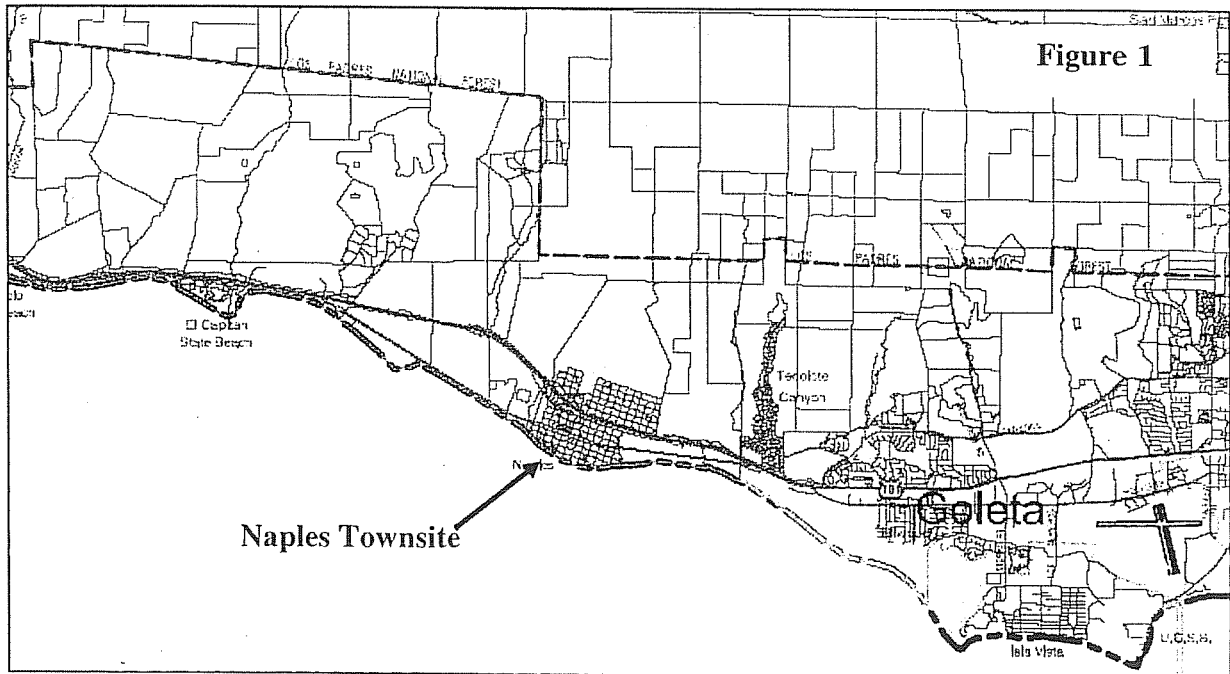


SANTA BARBARA COUNTY PLANNING COMMISSION
Staff Report for the Santa Barbara Ranch Project
Transfer of Development Rights

Hearing Date: November 7, 2007
Staff Report Date: October 26, 2007
Case Nos.: Not Applicable
Environmental Document: Exempt

Supervisorial District: Third
Staff: Dianne Black, Development Services Director
Tom Figg, Project Manager
Phone #: 377-9116



1.0 REQUEST

Request by County staff that the County Planning Commission receive a report on the feasibility of transferring development rights at Santa Barbara Ranch and make recommended findings to the Board of Supervisors, along with comments on an enabling ordinance, preparatory to commencing formal hearings in connection with the proposed development of the Naples townsite located two miles west of the City of Goleta, APN's 079-080-026 to .081-240-018, Third Supervisorial District. *(Continued from September 26, 2007)*

2.0 RECOMMENDATION AND PROCEDURES

Staff recommends that the Commission take the following actions:

1. Receive supplemental information regarding the feasibility of transferring development rights from Santa Barbara Ranch;
2. Recommend that the Board of Supervisors find that: (i) only a partial extinguishment of development potential at Naples is possible; (ii) partial extinguishment will not resolve the underlying conflict that gives rise to Policy 2-13; and (iii) the land use designation of AG-II-100 should be re-evaluated based upon the analysis in Section 8.2 of this staff report; and
3. Provide comments on the TDR Enabling Ordinance and recommend that the Board of Supervisors formally initiate the process of amending the County Code in order to maximize the potential for partial transfers at Santa Barbara Ranch.

3.0 JURISDICTION

The Santa Barbara Ranch Project entails a broad array of legislative and quasi-judicial land use approvals. Precedent to all of these actions, the County must first make a determination of TDR feasibility under CLUP Policy 2-13. The Planning Commission's role in each instance is advisory to the Board of Supervisors. As noted in Section 5.3, this is an iterative process and the TDR Ordinance will ultimately return for final consideration by the Commission.

4.0 RECAP FROM MEETING OF SEPTEMBER 26, 2007

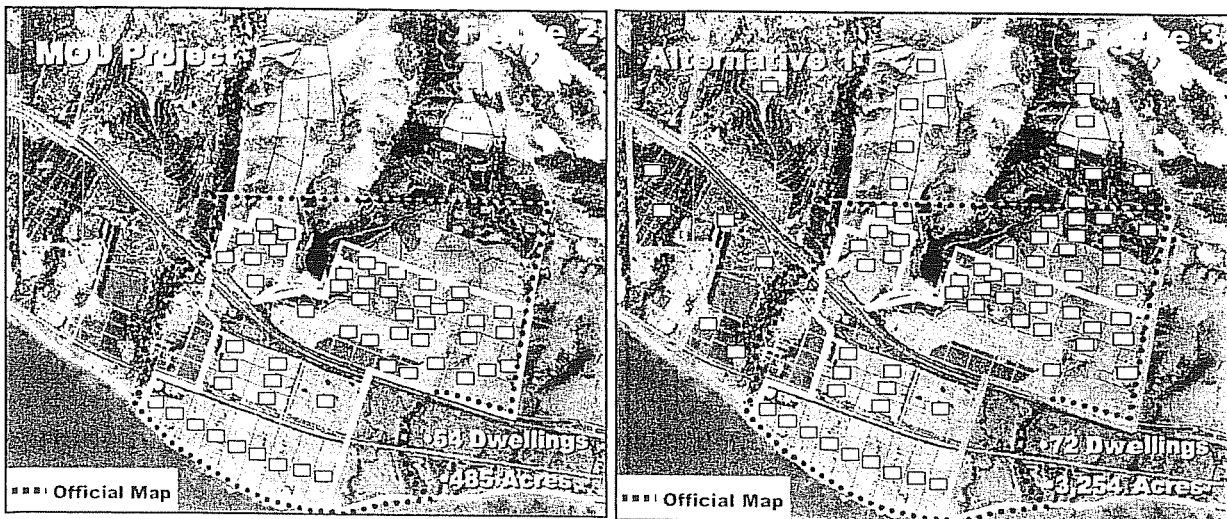
At its meeting of September 26, 2007, the Planning Commission received a detailed presentation on the matter of transfer of development rights ("TDR") in connection with the Santa Barbara Ranch Project. In summary, the need to study TDR feasibility arises from the plain and simple reality that legal lots already exist at Naples that could result in a residential density that far exceeds the underlying agricultural land use designation. This conflict is expressly recognized in the County's Coastal Land Use Plan ("CLUP") and provides for a re-designation of land use in the event that development rights cannot otherwise be directed to more appropriate urban locations. The issue is not whether development may occur at Naples, rather, it is a question of how much and where it will be allowed. In this regard, the Planning Commission was presented with the following facts:

- **Litigious History.** In 1995, the County adopted the Official Map of Naples, recognizing 274 legal parcels. The Map's adoption was precipitated by a lawsuit which struck down the County's involuntary lot merger provisions (*Morehart v. County of Santa Barbara*) and conforms with *Gardner v. Sonoma County*, a subsequent California Supreme Court decision recognizing lot creation by deed conveyance. Because the Official Map only recognizes 274 legal lots (as opposed to over 400 lots alleged by Naples landowners), the Map's adoption has led to further litigation:

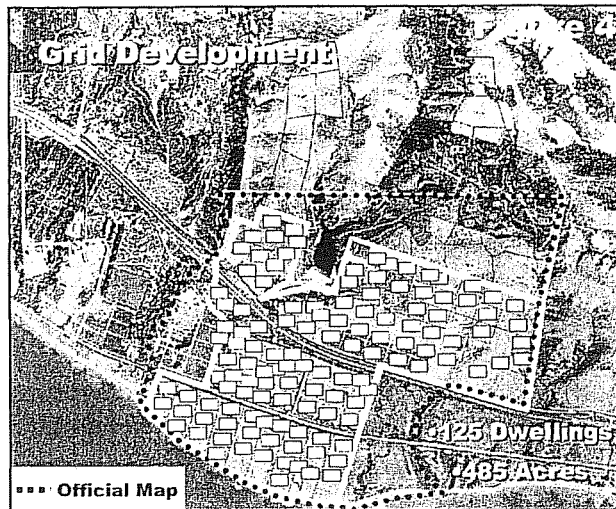
- Santa Barbara County Superior Court Case No. 179265, challenging the County’s Antiquated Subdivision Overlay Ordinance, alleging inverse condemnation and seeking monetary damages for alleged violations of civil rights and seeking declaratory relief.
- Santa Barbara County Superior Court Case No. 203256, challenging the action of the County and the California Coastal Commission in adopting and certifying Ordinance No. 4084 which, among other things, regulates private wastewater facilities.
- Threatened and tolled litigation, challenging the County’s 1994 rescission of its antiquated subdivision regulations, adoption of the Official Map and determination of parcel validity within the Naples townsite.

- **Memorandum of Understanding.** In late 2002, the County entered into a Memorandum of Understanding (“MOU”), setting forth a protocol and structure for the submission of project applications for Santa Barbara Ranch as a part of a potential global resolution of pending and threatened litigation. The MOU stays pending litigation claims, prevents piecemeal development applications, and provides a protocol for processing applications. The MOU does not preordain an outcome but does prescribe a specific process to be followed, including deliberation time frames.

- **Development Scenarios.** Under the MOU, two basic development options have been put forth by the landowner: a 54-unit residential planned development and related improvements on Santa Barbara Ranch totaling 485 acres (the “MOU Project”) and a 72-unit rural estate development encompassing Santa Barbara Ranch plus the adjacent 2,769-acre Dos Pueblos Ranch (“Alternative 1”). As summarized in Table 1 and graphically shown in Figures 2 and 3, the MOU Project and Alternative 1 extinguish development potential from 165 and 184 Naples lots within the Coastal Zone, respectively.



- **Baseline Scenario.** The baseline scenario against which both the MOU Project and Alt 1 should be compared is known as “Grid Development.” This particular scenario assumes that development would generally follow the rectilinear pattern of the existing lots and mapped street locations appearing on the Official Map. Taking into account policy conflicts and environmental constraints, it is estimated that between 114 and 125 Official Map lots have the potential for residential development.



- **Land Use Conflict.** Existing land use and zoning designations for the Naples townsite translates to a hypothetical residential development potential of 14 lots, far less than the 274 legal lots recognized in the Official Map and the 125 buildable lots at Santa Barbara Ranch. In short, existing agricultural land use designations and implementing zoning ordinances at Naples do not align with the residential lot densities already in existence. As a means of resolving this conflict, the County’s Coastal Land Use Plan (“CLUP”) contains policy language that is expressly and solely applicable to Naples. Policy 2-13 was adopted in 1982 at the time of the certification of the County’s Local Coastal Program and states:

“The existing townsite of Naples is within a designated rural area and is remote from urban services. The County shall discourage residential development of existing lots. The County shall encourage and assist the property owner(s) in transferring development rights from the Naples townsite to an appropriate site within a designated urban area which is suitable for residential development. If the County determines that transferring development rights is not feasible, the land use designation of AG-II-100 should be re-evaluated.”¹

- **TDR Study.** In compliance with Policy 2-13, the Solimar Research Group was commissioned to evaluate the feasibility of TDR at Naples. For a variety of reasons, Solimar concluded that a full extinguishment of development rights at Santa Barbara Ranch is not feasible but that it may be possible to transfer at least some development provided that a TDR Band is sufficiently capitalized. The potential number of lots from which development is extinguished depends on which development scenario is selected and what priorities are placed on areas of the site to be preserved. The overall capacity to extinguish development ranges from

¹ The term “feasible” is defined in the California Coastal Act as meaning “...capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors (Section 30108 of the California Public Resources Code).

a low of \$20 million (benchmarked against the Ellwood Mesa preservation project) to a high of \$73 million (representing the maximum potential of receiver sites).

- **Partial Feasibility.** Solimar has established \$20 million as the realistic near-term target for undertaking TDR as compared to the \$126 - \$205 million required to fully extinguish development at Naples under the Grid, MOU and Alternative 1 configurations. The resulting shortfall translates to a lot density that still exceeds the underlying agricultural land use designation. If full extinguishment of development potential at SBR through TDR is not possible, the underlying conflict between lot density and existing agricultural designations remains. The means by which to resolve this conflict is through a re-designation of land use. This is the expressed purpose of Policy 2-13.

- **Enabling Ordinance.** An overarching objective implicit in the County's Comprehensive Plan is to preserve rural areas and redirect development to locations within the designated urban limit line. CLUP Policy 2-13 reinforces this objective and requires the County to "...encourage and assist the property owner(s) in transferring development rights from the Naples town site...". While it is not feasible to extinguish all development rights at Santa Barbara Ranch, a TDR Ordinance would maximize its potential. Such an Ordinance has been crafted in consultation with key stakeholders along with an implementing framework that takes a "programmatic" approach to TDR.

5.0 ISSUE SUMMARY

5.1 Conflict Resolution

There are an abundance of goals and policies that promote the preservation of agricultural lands, sensitive habitat and visual resource values that make up the Gaviota Coast. For areas within the Coastal Zone (which include 93% of the Naples lots), these policies flow from the California Coastal Act. The Act acknowledges the potential for conflict (Section 30007.5) and Policy 2-13 was expressly crafted to harmonize public objectives with private property rights. Along these lines, the legislature expressly declared that the Act: "*...is not intended, and shall not be construed as authorizing the commission ... or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefor. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.*"

A finding of TDR feasibility only has bearing on whether Santa Barbara Ranch may be re-designated to a use other than agriculture. A factor to consider is that applications for development of a single family residence and separate guest house on each lot at Naples are permitted under *present* zoning. Without a re-designation, Naples can be developed under its current Grid configuration. The rectilinear pattern is indiscriminate relative to underlining

resources, and development under this scenario would like compromise the very resources that the Coastal Act and County seek to protect. A further point to consider is that the current agricultural zoning is not equipped to regulate large scale residential development. A re-designation of land use, on the other hand, would provide a mechanism by which to comprehensively plan the property and impose development standards protective of the resource values. So doing would enable the County to exact significant public benefits in the form of agricultural and open space easements, beach access and coastal trails. This could not otherwise be accomplished on a piecemeal, incremental and fragmented basis. This is illustrated by the comparative statistics in Table 1 below.

TABLE 1: ALTERNATIVE CONFIGURATIONS	Grid Development			NOTES: 1. Figures 2, 3 & 4 provide schematic representations of approximate residential development density and do not depict actual lot configurations. 2. Grid Development is based on estimates derived from the Revised Draft EIR and pertains to Santa Barbara Ranch only.		
	Coastal	Inland	Total			
Total Area (Acres)	352	133	485			
Land Use (Acres)						
Ag Land Preserved	0	0	0			
Open Space Preserved	0	0	0			
Coastal Access & Trails	0	0	0			
Lots						
Existing Official Map	203	16	219			
New Residential	105	20	125			
Net Reduction	98	(4)	94			
	MOU Project			Alternative 1		
	Coastal	Inland	Total	Coastal	Inland	Total
Total Area (Acres)	352	133	485	628	2,621	3,249
Land Use (Acres)						
Ag Land Preserved	133	4	137	271	2,358	2,629
Open Space Preserved	162	26	188	212	160	372
Coastal Access & Trails	8	0	8	8	1	10
Lots						
Existing Official Map	203	16	219	217	18	235
New Residential	38	16	54	33	39	72
Net Reduction	165	0	165	184	(21)	163

A final consideration is the acknowledgement that a re-designation of land use can actually increase the prospects for TDR. This is accomplished through a combination of lot mergers, reconfigurations and newly created parcels. The net result is less lots: 54 under the MOU Project and 72 under Alternative 1, compared to 125 buildable lots under the Grid. This, in turn, translates to less development value that must be transferred. In short, the MOU and Alternative 1 each represent examples of TDR internal to the project; the MOU extinguishes development from 67 buildable Grid lots within the Coastal Zone while Alternative 1 extinguishes a minimum of 72 lots (Table 1). The result is a smaller “feasibility gap” relative to what Solimar has estimated to be the outside limits of receiver site valuation (Table 2). Assuming an initial Bank capitalization of \$20 million, the number of Naples lots remaining under the Grid scenario ranges from 88 to 121, compared to the MOU Project ranging from 23 to 51 lots and for Alternative 1 ranging from 16 to 37 lots (Table 3).

TABLE 2: FINAL REVISED 2007 TDR STUDY UPDATE	Grid (125 Lots)	MOU (54 Lots)	Alt 1 (72 Lots)
Average House Size (Sq.Ft.)	3,660	4,500	4,631
Development Right Value			
Total	\$205 M	\$126 M	\$155 M
Average/Lot	\$1.64 M	\$2.24 M	\$2.07 M
Receiver Site Valuation Capacity	\$73.2 M	\$73.2 M	\$73.2 M
Valuation Differential	\$131.8 M	\$52.8	\$81.8
SOURCES: Santa Barbara Ranch Transferable Development Rights (TDR) Feasibility Analysis (page 59), Solimar Research Group, March 3, 2006. Summary Report to Update the Santa Barbara Ranch TDR Feasibility Study (Table 4.1, page 28), Solimar Research Group, Inc., August 30, 2007.			
NOTES: Figures shown in Table 1 reflect a 70% downward adjustment in maximum development proposed under each scenario.			

TABLE 3: TRANSFER RATIOS (NAPLES LOTS ONLY)	Scenario #1 Maximum Transfers	Scenario #2 Protect Viewshed	Scenario #3 Protect Coastal Bluff
Grid Scenario			
Existing Naples Lots (Net)	125	125	125
Lots Transferred	37	32	4
Lots Remaining	88	93	121
MOU Project			
Existing Naples Lots (Net)	54	54	54
Lots Transferred	31	25	3
Lots Remaining	23	29	51
Alternative 1			
Existing Naples Lots (Net)	40	40	40
Lots Transferred	18	24	3
Lots Remaining	22	16	37
SOURCES: Summary Report to Update the Santa Barbara Ranch TDR Feasibility Study (Tables 6.1, 6.2 and 6.3; page s 42, 43 and 44), Solimar Research Group, Inc., August 30, 2007.			
NOTES: Each Transfer/Extinguishment Scenario is based on an initial TDR Back capitalization of \$20 million. Scenario #1 reflects the maximum number of lots for which development rights can be transferred or extinguished; Scenario #2 seeks to eliminate lots for which development would otherwise be visible from Hwy 101; and Scenario #3 seeks to eliminate lots located south of Hwy 101, starting with those lots with ocean frontage.			

5.2 Program Alternatives

While it may not be feasible to fully extinguish or transfer development rights from Naples, Policy 2-13 nonetheless requires the County to “...encourage and assist the property owner(s) in transferring development rights from the Naples town site...”. In compliance with this policy, a TDR Ordinance and Program Framework have been crafted in consultation with key stakeholders. While the parties generally embrace the spirit of TDR and recognize the urgency of adopting enabling regulations, they differ on several fundamental aspects of the program’s

implementation. The applicant advocates for an unconstrained free market approach to TDR, while the Naples Coalition believe that participation should be compulsory. Such mandatory participation would include the irrevocable offer to sell development rights and a phased release of lots commensurate with capitalization of a TDR Bank. The obligatory “hold” period of participation would be eight years as measured from the date of Coastal Commission approval (roughly the equivalent of 10 years from the effective date of County approval).

As written, the proposed Enabling Ordinance is silent on the question of participation. Instead, issues of hold and compulsory selling are left to negotiation between the applicant and the County as part of a broader Development Agreement required for the project. Staff advocates this approach because it allows for an outcome that is mutually acceptable to the parties rather than dictate parameters that could invite further litigation and undermine overall preservation objectives. By County Code, the Development Agreement would be returned to the Planning Commission and Board of Supervisors for consideration as part of the broader Santa Barbara Ranch Project. Should the Commission concur with this approach, it may wish to express wish to its expectations with regard to the negotiating parameters. Alternatively, it may choose to recommend that these parameters be formalized within the Enabling Ordinance. Either way, the following options are offered for consideration:

5.2.1 TDR Participation

- a. **Option 1.** This option is based on the premise that: (i) development must be delayed to enable the TDR Bank to be come fully established and capitalized; and (ii) the sender site applicant must be compelled to sell its lots under a prescribed procedure in order for the Bank to raise capital for a known commodity. Under this option, the issuance/effectiveness of entitlements on the entire project would be stayed for an initial period of four years, commencing upon County approval, followed by a staged release of lots depending upon capitalization of the TDR Bank. The hold period would be discontinued after eight years. During the period of hold, the applicant would be obliged to sell its lots based on a value determined by a third party appraiser mutually selected by the TDR Bank and the applicant.
- b. **Option 2.** This option is based on the premise that the period of hold and applicant participation should be moderated relative to benchmarks identified in the Solimar study and concerns regarding possible takings. Under this scenario, the entitlements on a select number of Naples lots, equivalent in value to the \$20 million target suggested by Solimar (adjusted for inflation since the Elliwood-Mesa transaction), would be held for an initial period of four years. During this initial period, the applicant would be give priority to the TDR Bank for purchase of TDR credits by offering the Bank the right of first refusal to match, within a reasonable time period, bonified offers to purchase individual Naples lots. Provided the Bank successfully exercises this option and acquires lots during the initial period, the first right of refusal would be extended to encompass all lots within designated TDR priority areas.

- c. **Option 3.** This option is based on the premise of free market principles - that is, the price that a buyer could reasonably be expected to pay and a seller could reasonably be expected to accept. Consistent with these principles, the exchange or extinguishment of development rights would be voluntary whereby sellers and buyers would both need to be incentivized to participate for a TDR program to be successful. Under this scenario, there would be no expressed hold on entitlements nor would the applicant be compelled to sell to the TDR Bank. Instead, the Bank would act like any other potential buyer in the market place, free to tender offers and negotiate TDR transactions.

5.2.2 TDR Ordinance

As for comments on the TDR Ordinance, staff would suggest that the Commission keep focus on the broad policy issues rather than on the details of administration. Broad policy issues include: (i) delineating receiver site eligibility criteria (including geographic area); (ii) enacting a processing for assigning density credits; and (iii) establishing an amenity allowance to compensate neighborhoods for accommodating increased density. Furthermore, it would be prudent for the Commission to defer judgment on setting TDR priorities until it begins its deliberations on Santa Barbara Ranch Project as a whole. This would enable the Commission to become better acquainted with lot siting and resource values particular to each development scenario by which to set extinguishment priorities. These issues, as well as those concerning overall program administration (e.g., formation of the TDR Bank, etc.) would best be deferred until after Board of Supervisors decides to formally initiate the adoption process.

6.0 APPEALS PROCEDURE

As noted in Section 4.0, the Planning Commission's role is advisory to the Board of Supervisors. The TDR Feasibility Study and proposed Enabling Ordinance are not appealable actions; instead, the Board will serve as the decision making body.

ATTACHMENTS

The staff report from the Planning Commission's meeting of September 26, 2007, are posted on the County's website under Santa Barbara Ranch (<http://sbcountyplanning.org/projects/O3DVP-00041/index.cfm>).