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## **CHAPTER 6: GROWTH MANAGEMENT QUOTA SYSTEM (GMQS) AND TRANSFERABLE DEVELOPMENT RIGHTS (TDRS)**

### **6-10: PURPOSE AND APPLICABILITY OF GMQS**

#### **6-10-10: PURPOSE OF GMQS**

The purpose of the Growth Management Quota System (GMQS) is to manage the rate, type, location, quality, and ultimate quantity of growth within the Rural and Urban Areas of unincorporated Pitkin County to ensure:

- (a) A means of managing change that results in a controlled, paced growth rate for residential, commercial, and tourist accommodations development;
- (b) A type of growth in the Rural Area that is consistent with the existing rural character of the area, and helps to maintain a distinction between the Rural Area and the Urban Areas of Aspen, Basalt, Carbondale, and Snowmass;
- (c) A means of directing growth into appropriate locations that is containable and will not promote sprawl;
- (d) A quality and quantity of growth that preserves and is compatible with the existing character of the Urban and Rural Areas; manages population growth, including the number of permanent residents, visitors, and the total number of Pitkin County jobs; encourages growth in appropriate locations within the Aspen Urban Growth Boundary; and prevents incremental urbanization of the Rural Area;
- (e) An orderly manner of growth that does not exceed the available capacity of existing facilities and allows for the orderly provision of public services;
- (f) That incentives are given to certain types of growth that represent the type of development desired in the Urban and Rural Areas;
- (g) The provision of limited affordable housing opportunities in appropriate locations;
- (h) The preservation of historic structures;
- (i) The preservation of existing agricultural and open space lands and a unique rural character and quality of life;
- (j) The preservation of important rural and backcountry lands;
- (k) The protection of air and water quality; and

- (l) The conservation of natural resources and wildlife habitat.

## **6-10-20: APPLICABILITY OF GMQS**

All growth within the unincorporated areas of Pitkin County is regulated by this GMQS and shall require a Growth Management allotment or shall qualify for and receive a Growth Management exemption. For purposes of this Chapter, growth includes:

### (a) Residential Development

Any development of a new or re-development of an existing residential dwelling unit that requires a building permit, including all new structures, any remodeled structures, any additions to existing structures, and any replacement structures. As used herein, the term "residential development" is intended to address not only the principal residential structure, but also any other accessory structures, such as garages, sheds, and other structures that count as floor area pursuant to this Land Use Code, and, if the lot or parcel of land is less than twenty (20) acres in size, all agricultural structures.

### (b) Commercial Development

Any development of a new commercial structure or re-development of an existing commercial structure that requires a building permit, including all new structures, any remodeled structures, any additions to existing structures, and any replacement structures. As used herein, commercial development includes uses listed under the commercial and industrial use category in the use table in Chapter 4, and any other buildings designed or intended for the development of commercial businesses.

### (c) Tourist Accommodations Development

Any development of a new tourist accommodation unit or re-development of an existing tourist accommodation unit that requires a building permit, including all new structures, any remodeled structures, any additions to existing structures, and any replacement structures. As used herein, tourist accommodation development includes hotels, lodges, motels, bed and breakfast, resort cabins, and guest ranches. For projects with flexible unit configurations, also known as "lock-off units", each separate "key" or potentially rentable division shall constitute a unit.

### (d) Civic and Institutional Uses

Any development of a new or re-development of an existing civic and institutional use (as such uses are listed in the use table in Chapter 4) that requires a building permit, including all new structures, any remodeled structures, any additions to existing structures, and any replacement structures.

## **6-20: PURPOSE OF TDR SYSTEM**

The Pitkin County transferable development rights (TDR) system is intended to provide additional tools to implement the Pitkin County Comprehensive Plan and to offer applicants an alternative to the requirement for a GMQS allocation as a prerequisite to development approval. By offering an alternative to the GMQS, the TDR system is intended to increase flexibility by allowing applicants a second, voluntary, way to obtain development approvals in a manner that promotes implementation of Pitkin County Comprehensive Plan goals. The TDR system is designed to protect certain lands in defined Sending Sites from development, to provide the owners of property within those Sending Sites with an additional economically beneficial use of their property, while ensuring that development potential from such properties is instead used in Receiving Sites within the Urban Areas or to permit additional floor area in the Rural and Urban Areas.

## **6-30: EXEMPTIONS FROM GMQS**

### **6-30-10: PURPOSE**

Growth Management is applicable to all development activity that requires a building permit, which means that most development must either compete through the GMQS or be eligible for an exemption from competition. The purpose of this section is to create a number of discretionary exemptions from Growth Management within Pitkin County that allow certain types of growth to proceed without competing for and obtaining a growth management allotment.

The exemptions set forth in this section include growth that would normally be included within growth management, but because of some overriding public benefit related to the type of growth, an exemption is created. Exemptions are provided to promote the development type, character, location, and quality goals of the County, to continue an historical practice, and to ensure fairness in the system.

### **6-30-20: GENERAL STANDARDS AND CRITERIA FOR EXEMPTIONS**

#### **(a) Exemptions Discretionary**

The exemptions from growth management set forth in this section are granted through the procedures set forth in Chapter 2 only upon demonstration by the applicant of compliance with the standards for the particular exemption.

#### **(b) Compliance with Code Requirements**

To be eligible for any exemption, the proposed development must comply with all requirements of the Pitkin County Code.

#### **(c) Consideration of Comprehensive Plan**

Eligibility for any exemption shall consider the Comprehensive Plan, including adopted plans for the incorporated areas of Aspen, Basalt, Carbondale, and Snowmass, and the Pitkin County Comprehensive Plan.

(d) Exemptions Subject to Development Exactions and Impact Fees

GMQS exempt development approved as exempt from GMQS competition shall be subject to development exactions and impact fees pursuant to Chapter 8, except as specifically exempted in that Chapter.

**6-30-30: SUMMARY CHART OF GMQS EXEMPTIONS**

<b>TABLE 6-1: Summary of Exemptions</b>		
<b>Exemption</b>	<b>Specific Categories, If Applicable</b>	<b>Section Reference</b>
Deed Restricted Dwelling Units	Deed Restricted Category Affordable Housing Sale Units	Sec. 6-30-40(a)
	Deed Restricted Resident Occupied Housing Units	Sec. 6-30-40(b)
	Caretaker Dwelling Units	Sec. 6-30-40(c)
Development Utilizing TDR's	New Dwelling Units	Sec. 6-30-50(a)
	Additional Floor Area	Sec. 6-30-50(b)
Preservation of Historic Structures		Sec. 6-30-60
Large Lots	500+ Acre Parcels	Sec. 6-30-70(a)
Parcels Created in the LIR Zone Pursuant to the Cluster Option		Sec. 6-30-80
Conservation Development PUD (CD-PUD)		Sec. 6-30-90
Development of Up to 5,750 sq. ft. of Residential Floor Area on Certain Types of Pre-Existing Lots	Any Lot or Parcel Which Was Legally Created Before June 12, 1978	Sec. 6-30-100(a)
	Board Approved Subdivisions, Fully Developed Land Subdivision Exemptions, and 35 Acre Parcels Created Prior to January 10, 2000 and Located within the Crystal River or Frying Pan Areas	Sec. 6-30-100(b)
Remodels and Replacement	Remodeling	Sec. 6-30-110(b)
	Replacement	Sec. 6-30-110(c) & (d)
Civic and Institutional Uses		Sec. 6-30-120
New Lots Crated within the VR and VC Zone Districts		Sec. 6-30-130
Accessible ANSI Residences		Sec. 6-30-140
Commercial and Tourist Accommodations Developments with Insubstantial Growth	Commercial Tourist Accommodations	Sec. 6-30-150



Impacts		
Change in Use	Residential	Sec. 6-30-160
	Commercial	Sec. 6-30-160
	Tourist Accommodation	Sec. 6-30-160
Minor Expansion of a Multi-Family Dwelling Unit in the RMF Zone District		Sec. 6-30-170
Greenhouses that are not Customarily Accessory to a Principal Residential Use		Sec. 6-30-170

*(Code Revised (all sections) Ord. No. 14-D, 2006, 07-05-06; Table 6-1 (part) amended by [Ord. 21-2007, 07-24-07](#); Ord. 029-2012, 10-24-2012 [Ord. 038-2012, 12-19-12](#)*

### **6-30-40: EXEMPTION FOR DEED RESTRICTED DWELLING UNITS**

There are three types of deed restricted dwelling units that may be exempted from Growth Management:

- (1) Deed restricted Category affordable housing sale units and publicly owned Category affordable housing rental units;
- (2) Resident Occupied ("RO") deed restricted sale units and publicly owned RO rental units; and
- (3) Deed restricted caretaker dwelling units ("CDUs").
- (4) [Reserved]

There is no exemption provided for privately owned deed restricted rental units. Publicly owned Category and RO rental units are eligible for exemption.

#### **(a) Deed Restricted Category Affordable Housing Sale Units**

Deed restricted Category affordable housing sale units in any zone district where these units are allowed may be exempted from Growth Management. Publicly owned Category affordable housing rental units may also be exempted from Growth Management. Two exemptions for the development of Category affordable housing units are provided through Growth Management as follows:

##### **(1) 70/30 Development Projects in the AH/PUD Zone**

The development of projects containing a minimum specified mix of seventy (70) percent deed restricted Category and RO sale housing and a maximum of thirty (30) percent free market housing may be exempted from Growth Management to create an incentive for the production of deed restricted category affordable housing. Where the project is publicly owned, the Category and RO units may be rental units. All 70/30 development projects shall satisfy the following minimum criteria to qualify for a Growth Management exemption:

##### **(a) AH/PUD Zoning Required**

70/30 development project shall only occur in the AH/PUD zone.

##### **(b) Compliance with Housing Designee Goals and Deed Restrictions Required**

A 70/30 development project shall contribute to the annual housing production goal and unit mix established by the Aspen/Pitkin Housing

Authority for sale units (or rental units, if the project is publicly owned); and shall comply with the deed restrictions required by the Aspen/Pitkin Housing Authority for Category and RO sale units (or rental units, if the project is publicly owned).

(c) Minimum Specified Dwelling Unit Mix

A 70/30 development project shall comply with the following minimum specified dwelling unit mix:

Type of Dwelling Units by Overall Percentage of Development	Required Breakdown of Unit Mix Within 70% and 30% Categories	Options
70% Deed Restricted Category Affordable Housing Units and RO Housing Sale Units (or Rental Units, if publicly owned)	40% minimum for Category sale units (or rental units, if publicly owned) (Category units and RO sale units must comprise at least 60% of the total bedrooms mix in the project) 30% maximum for RO sale units (or rental units, if publicly owned) (if the project has free market units, limited to an overall total of 40% of the project's total number of bedrooms including free market bedrooms) Category sale units and RO sale units must comprise at least 60% of the bedroom mix of the project (or rental units, if publicly owned)	If there is no free market development, the limitation to 40% of the project's total number of bedrooms does not apply to the RO sale units (or rental units, if publicly owned) Units may be comprised of the types of units permitted or approved by special review under the applicable zone district (e.g., single-family, duplex, multi-family) All deed restricted Category units and RO housing units are required to be sale units, unless publicly owned in which case they may be rental units
30% Free Market Dwelling Units	Free market and RO sale units are limited to an overall total of 40% of the project's total number of bedrooms (or rental units, if publicly owned)	Free market units are optional, and are not required Free market units may be comprised of the types of units permitted or approved by special review under the applicable zone district (e.g., single-family, duplex, multi-family) Free market units may be rental units if permitted in the underlying zone district

(d) Minimum Design and Locational Criteria

70/30 development projects shall comply with the following minimum design and locational criteria:

- (1) The construction quality of the deed restricted sale units (or rental units, if publicly owned) shall be maximized;

(2) The size of the deed restricted sale units (or rental units, if publicly owned) shall be maximized considering the economics of the project, including the likely profit on any free market units and the restrictions on the pricing of the deed restricted sale units;

(3) The development project shall be located considering the criteria contained in the Citizen Housing Plan; and

(4) The development project shall be located within one-half (1/2) mile walking distance (measured from the closest residential structure) from either an existing mass transit stop or an agency approved planned mass transit stop that will be available prior to the issuance of any Certificates of Occupancy for the project.

(2) Deed Restricted Category Sale Housing Located Outside of the AH Zone Districts

Deed restricted Category sale housing (or rental housing, if publicly owned) in all zone districts may be exempted from Growth Management. No exemption is provided for deed restricted Category rental units, unless publicly owned. As an additional incentive, the greater of one additional dwelling unit or the total number of units necessary for any mitigation approved pursuant to Sec. 8-30 may be exempted from Growth Management on any lot or parcel located outside of the AH zone districts. The exemption is subject to special review approval pursuant to the criteria of Sec. 2-30-30(h)(2) and consideration of the Citizen Housing Plan. The additional Category sale units (or rental units, if publicly owned) may be allowed even if the lot or parcel is substandard in size and the resulting development on the lot or parcel would not conform with the underlying zone district's minimum parcel size for each dwelling unit.

(b) Deed Restricted Resident Occupied ("RO") Housing Units

Deed restricted Resident Occupied sale units (or rental units, if publicly owned) in any zone district may be exempted from Growth Management, subject to compliance with the provisions of the underlying zone district. No exemption is provided for deed restricted RO rental units, unless publicly owned.

(c) Caretaker Dwelling Units ("CDUs")

One (1) Caretaker Dwelling Unit ("CDU") may be exempted from Growth Management on any lot or parcel located in a zone district in which a CDU is an allowed use, a use allowed by special review, or a use allowed as part of a master plan, as shown in Table 4-1. The CDU may be allowed even if the lot or parcel is substandard in size and the resulting development on the lot or parcel would not conform to the underlying zone district's minimum parcel size for each dwelling unit, subject to the standards in Sec. 4-30-50(e). The CDU may be either attached

to a single-family dwelling unit ("principal dwelling") or other use or may be detached from the principal dwelling or other allowed use if it complies with the standards in Sec. 4-30-50(e).

(d) Employee Dwelling Units ("EDU"s)

[Reserved]

### **6-30-50: EXEMPTION FOR DEVELOPMENT USING TRANSFERABLE DEVELOPMENT RIGHTS ("TDRS")**

The transfer of development rights (TDRs) from Sending Sites identified in Sec. 6-70-20 may provide an exemption from GMQS subject to compliance with the standards of this section. Specific forms of exemption are listed below:

(a) New Dwelling Units

A new dwelling unit located within the Aspen Urban Growth Boundary may be exempted from GMQS through the use of TDRs as provided in Sec. 6-70-40(b) and subject to special review approval pursuant to the criteria in Sec. 2-30-30(h)(2). A new dwelling unit located outside the Aspen Urban Growth Boundary may not be exempted from GMQS through the use of TDRs.

(b) Additional Floor Area for Lots/Parcels

(1) Aspen Urban Growth Boundary

Additional floor area up to the final maximum size permitted by Table 5-1 (including base floor area), on a lot/parcel within the Urban Growth Boundary, may be exempted from GMQS without special review through the use of TDRs as provided in Sec. 6-70-40(b).

(2) Rural Area

(a) Additional floor area, up to the final maximum size permitted by Table 5-1 (including base floor area), on a lot in the following subdivisions within the Rural Area may be exempted from GMQS without special review through the use of TDRs as provided in Sec. 6-70-040(b): Starwood, Starwood Ranch, Owl Creek Ranch, East Owl Creek, Eagle Pines, Castle Creek Valley Ranch, White Star Ranch, Star Mesa and Aspen Valley Downs.

(b) Additional floor area, up to the final maximum size permitted by Table 5-1 (including base floor area), on a lot/parcel within the Rural Area not included in (a) above may be exempted from GMQS through the use of TDRs as provided in Sec. 6-70-40(b)

and subject to special review approval pursuant to the criteria in sec. 2-30-30(h)(2).

(3) Additional Floor Area for Properties with Development Rights Approved through Growth Management (Urban Growth boundary and rural area)

Additional floor area, up to the final maximum size permitted by Table 5-1 (including base floor area), for a lot or a parcel with development rights that have been awarded base square footage allotments through the County's GMQS scoring and competition procedures may be exempt from GMQS through the use of TDRs subject to special review approval pursuant to the criteria in Sec. 2-30-30(h)(2), but such exemption shall be limited to the maximum square footage specified in the GMQS competition.

(c) TDR Approvals

If a parcel has been approved as a TDR receiver site for new development and/or additional floor area, a GMQS allotment may not be applied for to replace the use of the TDR(s).

In cases of approved TDR Receiver Sites identified in sections 6-30-50(b)(1) and 6-30-50(b)(2)(a), use of a TDR shall be defined as the surrender of a TDR certificate at the time of building permit submittal.

*(Code Revised (all sections) by Ord. No. 014-D, 2006, 07-05-06; § 6-30-50 (part) amended by [Ord. 024, 10-28-09](#))*

**6-30-60: EXEMPTION FOR PRESERVATION OF HISTORIC STRUCTURES**

One additional single-family dwelling unit may be allowed on a property designated to the Pitkin County Historic Register, subject to special review approval pursuant to the criteria in Sec. 2-30-30(h)(2) and the following:

(a) One Additional Single-Family Dwelling Unit and Historic Structure(s)  
Exempt

The additional single-family dwelling unit may be exempt from GMQS up to the base maximum size permitted by Table 5-1, subject to special review approval pursuant to the criteria in Sec. 2-30-30(h)(2), unless the Board of County Commissioners determines that a smaller dwelling unit size is necessary to avoid visually overwhelming the historic resource(s) on the property, in which case the lower maximum dwelling unit size established by the Board of County Commissioners shall apply. Only one (1) single-family dwelling unit per parcel as it was configured on June 12, 1978, is permitted in addition to the historic

structure(s), regardless of the number of historic structures on the parcel and/or the availability of an exemption pursuant to this Sec. 6-30-60. This exemption for an additional single family dwelling unit shall not be available to properties with existing, non-historic single-family dwelling units. The retention of the historic structure(s) is exempt from GMQS and the minimum lot area per dwelling unit requirement of the underlying zone district.

(b) Listing of Historic Structure(s)

The property must be designated to the Pitkin County Historic Register as provided in Sec. 7-20-100 to be eligible for this exemption.

(c) Relocation of Historic Structure

The Board of County Commissioners may grant a GMQS exemption if the historic structure has been moved from its original parcel/lot or is proposed to be moved to another parcel/lot, subject to special review approval pursuant to the criteria in Sec. 2-30-30(h)(2).

(d) Transfer of Exemption

The Board of County Commissioners may approve the transfer of the GMQS exemption available through this provision from the parcel/lot where the historic structure is located to another parcel/lot, subject to special review approval pursuant to the criteria in Sec. 2-30-30(h)(2).

(e) Change in Use

The Board of County Commissioners may approve a change in use of an historic structure, subject to special review approval pursuant to the criteria in Sec. 2-30-30(h)(2).

(f) "Fathering Parcel" Retains Exemption Even if Reconfigured After June 12, 1978

An original "fathering parcel" that was legally configured as of June 12, 1978, retains one (1) GMQS exemption subject to the limitations of this section, notwithstanding any reconfiguration of the parcel after June 12, 1978. The exemption shall be granted to the parcel that is designated in the subdivision or division of the original fathering parcel, or if no such parcel is designated then to the parcel that seeks the exemption first in time.

(g) Calculation of Floor Area for Historic Structure(s)

If the lot or parcel on which an additional dwelling unit is proposed is located in a zone district that does not have a floor area ratio (FAR), the floor area of the

historic structure(s) shall be exempt from the calculation of floor area for the lot or parcel.

(1) If the lot or parcel on which an additional dwelling unit is proposed is located in a zone district that has a floor area ratio (FAR), a floor area bonus of the lesser of twenty-five (25) percent of the allowable floor area for the lot or parcel or the size of the historic structure(s) shall be provided for the historic structure(s). However, this bonus shall not be available to properties in the VC and VR zone districts.

### **6-30-70: EXEMPTION FOR LARGE LOTS (500+ ACRE PARCELS)**

A GMQS exemption is provided to create an incentive for owners to maintain land in large lots as follows:

(a) 500+ Acre Parcels

One single-family dwelling unit up to fifteen thousand (15,000) square feet of floor area shall be exempt from GMQS on any parcel of five hundred (500) acres or more in size, (except where codified Caucus floor area limitations exist, they shall apply), subject to compliance with the following standards:

(1) Deed Restriction against Further Subdivision

Prior to or concurrent with recordation of any final approval of a Site Plan, the land must be deed restricted against further subdivision or development of other than:

- (a) One single family dwelling unit;
- (b) Preservation and expansion of historic dwelling units or structures;
- (c) Accessory dwelling units or structures, including agricultural buildings; and
- (d) Infrastructure associated with the approved site specific development plan.

(2) Affect of Reconfiguration

If the parcel that is subject to the deed restriction is subsequently reconfigured, then the area of the parcel as it existed at the time of recordation of the deed restriction shall not be utilized to provide an additional exemption from GMQS for a newly created lot or parcel.



(3) Previous Approvals

On properties which received a five hundred (500) acre growth management exemption approval prior to July 5, 2006, one (1) single family dwelling unit of up to fifteen thousand (15,000) square feet of floor area (or up to floor area granted in previous approval, if less than fifteen thousand (15,000) square feet) shall be exempt from GMQS, regardless of codified Caucus floor area limitations.

(b) Two-Year Review

Codified Caucus floor area limitations (within the Exemption for Large Lots provisions only) shall be reviewed by the Board of County Commissioners after two (2) years from October 11, 2006. The purpose of the review will be to determine whether the Caucus floor area limitations within the provisions shall be retained, modified or repealed. Exemption for Parcels Created in the Low Impact Residential (LIR) Zone District Pursuant to the Cluster Option

**6-30-80: EXEMPTION FOR PARCELS CREATED IN THE LIR ZONE DISTRICT**

An exemption is provided for one (1) single-family dwelling unit containing up to eight thousand two hundred and fifty (8,250) square feet of floor area on a parcel created in the Low Impact Residential (LIR) zone district pursuant to the cluster option specified in Sec. 3-40-50(d).

*(Code Revised (all sections) by Ord. No. 014-D, 2006, 07-05-06; § 6-30-70 (part) amended by [Ord. 030, 10-11-06](#); [Ord. 021-07, 07-24-07](#))*

**6-30-90: EXEMPTION FOR DEVELOPMENT IN THE CONSERVATION DEVELOPMENT PUD (CD-PUD) ZONE DISTRICT**

An exemption is provided for development in the Conservation Development PUD (CD-PUD) zone district as specified in Sec. 3-70-40(h)(3) for the Residential Development Option 1, Sec. 3-70-40(i)(4) for the Commercial Agricultural Development Option 2, and Sec. 3-70-40(j)(4) for the Residential/Agricultural Development Option 3. In addition, an associated exemption is provided for aggregation of development rights from an adjacent parcel into a CD-PUD as specified below in Sec. 6-30-100(a)(9) for the Residential/Agricultural Development Option 3.

An PUD) zone district as specified in Sec. 3-70-40(g)(3) for the Residential Development Option and Sec. 3-70-40(h)(4) for the Commercial Agricultural Option. Exemption is provided for development in the Conservation Development PUD (CD-

### **6-30-100: EXEMPTION FOR DEVELOPMENT OF UP TO 5,750 SQUARE FEET OF RESIDENTIAL FLOOR AREA ON CERTAIN TYPES OF PRE-EXISTING LOTS**

A GMQS exemption is provided for the development of residential floor area in the following situations, subject to compliance with the standards in this section.

- (a) Exemption for any Lot or Parcel that was Legally Created Before June 12, 1978

The development of residential floor area on a lot or parcel legally created before June 12, 1978, may be exempted from Growth Management. This GMQS exemption may be used to develop one single-family dwelling unit and accessory structures that count as floor area, subject to compliance with all other applicable provisions of this Land Use Code and the following additional standards:

- (1) Without Existing Structures

If the lot or parcel is not improved with any structures that count as floor area, then the applicant may develop up to the base maximum size permitted by Table 5-1 on the lot or parcel that is exempt from Growth Management.

- (2) With Existing Structures Under 5,750 Square Feet

If there are existing structures on the lot or parcel that count as floor area, then the applicant may expand the structures or develop a new structure(s), up to a cumulative limit equal to the base maximum size permitted by Table 5-1 on the lot or parcel. If there is already an existing single-family dwelling unit on the lot or parcel, then the applicant may not use the remaining square footage to create an additional dwelling unit of density.

- (3) With Existing Structures of 5,750 Square Feet or More

If the existing structures on the lot or parcel already contain floor area equal to or greater than the base maximum size permitted by Table 5-1, then the applicant cannot obtain additional floor area via this exemption. The applicant may obtain additional floor area by utilizing transferable development rights to obtain an exemption from GMQS or by competing for an allotment in the Residential GMQS.

- (4) Replacement of Existing Structures

The existing structures on the lot or parcel may also be replaced, subject to compliance with Sec. 6-30-110(c).

(5) Limitation on Additions

A new dwelling unit created through this exemption may be expanded at any time by utilizing transferable development rights to obtain an exemption from GMQS or by competing for an allotment in the Residential GMQS.

(6) Floor Area Reserved

Development constructed pursuant to this exemption that results in less floor area than the base maximum size permitted by Table 5-1 on the lot or parcel shall be entitled to expand up to the base maximum size permitted by Table 5-1 in any future development at any future date.

(7) Governmental Lands Not qualified

Lands owned or controlled by any governmental entity or division on or before June 12, 1978, do not qualify for this exemption.

(8) "Fathering Parcel" Retains Exemption Even if Reconfigured After June 12, 1978

An original "fathering parcel" that was legally configured as of June 12, 1978, retains one GMQS exemption subject to the limitations of this section, notwithstanding any reconfiguration of the parcel after June 12, 1978. The exemption shall be granted to the parcel that seeks the exemption first in time, or designated in the subdivision or division of the original fathering parcel.

(9) Use of Growth Management Exemption on Adjacent Parcel

The growth management exemption may be used on a contiguous parcel under separate ownership or an adjacent parcel under the same ownership that is separated from the fathering parcel by a public road or other right-of-way, subject to Special Review and the following additional standards:

(a) The use of the growth management exemption shall:

- (1) Promote the clustering of buildings and uses;
- (2) Promote the preservation of open space, agricultural lands and/or wildlife habitat areas;
- (3) Take advantage of a site's unique natural resources and scenic features, and avoid or mitigate any hazardous areas.

(b) The receiving parcel shall contain a minimum of two (2) times the minimum lot area in the zone district to be eligible to receive the growth management exemption;

(c) When this growth management exemption is used in conjunction with a CD-PUD Residential Agricultural Development Option 3, the fathering parcel shall contain a minimum of 35 acres or an aggregation of smaller, contiguous parcels that combine for a minimum of 35 acres, and the aggregated development rights (floor area) may be clustered into one or two principal dwellings such that the density of units is reduced. For example, where a CD-PUD allows two principal dwellings and the adjacent parcel being added to the CD-PUD allowed another dwelling, the transferred floor area shall be used in a total either one principal dwelling or two clustered dwellings. In no event can the resulting development exceed applicable floor area limitations of the zone district.

(d) A deed restriction shall be recorded against the fathering parcel to memorialize the extinguishment of growth management exemption on the fathering parcel and the use of the growth management exemption on the receiving parcel, prior to the approval of the Site Plan, subdivision plat or other development approval for the receiving parcel.

(b) Growth Management Exemption For Board-Approved Subdivisions, Fully Developed Land Subdivision Exemptions, and 35 Acre Parcels Created Prior to January 10, 2000 and Located Within the Crystal River or Frying Pan Areas

(1) The development of residential floor area on a lot or parcel in the following situations is exempt from GMQS, subject to compliance with the standards in this section:

(a) A subdivision within the Rural Area approved by the Board of County Commissioners prior to June 19, 2000, and a subdivision within the Aspen Urban Growth Boundary approved by the Board prior to the 5th of July, 2006;

(b) A low impact subdivision approved by the Board;

(c) A lot split approved by the Board prior to June 19, 2000;

(d) A lot in a pre-1989 fully developed lands subdivision exemption approved by the Board; and

(e) A parcel of thirty-five (35) or more acres created prior to January 10, 2000 and Located within the Crystal River or Frying Pan Areas.

(f) Substandard sized lots separated by action of the Board of County Commissioners pursuant to Sec. 9-20-30.

(2) This GMQS exemption may be used to develop one (1) single-family dwelling unit and accessory structures that count as floor area, subject to compliance with all other applicable provisions of this Land Use Code and the standards in subsections (a) through (f) below.

(a) Without Existing Structures

If the lot or parcel is not improved with any structures that count as floor area, then the applicant may develop a dwelling unit up to the base maximum size permitted by Table 5-1 on the lot or parcel that is exempt from Growth Management.

(b) With Existing Structures Under 5,750 Square Feet

If there are existing structures on the lot or parcel that count as floor area, then the applicant may expand the structures or develop a new structure(s), up to the cumulative limit that the base maximum size permitted by Table 5-1 on the lot or parcel. If there is already an existing single-family dwelling unit on the lot or parcel, then the applicant may not use the remaining square footage to create an additional dwelling unit of density.

(c) With Existing Structures of 5,750 Square Feet or More

If the existing structures on the lot or parcel already contain a dwelling unit of up to the base maximum size permitted by Table 5-1, then the applicant cannot obtain additional floor area via this exemption. The applicant may obtain additional floor area by utilizing transferable development rights to obtain an exemption from GMQS or by competing for an allotment in the Residential GMQS.

(d) Replacement of Existing Structures

The existing structures on the lot or parcel may also be replaced, subject to compliance with Sec. 6-30-110(c).

(e) Limitation on Additions

A new dwelling unit created through this exemption may be expanded at any time by utilizing transferable development rights to obtain an exemption from GMQS or by competing for an allotment in the Residential GMQS.

(f) Floor Area Reserved

Development constructed pursuant to this exemption that results in a dwelling unit smaller than the base maximum house size permitted by Table 5-1 on the lot or parcel shall be entitled to expand up to the base maximum size permitted by Table 5-1 in any future development at any future date.

(3) The development of residential floor area on a lot in the Meadowood Subdivision is exempt from GMQS up to the total of the allowable floor area based on the floor area ratio (FAR) plus the additional floor area allocated to the lot pursuant to Board of County Commissioners Resolution No. 99-124, or 5,750 square feet of floor area, whichever is greater.

*(Code Revised (all sections) by Ord. No. 014-D, 2006, 07-05-06; § 6-30-100 (part) amended by [Ord. 002.2013, 01-23-13](#); Ord.030.16, 12-21-2016)*

**6-30-110: EXEMPTION FOR REMODELING AND REPLACEMENT**

A GMQS exemption is created for remodeling or replacement of existing floor area, commercial structures and tourist accommodation units, as follows:

(a) General Standards

An exemption for remodeling, replacement, and additions shall comply with all other applicable provisions of this Land Use Code and the following standards:

(1) Legally Created Structure

The applicant shall demonstrate that the structure proposed for remodel or replacement was legally created by producing a valid copy of the building permit for the structure. In the event a valid building permit for a structure cannot be provided, remodeling or replacement may occur if the applicant demonstrates that the structure was built prior to the issuance of County building permits.

(2) Non-Conforming Structures

The remodeling, replacement, or addition to a non-conforming structure shall comply with the standards of Sec. 9-40 as applicable.

(3) No Change of Use

The use of the structure shall not be changed as part of the exemption for the remodel or replacement. The provisions of Sec. 6-30-160 shall be used to determine whether a proposed development is considered to be a change in use.

(4) Location

The remodeling or replacement shall occur on the same lot or parcel on which the existing structure is located, but shall not be limited to the same footprint as the structure being remodeled or replaced.

(b) Exemption for Remodeling

(1) Residential Structures

Remodeling of residential structures may be exempted from Growth Management, provided that the floor area of the structure shall not be increased, unless additional floor area is obtained by utilizing transferable development rights or by competing for an allotment in the Residential competition system.

(2) Commercial Structures and Tourist Accommodation Units

The remodeling of a commercial structure or tourist accommodation unit may be exempted from Growth Management, provided that the existing commercial floor area shall not be expanded and the number of tourist accommodation units shall not be increased unless an exemption is obtained pursuant to Sec. 6-30-150 or an allotment is obtained by competing in the Commercial/Tourist Accommodations competition system.

(c) Exemption for Replacement of Residential Floor Area

The replacement of legally established residential floor area on a lot or parcel in a Board-approved subdivision, on a lot or parcel legally created and configured prior to June 12, 1978, or on a thirty-five (35) or more acre parcel legally created prior to January 10, 2000, and located within the Crystal River or Frying Pan areas may be exempted from Growth Management, subject to the following:

(1) Replacement Size Limited

- (a) If the total size of the structure(s) on the lot or parcel is less than or equal to the base maximum size permitted by Table 5-1, then the existing structure(s) can be replaced and can be expanded,

up to a total of the base maximum size permitted by Table 5-1 on the lot or parcel.

(b) If the total size of the structure(s) on the lot or parcel is more than the base maximum size permitted by Table 5-1, then the existing structure(s) may be replaced, but these structures may not be expanded without obtaining either a GMQS allotment or transferable development rights.

(c) Demolished square footage of structures not attached to the principal dwelling unit may not be combined with the replacement square footage of the principal dwelling unit to develop a replacement dwelling unit that is larger than the existing unit, except that up to seven hundred fifty (750) square feet of detached garage area may be replaced with the same number of square feet in an attached garage.

#### (2) Relocation May Be Required

The County may require the replaced dwelling unit to be relocated within the same lot or parcel, if such relocation would result in the replaced structure avoiding a Constrained Area (as defined in Sec. 7-10-50 or would result in a less severe impact from development upon a Constrained Area.

#### (3) Replacement Required Within Two (2) Years of Demolition

An applicant who has received an exemption to replace existing floor area shall be required to obtain a building permit for the replacement floor area no more than two (2) years after the date of having received the exemption. Failure to obtain the building permit within the two (2) year period shall render the replacement exemption null and void for the lot or parcel.

#### (4) Fathering Parcel Retains Exemption Even if Reconfigured After June 12, 1978

If the parcel is reconfigured and results in the creation of more than one parcel, the original "fathering parcel" that was legally configured as of June 12, 1978, shall retain one replacement exemption as provided in Sec. 6-30-100(d)(1), subject to the limitations of this section. The exemption shall be granted to the parcel designated upon subdivision or division of the original fathering parcel, or if no parcel is so designated, then to the parcel that seeks the exemption first in time. Reconfiguration of the parcel through lot line adjustment shall not affect the availability of the replacement exemption.



(5) Limitation on Additions

A replacement dwelling unit created through this exemption may be expanded at any time by utilizing transferable development rights to obtain an exemption from GMQS or by competing for an allotment in the Residential GMQS.

(d) Exemption for Replacement of Commercial Structures and Tourist  
Accommodation  
Units

The replacement of legally established commercial structures and tourist accommodation units may be exempted from Growth Management, subject to the following:

- (1) The existing commercial floor area shall not be expanded and the number of tourist accommodation units shall not be increased unless an exemption is obtained pursuant to Section 6-30-150 or an allotment is obtained by competing in the Commercial/Tourist Accommodations competition system.

An applicant who has received an exemption to replace an existing commercial structure or tourist accommodations unit shall be required to obtain a building permit for the replacement structure or unit no more than two (2) years after the date of having received the exemption. Failure to obtain the building permit within the two (2) year period shall render the replacement exemption null and void for the lot or parcel.

**6-30-120: EXEMPTION FOR CIVIC AND INSTITUTIONAL USES**

The development of civic and institutional uses may be exempted from GMQS subject to compliance with this section.

(a) General

To be eligible for an exemption from GMQS an applicant shall demonstrate that the development:

- (1) Is listed in Table 4-1 as a Civic or Institutional use, and provides a basic or fundamental public service or public amenity, will be available to the general public or will be held for the public's benefit, serves primarily the local community, provides facilities in response to growth, and is not itself a growth generator; or

(2) Is a necessary facility of a non-profit institution whose mission is consistent with the purposes of this Land Use Code and with the goals and policies of the Comprehensive Plan.

(b) Employee Mitigation

The applicant shall agree to mitigate any employees that are generated by the proposed development, as specified in Sec. 8-30.

(c) Parking

The applicant shall accommodate the parking necessary on-site or in another appropriate location to serve the proposed development.

(d) Facilities

The applicant shall agree to provide any improvements to water supply, sewage treatment, drainage control, fire and police protection, roads, transit, trails schools, library, hospital, and parks that are necessitated by the proposed development.

(e) Environmental and Visual Resources

The applicant shall mitigate any adverse impacts on the community's air, water, land, and other natural resources and any adverse visual impacts on surrounding properties that are caused by the proposed development.

**6-30-130: EXEMPTION FOR NEW LOTS CREATED WITHIN THE VILLAGE COMMERCIAL (VC) AND VILLAGE RESIDENTIAL (VR) ZONE DISTRICTS**

A GMQS exemption for each single family dwelling unit is provided for new lots created within the VC and VR zone districts pursuant to the provisions of Sec. 2-30-30 as follows:

(a) Dwelling Units Limited in Size

The single family dwelling units exempted from GMQS shall be limited to the maximum floor area permitted in the applicable zone district.

(b) Fathering Parcel Retains Exemption

The original fathering parcel retains one (1) GMQS exemption, which shall be designated in the subdivision of the original fathering parcel.

(c) Replacement Limited

An existing non-historic structure that is non-conforming in the VC or VR zone districts and is located on a lot or parcel created pursuant to the subdivision exemption in Sec. 2-30-30 may only be replaced subject to compliance with all of the dimensional standards in the applicable zone district and the Redstone Historic Preservation Guidelines.

#### **6-30-140: EXEMPTION FOR ACCESSIBLE (ANSI) RESIDENCES**

A GMQS exemption is provided for single-family residences utilizing floor area, which is exempted from floor area calculations pursuant to Section 5-20-70 (k).

*Repealed [Ord. 011-2011-08-20-2011](#), reinstated [Ord.038-2012, 12-19-2012](#)*

#### **6-30-150: COMMERCIAL AND TOURIST ACCOMMODATIONS DEVELOPMENTS WITH INSUBSTANTIAL GROWTH IMPACTS**

A GMQS exemption is provided for commercial development and tourist accommodations with insubstantial growth impacts. For a development to qualify for this exemption, the applicant shall demonstrate that:

(a) Size Limitation

The development contains no more than one thousand (1,000) square feet of new commercial floor area or no more than three (3) new tourist accommodation units.

(b) Employee Generation

The development will generate an insubstantial number of additional employees. For purposes of this section, insubstantial shall mean that the development will generate no more than three (3) additional employees.

(c) Parking Demand

The development will generate an insubstantial demand for additional parking and the parking that is needed will be accommodated on-site or in another appropriate location. For purposes of this section, insubstantial shall mean that the development will generate the demand for no more than five (5) additional parking spaces.

(d) Facilities

The development will generate an insubstantial demand for basic governmental facilities such as water supply, sewage treatment, drainage control, fire and police protection, and roads, will place an insubstantial burden on the community's bus system, schools, library, hospital, and park/trail system. For purposes of this section insubstantial shall mean that the development will not generate the need

for any new capital improvements (other than minor improvements needed to directly serve the development, such as a water service line or a driveway), and will not generate the need for any new staffing by governmental personnel. Any minor improvements that are determined to be necessary to serve the development shall be provided by the applicant.

(e) Environmental and Visual Impacts

The development will cause an insubstantial adverse impact on the community's air, water, and other natural resources and will cause negligible adverse visual impacts on surrounding properties. Any such adverse impacts that are caused by the development shall be mitigated by the applicant.

**6-30-160: CHANGE IN USE**

A GMQS exemption is provided for change in use of an existing structure from the residential, commercial, or tourist accommodation use categories to another such category. For example, the conversion of a residential dwelling unit into an office is considered to be a change of use for growth management purposes. The conversion of an office into a retail business is not considered a change of use for growth management purposes, though it may be considered a change of use for other purposes (such as special review) in this Land Use Code. For a development to qualify for this exemption, the applicant shall comply with the following requirements:

(a) Legally Created

The applicant shall demonstrate that the structure in which the change in use is proposed was legally created by producing a valid copy of the building permit for the structure. In the event a valid building permit for a structure cannot be provided, the applicant shall demonstrate that the structure was built prior to the issuance of County building permits.

(b) Employee Mitigation

The applicant shall agree to mitigate any employees that are generated by the proposed change in use, as specified in Sec. 8-30.

(c) Parking

The applicant shall accommodate the additional parking needed on-site or in another appropriate location the additional parking needed to serve by the proposed change in use.

(d) Facilities

The applicant shall agree to provide any improvements to water supply, sewage treatment, drainage control, fire and police protection, roads, transit, trails schools, library, hospital, and parks that are necessitated by the proposed change in use.

(e) Environmental and Visual Impacts

The development will cause an insubstantial adverse impact on the community's air, water, and other natural resources and will cause negligible adverse visual impacts on surrounding properties. Any such adverse impacts that are caused by the development shall be mitigated by the applicant.

**6-30-170: MINOR EXPANSION OF A MULTI-FAMILY DWELLING UNIT IN THE RMF ZONE DISTRICT**

A GMQS exemption is provided for minor expansions to a multi-family dwelling structure or individual dwelling unit in the RMF zone district. The GMQS exemption for a minor expansion to a multi-family dwelling unit is limited to construction of a subgrade floor area.

*(Code Revised (all sections) by Ord. No. 014-D, 2006, 07-05-06; § 6-30-70 (part) amended by [Ord. 030, 10-11-06](#); [Ord. 029-2012, 10-24-2012](#); [Ord. 021-07, 07-24-07](#))*

**6-30-180: EXEMPTION FOR GREENHOUSES THAT ARE NOT CUSTOMARILY ACCESSORY TO A PRINCIPAL RESIDENTIAL USE**

A GMQS exemption is provided for greenhouses in the RS-160, RS-35, RS-30, RS-20, AR-10, AR-2, R-30 and T zone districts that are not customarily accessory to a principal residential use, if approved through Special Review pursuant to Sed.2-30-30(h)(2) and subject to compliance with the following requirements:

- a) Size/Scale: The greenhouse(s) shall be of a size and scale that relates to the size and scale of the agricultural operation on-site.
- b) Employee Generation: No mitigation is required for any employees that are not generated by a greenhouse(s).
- c) Traffic/Parking: The applicant shall limit vehicular trips and shall limit deliveries to/from the greenhouse(s) to specific hours. Adequate parking shall be provided on-site.
- d) Facilities: The applicant shall agree to provide any improvements to public facilities and services that are necessitated by the greenhouse(s).
- e) Environmental and Visual Impacts: The greenhouse(s) shall not cause a substantial adverse impact on the community's air, water and other natural

resources, and shall not cause significant adverse visual impacts on surrounding properties. Any such adverse impacts that are caused by the greenhouse(s) shall be mitigated by the applicant.

## **6-40: ALLOTMENT SYSTEM**

### **6-40-10: ALLOTMENT TYPES**

#### (a) Purpose

The purpose of this section is to establish a method of managing growth in Pitkin County whereby all development that is not eligible for an exemption, pursuant to Sec. 6-30, is managed through a competition system. The competition consists of (i) a set of annual development allotment ceilings (a/k/a "quotas") that identify the amount of growth that may occur through the competition system, and (ii) the scoring categories and standards, which establish a rational method of awarding development allotments to competing applications. Development is scored through this competitive process by the Planning and Zoning Commission and allotments are awarded by the Board of County Commissioners to the highest scoring applicants. Appeals of the scoring may be taken to the Board.

#### (b) Allotment Types

The following types of allotments have been established:

##### (1) Residential Development: New Lots and Parcels

These allotments are intended to provide for the development of residential floor area on:

- (a) New subdivision lots or any other legally created lot or parcel determined not to have a development right;
- (b) Thirty-five (35) acre parcels that are located within the Crystal River or Frying Pan areas and were created after January 10, 2000; and
- (c) Thirty-five (35) acre parcels that are located within the remainder of unincorporated Pitkin County and were created after June 12, 1978.

##### (2) Residential Development: Additions

These allotments are intended to provide for the development of additional residential floor area in existing dwelling units and related accessory structures, or for additional residential floor area in approved dwelling

units and related dwelling units beyond that obtained on a lot or parcel pursuant to Sec. 6-30 or Sec. 6-40-10(b)(1). See also Sec. 5-20-70.

(3) Commercial Development

These allotments are intended to provide for new commercial development and additions to existing commercial development that results in the creation of Employment Generation Units (EGUs). An Employment Generation Unit is the number of full-time equivalent employees generated by the project, based on the following formula:

(a) Square footage of commercial development x number of full time equivalent employees generated per 1,000 square feet = EGU.

(b) The standards of Sec. 8-30 shall be used to determine the employee generation of a project.

(4) Tourist Accommodation Units

These allotments are intended to provide for the development of tourist accommodation units.

**6-40-20: GENERAL STANDARDS FOR ALLOTMENTS AND COMPETITION**

(a) Compliance with Code Requirements

As a prerequisite to the award of any development allotment, the proposed development must comply with all requirements of the Pitkin County Code. No allotments shall be granted where the development proposed violates this Land Use Code. An applicant who receives a score of zero (0) under any category, which indicates that the proposed development does not comply with a standard of this Land Use Code, shall be required to bring the proposed development into compliance with this Land Use Code before a Site Plan or other development application for the proposed development may be approved. An Applicant may receive a score of zero (0) in certain categories and not be in violation of the land Use Code. The categories are identified below.

(b) Allotment or Exemption Required

Receipt of an allotment or eligibility for an exemption is a pre-requisite to continuation in the land use review process. If an allocation or exemption is denied, any other land use applications that are pending for the property shall be denied as well.

(c) Consideration of Comprehensive Plan

The award of any development allotment shall consider the applicable Comprehensive Plans, including the Pitkin County Comprehensive Plan and the adopted plans for the incorporated areas of Aspen, Basalt, Carbondale, and Snowmass Village.

(d) Covenant

Any applicant who is awarded an allotment shall prepare a covenant in a form provided by the County that addresses all of the commitments made in the application. The covenant shall be submitted prior to the submission of any building permit applications that would utilize the allotments that have been awarded. Following review and approval of the covenant by the Community Development Department, the covenant shall be recorded with the Pitkin County Clerk and Recorder and shall run with and be a burden upon the land.

(e) Scoring Based on Merits of Proposed Development and Parcel Alone  
Scoring of individual development proposals shall be based on features and characteristics included in the proposed development and on the parcel where the proposed development would take place. Scores shall not be increased based on features or characteristics included in any subdivision containing the lot or parcel proposed for development, unless the feature or characteristic would actually be created by the proposed development. In the event an application includes proposed development, or on more than one tract of thirty-five (35) acres or more, each proposed lot or parcel shall be considered as an individual application. Scoring for a parcel, lot, or tract, will not be increased due to proposed improvements, features or characteristics proposed for other lots or parcels.

(f) Proportionality

When scoring an application, the Planning and Zoning Commission should consider whether each commitment made by the applicant seeking points is proportional to the size of the allotment being requested. In other words, an applicant seeking an allotment for a large amount of floor area would be expected to make a proportionally greater commitment to obtain the same score as an applicant seeking a lesser amount of floor area.

*(Code revised (all sections) Ord. 014-D, 2006, 07-05-08; § 4-30-50 (part) amended by Ord. 019-09, 06-24-09)*

**6-40-30: ESTABLISHMENT OF ANNUAL ALLOTMENT CEILINGS**

(a) The following table establishes annual allotment ceilings for residential, commercial, and tourist accommodations development.



(b) Exemptions from GMQS awarded pursuant to Sec. 6-30 shall not be subject to the annual allotment ceilings and shall not be limited on an annual basis.

TABLE 6-4: Annual Allotment Ceilings	
TYPE OF DEVELOPMENT	ANNUAL ALLOTMENT CEILING
<b>1. Residential Development: New Lots and Parcels</b>	
Within Aspen Urban Growth Boundary	23,000 sq. ft.
Within Crystal River Area	10,000 sq. ft.
Within Frying Pan Area	5,750 sq. ft.
Within Remainder of Rural Area	25,000 sq. ft.
<b>2. Residential Development: Additions</b>	
Within Aspen Urban Growth Boundary	10,000 sq. ft.
Within Crystal River Area	4,000 sq. ft.
Within Remainder of Rural Area	25,000 sq. ft.
<b>3. Commercial Development</b>	
Within Entire County	43 EGUs
<b>4. Tourist Accommodations Development</b>	
Within Entire County	31 units

*(Code Revised (all sections) by Ord. No. 14-d, 07\_05\_06; Table 6-4 (part) amended by Ord. 022-08, 07-09-08)*

**6-40-40: EXPIRATION OF ALLOTMENTS**

(a) Allocated Allotments Do Not Expire

Allotments that are allocated to applicants shall not expire.

(b) Unallocated Allotments Expire Annually

Allotments that are not allocated to any applicants expire automatically and are not carried forward into successive years. The annual allotments shall expire on December 31st of each calendar year or at such time as all applications for allotments in the particular development type have been processed and the requested allotments have either been awarded or have been denied.

**6-40-50: ANNUAL DEADLINES FOR SUBMISSION OF APPLICATIONS**

(a) The following table establishes the annual deadlines for submission of applications for growth management allotments.

**TABLE 6-5: GMQS Application Deadlines**

TYPE OF DEVELOPMENT	ANNUAL SUBMISSION DEADLINE
Residential Development: New Lots	September 1
Residential Development: Additions	January 15; if all allotments are not awarded in this competition, then the bi-annual submission deadline is July 1
Commercial Development	November 15
Tourist Accommodations Units	October 1

(b) The procedures for submission and review of applications for GMQS allotments may be found in Sec. 2-40-40.

**6-50: RESIDENTIAL COMPETITION SYSTEM**

**6-50-10: GENERAL**

The standards and scoring system in this section are utilized to evaluate applications for residential development allotments submitted pursuant to the procedures in Sec. 2-40-40. The competitive categories, points available, and minimum competitive thresholds for residential developments are summarized in Table 6-7 (for development within the Aspen Urban Growth Boundary) and Table 6-8 (for development within the Rural Area, Crystal River Area and Frying Pan Area).

(a) Method of Scoring

Scoring shall be conducted separately for (i) new lots and parcels, and (ii) new additions. Scoring shall also be conducted separately for development within the Aspen Urban Growth Boundary, Rural Area, Crystal River Area, and Frying Pan Area.

(1) Scoring of new lots and parcels consider all structures for which a GMQS allotment is being sought.

(2) If allotments are sought for more than one (1) parcel of thirty-five (35) acres or larger which was created pursuant to the state statutory exemption for such parcels, then each parcel for which an allotment is sought shall be considered a separate application for an allotment. Such parcels shall not be considered together as if they were part of a single subdivision or planned development.

(1) Scoring for additions shall consider the entire structure or structures for which the GMQS allotment is being sought

## **6-50-20: STANDARDS FOR SCORING APPLICATIONS FOR RESIDENTIAL ALLOTMENTS**

The Planning and Zoning Commission shall consider each application with respect to the standards described below, and shall assign points according to the following schedules:

(a) Impacts on Public and Private Facilities

(1) Considering whether an applicant has provided a commitment to install those public and private facilities that are necessary to serve the development and also to install facilities that may be of benefit to the surrounding neighborhood. Points shall be awarded according to the following schedule:

(a) Zero (0) means the proposed facilities do not comply with the County's adopted standards or do not meet the needs of the project.

(b) One (1) means the proposed facilities comply with the County's adopted standards and provide for the needs of the project, but do not improve services to the surrounding neighborhood.

(c) Two (2) means the proposed facilities comply with the County's adopted standards, provide for the needs of the project, and help to solve a problem or resolve a constraint with existing facilities, or otherwise are of benefit to the surrounding neighborhood. Any such improvements proposed must also be consistent with adopted County plans addressing such facilities and must be determined to be necessary and appropriate by the referral agency charged with utilizing the facility or providing the related service.

(2) The categories in which points shall be awarded are as follows:

(a) Fire Protection

(1) Capability of the appropriate fire protection district to provide fire protection according to its established response standards, including whether appropriate access has been provided to the development site, with necessary vehicle turnouts and turn-around pads;

(2) Adequacy of available water pressure and capacity for providing fire-fighting flows; and

(3) Commitment of an applicant to provide or pay for fire protection facilities that may be necessitated by the project or that may improve fire protection capabilities in the neighborhood, including but not limited to fire hydrants, water storage tanks or ponds, and fire fighting vehicles or equipment.

(b) Road System

(1) Capability of the public road network to provide for the needs of the proposed development within acceptable levels of safety, as defined in the Pitkin County Asset Management Plan; and

(2) Applicant's commitment to provide or pay for necessary road system improvements attributable to the proposed development or to improve road capacity or safety in the neighborhood.

(c) Transit and Trail Systems

(1) Whether the proposed development site is located in proximity to existing transit routes and trail systems and whether appropriate on-site connections are made to these routes and trails;

(2) Capability of the transit system to accommodate the proposed development without the need for additional equipment or route shifts;

(3) Commitment of the applicant to finance or provide capital improvements (such as a bus, bus shelter, or trail connection) that enhance the ability of the transit or trail system to serve the proposed development, or to provide an easement for a trail that has been identified in the Pitkin County Comprehensive Plan; and/or an easement for a trail that has generally been identified as a public access need.

(b) Effect on the Environment

(1) Considering the environmental impacts of the proposed development and whether the applicant commits to actions that will have a positive effect on the natural environment in Pitkin County, thereby achieving an overall benefit for the community. Points shall be awarded according to the following schedule:

(a) Zero (0) means the proposed development does not comply with the applicable adopted County environmental standards.

(b) One (1) means the proposed development complies with (but does not exceed) the applicable adopted County environmental standards.

(c) Two (2) means the proposed development exceeds the applicable adopted County environmental standards, or the proposed development complies with the applicable adopted County environmental standards and helps to solve an existing environmental problem. To receive a score of 2 in any category, an applicant shall exceed an adopted standard or solve an existing problem as expressed in at least one of the standards in that category, but need not do so in all of the standards of that category.

(2) The categories in which points shall be awarded are as follows:

(a) Water Resources

Considering the overall impacts of the development on local and regional water resources, including:

(1) The extent to which the proposed development of the property will comply with or will exceed (by more than fifty (50) percent) the minimum stream setbacks and riparian and wetland buffers established in Table 5-1 and Sec. 7-20-80 of this Land Use Code.

(2) Whether an applicant commits to the dedication of water rights to an appropriate public agency or other actions that will contribute to the protection of minimum stream flows and address a documented need in Pitkin County.

(3) Whether an applicant commits to retain irrigation water rights with agricultural or open space lands that are part of the development.

(4) Whether an applicant commits to the implementation of techniques that will improve the efficiency of existing irrigation systems and commits to dedicate the remaining water to minimum instream flows, or increases the amount of agricultural land or protected open space that is able to be irrigated within the development.

(5) Whether an applicant proposes a water augmentation plan that will replace water that is to be used by the development with augmentation water that re-enters the stream either (i) upstream of the development, or (ii) at the same point of diversion employed by the development (that is, bringing "wet water" to the County), or (iii) downstream of the development, but still upstream of the in-stream depletion areas in Pitkin County.

(b) Wildlife Habitat Protection

Considering the extent to which the proposed development will contribute to the protection of wildlife habitat in Pitkin County by exceeding the standards of Sec. 7-20-70. The County has identified the following activity that qualifies as exceeding the adopted standards:

(1) An applicant could commit to a program that would enhance or would restore native wildlife habitat that has been degraded by human or animal activity (for example, by creating or restoring wetlands and/or riparian habitat). On-site enhancement is preferred, but where there are no significant opportunities for on-site enhancement or restoration, a commitment to enhance or restore other sites in Pitkin County may be considered.

(2) Applicants may also identify other innovative ways in which wildlife habitat can be protected in Pitkin County that would exceed the County's adopted wildlife standards.

Applicants with no mapped or known wildlife habitat on their entire lot or parcel shall receive a score of two (2) in this category.

(c) Achievement of Community Goals

(1) Open Space Preservation

(a) Considering the extent to which the proposed development will contribute to the preservation of open space in Pitkin County. Valued open space that an applicant could preserve includes:

(1) Undeveloped lands that have wildlife, scenic, and other desirable resource values;

(2) Agricultural lands, including those that have been historically irrigated, used for food, grains or other feed production, and those used for dry pasture and rangeland;

(3) Lands, or easements over lands, which provide access to public lands or public waters; and

(4) Other undeveloped lands whose preservation would be consistent with the adopted Pitkin County Comprehensive Plan.

(b) Points shall be awarded according to the following schedule:

(1) Zero (0) means the proposed development does not preserve any of the valued open space within the property.

(2) One (1) means the proposed development preserves some, but not all of the valued open space within the property.

(3) Two (2) means the proposed development preserves all of the valued open space within the property.

(4) If the entire lot or parcel does not contain any valued open space, the applicant shall receive a score of two (2).

\*Note: An Applicant can receive a score of zero (0) in this category and not be in violation of the Land Use Code.

## (2) Hazard Mitigation and Avoidance

Considering the extent to which the proposal mitigates the impacts of development or avoids locating development in floodplain hazard, geologic hazard, or wildfire hazard areas, as these areas are described in Chapter 7 of this Land Use Code. Points shall be awarded according to the following schedule:

(a) Zero (0) means the proposed development does not comply with the County's adopted standards for floodplain, geologic, and wildfire hazard areas.

(b) One (1) means the proposed development complies with the County's adopted mitigation standards for development in floodplain, geologic, and wildfire hazard areas, but includes some development activities on slopes in excess of thirty (30) percent or in areas subject to severe wildfire hazards.

(c) Two (2) means the proposed development complies with the County's adopted mitigation standards for development in floodplain, geologic, and wildfire hazard areas and includes no development activities on slopes in excess of thirty (30) percent or in areas subject to severe wildfire hazards. \*Note: An Applicant can receive a score of zero (0) in this category and not be in violation of the Land Use Code

(3) Development Below Allowable Density (Only applies to developments within the Rural Area)

Considering the extent to which the development proposed is less than the allowable density in terms of numbers of dwelling units (not including caretaker dwelling units, employee dwelling units, or deed restricted affordable dwelling units) permitted in the applicable zone district. No points shall be awarded where density is reduced subject to standards in Sec. 5-10-20 of the Land Use Code (Reduction in Density for Steep Slopes.) Points shall be awarded according to the following schedule:

(a) Zero (0) means the applicant proposes development at a density of seventy-six (76) percent to one hundred (100) percent of the density allowed by the underlying zone district.

(b) One (1) means the applicant commits to limit development to fifty-one (51) percent to seventy-five (75) percent of the density allowed by the underlying zone district.

(c) Two (2) means the applicant commits to limit development to fifty (50) percent or less of the density allowed by the underlying zone district.

An applicant shall receive a score of one (1) if there is no opportunity to reduce density on a property. Note: an Applicant can receive a score of zero (0) in this category and not be in violation of the Land Use Code.

(4) Reduction of Visible Mass (Only applies to developments within the Rural Area) \*Note: An applicant can receive a score of zero (0) in this category and not be in violation of the Land Use Code.

Considering the extent to which the development proposed is less than the allowable floor area allowed on the property by the underlying zone district; utilizes some of its allowed floor area to develop sub-grade space; or is below the allowable height of the underlying zone district. Points shall be awarded according to the following schedule. Applicants for a



new lot or parcel in the Rural Remote Zone District shall receive the maximum score of six (6) points in this category.

<b>TABLE 6-6: Points Schedule for Reduction of Visible Mass</b>			
	Final Maximum Floor Area (see note 1)	Sub-Grade Floor Area (see note 2)	Height (see note 3)
0 Points	Final maximum floor area is limited to more than 75% of that potentially available to the property.	Less than 20% of the requested floor area would be built sub-grade.	Proposed structure(s) limited to less than 15% below the maximum allowable height.
1 Point	Final maximum floor area is limited to no more than 75% of that potentially available to the property.	At least 20% of the requested floor area will be built sub-grade.	Proposed structure(s) limited to at least 15% below the maximum allowable height.
2 Points (Note 4)	Final maximum floor area is limited to no more than 55% of that potentially available to the property.	At least 30% of the requested floor area will be built sub-grade.	Proposed structure(s) limited to at least 30% below the maximum allowable height.
<p>Notes:</p> <ol style="list-style-type: none"> <li>1. This calculation is based on the final maximum floor area that is potentially allowed on the property by the underlying zone district, as specified in Table 5-1.D. See Sec. 5-20-70 for rules governing measurement of floor area.</li> <li>2. To qualify as sub-grade, the space must meet the requirements for exempt sub-grade space in Sec. 5-20-70(g)(1).</li> <li>3. To receive points in this category, no portion of any proposed structure can measure above the stated height limit.</li> <li>4. Applicants may score points in each of the three categories described in this section, up to a maximum of 6 points (2 points in each category).</li> </ol>			

(d) Creative Bonus \*Note: An Applicant can receive a score of zero (0) in this category and not be in violation of the Land Use Code.

The Planning and Zoning Commission may award bonus points to any development application that meets the overall minimum scoring threshold to obtain an allocation, as specified in Tables 6-7 and 6-8. Bonus points may be awarded to an applicant who proposes creative approaches that are consistent with the purpose and intent of the scoring categories set forth in Secs. 6-50-20 (a), (b), and (c), and go beyond the standards established in each of the respective categories. Bonus points may also be awarded for creative approaches that have not been addressed in any of the scoring categories set forth in Secs. 6-50-20 (a), (b), and (c), but that are consistent with and help to implement the Pitkin County Comprehensive Plan. Up to five (5) bonus points may be awarded as follows:

(1) One (1) bonus point may be awarded for each creative approach an applicant proposes that is consistent with the purpose and intent of a scoring category set forth in Secs. 6-50-20 (a), (b), and (c), and goes beyond the standards established in that category.

(2) One (1) bonus point may be awarded for each creative approach an applicant proposes that is consistent with and helps to implement the Pitkin County Comprehensive Plan.

(3) One (1) bonus point may be awarded to any applicant who proposes to build affordable housing, rather than pay the Employee Housing Impact Fee required by Section 8-30 of this Land Use Code. To obtain the bonus point, the proposal to build the housing shall comply with the County's adopted affordable housing policies and guidelines in terms of its location and the type of housing proposed.

<b>TABLE 6-7: Residential GMQS Scoring System – Urban Growth Boundary</b>			
Criteria	Points Available	Multiplier	Potential Score
<b>(a) Impacts on Public and Private Facilities</b>			
(1) Fire Protection	0-2	1	2
(2) Road System	0-2	1	2
(3) Transit/Trails	0-2	2	4
<b>(b) Effect on the Environment</b>			
(1) Water Resources	0-2	2	4
(2) Wildlife Habitat Protection	0-2	1	2
<b>(c) Achievement of Community Goals</b>			
(1) Open Space Preservation	0-2	1	2
(2) Hazard Avoidance	0-2	1	2
(d) Creative Bonus	0-5	1	5
Total Points Available (Excluding Bonus)			18 points
Minimum Threshold to Obtain an Allocation (New Lots)			13 points
Minimum Threshold to Obtain an Allocation (Additions)			12 points

<b>TABLE 6-8: Residential GMQS Scoring System – Rural Area</b>			
Criteria	Points Available	Multiplier	Potential Score
<b>(a) Impacts on Public and Private Facilities</b>			
(1) Fire Protection	0-2	1	2
(2) Road System	0-2	1	2
(3) Transit/Trails	0-2	1	2
<b>(b) Effect on the Environment</b>			
(1) Water Resources	0-2	2	4
(2) Wildlife Habitat Protection	0-2	2	4
<b>(c) Achievement of Community Goals</b>			
(1) Open Space Preservation	0-2	2	4
(2) Hazard Avoidance	0-2	1	2
(3) Development Below Allowable Density	0-2	2	4
(4) Reduction of Visible Mass	0-6	1	6
(d) Creative Bonus	0-5	1	5
Total Points Available (Excluding Bonus)			30 points
Minimum Threshold to Obtain an Allocation (New Lots)			22 points
Minimum Threshold to Obtain an Allocation (Additions)			20 points

*(Code revised (all sections) by Ord. 014-D-2006, 07-05-0; § 6-50-20 (part) amended by Ord. 021-0, 07-24-07; Ord. 023-07, 08-28-07, Ord. 019-09, 06-24-09, Ord. 026-09 11-04-09)*

## **6-60: COMMERCIAL/TOURIST ACCOMMODATIONS COMPETITION SYSTEM**

### **6-60-10: GENERAL**

The standards and scoring system in this section are utilized to evaluate applications for commercial and tourist accommodations allotments submitted pursuant to the procedures in Sec. 2-40-40. The competitive categories, points available, and minimum competitive thresholds for commercial and tourist accommodations units are summarized in Table 6-10 (for commercial development) and Table 6-11 (for tourist accommodations units).

#### (a) Method of Scoring

Scoring shall be conducted separately for commercial development and for development of tourist accommodations units.

#### (b) Proportionality

When scoring an application, the Planning and Zoning Commission should consider whether each commitment made by the applicant seeking points is proportional to the size of the allotment being requested. In other words, an applicant seeking an allotment for a large number of EGUs or tourist units would be expected to make a proportionately greater commitment to obtain the same score as an applicant seeking a lesser number of EGUs or units.

### **6-60-20: STANDARDS FOR SCORING APPLICATIONS FOR COMMERCIAL AND TOURIST ACCOMMODATIONS ALLOTMENTS**

The Planning and Zoning Commission shall consider each application with respect to the scoring categories described herein, and shall assign points according to the following schedules:

#### (a) Impacts on Public and Private Facilities

(1) Considering whether an applicant has provided a commitment to install those public and private facilities that are necessary to serve the development and may also be of benefit to the surrounding neighborhood. Points shall be awarded according to the following schedule:

(a) Zero (0) means the proposed facilities do not comply with the County's adopted standards or do not meet the needs of the project.

(b) One (1) means the proposed facilities comply with the County's adopted standards and provide for the needs of the

project, but do not improve services to the surrounding neighborhood.

(c) Two (2) means the proposed facilities and improvements comply with the County's adopted standards, provide for the needs of the project, and help to solve a problem or resolve a constraint with existing facilities, or otherwise are of benefit to the surrounding neighborhood. Any such improvements proposed must also be consistent with adopted County plans addressing such facilities.

(2) The types of facilities for which points shall be awarded are as follows:

(a) Storm Drainage

(1) The degree to which an applicant proposes to manage storm drainage from the development site and where applicable, from neighboring properties; and

(2) If the development requires the use of a public or private drainage system, the commitment of the applicant to install the necessary improvements to the system and to maintain the system over the long term.

(b) Fire Protection

Capability of the appropriate fire protection district to provide fire protection according to its established response standards;

(1) Adequacy of available water pressure and capacity for providing fire-fighting flows; and

(2) Commitment of an applicant to finance or provide fire protection facilities that may be necessitated by the project or that may improve fire protection capabilities in the neighborhood, including but not limited to fire hydrants, water storage tanks or ponds, and specialized fire fighting vehicles or equipment.

(c) Road System

(1) Capability of the public road network to provide for the needs of the proposed development within acceptable levels of safety, as defined in the Pitkin County Asset Management Plan; and

(2) Applicant's commitment to finance or provide necessary road system improvements attributable to the proposed development or to improve road capacity or safety in the neighborhood.

(d) Transit and Trail Systems

(1) Whether the proposed development site is located in proximity to existing transit routes and trail systems and whether appropriate on-site connections are made to these routes and trails;

(2) Capability of the transit system to accommodate the proposed development without the need for additional facilities or route shifts;

(3) Commitment of the applicant to finance or provide capital improvements (such as a bus, bus shelter, or trail connection) that enhance the ability of the transit or trail system to serve the proposed development, or to provide an easement for a trail that has been identified in the Pitkin County Comprehensive Plan; and/or an easement for a trail that's generally been identified as a public access need.

(b) Quality of Design

(1) The Planning and Zoning Commission shall consider each application's exterior design and rate each development by assigning points according to the following system:

(a) Zero (0) means a deficient design or a design with a major flaw.

(b) One (1) means an acceptable (but standard) design.

(c) Two (2) means an excellent design.

(2) The types of design features for which points shall be awarded are as follows:

(a) Site Design

Considering the quality and character of the proposed site plan, including but not limited to the following elements:

- (1) Quality and character of the proposed landscaping and open space areas;
- (2) Degree to which natural vegetation is preserved;
- (3) Provision of pedestrian amenities (paths, sitting areas, outdoor recreation areas, construction of connections to existing trails or walks) that enhance the design of the development and provide for the needs of customers and employees;
- (4) Provision of automatic, in-ground irrigation systems for all landscaped areas that require irrigation;
- (5) Use of reclaimed grey water for landscape irrigation;
- (6) 100% balance of cut and fill on-site;
- (7) Orientation of development to accommodate active solar gain; and
- (8) Orientation of development to accommodate passive solar gain.

(b) Parking and Circulation

Considering the quality and efficiency of the internal circulation, parking lot design, trash areas, service vehicle access, loading areas, and snow storage areas. Considering whether design features have been proposed to screen parking and service areas from public views. Considering whether the design avoids the potential for conflicts between vehicle circulation and pedestrian circulation areas, or between vehicle circulation, vehicle parking and service loading and delivery areas.

(c) Visual Impacts

Considering the extent to which the applicant uses mitigating techniques such as siting, buffering, natural topography and vegetation and setbacks to offset the visibility of the project (man-made berms are not encouraged), and whether the height of the proposed project is consistent and compatible with that of surrounding buildings. Only reductions in height beyond those standards required by Table 5-1, and by Chapter 7 shall receive points.

(d) Guest Amenities (Only Applies to Tourist Accommodation Development)

Considering the extent to which the project provides facilities for its guests, including, but not limited to, on-site common meeting areas such as lobbies and conference areas, on-site dining facilities, and on-site recreational facilities. \*Note: An Applicant can receive a score of zero (0) in this category and not be in violation of the Land Use Code.

(c) Achievement of Community Goals

(1) Employee Housing \*Note: An applicant can receive a score of zero (0) in this category and not be in violation of the Land Use Code.

Considering the commitment of the applicant to exceed the requirements of Sec. 8-30 of this Land Use Code, Employee Housing Impact Fee. According to this section, an applicant for commercial development or for historic/standard tourist lodge accommodation units and luxury tourist/lodge accommodation units is required to mitigate for one hundred (100%) percent of the project's employee housing impacts. An applicant shall receive up to three (3) points for committing to exceed this requirement, according to the following schedule:

TABLE 6-9: Employee Housing Points Schedule	
Employee Housing Impacts Mitigated	Points Awarded
Commercial Development and Historic/Standard Tourist Lodge Accommodation Units	
100%	0 points
110%	1 points
120%	2 points
130%	3 points
Luxury Tourist/Lodge Accommodation Units	
100%	0 points
110%	1 points
120%	2 points
130%	3 points

(2) Alternative Transportation Techniques

Considering the commitment of the applicant to provide: employee transportation services (such as van pools, bus passes) at no cost to employees; guest transportation services (applicable to tourist accommodations only); facilities that will encourage bicycling by employees (such as secure bicycle storage, showers, lockers); or other



alternative transportation solutions that the Planning and Zoning Commission finds to be consistent with the intent of this scoring category. Points shall be awarded according to the following schedule:

(a) Zero (0) means the applicant does not propose to employ alternative transportation techniques as part of the project.

(b) One (1) means the applicant proposes to employ alternative transportation techniques as part of the project, the extent and type of which are determined to be standard for a project of its size and type. \*Note: An Applicant can receive a score of zero (0) in this category and not be in violation of the Land Use Code.

(c) Two (2) means the applicant proposes to employ alternative transportation techniques as part of the project, the extent or the type of which are determined to be exceptional for a project of its size and type.

<b>TABLE 6-10: Commercial GMQS Scoring System</b>			
Criteria	Points Available	Multiplier	Potential Score
<b>(a) Availability of Facilities</b>			
(1) Storm Drainage	0-2	1	2
(2) Fire Protection	0-2	1	2
(3) Road System	0-2	1	2
(4) Transit/Trails	0-2	2	4
<b>(b) Quality of Design</b>			
(1) Site Design	0-2	2	4
(2) Parking and Circulation	0-2	2	4
(3) Visual Impacts	0-2	2	4
<b>(c) Achievement of Community Goals</b>			
(1) Affordable Housing	0-3	2	6
(2) Alternative Transportation Modes	0-2	2	4
Total Points Available			32 points
Minimum Threshold to Obtain an Allocation			24 points

<b>TABLE 6-11: Tourist Accommodations GMQS Scoring System</b>			
Criteria	Points Available	Multiplier	Potential Score
<b>(a) Impacts on Public and Private Facilities</b>			
(1) Storm Drainage	0-2	1	2
(2) Fire Protection	0-2	1	2
(3) Road System	0-2	1	2
(4) Transit/Trails	0-2	2	4
<b>(b) Quality of Design</b>			

<b>TABLE 6-11: Tourist Accommodations GMQS Scoring System</b>			
<b>Criteria</b>	<b>Points Available</b>	<b>Multiplier</b>	<b>Potential Score</b>
(1) Site Design	0-2	2	2
(2) Parking and Circulation	0-2	2	4
(3) Visual Impacts	0-2	2	4
(4) Guest Amenities	0-2	1	2
<b>(c) Achievement of Community Goals</b>			
(1) Affordable Housing	0-3	2	6
(2) Alternative Transportation Modes	0-2	2	4
Total Points Available			34 points
Minimum Threshold to Obtain an Allocation			26 points

*(Code revised (all sections) by Ord. 014-d-2006, 07-05-0; § 6-50-20 (part) amended by Ord. 021-0, 07-24-07; Ord. 023-07, 08-28-07, 019-09, 06-24-09)*

## **6-70: TRANSFERABLE DEVELOPMENT RIGHTS SYSTEM**

### **6-70-10: GENERAL**

The Transferable Development Rights (TDR) System is used to move development rights from defined “Sending Sites” to other defined “Receiving Sites” through private market purchase and sale transactions, pursuant to the standards in this section. The TDR system is summarized in Table 6-12. Procedures for the issuance of Certificates of Transferable Development Rights, and for the use of Transferable Development Rights pursuant to this Land Use Code, are set forth in Table 2-1.

### **6-70-20: SENDING AND RECEIVING SITES**

#### **(a) Sending Sites**

In addition to all other uses available, the following types of land shall have the right to sever development rights, and to transfer those development rights to other areas pursuant to this section.

##### **(1) Preservation Sites**

Lots or parcels, or portions of lots or parcel, in the RR, TR-1, TR-2 zone districts that have not previously used TDRs to remove development potential, and subject to the limitations shown in Table 6-12.

##### **(2) Conservation Development PUD (CD-PUD)**

Lands within the Conservation Development PUD (CD-PUD) zone district that are not developed pursuant to the Residential Development or Commercial Agricultural Development Options.

(3) Constrained Sites.

Legally created lots or parcels that have been identified as Constrained Sites because the lot or parcel is undevelopable or severely restricted pursuant to the Land Use Code, as determined in the discretion of the Board of County Commissioners.

(4) Visually Constrained Sites

Legally created lots or parcels that have been identified as Visually Constrained Sites because development would severely impact or destroy a scenic public view plane, as determined in the discretion of the Board of County Commissioners.

(5) Limited Development Conservation Parcels

Conservation parcels on which limited development is proposed pursuant to Sec. 6-70-40(a)(9); on which a conservation easement for limited development has been executed and recorded; and which have received special review approval from the Board of County Commissioners to sever transferable development rights.

(6) Properties Designated to Pitkin County Historic Register

Properties that have received approval from the Board of County Commissioners to sever development rights (TDRs) in conjunction with designation to the Pitkin County Historic Register

<b>TABLE 6-11: Tourist Accommodations GMQS Scoring System</b>			
<b>Criteria</b>	<b>Points Available</b>	<b>Multiplier</b>	<b>Potential Score</b>
<b>(a) Impacts on Public and Private Facilities</b>			
(1) Storm Drainage	0-2	1	2
(2) Fire Protection	0-2	1	2
(3) Road System	0-2	1	2
(4) Transit/Trails	0-2	2	4
<b>(b) Quality of Design</b>			
(1) Site Design	0-2	2	2
(2) Parking and Circulation	0-2	2	4
(3) Visual Impacts	0-2	2	4
(4) Guest Amenities	0-2	1	2
<b>(c) Achievement of Community Goals</b>			
(1) Affordable Housing	0-3	2	6
(2) Alternative Transportation Modes	0-2	2	4
Total Points Available			34 points
Minimum Threshold to Obtain an Allocation			26 points

*(Code revised (all sections) by Ord. 014-d-2006, 07-05-0; § 6-50-20 (part) amended by Ord. 021-0, 07-24-07; Ord. 023-07, 08-28-07, 019-09, 06-24-09)*

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TABLE 6-12: TDR Table		
ZONE DISTRICT	CAN A PROPERTY IN THIS ZONE DISTRICT OR DESIGNATION BE A TDR SENDING SITE?	CAN A PROPERTY IN THIS ZONE DISTRICT BE A TDR RECEIVING SITE? IF YES, CAN IT BE USED TO INCREASE HOUSE SIZE AND/OR TO CREATE A NEW DEVELOPMENT RIGHT?
R/R	YES*	NO
RS-160	NO**	NO
RS-35	NO**	YES – to increase house size to max permitted
TR-1	YES*	NO
TR-2	YES*	YES – to increase house size up to 3,500 sq. ft., but only with TDRs from a sending site within the TR-2 zone district
AR-10, RS-20, RS-30	NO**	YES – to increase house size to max permitted; YES - to create a new development right (in the Aspen UGB only)
AR-2	NO	YES – to increase house size to max permitted; YES - to create a new development right (in the Aspen UGB only)
R-6, R-15, R-30	NO	YES – to increase house size to max permitted; YES - to create a new development right (in the Aspen UGB only)
R-15A	NO	YES – to increase house size to max permitted
LIR	NO	YES – to increase house size to max permitted ONLY as part of a Cluster Option Development
CD-PUD	YES	YES – to increase total gross square footage of all structures to max permitted (in compliance with BOCC-adopted Caucus floor area limitations, where such limitations exist) ONLY as part of the Residential Development Option and only with TDRs from within the CD-PUD
RS-G, MHP, AH, AH-PUD, B-1, B-2, VC, P-I, T, SKI-REC, VR, I, PUB, AC/REC-2	NO	NO
Lots/Parcels in any Zone District Other than RR, TR-1, TR-2, VR, VC, SKI-REC, MHP, AH, AH-PUD, RS-G, B-1, B-2, P-I, T, PUB, I, U, AC/REC-2 Determined to be “Constrained Sites”	YES	NOT APPLICABLE
<p>NOTES: In zone districts without FAR limits (RS-35, RS-30, RS-20, and AR-10) where TDRs are available to increase house size, the maximum size of the house after use of the TDRs shall be the maximum size shown in Table 5-1, which is based on Comprehensive Plan for different areas.</p> <p>In zone districts with FAR limits (AR-2, R-30, R-15, R-15A, R-6, and VR) where TDRs are available to increase house size, the maximum allowable floor area of the house shall be limited by the applicable FAR, as shown in Table 5-1.</p> <p>1. TDRs may not be used to exceed the maximum allowable floor area, but may be used to attain the final maximum gross floor area</p> <p>*Except where parcel is less than 1 acre and does not comply with the criteria specified in Sec. 6-70-40(a)(6).</p> <p>**Except where parcel is designated as a Limited Development Conservation Parcel by Special Review</p>		

*(Code revised (all sections by Ord. No. 14-D, 2006, 07-05-06; Table 6-12 amended (part) by [Ord. 38-06, 12-06-06](#))*

(b) Receiving Sites

In addition to all other uses available in the underlying zone, the following types of sites may receive development rights that have been severed from other properties and transferred pursuant to this section:

(1) Lots or Parcels without Development Rights in the Aspen Urban Growth Boundary

TDRs may be used to create a new development right for a single family dwelling on a legally created lot or parcel within the Aspen urban Growth Boundary that does not currently have a development right to build a single family dwelling and/or accessory structures with a combined floor area of up to the base maximum size permitted by Table 5-1.

(2) Lots or Parcels Where a House Larger than the Base Floor Area Is Desired

Where the owner of a lot or parcel in the RS-35, RS-30, RS-20, AR-10, AR-2, R-30, R-15, R-15A or R-6 zone districts desires to build larger than the base maximum floor area permissible under Table 5-1, TDR's may be used to increase the permitted floor area up to the final maximum floor area specified in Table 5-1 may be subject to special review approval, if required in Sec. 6-30-50(b), and shall be reviewed through the Site Plan process.

*(Code revised (all sections by Ord. 014-D-2006; § 6-70-20 amended (part) by [Ord. 038-06, 12-06-06](#); [Ord. 021-07, 07-24-07](#), [Ord. 024-09, 10-28-09](#))*

**6-70-30: NUMBER OF TDRS CREATED AND REQUIRED**

(a) Sending Sites

This section describes how the number of TDRs available to be severed from Sending Sites is calculated. If the Sending Site contains an existing dwelling unit or other primary structure, the total acreage available for calculation of available TDRs under subsections (1) through (3) below shall be reduced by the minimum lot size for a lot in that zone district. The remainder of the lot or parcel does not need to be divided into individual lots or parcels, through subdivision, lot split, or subdivision exemption, as a pre-requisite to severance and transfer.

(1) RR and TR-1 Zone Districts

In the RR and TR-1 zone districts, one TDR may be severed and sold for every thirty-five (35) acres of each Sending Site, provided that fractions of

TDRs shall not be considered. A legally created lot or parcel less than thirty-five (35) acres in size may sever and sell one (1) TDR. The transfer of less than one (1) TDR, or any fractional interest of less than a whole number, is prohibited. The following chart illustrates the number of TDRs by size of the Sending Site:

TABLE 6-13: TDRs Available By Acreage	
Acreage of Preservation Site	Number of TDRs
35 acres or less	1 TDR
60 acres	1 TDR
70 acres	2 TDRs
90 acres	2 TDRs
135 acres	3 TDRs
140 acres	4 TDRs

(2) TR-2 Zone District

TDRs may be severed and sold from lands within the TR-2 zone district at the rate of one (1) TDR per ten (10) acres for properties as they were configured as of January 26th, 2005. A legally created lot or parcel less than ten (10) acres in size may sever and sell one (1) TDR. The transfer of less than one (1) TDR, or any fractional interest of less than a whole number, is prohibited.

(3) CD-PUD Zone district

TDRs may be severed and sold from lands within the CD-PUD zone district at the rate of one (1) TDR per thirty-five (35) acres, excluding the first one hundred sixty (160) acres that are developed pursuant to the standards for the Residential Development or Commercial Agricultural Development Options.

(4) Constrained Sites

The Board may allow one (1) or more development rights to be severed and transferred from a site, provided the site meets the criteria for Constrained Sites in Sec. 6-70-40(a)(7).

(5) Visually Constrained Sites

The Board may allow one (1) development right to be severed and transferred from a site, provided the site meets the criteria for Visually Constrained Sites in Sec. 6-70-40(a)(8).

(6) Limited Development Conservation Parcels



Provided the site meets the criteria for Limited Development Conservation Parcels in Sec. 6-70-40(a)(9), TDRs may be severed and sold at the rate of one (1) TDR per thirty-five (35) acres. In calculating parcel size for purposes of determining number of potential TDRs, seventy (70) acres shall be deducted for each legal dwelling unit that exists on the property. If no dwelling units exist on the property, and the property was legally created before June 12, 1978, the entire parcel acreage can be used for purposes of determining number of potential TDRs.

(b) Receiving Sites

(1) When used to increase house size, one (1) TDR Certificate shall allow the purchaser in an approved Receiving Site to expand the base floor area by up to two thousand five hundred (2,500) square feet of floor area. A portion of the two thousand five hundred (2,500) square feet of floor area associated with one (1) TDR may be reserved for future development on the same site exempt from GMQS.

(2) When used to create a new development right on an approved Receiving Site where a development right does not exist, one (1) TDR Certificate shall permit the purchaser to create a development right of up to two thousand five hundred (2,500) square feet of floor area.

*(Code revised (all sections by Ord. 014-D-2006; § 6-70-30 amended (part) by [Ord. 038-06, 12-06-06](#); [Ord. 021-07, 07-24-07](#))*

**6-70-40: CRITERIA FOR TDR TRANSFERS**

(a) Criteria for Sending Sites

(1) Legally Created Lot or Parcel

A Sending Site shall be a legally created Lot or Parcel.

(2) Eligible Sending Sites

Eligible Sending Sites are specified in Sec. 6-70-20(a). TDRs may be severed and sold from Eligible Sending Sites if the land is subject to a conservation easement granted to Pitkin County in a form approved by the County after the 5th of July, 2006 but before the TDRs have been certified provided the conservation easement specifically reserves the right to certify TDRs. The County, in its discretion, may refuse acceptance of the conservation easement. If the landowner seeking a TDR claims State or Federal Tax benefits for the conservation easement, the landowner must declare any TDRs reserved as an amount received for a bargain sale at

their appraised value on IRS Form 8283 signed by the appraiser and acknowledged by the County. TDRs reserved in a conservation easement may not be certified until the County duly executes a restrictive covenant on the property, and takes other action as may be necessary to rezone the property or to designate it as a constrained lot in order to designate the property as a TDR sending site.

(3) Aggregation of Acreage

The acreage of all contiguous parcels in common ownership shall be aggregated for purposes of calculating how many TDRs may be severed from the Sending Site.

(4) Restriction on Further Development

Upon severance of a TDR from a Sending Site, the owner of the Sending Site shall execute and record a restrictive covenant on the parcel that acknowledges that the development right has been severed from the parcel and that all further development, as that term is defined in Chapter 11, is prohibited. The form of the covenant shall be approved by the County Attorney, and shall address (a) what types of activities not involving structures or regular human occupancy may still be conducted upon the land following severance of the TDR, and (b) obligations regarding maintenance of the land (including weed control and fence maintenance) following severance of the TDR.

(5) Criteria for Retaining Structure in RR Zone District

Notwithstanding the severance of TDR(s) from a lot or parcel in the RR zone district, one (1) legally created structure up to one thousand (1,000) square feet in size may be retained, subject to special review approval and the following additional standards and criteria:

- (a) The structure must pre-date the re-zoning of the parcel to the RR zone district;
- (b) The structure must be on a least thirty-five (35) acre parcel, or must be on a legally created separate parcel that is substandard in size. Subdivision shall not be permitted to create parcels less than thirty-five (35) acres in size;
- (c) The structure must be deed restricted as Category or Resident-Occupied employee housing as specified by the Board of County Commissioners;

(d) The preservation site must be restricted against all further development, as that term is defined in Chapter 11, in a form acceptable to the County Attorney;

(e) The structure may never be expanded, and may only be replaced with a structure of the same mass and bulk with no change to the existing footprint; and

(f) The structure may not be subdivided, separately conveyed or otherwise separated from the underlying preservation site.

(6) Criteria for Transfer of TDR From a Lot or Parcel Containing Less Than One Acre Within the RR, TR-1 or TR-2 Zone Districts

If an owner of a parcel of one (1) acre or less in the RR, TR-1 or TR-2 zone districts wishes to be granted a TDR, the following criteria must be met and an administrative approval granted pursuant to Sec. 2-30-20:

(a) The applicant must provide the legal description and proof of ownership of the property and a site plan demonstrating that the following can be met:

(1) Required distances between the well location and the onsite wastewater treatment system can be satisfied pursuant to the Pitkin County Environmental Health and Natural Resources regulations;

(2) A onsite wastewater treatment system can be accommodated pursuant to the Pitkin County Environmental Health and Natural Resources regulations;

(3) A footprint of one thousand (1,000) square feet for a structure can be accommodated on the site without interference of subsections (1) and (2) above;

(4) Legal access to the site exists;

(5) Any site with a septic tank must have access for a septic pump truck.

(7) Criteria for Constrained Site TDRs

(a) The lot or parcel shall be located in a zone district other than the RR, TR-1, TR-2, VR, VC, SKI-REC, MHP, AH, AH-PUD, RS-G, B-1, B-2, P-I, T, PUB, I, U or AC/REC-2 zone districts, and shall be undevelopable or severely restricted pursuant to this Land

Use Code. Both the availability of Constrained Site TDRs and the amount of TDRs to be awarded, if any, are discretionary with the Board, and shall be considered pursuant to Sec. 6-70-20(a)(3).

(b) The determination that a property is constrained pursuant to this section is merely a procedure to allow the Board to consider granting a TDR(s) at the request of a property owner, and shall not be considered a final decision as to the beneficial, productive, and/or economically viable uses that may be available to the property.

(8) Criteria for Visually Constrained Site TDRs

(a) The lot or parcel shall be located in a zone district other than the RR, TR-1, TR-2, VR, VC, SKI-REC, MHP, AH, AH-PUD, RS-G, B-1, B-2, P-I, T, PUB, I, U or AC/REC-2 zone district, and shall be determined by the Community Development Department to be visually constrained because development would severely impact or destroy a Scenic View Protection Area, and the Board of County Commissioners shall confirm that determination. The availability of a Visually Constrained Site TDR(s) is discretionary with the Board, and shall be considered pursuant to Sec. 6-70-20(a)(4).

(b) The determination that property is visually constrained pursuant to this section is merely a procedure to allow the Board to consider granting one transferable development right at the request of a property owner, and shall not be considered a final decision as to the beneficial, productive, and/or economically viable uses that may be available to the property.

(9) Criteria for Limited Development Conservation Parcels TDRS

If a property owner wishes to sever TDRs from a parcel on which no further development is proposed (with the exception of development of one (1) deed restricted caretaker dwelling unit; and /or accessory agricultural buildings) the following criteria must be met in addition to the Special Review criteria in Sec. 2-30-30(h).

(a) The parcel shall be located within the AR-10, RS-20,RS-30, RS-35 or RS-160 zone districts.

(b) The parcel shall contain a minimum of 160 acres and be configured as it was on December 6, 2006. All residential and accessory structures (with the exception of agricultural buildings) must have existed on the subject property on or

before December 6, 2006. All adjacent parcels held in common ownership shall be included for review.

- (c) If there is no existing development on the property then no further development is allowed.
- (d) If there is existing development on the property, then further development shall be limited as follows:
  - (1) An activity envelope and site plan shall be established for all existing development on the property. The size and location of existing structures shall be documented on the site plan.
  - (2) One existing dwelling unit on the parcel may expand up to a maximum floor area of 5,750 square feet. (Floor area of accessory structures other than agricultural buildings, shall be included in the total floor area allowance of five thousand seven hundred fifty (5,750) square feet.) If a dwelling unit(s) of larger than five thousand seven hundred 50 (5,750) square feet exists, and/or if more than one legal dwelling unit exists on the parcel, then the parcel shall be subject to the replacement and/or non-conforming structure provisions of the Land Use Code.
  - (3) Agricultural buildings are exempt from floor area as provided in Sec. 5-20-70(j). The location of proposed agricultural buildings shall be established through the activity envelope and site plan process, unless they are determined to be exempt pursuant to Sec. 7-10-30.
  - (4) One deed-restricted caretaker dwelling unit of up to one thousand (1,000) square feet shall not count as floor area. Other accessory structures including garages, shall count as floor area. Below grade space shall count as floor area.
  - (5) Neither Growth Management allotments, nor growth management exemptions, including TDRs may be used on-site to increase floor area or to create a new development right(s).
  - (6) If a deed restricted dwelling unit does not already exist, development of one (1) deed restricted caretaker dwelling unit may be requested and reviewed concurrently with special review for severance of TDRs on the property, subject to the criteria in Secs. 4-30-50 (e) and 6-30-40 (c). The location of the proposed caretaker dwelling unit shall be established through

the activity envelope and site plan process. Parcels shall not be eligible to apply for any other new Special Review Uses.

(e) A conservation easement prohibiting further development of the property must be approved by the County Attorney, executed and recorded prior to, or concurrent with issuance of TDR Certificates. The following two exceptions to the prohibition of further development may be made for properties with existing development.

1. Agricultural Buildings may be built to accommodate on-site agricultural operations subject the provisions of Sec.5-20-70(j) and/or
2. One (1) deed restricted caretaker dwelling unit may be built, if there is an existing principal dwelling unit on the property.

(f) TDRs may be severed from the property and transferred off-site to eligible receiver sites based on the following criteria:

- (1) The parcel size shall be based upon a survey depicting the property and adjacent parcels held in common ownership, both as configured on December 6, 2006.
- (2) The number of TDRs awarded shall be based on one (1) TDR/thirty-five (35) acres.
- (3) In calculating parcel size for purposes of determining the number the number of potential TDRs, seventy (70) acres shall be deducted for each legal dwelling unit that exists on the property. If no dwelling units exist on the property, and the property was legally created before June 12, 1978, and is not otherwise restricted against further development, the entire parcel acreage can be used for purposes of determining number of potential TDRs.
5. If the Applicant chooses to limit the floor area of the principal structure on the property in perpetuity to a maximum of 3,250 square feet then one (1) TDR may be awarded for the 2,500 square foot reduction in the floor area from five thousand seven hundred fifty (5,750) square feet of floor area.

(g) Land use approvals on Limited Development Conservation Parcels shall be granted vested property rights pursuant to Section 2-20-170, but the vesting of rights shall be for a period of twenty (20) years, rather than three years.

(h) Approval for an Activity Envelope or Site Plan on a Parcel shall remain in effect until the end of the lapsing period according to provisions in Section 2-20-160, except the approval shall lapse (i.e. expire) after a period of twenty (20) years and/or after a period that coincides exactly with the vesting period granted.

(10) Criteria for Properties Designated on the Pitkin County Historic Register

Both the availability of historic register property TDRs and the amount of TDRs to be awarded, if any, are discretionary with the Board, and shall be considered pursuant to Section 6-70-20(a)(6). In making a determination on how many TDRs to award, the Board of County Commissioners shall consider the following factors:

(a) Community benefit associated with historic resource, including but not limited to the following considerations:

- (1) Value/importance of resource relative to overall County Historic Inventory
- (2) Accessibility to the public;
- (3) Visibility to the public;
- (4) Neighborhood/Caucus Master Plan identification of resource as valuable;
- (5) Caucus recommendation regarding value of resource to Caucus area;
- (6) Guarantee of long-term preservation of resource through a covenant, development agreement, conservation easement or other instrument acceptable to the Community Development Department and the County Attorney.

(b) Cumulative Community impacts associated with the following discretionary incentives in the event that one or more are issued by the BOCC for the property:

1. Growth Management Quota Exemption;
2. Subgrade space exemption from floor area calculation;
3. Exemption from affordable housing mitigation requirements;
4. Density bonus of one additional house or intensity bonus.

(c) Amount of incentive required to effect preservation of historic resource

(d) Likely development potential of the property based upon zoned density and intensity, development of comparable properties in the neighborhood, physical characteristics of the land, neighborhood compatibility, and extent to which infrastructure could accommodate potential development.

(b) Criteria for Receiving Sites

Transferable development rights from any Sending Site in the County may be used on any Receiving Site in the County except as limited by Table 6-12 and the provisions of this section.

Except as expressly authorized in this section, all development of the Receiving Site shall comply with all requirements of the applicable zoning district regulations, except as may be varied by the Board of Adjustment or by staff through the Administrative Modification procedures in Sec. 2-20-10(c).

(1) When Used to Increase Base Maximum Floor Area:

(a) Regardless of the number of TDRs purchased, no structure on any Receiving Site shall be permitted to exceed that maximum size for structures in the zone district shown in Table 5-1.

(b) Additional floor area shall not be available to any Receiving Site where the underlying zone district contains a floor area ratio restriction that would not permit the square footage of floor area sought, or where a prior development approval limited the square footage allowed, and there was no provision for the use of TDRs to exceed the allowed square footage.

(2) When Used to Create a New Development Right



Transferable development rights from any Sending Site may be transferred to a Receiving Site located within Aspen Urban Growth Boundary as set forth in Table 6-12.

*(Code revised (all sections by Ord. 014-D-2006; § 6-70-40 amended (part) by [Ord. 038-06, 12-06-06](#); [Ord. 021-07, 07-24-07](#))*