

WORKING DRAFT

ORDINANCE NO. _____ (NEW SERIES)

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION OF CERTAIN PROPERTY AND IMPLEMENTING A TRANSFER OF DEVELOPMENT RIGHTS ASSOCIATED WITH THE GENERAL PLAN UPDATE

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. The Board of Supervisors declares that the intent of this ordinance is to amend the Zoning Ordinance in support of a transfer of development rights program associated with the General Plan Update. This ordinance is specifically intended to isolate the development rights removed as a result of the General Plan Update from a property and make those rights available for transfer. The Board finds that these amendments are reasonable and necessary for the public health, safety, and welfare and are consistent with the General Plan.

Section 2. The zoning classification of certain real property delineated on the Map identified as Document No. _____, on file with the Clerk of the Board of Supervisors of the County of San Diego, is hereby changed to add an X designator to the Special Area Regulations section.

Section 3. The following transfer of development rights program is hereby adopted for the property affected by this ordinance.

A. OBJECTIVES

(1) The purpose of these provisions is to:

- (a) preserve open space, scenic views, critical and sensitive areas, and natural hazard areas;
- (b) conserve agriculture and forestry uses of land;
- (c) protect lands and structures of aesthetic, architectural, and historic significance;
- (d) retain open areas in which healthful outdoor recreation can occur;
- (e) implement the San Diego County General Plan Update;
- (f) retain, in transferable form, those development rights removed from a property as result of the General Plan Update with consideration of regulatory and physical constraints; and
- (g) provide a mechanism whereby those development rights may be transferred to other properties.

B. DESIGNATION OF SENDING SITES

(1) Properties receiving the TDR designator with this ordinance are designated as sending sites.

(2) Each sending site established by this ordinance shall have the right to sever the rights to develop that were reduced as a result of the General Plan Update from the parcel in a sending site and to sell those rights to a transferee consistent with the objectives of this program in Section A.

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(3) The transferable rights are derived from the development constraints in place at the time the General Plan Update was adopted compared to the General Plan Update allowed densities. The number of transferable rights available to a property are calculated based on predetermined conversion factors mapped on the TDR Exhibit dated XXXXXX, on file with the Department of Planning and Land Use.

These conversion factors account for density and minimum lot size constraints in place at the time the General Plan Update was adopted such as:

- (a) the General Plan regional category and land use designations;
- (b) the Zoning Ordinance Maximum Density and Minimum Lot Size designations; and
- (c) the Groundwater Ordinance Residential Density Controls.

These conversion factors also account for other constraints addressed by regulations at the time the General Plan Update was adopted with available mapping data such as:

- (a) steep slopes;
- (b) sensitive biological habitat and wetlands;
- (c) emergency services travel time standards;
- (d) floodways and flood plains; and
- (e) dead end road length standards.

B. DESIGNATION OF RECEIVING SITES

- (1) The establishment of receiving sites should be considered for all post-General Plan Update general plan and zoning amendments that proposed to increase densities.
- (2) Receiving sites established shall be consistent with the general plan and community plan.

C. RIGHT TO TRANSFER DEVELOPMENT RIGHTS

- (1) Each legal lot established as a sending site by this ordinance shall have the right to sever the rights to develop that were reduced as a result of the General Plan Update from the parcel in a sending site and to sell those rights to a transferee consistent with the objectives of this program in Section A.
- (2) The transferee may retire the rights, resell them, or apply them to property in an eligible receiving site in order to obtain approval for development at a density or intensity of use greater than would otherwise be allowed on the land, up to the maximum density indicated in the general plan.
- (3) Any transfer of development rights pursuant to this ordinance authorizes only an increase in maximum density consistent with the general plan and shall not alter or waive the development standards of the receiving site. Nor shall it allow a use otherwise prohibited in a receiving district.

D. DETERMINATION OF TRANSFERABLE DEVELOPMENT RIGHTS

- (1) The Director shall be responsible for:
 - (a) determining, upon application by a property owner, the development rights that may be transferred from a sending site and issuing a transfer of development rights certificate upon application by the property owner.

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(b) maintaining permanent records of all certificates issued, deed restrictions and covenants recorded, and development rights retired or otherwise extinguished, and transferred to specific properties; and

(c) making available forms on which to apply for a transfer of development rights certificate.

(2) An application for a transfer of development rights certificate shall contain:

(a) a certificate of title for the sending site prepared by an attorney licensed to practice law in the state of California;

(b) a plat of the proposed sending parcel and a legal description of the sending parcel prepared by a registered civil engineer authorized to practice land surveying or licensed land surveyor;

(c) names, addresses, telephone numbers and signatures of all owners;

(d) copy of the current owner's recorded deed;

(c) applicable fees; and

(d) such additional information required by the Director as necessary to determine the number of development rights that qualify for transfer and prepare the certificate.

(3) A transfer of development rights certificate shall identify:

(a) the property owner;

(b) a legal description of the sending site on which the calculation of development rights is based;

(c) a statement of the number of development rights (quantified in dwelling units) eligible for transfer;

(d) the date of issuance;

(e) the signature of the Director or designee; and

(f) a serial number assigned by the Director.

(4) No transfer of development rights under this ordinance shall be recognized by the County of San Diego as valid unless the instrument of original transfer contains the Director's certification.

(5) Appeal. The issuance of a transfer of development rights certificate and the number of development rights eligible for transfer contained in the certificate may be appealed pursuant to the Administrative Appeal Procedures beginning at Section 7200 of the Zoning Ordinance.

E. INSTRUMENTS OF TRANSFER

(1) An instrument of transfer shall conform to the requirements of this section. An instrument of transfer, other than an instrument of original transfer, need not contain a legal description or plat of the sending parcel.

(2) Any instrument of transfer shall contain:

(a) the names of the transferor and the transferee;

(b) a certificate of title for the rights to be transferred prepared by an attorney licensed to practice law in the state of California;

(c) a covenant the transferor grants and assigns to the transferee and the transferee's heirs, assigns, and successors, and assigns a specific number of development rights from the sending site to the receiving site; and

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(d) a covenant by which the transferor acknowledges that he has no further use or right of use with respect to the development rights being transferred.

(3) An instrument of original transfer is required when a development right is initially separated from a sending site. It shall contain the information set forth in paragraph (2) above and the following information:

(a) a legal description and plat of the sending parcel prepared by a licensed surveyor named in the instrument;

(b) the transfer of development rights certificate described in Section D above; and

(c) a covenant that all provisions of the instrument of original transfer shall run with and bind the sending site and may be enforced by the County of San Diego.

(4) If the instrument is not an instrument of original transfer, it shall include information set forth in paragraph (2) above and the following information:

(a) a statement that the transfer is an intermediate transfer of rights derived from a sending site described in an instrument of original transfer identified by its date, names of the original transferor and transferee, and the book and the page where it is recorded in the County of San Diego.

(b) copies and a listing of all previous intermediate instruments of transfer identified by its date, names of the original transferor and transferee, and the book and the page where it is recorded in the County of San Diego.

(5) County Counsel shall review and approve as to the form and legal sufficiency of the following instruments in order to affect a transfer of development rights to a receiving site:

(a) An instrument of original transfer;

(b) An instrument of transfer to the owner of the receiving parcel; and

(c) Instrument(s) of transfer between any intervening transferees.

Upon such approval, the Director shall notify the transferor or his or her agent, record the instruments with the County Recorder, and provide a copy to the County Assessor. Such instruments shall be recorded prior to release of applicable development approvals for the receiving site.

F. APPLICATION OF DEVELOPMENT RIGHTS TO A RECEIVING SITE

(1) This section provides a conceptual process for application of transferred development rights to a receiving site. The specific process should be specified for a receiving site when that site is established.

(2) A person who wants to use development rights on a property in a receiving site may submit an application for the use of such rights on a receiving parcel. The application could be part of an application for a development permit. In addition to any other information required for the development permit, the application should be accompanied by:

(a) an affidavit of intent to transfer development rights to the property; and

(b) either of the following:

1. a certified copy of a recorded instrument of the original transfer of the development rights proposed to be used and any intermediate instruments of transfer through which the applicant became a transferee of those rights; or

2. a signed written agreement between the applicant and a proposed original transferor (accompanied by an application for a transfer of development rights

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certificate from the transferor) in which the proposed transferor agrees to execute an instrument of such rights on the proposed receiving parcel when the use of those rights, as determined by the issuance of a development permit, is finally approved.

(2) In the case of a privately initiated general plan amendment that include transfers of development rights to achieve a density in excess of the General Plan, the applied development rights should be extinguished at the time of final approval of the amendment.

(3) The County should also pursue general plan amendments that establish receiving area where future subdivisions and development have the ability to take advantage of transferable development rights.

(3) Where receiving areas are established. the County of San Diego may grant preliminary subdivision approval of a proposed development incorporating additional development rights upon proof of ownership of development rights and covenants on the sending site being presented to the County of San Diego as a condition precedent to final subdivision approval.

(3) No general plan amendment or final plat of subdivision, including minor subdivisions, should be approved and no development permits should be issued for development involving the use of development rights unless the applicant has demonstrated that:

(a) the applicant will be the bona fide owner of all transferred development rights that will be used for the construction of additional dwellings or the creation of additional lots;

(b) a deed of transfer for each transferred development right has been recorded in the chain of title of the sending site and such instrument restricts the use of the parcel in accordance with this ordinance; and

(c) the development rights proposed for the subdivision or development have not been previously used. The applicant shall submit proof in the form of a current title search prepared by an attorney licensed to practice law in the state of California.

Section 4. Expiration. Unless extended by ordinance approved by the Board of Supervisors, this ordinance and the resulting special area designators and transferable development rights shall expire on June 30, 2030.