

ATTACHMENT A

FINDINGS

California Environmental Quality Act (“CEQA”)

The TDR Ordinance is statutorily exempted from the California Environmental Quality Act (“CEQA”) insofar as it does not constitute a “project.” CEQA Guidelines Section 15378(b)(4) states that an action is not a “project” for purposes of CEQA, where it involves: “The creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may have a significant effect on the environment.” Several CEQA decisions have opined that fiscal programs are not projects for purposes of CEQA, while other companion decisions assert that actions leading to land use changes (but which do not actually ordain the outcome) do not produce any physical changes to the environment that would otherwise trigger CEQA. These decisions include the following projects:

- The formation of an assessment district to raise revenue for a water district. *Not About Water Comm. V. Board of Supervisors*, (2002) 95 Cal. App.4th 982, 1001.
- The formation of a community facilities district under Govt. C. sections 53311 to raise revenue in which no decision committed the agency to any school expansion or development. *Kaufman and Broad South Bay, Inc. v Morgan Hill Unified School District*, (1992) 9 Cal. App.4th 464.
- The detachment of 10,000 acres of undeveloped land from a recreation and park district was not considered a project because no land use designation would change. *Simi Valley Recreation and Park District v. LAFCO*, (1975) 51 Cal. App.3rd 648, 666.

The present situation is similar. The TDR Ordinance as currently proposed, does not commit the County to providing development credits for any particular sending or receiving sites, nor does it eliminate the possibility that any development rights could be extinguished. Therefore, the approval of an ordinance would not produce any physical changes to the environment that would trigger CEQA. On the other hand, subsequent actions of the County (or participating jurisdictions) to rezone land or amend land use policy documents (e.g., Comprehensive Plan, Coastal Land Use Plan, etc.) would be projects subject to CEQA and appropriate environmental review would have to be prepared before final decisions could be made.

Land Use Development Code (Section 35.104.060)

- a. *The request is in the interest of the general community welfare.*

The proposed TDR Ordinance specifically responds to Coastal Land Use Plan (“CLUP”) Policy 2-13 which requires the County to “encourage and assist” property owners at Naples to transfer development rights to more appropriate urban locations. This obligation, in turn, responds to a host of Comprehensive Plan and CLUP policies that collective: (i) discourage urban development beyond the urban/rural boundary, the conversion of agricultural land to urban uses, and the extension of urban services and consequent urban sprawl; and (ii) promote infill development, managing growth relative to

its ability to pay for necessary services, and the preservation of sensitive resources. These values are a matter of land use policy of the County that are intrinsic to the general community welfare.

b. *The request is consistent with the Comprehensive Plan, the requirements of the State planning and zoning laws, and this Development Code. If the Amendment involves an Amendment to the Local Coastal Program, then the request shall also be found to be consistent with the Coastal Land Use Plan.*

CLUP Policy 2-13 acknowledges the disconnect in agricultural land use designations and the legal lot density already present at Naples. Moreover, the policy provides a mechanism for resolving this conflict through a re-designation of land use, provided that three parameters are satisfied: (i) that the County discourage residential development of existing lots; (ii) that the County encourage and assist the property owner(s) in transferring development rights from Naples town site to urban areas more suited for residential development; and (iii) that the County determines that transferring development rights is not feasible. On the basis of substantial evidence in the record, the Board of Supervisors has declared that the full extinguishment of development potential at Naples through TDR is not feasible. This finding notwithstanding, the proposed TDR Ordinance maximizes the opportunity for transfers in furtherance of Policy 2-13 objectives which require the County to “...*encourage and assist the property owner(s) in transferring development rights from the Naples town site...*”. The proposed Ordinance includes a process for designating receiver sites that respects existing land use entitlement procedures. In compliance with state and local planning regulations, notice of the Planning Commission hearing on the proposed Ordinance has been published and circulated in the time and manner prescribed by law.

c. *The request is consistent with good zoning and planning practices.*

Transfer of development rights is recognized as an important planning tool to preserve important resources while respecting the rights of private property owners. The proposed Ordinance embraces this tool as a means to both to comply with and affirmatively further the interest of the general community welfare.