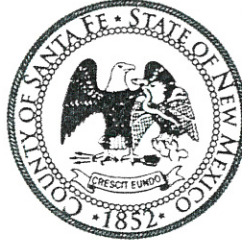


Henry P. Roybal
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Anna T. Hamilton
Commissioner, District 4

Ed Moreno
Commissioner, District 5

Katherine Miller
County Manager

TO: Board of County Commissioners

FROM: Erin Ortigoza, Senior Planner *EO*
Robert Griego, Planning Manager *RG*

Via: Penny Ellis-Green, Growth Management Director *PEG*

DATE: November 28, 2018

RE: **Approval of Permanent Severance of Transferable Development Rights And Land Use Restriction Agreement**

SUMMARY

Santa Fe County established a Transfer of Development Rights (TDR) Program via Resolution 2016-33 in accordance with the Sustainable Growth Management Plan and Sustainable Land Development Code. Staff qualified an approximately 118 acre property owned by Brad and Kathy Holian via TDR Qualification Report Number 2017-6 on July 28th, 2017 and developed TDR Agreements and TDR Certificates in accordance with the Sustainable Land Development Code.

BACKGROUND

The TDR Program allows property owners with land meeting certain criteria outlined in the SGMP and SLDC to qualify their land for TDRs. The property was qualified for TDRs in accordance with SLDC §12.14.3.1. as it demonstrated public benefits including protection of sensitive environmental lands, agricultural land, and land providing open space, and preserving scenic vistas, natural features, and areas of special character. The TDR Qualification report identified 5 development rights on the 118 property which is located within the Rural Fringe Zoning District based on the density of 1 DU per 20 Acres. The TDR Sending Area has 4 TDRs and encompasses approximately 111 acres. The residual area of the property is approximately 7 acres and includes the buildable area where a residence has been constructed.

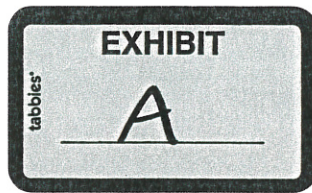
The TDR Agreement, TDR Certificated and TDR Sending Area Plat and are permanent enforceable restrictions of future development and are in accordance with the SLDC Sections 12.14.4 Allocation of Development Rights and 12.14.6 Right to Sever and Transfer.

STAFF RECOMMENDATION

Staff recommends that the Board approve Permanent Severance of Transferable Development Rights and Land Use Restriction Agreement for Brad and Kathy Holian and Santa Fe County in accordance the TDR Program regulations.

EXHIBITS

Exhibit A: TDR Agreement between Brad and Kathy Holian and Santa Fe County



PERMANENT SEVERANCE OF TRANSFERABLE DEVELOPMENT RIGHTS AND LAND USE RESTRICTION AGREEMENT

This Permanent Severance of Transferable Development Rights and Land Use Restriction Agreement ("Agreement") is between Brad L. and Kathleen S. Holian (collectively, "Owner"), a married couple whose address is 303 Glorieta Mesa Road, Glorieta NM 87535, and Santa Fe County ("County"). The Owner and the County are collectively referred to in this Agreement as the "Parties."

RECITALS

- A. The County has established a Transferable Development Rights ("TDR") Program under NMSA 1978, Section 5-8-43 (2003) and Chapter 12, Section 12.14 of the County Sustainable Land Development Code ("SLDC"), County Ordinance No. 2016-9 ("TDR Program").
- B. Owner is the sole owner in fee simple of the real property described on the Warranty Deed and Boundary Survey Plat filed in the records of the County Clerk as Instrument Nos. 1812959 and 1710442, respectively, and comprising 118.387 acres, more or less ("Property").
- C. The Property is zoned Rural Fringe on the SLDC Zoning Map ("Current Zoning"), which allows a base density of one dwelling per 20 acres under the SLDC. One single-family dwelling is currently located on the Property.
- D. As documented in TDR File No. 2017-6 of the County Growth Management Department, the County has determined that the Property has a total of 4 remaining TDRs. The County has further determined that it is in the public interest to conserve the Property, or a portion of the Property, through the TDR Program for the following purposes ("Conservation Purposes"): conservation of wildlife habitat and corridors, agricultural land, open space, and scenic vistas.
- E. Owner desires to sever permanently the 4 remaining TDRs from the Property in accordance with the TDR Program. The specific area of the Property from which the TDRs are severed ("Sending Area" or "Sending Site") is identified on Exhibit A and in the Sending Area Plat filed in the records of the County Clerk as Instrument No. _____, at Book _____, Page ____.
- F. Section 12.14.4.1 of the SLDC provides:
- A development right shall be severed ... only by a development right certificate ["TDR Certificate"] issued by Santa Fe County. A conservation easement, restrictive covenant, or other permanent and enforceable restriction on future development shall be placed on the sending area limiting future development to the total number of development rights established by the zoning of the property minus:*
- 1. all development rights previously transferred in accordance with this Chapter [i.e., Chapter 12, Section 12.14 of the SLDC];*

2. *any development rights previously extinguished or limited as a result of a recorded covenant or plat applicable to the property;*
3. *the number of development rights to be transferred by the proposed transaction; [and]*
4. *the number of existing single-family dwellings or square footage of development allowed on the sending site.*

G. Section 12.14.6.1 of the SLDC further provides that, “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.” Finally, Section 12.14.4 of the SLDC provides that, “The restriction on future development imposed on the sending area under Section 12.14.4.1 shall be created by a written instrument approved by the County Attorney and identified on a survey plat, which shall reference the recorded instrument.”

H. The Owner intends by this Agreement to permanently sever all four (4) TDRs from the Sending Area and simultaneously establish a “permanent and enforceable restriction on future development” of the Sending Area within in the meaning of Chapter 12 of the SLDC as amended, to include Sections 12.14.4.1, 12.14.4, and 12.14.6.1.

I. The permanent severance of four (4) TDRs from the Sending Area is evidenced by TDR Certificate Nos. 2018-0001, 2018-0002, 2018-0003, and 2018-0004 issued by the County Land Use Administrator, which may be transferred or redeemed in accordance with the County TDR Program and the instructions provided on the back of the Certificates.

J. No mortgage, lien, or other security interest encumbers the Property and no irrigation water rights are appurtenant to the Property.

AGREEMENT

In accordance with the TDR Program and the Recitals set out above, which are incorporated into and made a part of this Agreement by reference, Owner hereby severs four (4) TDRs from the Sending Area and establishes the TDR Land Use Restrictions on the Sending Area, which touch and concern the land, which shall run with the land in favor of the County, and which shall be binding upon the Owner and the Owner’s heirs, successors and assigns (hereinafter collectively referred to as “Owner”), in perpetuity, whether or not these TDR Land Use Restrictions are individually recorded or noticed with subsequent grants of the Property or any division of the Property:

1. Land Use Restrictions within Sending Area

1.1 The Sending Area comprises 111.1 acres, more or less, as shown on Exhibit A.

1.2 No residential dwellings shall be constructed within the Sending Area. In addition, future "development" (as defined in the SLDC) within the Sending Area shall be further restricted as follows:

1.2.1 The Sending Area shall be used solely for the "Agricultural, forestry, and conservation/open space" purposes allowed within the Rural Fringe Zone, as identified on Appendix B of the SLDC; *provided*, however, that the Sending Area *shall not be used* for a concentrated animal feeding operation, a commercial stable, an animal waste lagoon, or any purpose requiring a Conditional Use Permit.

1.2.2 No structures other than "Accessory Structures," as defined in the SLDC, shall be constructed within the Sending Area.

1.2.3 The County shall not issue a permit for any Accessory Structure or other development within the Sending Area unless such proposed development is fully consistent with this Agreement, as determined by the Land Use Administrator.

1.3 After the effective date of this Agreement, Owner shall not grant any easement in, on, over, or under the Sending Area except as approved by the County, in writing; *provided*, however, that this restriction shall not apply to utility easements; and *provided further* that the County shall not withhold its approval of any easement unless the easement would defeat or be substantially inconsistent with the Conservation Purposes, as determined by the Land Use Administrator.

1.4 The Owner shall not subdivide the Sending Area or otherwise divide it into separate legal lots or parcels, nor shall the Owner sever the mineral estate of the Sending Area from the surface estate; *provided*, however, that nothing in this Agreement shall prohibit the creation of undivided interests in the Sending Area.

2. Existing Structures. These TDR Land Use Restrictions do not prohibit the repair, maintenance, and replacement of buildings, structures, and other improvements existing on the Sending Area on the effective date of this Agreement.

3. General Provisions.

3.1 Amendment. This Agreement shall not be subject to amendment.

3.2 Venue; Applicable Law. In any legal dispute regarding these Deed Restrictions, the New Mexico First Judicial District State Court, Santa Fe County, shall be the exclusive venue. These Deed Restrictions shall be interpreted and enforced in accordance with New Mexico Law.

3.3 County Enforcement. The County Attorney may enforce this Agreement by bringing suit against Owner, including Owner's heirs, successors, and assigns, in accordance with Section 3.2.

3.4 Construction. This Agreement shall be construed to carry out the Owner's intent to permanently sever all 4 TDRs from the Sending Area and simultaneously impose the Land Use Restrictions on the Sending Area described above.

3.5 Attorney's Fees and Costs. In the event the County prevails in an action to enforce this Agreement, including defending an action brought by Owner or Owner's heirs, successors and assigns, Owner shall pay the County's costs and reasonable attorney's fees.

IN WITNESS of the forgoing, the Parties execute this Agreement as of the latest date written below.

OWNERS:

Brad L. Holian

Kathleen S. Holian

_____ Date: _____ _____ Date: _____

SANTA FE COUNTY:

By: _____
Anna Hansen, Chair

ATTEST:

_____ Date: _____
Geraldine Salazar
Santa Fe County Clerk

Approved as to form:



R. Bruce Frederick
Santa Fe County Attorney

APPROVED:

_____ Date: _____
Penny Ellis-Green
Land Use Administrator

[Owner acknowledgement on following page]

ACKNOWLEDGEMENT OF OWNER

State of New Mexico

County of Santa Fe

The forgoing Permanent Severance of Transferrable Development Rights and Land Use
Restriction Agreement was acknowledged before me on _____ (date) by **Brad
L. and Kathleen S. Holian.**

Signature of Notarial Officer

My commission expires: _____

Exhibit A: TDR Sending Area

TDR Sending Area references Boundary Survey
plat for Lot 3D, vicinity of Glorieta, Santa Fe
County New Mexico

Parcel ID: 910011349
Total Parcel approx. 118.4 acres

Recorded in the records of Santa Fe County as
Instrument No.1710442, Book 760, Page 001

Residual of LOT 3D -
7.264 Ac. +/- Buildable Area

Glorieta Mesa Road

LOT 3D
118.402 acres +/-

TDR Sending Area of
LOT 3D 111.138 acres +/-

