



THE BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY

**ORDINANCE NO. 2023-\_\_\_. AN ORDINANCE AMENDING THE SUSTAINABLE LAND DEVELOPMENT CODE, ORDINANCE NO. 2016-9 TO AMEND SECTION 12.14 (TRANSFER OF DEVELOPMENT RIGHTS) TO AMEND THE TDR RATIO TO INCREASE THE NUMBER OF ADDITIONAL DWELLING UNITS ALLOWED PER TDR; TO ESTABLISH TDR TRANSFER RATIOS FOR DIMENSIONAL STANDARDS; TO EXEMPT AFFORDABLE HOUSING FROM THE REQUIREMENT TO PURCHASE TDRS; TO MAKE MINOR TECHNICAL AND GRAMMATICAL CHANGES; TO REVISE PROCEDURAL STANDARDS; TO ADD A NEW SECTION TO ALLOW A DENSITY CHARGE OPTION IN LIEU OF TDRS; AND TO AMEND THE DEFINITION OF LOT COVERAGE IN APPENDIX A OF THE SLDC.**

**BE IT ENACTED BY THE BOARD OF COUNTY COMMISSIONERS (“BOARD”) OF SANTA FE COUNTY (“COUNTY”):**

Chapter 12 Section 12.14 of the SLDC is hereby amended and restated as follows:

**12.14. TRANSFER OF DEVELOPMENT RIGHTS.**

**12.14.1. Purpose.** The purposes of this Section are to:

**12.14.1.1.** promote preservation of agriculture, rural open space and character, scenic vistas, natural features, areas of special character or special historic, cultural or aesthetic interest or value, and environmental resources for the benefit of the residents of Santa Fe County. This Section will also authorize an applicant or owner of any estate or interest in property to obtain a development order granting Transfer of Development Rights (“TDR”) relief pursuant to a beneficial use and value determination, to transfer or sell one or more transferrable development rights where the development order authorizes relief in the nature of a TDR;

**12.14.1.2.** minimize the economic impact of environmental restrictions on property owners in designated sending areas, and allow increases in development potential in receiving areas that maintain the County’s overall environmental carrying capacity as defined in the SGMP;

**12.14.1.3.** ensure that owners of land to be preserved, conserved, or protected have reasonable use of their property by permitting a transfer of development rights to other properties;

**12.14.1.4.** provide a mechanism whereby development rights may be reliably transferred; and

**12.14.1.5.** authorize conveyances of development rights to the County or to the County development rights bank.

**12.14.2. Applicability.** The procedures and regulations in this Chapter apply to the transfer of development rights from land qualifying as sending areas to land qualifying as receiving areas.

**12.14.3. General Standards.**

**12.14.3.1.** Development rights may be sent:

1. from sending areas identified by a Community Overlay District;
2. from areas designated as an environmental and resource protection overlay, historic preservation overlay or agriculture overlay;
3. from sensitive environment lands; e. g. riparian habitats, endangered or threatened species habitat, archeological sites;
4. from agricultural land;
5. from lands providing open space and preserving scenic vistas, natural features and areas of special character; and
6. through a transfer of development rights as part of a development order granting BUD relief.

**12.14.3.2** Development rights may not be sent:

1. from areas of required open space within a development;
2. from areas of required setbacks within a development;
3. from MU and PD districts ; and
4. from CG, I and IL districts.

**12.14.3.3** A single property shall not be both a sending area and a receiving area.

**12.14.3.4.** Development rights may be used on receiving areas to provide additional density and greater dimensional flexibility as allowed in the zoning district with TDRs and in accordance with the TDR Transfer Ratio identified in Table 12-2 and the TDR Dimension Standards Ratio identified in Table 12-3.

**12.14.4. Transferable Development Rights Certification.**

**12.14.4.1.** A development right shall be severed and transferred only by a TDR Certificate issued by Santa Fe County. A permanent severance of transferable development rights and land use restriction agreement or other permanent and enforceable restriction on future development is required for TDR certification. The TDR Agreement shall limit future development on the Sending Area. The total number of development rights remaining on the property shall be established and identified in the TDR Agreement and on the TDR Sending Area Plat.

**12.14.4.2.** The TDR Certification results in the conveyance of TDR Certificates to the property owners and the restriction on future development imposed on the sending area pursuant to the TDR Agreement.

1. TDR Certification requires the recordation of the following documents:
  - a. TDR Agreement; and
  - b. TDR Sending Area Plat.

2. Both the TDR Sending Area Plat and the TDR Agreement shall clearly identify the area of restricted development, and shall reference the other document. The TDR Sending Area Plat shall be approved in accordance with Chapter 4.

**12.14.4.3.** Transferors shall have the right to sever all or a portion of the development rights from sending areas and to sell, trade, or barter TDR Certificates to a transferee.

**12.14.4.4.** Any transfer of development rights pursuant to this Chapter authorizes an increase in maximum density and/or changes to dimension standards in accordance with the zoning standards for the Receiving Area as identified in Chapter 8 and in accordance with the TDR Transfer Ratio identified in Table 12-2 and the TDR Dimension Standards Ratio identified in Table 12-3. The TDR Transfer Ratio and the TDR Dimension Standards Ratio shall not alter or waive the development standards of the receiving area, nor shall they allow a use otherwise prohibited in the receiving zoning district, unless otherwise provided in the regulations applicable to the receiving area.

**12.14.4.5.** Transfer of development rights shall not be available for land restricted from development by covenant, easement or deed restriction.

**12.14.4.6.** All TDR Plats and TDR Agreements shall be recorded in the Office of the county Clerks.

**12.14.4.7. Value of Transferable Development Rights.** The monetary value of TDRs is completely determined between the seller and buyer.

#### **12.14.5. Sending . Areas**

**12.14.5.1. Calculation of Development Rights.** Calculation of development rights shall be based on the base density of the parcel and the size of the sending areas. Sending Area calculations may not include any residential dwelling, in accordance with subsection 4 below. The number of development rights associated with a sending area shall be determined through the TDR Certification process, based on the following:

1. One development right for each primary residential dwelling that could potentially be constructed on the sending area.
2. Sending areas shall meet the criteria established by this Chapter 12.
3. Sending areas with valid irrigation water rights may receive one additional TDR for each acrea foot of irrigation water rights only if the owner agrees to an enforceable restriction on the transfer of water rights acceptable to the County. The party sending the development rights shall bear the burden of demonstrating to the County's satisfaction the validity, amount and other elements of the water rights. The TDR Agreement and the TDR Sending Area Plat shall identify the restriction on sale or transfer of irrigation water rights.
4. If the parcel with the sending areas contains any residential dwelling units, then the calculation of development rights pursuant to the sections above shall be reduced to reflect such existing development, so that the resulting calculation reflects only additional potential primary residential development available on the property.

**12.14.5.2 Development on Sending Areas.** Development on a sending area shall be limited to those uses and or structures that promote the values of the site for the reason that the TDR sending area was created, so long as such development does not include any dwelling units.

**12.14.6. Right to Sever and Transfer.**

**12.14.6.1.** A development right may be severed from an approved sending site only after a restriction on future development is imposed on the sending area pursuant to Section 12.14.4.1. The TDR certificate may be transferable from one person or entity to another upon approval by the Administrator.

**12.14.7. Receiving Sites.**

**12.14.7.1.** In order to be eligible as a receiving area, a property must be located in one of the following areas or zoning districts:

1. Mixed Use (MU);
2. Planned Development (PD);
3. Industrial General (I);
4. Industrial Light (IL);
5. Commercial General (CG);
6. Designated receiving areas; or
7. A property rezoned to an eligible zoning district.

**12.14.7.2.** The receiving site must be served by public water and wastewater systems.

**12.14.7.3.** The receiving site must be accessible by public roads.

**12.14.7.8. TDR Transfer Ratios.** TDRs may be used in receiving areas per the TDR Density Transfer Ratio identified in Table 12-2 and/or the TDR Density and Dimension standards Transfer Ratio identified in Table 12-3.

**Table 12-2 TDR Density Transfer Ratio**

TDR Use	Additional Units allowed per TDR in Receiving Area
Residential – For Sale	5
Residential – For Rent	10

**12.14.7.8.1** All rental housing approved using this transfer ratio must remain as rental for a minimum of 20 years.

**12.14.7.8.2.** TDRs may be used in receiving areas to increase or decrease dimensional standards in CG, I, IL, MU and PD districts to the standards identified chapter 8, in accordance with Table 12-3 below.

**Table 12-3 Transfer Ratio For Dimension Standards**

<b>Dimensional Standard</b>	<b># of TDRs Required to Achieve Changes to Base Density/Dimension Standards</b>
Nonresidential Minimum Percent Required	1 TDR per 5% decrease
Nonresidential Maximum Percent Required	1 TDR 5% increase
Frontage (minimum, feet)	1 TDR per 10 lots
Lot width (minimum, feet)	1 TDR per 10 lots
Height (maximum, feet)	1 TDR to increase height for every 25,000 sq. ft of floor area
Lot coverage (maximum, percent)	1 TDR per 25,000 sq.ft.

**12.14.7.9 Affordable Housing.**

1. Affordable housing units for sale or rental as a primary residence are exempt from the TDR requirements and can increase density to the maximum amount allowed with TDRs in each zoning district without purchasing TDRs.
2. For the purpose of this subsection, “Affordable Housing” is defined as any housing unit built to benefit households whose gross income is 120% or less of the area median income for Santa Fe County and whose monthly housing payment would not cause the household to be “housing cost burdened” pursuant to HUD guidelines.
3. An eligible buyer or renter for an Affordable Housing unit must meet Affordable Housing qualification requirements in Chapter 13 of this SLDC for approval by the County Affordable Housing Administrator.
4. An Affordable Housing Agreement shall be approved by the Board prior to or with the final plat or development plan, to be signed by the County Affordable Housing Administrator and Board of County Commissioners and recorded in the office of the County Clerk with the final plat or development plan.

**12.14.8.** A property is not eligible as a receiving area if the transfer of development rights to the property would adversely impact regionally or locally significant historical resources or naturally sensitive areas.

**12.14.9.** If a receiving area has any outstanding code violations and/or unpaid taxes, the owner shall resolve these violations, including any required abatement, restoration, or payment of penalties or taxes, before the property may be qualified as a receiving area in the transfer of development rights program.

**12.14.10. Development Approval Procedure.** The procedures for review and approval of an application including the use of TDRs shall be the same as those procedures that would apply if no TDRs were being used. A rezoning of the receiving area shall not be required for use of TDRs consistent with the provisions

of this Chapter unless it is part of a rezoning to a qualifying district. If the County approves the proposed development, the documentation of the approval shall include the numbers of TDRs required to support the number of residential dwelling units, nonresidential square footage and/or adjustments to dimension standards required for the development.

**12.14.10.1.** TDR certificates shall be acquired prior to recordation of a final plat or Development Plan.

**12.14.10.2.** TDR certificates will be extinguished at the time of the plat or Development Plan recordation.

**12.14.10.3.** A conceptual plan shall establish the number of TDRs required for the development. A receiving area may be established by a conceptual plan, including location, size and general development parameters. The normal subdivision and rezoning processes, if needed, will be required in addition to the conceptual plan approval.

**12.14.11. Reinstitution of development rights.** Reinstitution of development rights on a sending area is prohibited.

**12.14.12. Notification of the County Assessor.** The County Assessor may review and adjust a property's valuation in accordance with NMSA 1978, Chapter 7, Articles 35-38 to reflect valuation changes arising from the TDRs to or from a particular parcel . The County shall notify the County Assessor of the transfer or purchase of TDRs within thirty (30) days of any of the following:

**12.14.12.1.** Recordation of a TDR Agreement and TDR Sending Area Plat;

**12.14.12.2.** Purchase of development rights by the County for the County development rights bank;

**12.14.12.3.** The receipt by the County or the County development rights bank of a donation of development rights; and

**12.14.12.4.** The sale, lease or conveyance of development rights by the County development rights bank.

**12.14.13. Establishment of the County Transferrable Development Rights (TDR) Bank.**

**12.14.13.1.** The Board has established a County TDR Bank via resolution .

**12.14.11.2.** The County TDR Bank Administrator shall be appointed by the County Manager and shall have the power and authority to negotiate a purchase and/or sale of development rights, subject to the approval of the Board.

**12.14.11.3.** The County TDR bank may, for conservation or other purposes, hold indefinitely any TDRs it possesses.

**12.14.14. Funding, Management.** The County TDR bank may receive funds from the proceeds of a voter approved open space bond issue; from the general fund of the County, whether through issuance of general obligation bonds or from general fund revenues; from the proceeds of the sale of TDRs by the County TDR bank or any revenue from a public improvement district bond issue; or grants or donations from any source. A separate interest bearing trust fund shall be established

for the County TDR5bank, into which all receipts shall be deposited and from which payments shall be made.

**12.14.15. Program Development.** The Board may further development of the County's TDR program by adopting resolutions not inconsistent with Section 12.14.

**12.14.16. Development Transfer Charge Option.**

**12.14.16.1.** Development Transfer Charges (DTCs) are payments in lieu of TDRs that provide the same adjustments to Receiving Area base standards as TDRs and at the same ratios as TDRs. This option is available only if there are no TDRs in the TDR Bank.

**12.14.16.2.** In lieu of the TDRs that would otherwise be required to approve a proposed development, a Receiving Area developer using the DTC Option shall submit a DTC payment determined by multiplying the number of required TDRs times the sales price established for each TDR through the TDR Bank.

**12.14.16.3.** DTC payments shall be made prior to recordation of the final plat on the Receiving Area.

**12.14.16.4.** DTC payments shall be used exclusively to acquire TDRs on land qualified as Sending Areas under the provisions of Section 12.14 to include costs incurred in confirming the qualifications of a proposed Sending Area and recording permanent and enforceable restrictions on the Sending Area.

Appendix A of the SLDC is hereby amended as follows:

**Lot Coverage:** lot coverage shall be calculated as follows:

Nonresidential and Mixed Uses. Lot coverage for nonresidential uses and for mixed uses (nonresidential and residential) includes all impervious areas; i.e., hard-surfaced, human-made area that does not readily absorb or retain water, including but not limited to building roofs, parking and driveway areas, swimming pools, sidewalks and paved recreation areas. Lot coverage for nonresidential uses is calculated by dividing the total area of all impervious surfaces on the site by the gross lot area. Nonresidential Lot Coverage = Impervious Area ÷ Gross Lot Area.

The effective date of this Ordinance shall be 30 days after this Ordinance is recorded with the County Clerk.

**PASSED, APPROVED AND ADOPTED THIS \_\_\_ DAY OF \_\_\_\_\_, 2023.**

**THE BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY**

By: \_\_\_\_\_  
Anna Hansen, Chairperson

**ATTEST:**

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**Katharine E. Clark**  
**County Clerk**

**APPROVED AS TO FORM:**

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**Jeff Young**  
**Santa Fe County Attorney**