee member is unwilling/unable to fulfill their obligation. The exception will be the first sending site review committee appointed. The committee will have a one year, two (2) year and three (3) year appointment for the first three (3) years. Vacancies will be announced in accordance with county policy.
- 2. Notification: The following local entities, which have an interest in or may be affected by easement establishment, will be notified and given the opportunity to provide feedback in the sending site qualification process. Entities listed below must provide feedback to the review committee within thirty (30)

calendar days following receipt of notification. Lack of comment from any agency contacted will be construed as support.

Churchill County assessor's office
City of Fallon
Fallon Paiute-Shoshone Tribe
Lahontan conservation district
Lahontan Valley environmental alliance
NAS Fallon
Newlands Water Protective Association
Stillwater conservation district
Truckee-Carson irrigation district

U.S. fish and wildlife service

3. Application Review:

- a. The sending site review committee will review all applications. Local entity comments will be evaluated, the conservation easement deed and proposed restrictions reviewed, and TDRs verified. A written report shall be forwarded to theplanning commission within sixty (60) calendar days of application submittal. The report shall include a recommendation on the sending site, comments on the proposed development restrictions outlined in the conservation easement deed and the number of ERCs calculated.
- b. At a regular scheduled meeting the planning commission will review the sending site review committee's report, and forward a recommendation to the board of county commissioners.
- c. The board of county commissioners will approve or reject the sending site application and approve the total number of ERCs.
- d. If the sending site application is approved by the board of county commissioners the planning department shall prepare a letter of intent to issue TDR certificates. The letter of intent shall indicate the number of development rights available for transfer, the development restrictions to be placed on the conservation easement, and the responsibilities of the property owner. The landowner shall sign the letter of intent acknowledging acceptance of the board's approval and conditions.
- 4. TDR Certification: A TDR certificate will be issued by the county upon recordation of a conservation easement deed. The board of county commissioners shall review all conservation easement deeds prior to recordation and upon recordation shall direct the planning director or his/her designee to issue the TDR certificates. TDR certificates shall reference the recorded document number of the conservation easement deed and may be sold. (Bill 2007-I, 2007: Bill 2006-F, 2006)

16.14.090: TRANSFER PROCESS:

- A. Development rights where both the proposed sending and receiving sites would be within unincorporated Churchill County shall be transferred using the following process:
- 1. Following application review committee review of the sending site application as described in subsection 16.14.080B3 of this chapter, the sending site review committee shall forward its comments to the planning commission for their review, comment and recommendation. The sending site application package will be forwarded to the board of county commissioners for approval. If the package is approved, a letter of intent to issue TDR certificates will be sent. The letter of intent will authorize transfer of development rights as approved in exchange for the sending site conservation easement to be held in perpetuity. The sending site owner may then market the sending site development rights to potential purchasers.
- 2. In applying for receiving site approval, the applicant shall provide the planning department with one of the following:
 - a. A TDR certificate letter issued in the name of the applicant; or
 - b. A TDR certificate letter issued in the name of another person or persons and a copy of a signed option to purchase those sending site development rights.
 - 3. Until the receiving site applicant delivers the TDR certificate issued in the applicant's name for the number of TDRs being used and the planning department records retirement/extinguishments of development rights executed, a tentative map shall not be approved. The planning department will be responsible for notifying other departments of all transactions.
 - 4. The public hearing held on the development proposal (either PUD application or PUD tentative map) shall also serve as the hearing on the TDR proposal.
 - 5. Development rights from a sending site shall be considered transferred to a receiving site when a final decision is made on the PUD application or tentative map. (Bill 2007-I, 2007: Bill 2006-F, 2006)