

# **Transfer of Development Rights FAQs**

(and several not so frequently asked questions)

## **THE PROGRAM**

### **What is the Transfer of Development Rights Program?**

The [Transfer of Development Rights \(TDR\) Program](#) allows property owners of agricultural and other environmentally and culturally valuable land to sell their development rights in exchange for TDR Certificates. They can sell the TDR Certificates to other property owners (often developers) who can build at greater density in locations where development is more appropriate.

The [Program](#) offers landowners a financial benefit to conserve their land while giving developers an incentive to build where additional growth can be sustained by existing infrastructure. The [Program](#) is an opportunity for landowners and developers to leave a legacy of environmental stewardship and sustainable development in Santa Fe County.

The staff in the Growth Management Department administer the [Program](#) according to the regulations found in Section 12.14 of the [Sustainable Land Development Code \(SLDC\)](#), adopted by the Board of County Commissioners (BCC) in 2016, and revised by Ordinance 2023-07.

The lands that are eligible for the [Program](#) are categorized as Sending Areas or Receiving Areas.

### **What are Sending Areas and Receiving Areas?**

Land that is being preserved from development is called the Sending Area. The goal for preserving land in the Sending Area is to restore, maintain, and improve the integrity of agricultural land, open space, scenic views, special natural features, and other historic, cultural, and environmental resources for the benefit of the community, the local economy, and the environment. There are no restrictions on how the landowner can use the money from selling their TDR Certificates; however, many use the revenue to pay off a mortgage, secure a loan, save for the future, donate to a land conservation program or their favorite charity, or for any other purpose.

A Receiving Area is land that is designated for future development due to the availability of existing and planned infrastructure. The goal for development in the Receiving Area is to create complete and compact neighborhoods that offer a variety of housing options, business opportunities, and access to transit, recreation, and essential public services. The developer can only use TDR Certificates for additional density in certain zoning districts. The developer can redeem the TDR Certificate for a limited number of additional housing units or additional square footage on their project.

The specific criteria for the Sending Area and the Receiving Area are outlined in Section 12.14 of the [SLDC](#).

### **How else is the County participating in the Program?**

Santa Fe County is severing the development rights of property it owns and manages as public Open Space. The County will use the proceeds from selling the TDR Certificates to purchase additional TDR Certificates, thereby preserving more land that has agricultural, environmental or cultural value.

**Could the County designate new Sending Areas and Receiving Areas in the future?**

Yes. The BCC may change the eligibility criteria for a Sending Area or a Receiving Area. Any community in Santa Fe County can prepare a Community Plan and a Community Plan Overlay to identify additional Sending Areas or Receiving Areas within their specific community. Communities that already have an adopted Community Plan or a Community Overlay District can amend them to identify specific properties as a Sending Area or Receiving Area.

**Are there Sending Areas or Receiving Areas outside of Santa Fe County?**

No. The [Program](#) only applies to land within Santa Fe County and outside of municipal, state, federal and tribal jurisdiction.

## **SENDING AREAS**

**I want to sell the development rights to my land. What are the eligibility criteria?**

12.14 of the [SLDC](#) outlines the criteria for land that is eligible for a “Sending Area.” These are:

- From Sending areas identified by a Community District Overlay Zones;
- From areas designated as an environmental and resource protection overlay, historic protection overlay or agricultural overlay;
- From sensitive environmental lands (e.g. riparian habitats, endangered or threatened species habitat, archaeological sites);
- From agricultural land;
- From lands providing open space and preserving scenic vistas, natural features, and areas of special character; and
- Through a Transfer of Development Rights as part of a development order granting Beneficial Use and Value Determination relief.

**Is a TDR the same as a conservation easement?**

No, but they are very similar tools for permanently preserving land. Conservation easements are legal agreements between a property owner and a land trust or a similar organization. The TDR Program is only available only through Santa Fe County.

**How much does it cost?**

One expense is the fee for a licensed surveyor to create the Sending Area Plat. There is a \$25.00 fee for the Sending Area Plat Permit. There are additional fees for recording the documents at the [Clerk's Office](#). The fee for recording the documents depends on the number of pages that will be recorded.

The applicant must also provide a title report to demonstrate clean title to the property.

The property owner is responsible for paying all taxes, penalties, interest and fees due for that taxable year before a TDR Agreement can be approved.

**How many TDR Certificates can I expect from my land?**

The number of TDR Certificates depends on the size of the Sending Area and the density of development permitted within the zoning district.

The number of TDR Certificates allocated to a Sending Area is determined by dividing the acres of the Sending Area by the number of acres required to build one dwelling unit on the property. For example, if an owner of a 2.5-acre property with one house in the Traditional Community zoning district wants to sever the remaining development rights, then the calculation is as follows:

Gross Acres	2.5 acres
(minus) Acres for Existing Dwelling Units	.75
(minus) Acres of Planned Dwelling Units	0
(minus) Acres Already Restricted from Development	0
(equals) Net Acres of Sending Area	1.75
(divided by) Acres Required for one Dwelling Unit in the Zoning District	.75
(equals) TDR Certificates*	2.5

The property owner will be eligible for 2 TDR Certificates.

Land that is already prevented from development though a conservation easement, deed restriction or other legal agreement cannot be included in the calculation for TDR Certificates.

Depending on the specific purposes and impact they can have on the land, any land encumbered by a road right-of-way, trail, utility easement, setback, acequia, or floodplain ***is not*** subtracted from the acres when estimating the number of TDR Certificates.

\*If the calculation results in a fraction, the number of Certificates will be rounded down to the whole number unless the Land Use Administrator approves a minor administrative deviation pursuant to Section 4.9.7.6 of the SLCD, provided the deviation does not exceed five-tenths of a percent (.5%).

### **How does my application get approved?**

The [TDR Administrator](#) will meet with the property owner and visit the property. If the property is eligible, the [TDR Administrator](#) will prepare a Qualification Report for approval by the Land Use Administrator and the property owner. The County's Technical Advisory Committee may review a TDR Application if it includes a subdivision or land development. The property owner and the County's Legal Department will prepare a TDR Agreement, which is the written document that outlines all of the conditions for severing development rights. The BCC will consider approval of the TDR Agreement at a Public Hearing.

### **How long does it take to get my application approved for TDR Certificates?**

Each TDR application will have unique circumstances and timeframes for approval. The entire process could take as short as three months or as long as one year (or more) depending on the complexity of the application, the availability of surveyors, staffing capacity, and the availability of information that must be included in the application.

### **Can I develop in the Sending Area?**

Any new development in the Sending Area is very limited. A "dwelling unit" (e.g. – house) is not permitted in the Sending Area; however, the development of a structure is permitted if the structure is used to support the purpose of the TDR. Section 12.14.5.2 of the [SLDC](#) says, "Development on a Sending Area shall be limited to those uses and or structures that promote the values of the site for the reason the TDR Sending Area was created, so long as such development does not include any dwelling units."

For example, a Sending Area may include a multi-use trail, benches and shade structures if the purpose of the TDR is for open space. Similarly, a farmer can build a barn or storage structure in the Sending Area because the land is used for irrigated agriculture.

**What is a Sending Area Plat?**

The Sending Area Plat is a survey of the property that shows the areas that will be restricted from development, any proposed lots, and all existing and any planned development. It identifies any easements or other restrictions to future development. The Sending Area Plat is used to calculate the number of TDR Certificates that a property owner can receive by severing their development rights.

The Sending Area Plat needs to be approved by the Land Use Administrator. This requires a separate application, a \$25 fee, and review by the staff in the Building & Development Services Division. The [TDR Administrator](#) can provide the surveyor with a checklist of requirements for the Sending Area Plat.

**What is a TDR Agreement?**

The TDR Agreement is the legal document between a landowner and Santa Fe County that permanently retires the development rights to a property. The TDR Agreement outlines the conditions of the [TDR Program](#). Only the BCC can approve the TDR Agreement.

**Is the TDR permanent?**

Yes. Section 12.14.13 of the [SLDC](#) states, “Reinstitution of development rights on a Sending area is prohibited.”

**Do I still own my property?**

Absolutely. The [Program](#) does not change ownership of the property. The owner can sell the property, but the development rights will still be severed from the property.

**Do I have to allow public access to my land?**

No. Public access is not a requirement of the [Program](#), but it is not prohibited either, so a property owner can set aside land for public access if that is desired as an enhancement to the recreational or educational purposes of the TDR.

**Do I have to sever all the development rights on my property?**

No. A property owner can develop the property if there are remaining development rights based on the size of the property and the zoning district.

**Can I build a residence on my property after I have created TDRs?**

Only if permitted in the TDR Agreement and the if area where the residence will be developed is identified on the Sending Area Plat. A property owner may build a residence on their property only if there are remaining development rights and the development is located outside of the Sending Area. Then number of acres required to build a residence on the property will be subtracted from the acres of land that is used to calculate the number of TDR Certificates that can be generated from the property.

**Does the zoning district of my property change because of severing the development rights?**

No. The zoning remains the same after the TDR Agreement is approved.

**What if my property is zoned commercial, industrial or mixed use? Is the property still eligible as a Sending Area?**

No. A property cannot be a Sending Area and a Receiving Area. These zoning districts are already identified as Receiving Areas by Section 12.14 of the [SLDC](#).

**Can I include easements or other conditions when determining the Sending Area?**

Yes. Property owners can include utility easements, access easements and other types of easements or restrictions on the Sending Area Plat.

**Can I subdivide my property?**

Yes, but it is not required. Buyers and sellers of TDR Certificates can subdivide their property if the subdivision meets all the requirements of the [SLDC](#). The subdivision can be completed after the Sending Area Plat and the TDR Agreement are approved, but the size of the Sending Area cannot decrease because development rights have already severed.

**Is the Sending Area Plat the same thing as a subdivision?**

No. Section 5.4.3.18 of the [SLDC](#) states that the Sending Area Plat is not a subdivision.

**Are there any property tax benefits?**

Any changes to property taxes because of the [TDR Program](#) are determined by the County Assessor. Section 12.14.14 of the [SLDC](#) states that “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.”

**Do I need to have title insurance on the property?**

No. Title insurance only insures “clear marketable title” to the property. The County does need proof that you own the property, and will require a title report from a title insurance company. Also, when the property owner signs the TDR Agreement, they are stating and affirming that they own the property with clear title and will hold the County harmless against any claims.

**Do any lien holders need to approve the TDR Agreement?**

Not necessarily. You can still apply to the TDR program if you have a mortgage or other lien on the property. But prior liens must be either paid in full and released or subordinated to the TDR Agreement by a signed and notarized subordination agreement. Also, when the property owner signs the TDR Agreement, they are stating and affirming that they own the property without any liens.

**If a property is held in trust, do all beneficiaries of the trust need to sign the TDR Agreement?**

No. Only the trustee(s) of the trust must sign the TDR Agreement.

# **RECEIVING AREAS**

## **I want to develop my land at higher density. What are the criteria for the Receiving Area?**

According to the [SLDC](#), only the following zoning districts are designated as Receiving Areas:

- Mixed Use
- Planned Development
- Industrial General
- Industrial Light
- Commercial General

Additionally, the property must have access to public water and sewer systems and must have access from a public road. Communities may identify Receiving Areas through their Community Plan and Community District Overlay Zone.

## **Does the Board of County Commissioners have to approve my development plan because it includes TDR Certificates?**

Not necessarily. Section 12.14.12 of the [SLDC](#) states, “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.”

## **What is the incentive for using TDR Certificates in the development project?**

There are several ways a developer can redeem TDR Certificates and apply them to their project for additional density. Certificates allow the property owner to develop additional dwellings, smaller lots, taller buildings, larger areas of impervious surfaces and other incentives. Section 8 of the SLDC identifies the “dimensional relief” from applying TDR Certificates in each zoning district.

## **Must I buy the Certificates before I apply for a development permit?**

No. A developer can apply for a development without owning TDR Certificates. The developer can purchase the TDR Certificates after their development is approved. However, Section 12.14.12.1 of the [SLDC](#) states “TDR certificates shall be acquired prior to recordation of a final plat or Development Plan.”

## **How do I apply?**

There is not a separate TDR Application for a development project in the Receiving Area. The application you submit for a development project is the same as the application you would otherwise submit without using TDRs. You can apply for a development permit to the [Building and Development Services Division](#) in the Growth Management Department.

# **TDR MARKETPLACE**

## **I own TDR Certificates. Now what?**

You can sell them, keep them as an investment, donate them, give them away as a gift, or trade them for something else. Regardless of what you decide to do with them, the TDR Certificates should be secured in a safe place where they will not be lost, damaged, or stolen.

If you want to sell your TDR Certificates, you can ask the [TDR Administrator](#) to add them to the [TDR Marketplace](#). [TDR Marketplace](#) is a webpage where buyers and sellers can contact each other to negotiate a transaction. Potential buyers will email you if they are interested in negotiating a price.

The buyer must have the TDR Certificate recorded in their name at the County Clerk. Contact the [TDR Administrator](#) for assistance.

## **I don't own land. Can I still buy a TDR Certificate?**

Yes. Anyone can buy or sell a TDR Certificate. A TDR Certificate can be bought, sold, traded, held as an investment, or donated to a community organization.

## **Can the same landowner sell and buy TDR Certificates?**

Yes, but the TDR Certificate cannot be used to send and receive development rights on the same property. The development rights must be severed from one property and redeemed at a different property.

## **What is the TDR Bank?**

The TDR Bank is a depository for TDR Certificates that are owned by the County. The County buys and sells its TDR Certificates through the TDR Bank. Privately-owned TDR Certificates are not deposited into the TDR Bank, but they are advertised on the [TDR Marketplace](#) webpage at the owner's request.

## **What if I want to buy Certificates and there are not any for sale?**

A developer can negotiate a price with a private owner or buy TDR Certificates from the County through the TDR Bank. If a developer is not successful in negotiating with a private owner and if there are not any for sale in the TDR Bank, then a property owner must pay a "Development Transfer Charge" to the TDR Bank.

## **What is the Development Transfer Charge?**

The Development Transfer Charge is a fee a developer must pay in exchange for a TDR Certificate, but only if there are not any TDR Certificates for sale in the TDR Bank. The TDR Bank determines the fee (see Section 12.14.18.2 of the [SLDC](#)). The County determines the fee based on the most current estimated value of TDR Certificates.

## **How much is a TDR worth?**

The price of a TDR Certificate depends on the market for real estate development and the availability of TDR Certificates. The [Program](#) is entirely voluntary and market driven.

# **WATER RIGHTS**

## **Can a property owner get TDR Certificates for water rights?**

Yes. A property that has valid irrigation water rights can permanently retire one acre-foot per year of water rights in exchange for one TDR Certificate. The owner must submit the [Water Rights Guidance](#) to the County to demonstrate valid ownership.

## **Where can I go to get documentation about my water rights?**

Go to the [Office of the State Engineer, Water Rights Division](#) website to download a Declaration of Ownership of Water Rights.