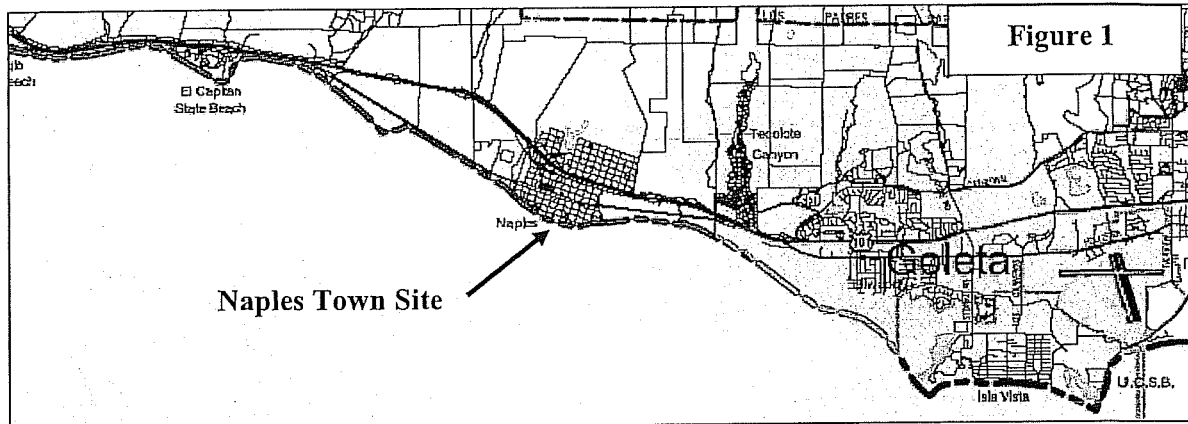


**ATTACHMENT D**  
**PLANNING COMMISSION STAFF REPORTS**

**SANTA BARBARA COUNTY PLANNING COMMISSION**  
**Staff Report for Transfer of Development Rights**  
**Enabling Ordinance**

Hearing Date: July 23, 2008  
Staff Report Date: July 9, 2008  
Case Nos.: 08ORD-00000-00008  
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 a draft Ordinance establishing a policy and procedural framework for transferring development rights and make a recommendation to the Board of Supervisors in association with the Naples town site located two miles west of the City of Goleta, APN's 079-080-026 to 081-240-018, Third Supervisorial District. (Continued from May 7, 2008, June 4, 2008, and June 5, 2005).

## 2.0 RECOMMENDATION AND PROCEDURES

Staff recommends that the Commission take the following actions:

1. Receive a report on a draft TDR Ordinance;
2. Identify Ordinance changes as the Commission may determine appropriate; and
3. Recommend that the Board of Supervisors: (i) adopt the findings in Attachment A; (ii) adopt the TDR Ordinance in Attachment B, as revised; (iii) endorse designation of non-governmental organization ("NGO") to serve as the TDR administrative authority pursuant to Section 35.64.090 of the Ordinance; and (iv) provide all reasonable assistance (without financial obligation) to facilitate implementation of the TDR Ordinance, including recruitment of an NGO to administer the program.

### 3.0 JURISDICTION

The TDR Ordinance is associated with the Santa Barbara Ranch Project which entails a variety of legislative and quasi-judicial land use entitlements. The Planning Commission's role in each instance is advisory to the Board of Supervisors.

### 4.0 INTRODUCTION

#### 4.1 Policy 2-13

The Naples town site is a small lot subdivision dating back to 1888, encompassing an 800-acre area on the Gaviota coast, located two miles west of the City of Goleta. Under an Official Map approved by the County in 1995, the town site is divided into 274 legal parcels as compared to an underlying agricultural land use designation that permits only 14 lots. As a means of resolving the disconnect between legal lots and land use density, the County's Coastal Land Use Plan encourages TDR to relocate or otherwise extinguish development from Naples. The specific language of CLUP Policy 2-13 reads as follows:

*“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.”*

Under the terms of a cooperative Memorandum of Understanding entered into with the County in late 2002, the owner of Santa Barbara Ranch has made application for a 54-unit large lot residential development totaling 485 acres and encompassing 80% of the lots comprising Naples (commonly referred to as the “MOU Project”). The owner of the adjacent Dos Pueblos Ranch property subsequently consented to include its property with Santa Barbara Ranch to form a larger proposal known as Alternative 1. Together, Santa Barbara and Dos Pueblos Ranch represent 86% of the Official Map lots and 90% of acreage comprising Naples.

#### 4.2 TDR Feasibility

In compliance with CLUP Policy 2-13, a series of studies were undertaken by the Solimar Research Group (under contract to the County) to evaluate the feasibility of TDR for three possible scenarios: (i) the existing baseline condition known as the “Grid”; (ii) the MOU Project; and (iii) Alternative 1. The TDR studies conclude that: “...while it may be possible to extinguish at least some development potential at Naples, a complete extinguishment of development rights is improbable.” These findings and relevant documents were the subject of separate public hearings by the Planning Commission and Board of Supervisors in late 2007 and early 2008.

As provided in CLUP Policy 2-13, the determination of TDR feasibility is made by the County. Pursuant to this authority, the Board of Supervisors affirmed the recommendation of the County Planning Commission and declared on February 5, 2008, that: (i) only a partial transfer of development potential at Naples/SBR is possible; and (ii) the land use designation of AG-II-100 should be re-evaluated as provided by Policy 2-13 of the CLUP. The Board also concurred with the County Planning Commission that a TDR program should be market-based and voluntary in scope. In so doing, the Board authorized and directed staff to finalize a TDR Ordinance and initiate the adoption process.

### 4.3 Initial Program Framework

Following initial release of the TDR Study in March 2006, a series of informal discussions subsequently ensued between various stakeholders with the guidance of Supervisors Salud Carbajal and Brooks Firestone. The informal TDR Working Group consisted of representatives of the County, City of Santa Barbara, Naples Coalition (and constituent members), and SBR applicant/landowner. Representatives from Bermant Development as well as officials from the Cities of Goleta and Carpinteria also participated at key points in the process. Through this collaborative process, and with the assistance of the Solimar Research Group, a TDR Ordinance was devised and embodies the following elements:

- Prioritizing Naples lots for preservation, identified by the Board of Supervisors, for the purposes of extinguishing development rights from one combination of the following locations: (i) lots most visible for Highway 101; (ii) lots located within the coastal zone; (iii) lots located on the bluff south of Highway 101; (iv) lots located on productive agricultural land; and/or (v) lots located within or near environmentally sensitive habitat.
- Creating a commodity for receiving sites called “density credits.” Each credit represents one residential unit above the existing baseline density of each receiver site. Developers would purchase credits based on the market value associated with each receiver site. Market value is benchmarked against what developers are willing to pay, generally ranging between 18% and 20% of the selling price for an additional residential unit.
- Adopting receiver site eligibility criteria. In this regard, the following criteria has been proposed: (i) sites located within South Coast Housing Market; (ii) sites without severe environmental constraints so as to preclude development by virtue of slopes, flood plains, geologic hazards and ESHA; (iii) sites not involving prime agricultural land; and (iv) sites that are currently proposed for upzoning or for which second dwellings are otherwise allowed, regardless of all other criteria.
- Enacting a process for assigning density credits. A four step process discretionary is suggested: (i) abbreviated applications are filed by owners/developers; (ii) requests are prescreening by County staff to determine receiver site eligibility; (iii) preliminary non-

binding assignments of density credits are made by the Planning Commission; and (iv) development plans are processed for approval along with assignment of density credits.

- Establishing a “TDR Authority” to serve as an investment and administrative intermediary in the TDR process. Activities of the Authority would include: (i) establishing fair market prices and transfer ratios; (ii) buying development rights and selling density credits; (iii) attracting capital investment and servicing a revolving trust fund for ongoing TDR transactions; and (iv) facilitating inter-jurisdictional TDR agreements between the County and other potential participants (e.g., cities, USCB, etc).
- Incentivizing receiver site areas and award of density credits through establishment of “amenity funds.” For each five density credits that are sold and exercised in a particular community plan area, it is proposed that 10% of the total sale proceeds be earmarked for amenity enhancements and infrastructure improvements in those specific neighborhoods where density credits are awarded.
- Mitigating investment risk and retaining commodity value through policies that limit developer alternatives for achieving greater market-rate densities. This would be accomplished by requiring that all upzoning, including agricultural land conversions, occur within the framework of the TDR Program (i.e., purchase of density credits or equivalent measures).

In summary, the simple policy objective of the TDR Ordinance is to transfer or otherwise extinguish as much development potential as possible in furtherance of specific preservation goals. At present, there are 274 legal lots at Naples as compared to an underlying agricultural land use designation that allows for a residential density that is far less (i.e., 14 lots). Rather than focus on specific receiver sites or debate valuation methodology, the TDR Ordinance is programmatic in nature. That is, the determination of where density may be transferred is a matter to be determined by the Planning Commission on a case-by-case basis. In other words, the Ordinance merely outlines a procedure to be followed in designating receiver sites; its adoption by no means compromises the County’s control over specific projects or land use.

## 5.0 ISSUE ANALYSIS

### 5.1 Ordinance Update

On May 7, 2008, the Planning Commission conducted the first of three hearings on a draft of the TDR Ordinance. The hearing was subsequently continued to June 4<sup>th</sup> and resulted in consensus on a number of issues that have been incorporated into the revised draft Ordinance appearing in Attachment B (e.g., exempting zone change applications received before the effective date of the Ordinance, incorporating provisions regarding culturally significant sites, and miscellaneous clarifications). After a third continued hearing on June 5th, the Commission conceptually endorsed the Ordinance subject to the changes summarized below. These changes are reflected

in “redlined” form in Attachment B (i.e., underlining denotes proposed additions and stricken language is to be deleted).

- **Geographic Applicability:** The Commission recommended that the geographic eligibility of potential receiver sites be limited to urban areas of the South Coast Housing Market Area. As previously drafted, the Ordinance allowed for rural sites to be considered at the discretion of the Board of Supervisors once, in their sole judgment, potential urban sites have been exhausted.
- **Setting of Priorities:** The Commission recommended that: (i) the process for prioritizing sender site lots proceed incrementally as funds are raised; and (ii) voluntary donors be allowed to designate their own priorities while requiring those who purchase TDR credits to abide by the priorities set by the County. As previously drafted, the Ordinance anticipated a one-time designation of priorities once the outcome of entitlement hearings on the Santa Barbara Ranch Project have concluded.
- **Application Process:** The Commission recommended that an expedited process for processing receiver site applications be instituted without actually defining specific time frames within the Ordinance. As previously drafted, the Ordinance prescribed an initial period of 30 days for the P&D Director to determine basic eligibility; afterwards, the process would follow normal County protocols.
- **Upzoning:** The Commission recommended that the purchase of TDR credits not be mandatory; rather, is it proposed that a density bonus program be substituted in place of compulsory participation. As previously drafted, the Ordinance required that all upzoning that results in higher residential density be subject to the purchase of development credits.
- **Amenity Funds:** The Commission recommended that: (i) an allowance for neighborhood amenities be provided up to an amount equal to 10% of the value of TDR credits for each receiver site; and (ii) actual amenity fund allocations be subject to Planning Commission approval as part of the entitlement process for each receiver site. As previously drafted, the Ordinance left the amenity fund negotiation and allocation process to the discretion of the TDR Authority, subject to the 10% valuation threshold.
- **TDR Pricing:** The Commission recommended that the methodology for valuing TDR credits be established in guidelines approved by the Board of Supervisor so as to ensure equitable treatment and provide certainty to prospective receiver site applicants early on in the process. As previously drafted, the Ordinance did not prescribe appraisal guidelines and left the valuation process largely to the TDR Authority.
- **Administrative Options:** The Commission recommended that the Board play as active role as possible taking into account budget constraints and other competing priorities. As previously drafted, the Ordinance provided flexibility for County participation but did not

prescribe a specific level of involvement beyond the processing procedures for determining receiver site eligibility.

<b>TABLE 1</b>	<b>ADMINISTRATIVE OPTIONS</b>	
	<b>Active Participation</b>	<b>Passive Participation</b>
<b>Program Administration</b>	Discount or Waive Fees for Processing TDR Applications	Obtain Full Cost Recovery as With All Other Land Use Matters
<b>TDR Authority Designation</b>	Designate County as the TDR Authority & Provide Staff Support	Assign Responsibility to a Non-Governmental Organization (NGO)
<b>Program Capitalization</b>	Help Capitalize the TDR Program Through Direct Contributions	Provide No Financial Support and Defer Fund Raising to the TDR Authority

## 5.2 Optional Modifications

A centerpiece of discussions at the Commission's last hearing on June 5<sup>th</sup> was the need to incentivize potential receiver site owners to apply for designation. The approach taken in the redlined Ordinance appearing in Attachment B is to: (i) offer inducements in the form of development concessions (Section 35.64.070); and (ii) provide a measure of certainty in valuing TDR credits (Section 35.64.090.C.) It is unknown whether these provisions are sufficient to induce receiver site participation by means of density bonus as opposed to applying for rezones. Should the Commission that believe that more aggressive measures are needed, two additional options are possible:

**Price Restriction.** Amend Section 35.64.090.C. by adding a new subpart "4" to read as follows: *"Until January 1, 2010, the maximum price payable for a development credit shall be computed as 15% of the average per unit selling price of dwelling units in similar projects located in the general vicinity as derived from comparable sales by the appraiser. On January 1, 2010, and on the annual anniversary date thereafter, the maximum price payable for a development credit shall be reviewed by the Board and adjusted up or down as it determines, at its sole discretion, is necessary and appropriate to induce receiver site applications. The Board's review shall consider, among other factors, the number of applications received for residential zone changes during the previous twelve months compared to the number of applications for receiver site designation."*

**Preliminary Valuation.** Amend Section 35.64.090.C. by adding a new subpart "5" to read as follows: *"Upon the determination of receiver eligibility pursuant to Section 35.64.060.B.2., and within 30 days of the applicant's submittal of a preliminary conceptual plan and processing fee as provided in Section 35.64.060.B.3, the TDR Authority shall furnish the applicant with an estimate of value of the development credits associated with the preliminary conceptual plan. Within 30 days following the Commission's determination of maximum density*

*pursuant to Section 35.64.060.B.3, the TDR Authority shall furnish the applicant with an update of its estimate to reflect the maximum density determined by the Commission. The estimates of valuation, in each instance, shall be non-binding as to the ultimate purchase of development credits and shall be furnished solely to assist the applicant in determining project feasibility.”*

## 6.0 APPEALS PROCEDURE

The proposed TDR Ordinance is not an appealable action; instead, the Board of Supervisors will serve as the decision making body. It is further noted that project approvals for the Santa Barbara Ranch Project fall with the jurisdiction of the County Planning Commission, while the TDR Ordinance is potentially applicable to all unincorporated areas of the County. The Cities of Santa Barbara and Goleta have also indicated interest in participating in a TDR Program as it pertains to their respective jurisdictions. On June 18, 2008, the Montecito Planning Commission was consulted on the Ordinance’s potential application to its particular geographic area or purview. After considerable discussion, the Commission declined to endorse the Ordinance. On July 22<sup>nd</sup>, staff is scheduled to make a presentation to the Santa Barbara City Council and will report the results to the Planning Commission at its hearing on the following day.

## ATTACHMENTS

- A. TDR Ordinance Findings
- B. Revised Draft TDR Ordinance

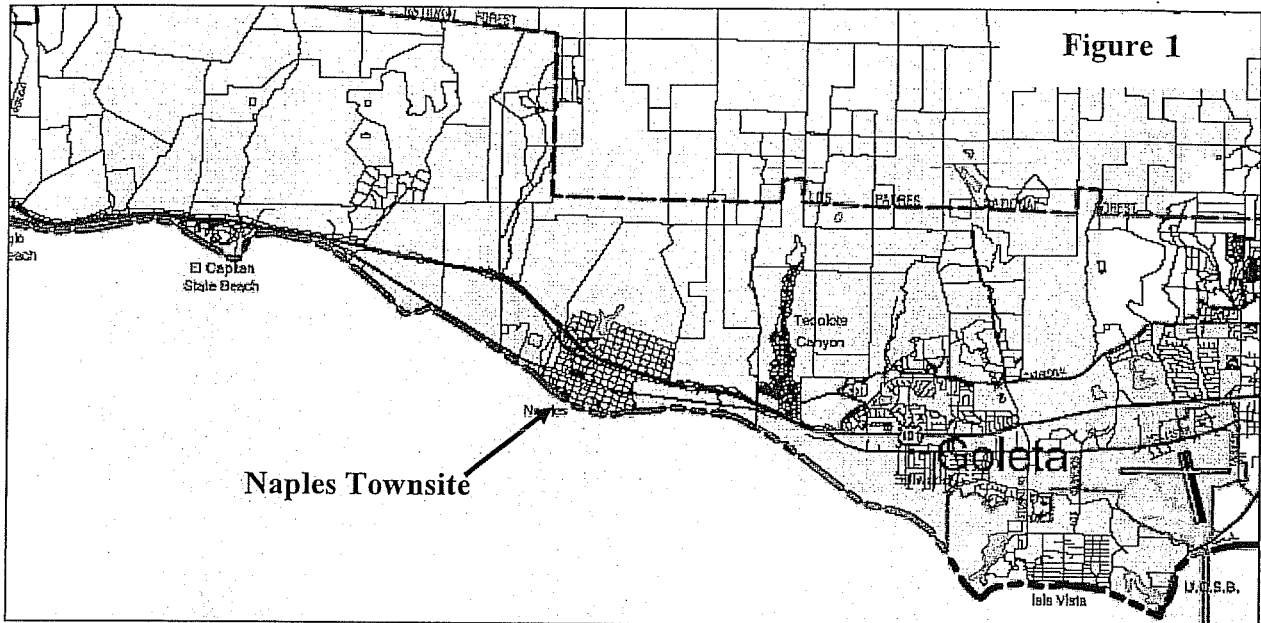
*(NOTE: Staff reports from the prior Planning Commission hearings on this item have been posted on the Santa Barbara Ranch Project webpage and may be viewed at: (<http://sbcountyplanning.org/projects/03DVP-00041/index.cfm>)).*



**MONTECITO PLANNING COMMISSION**  
**Staff Report for Transfer of Development Rights**  
**Enabling Ordinance**

Hearing Date: June 18, 2008  
Staff Report Date: June 9, 2008  
Case Nos.: 08ORD-00000-00012  
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 Montecito Planning Commission receive a report on a draft Ordinance, establishing a policy and procedural framework for transferring development rights and make a recommendation to the Board of Supervisors in association with the Naples townsite located two miles west of the City of Goleta, APN's 079-080-026 to 081-240-018, Third Supervisorial District

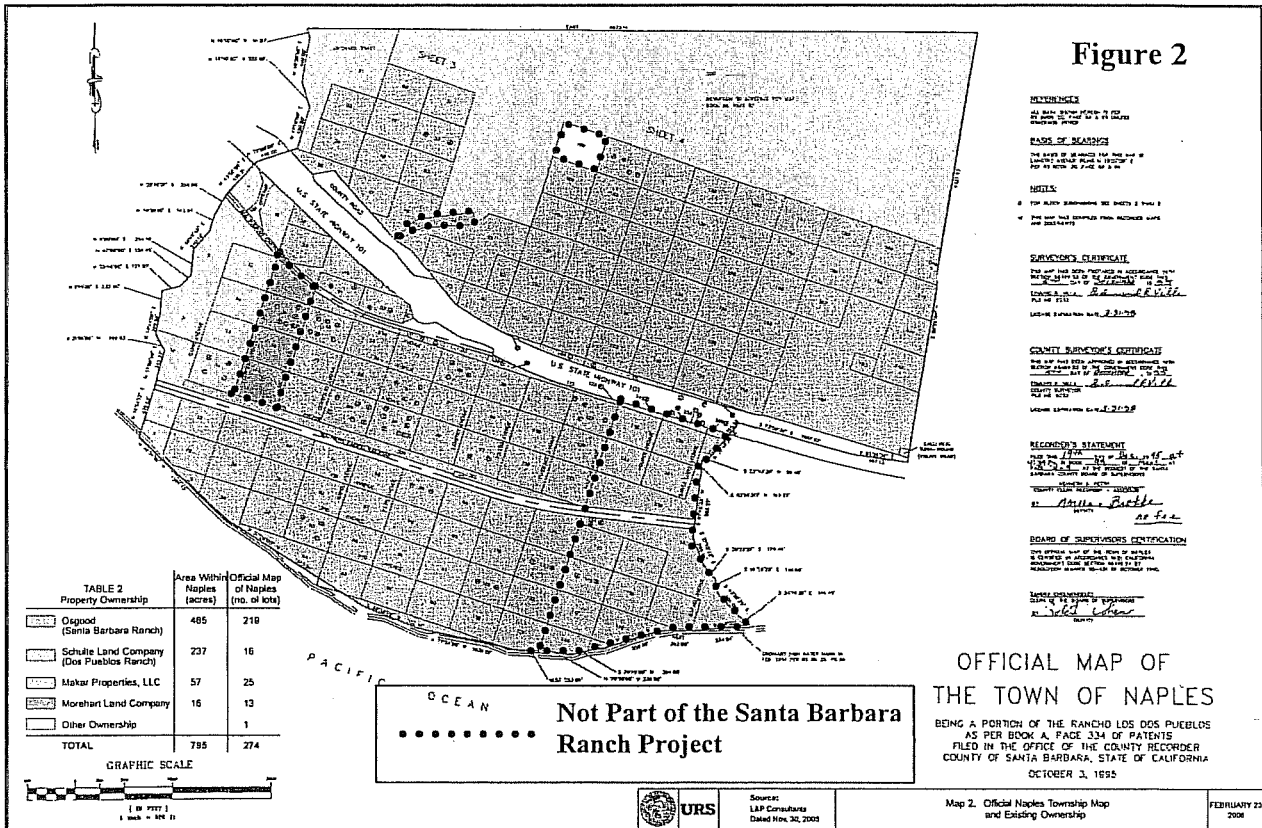
## 2.0 RECOMMENDATION AND PROCEDURES

Staff recommends that the Commission take the following actions:

1. Receive a report on a draft Transfer of Development Rights (TDR) Ordinance; and
2. Recommend that the Board of Supervisors: (i) adopt findings as proposed (Section 6.0); and (ii) adopt the proposed Ordinance (Attachment A) with the changes recommended by the County Planning Commission (Section 5.0).

### 3.0 JURISDICTION

The TDR Ordinance is associated with the Santa Barbara Ranch Project which entails a variety of legislative and quasi-judicial land use entitlements. Project approvals for the Santa Barbara Ranch Project fall with the jurisdiction of the County Planning Commission, while the TDR Ordinance is potentially applicable to all unincorporated areas of the County. The Cities of Santa Barbara and Goleta have also indicated interest in participating in a TDR Program as it pertains to their respective jurisdictions. Under the authority of the Montecito Land Use and Development Code, the Planning Commission’s role in the adoption process is advisory to the Board of Supervisors.



### 4.0 INTRODUCTION

#### 4.1 Background

The Naples town site is a small lot subdivision dating back to 1888, encompassing an 800-acre area on the Gaviota coast, located two miles west of the City of Goleta. Under an Official Map approved by the County in 1995, the town site is divided into 274 legal parcels as compared to an underlying agricultural land use designation that permits only 14 lots. As a means of resolving the disconnect between legal lots and land use density, the County’s Coastal Land Use Plan

encourages TDR to relocate or otherwise extinguish development from Naples. The specific language of CLUP Policy 2-13 reads as follows:

*“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.”*

Under the terms of a cooperative Memorandum of Understanding entered into with the County in late 2002, the owner of Santa Barbara Ranch has made application for a 54-unit large lot residential development totaling 485 acres and encompassing 80% of the lots comprising Naples (commonly referred to as the “MOU Project”). The owner of the adjacent Dos Pueblos Ranch property subsequently consented to include its property with Santa Barbara Ranch to form a larger proposal known as Alternative 1. Together, Santa Barbara and Dos Pueblos Ranch represent 86% of the Official Map lots and 90% of acreage comprising Naples.

In compliance with CLUP Policy 2-13, a series of studies were undertaken by the Solimar Research Group (under contract to the County) to evaluate the feasibility of TDR for three possible scenarios: (i) the existing baseline condition known as the “Grid”; (ii) the MOU Project; and (iii) Alternative 1. The TDR studies conclude that: “...while it may be possible to extinguish at least some development potential at Naples, a complete extinguishment of development rights is improbable.” These findings and relevant documents were the subject of separate public hearings by the Planning Commission and Board of Supervisors in late 2007 and early 2008.

As provided in CLUP Policy 2-13, the determination of TDR feasibility is made by the County. Pursuant to this authority, the Board of Supervisors affirmed the recommendation of the County Planning Commission and declared on February 5, 2008, that: (i) only a partial transfer of development potential at Naples/SBR is possible; and (ii) the land use designation of AG-II-100 should be re-evaluated as provided by Policy 2-13 of the CLUP. The Board also concurred with the County Planning Commission that a TDR program should be market-based and voluntary in scope. In so doing, the Board authorized and directed staff to finalize a TDR Ordinance and initiate the adoption process.

## 4.2 Ordinance Summary

Following initial release of the TDR Study in March 2006, a series of informal discussions subsequently ensued between various stakeholders with the guidance of Supervisors Salud Carbajal and Brooks Firestone. The informal TDR Working Group consisted of representatives of the County, City of Santa Barbara, Naples Coalition (and constituent members), and SBR applicant/landowner. Representatives from Bermant Development as well as officials from the Cities of Goleta and Carpinteria also participated at key points in the process. Through this

collaborative process, and with the assistance of the Solimar Research Group, a TDR Ordinance (Attachment A) was devised and embodies the following elements:

- Prioritizing Naples lots for preservation, identified by the Board of Supervisors, for the purposes of extinguishing development rights from one combination of the following locations: (i) lots most visible for Highway 101; (ii) lots located within the coastal zone; (iii) lots located on the bluff south of Highway 101; (iv) lots located on productive agricultural land; and/or (v) lots located within or near environmentally sensitive habitat.
- Creating a commodity for receiving sites called “density credits.” Each credit represents one residential unit above the existing baseline density of each receiver site. Developers would purchase credits based on the market value associated with each receiver site. Market value is benchmarked against what developers are willing to pay, generally ranging between 18% and 20% of the selling price for an additional residential unit.
- Adopting receiver site eligibility criteria. In this regard, the following criteria has been proposed: (i) sites located within South Coast Housing Market; (ii) sites without severe environmental constraints so as to preclude development by virtue of slopes, flood plains, geologic hazards and ESHA; (iii) sites not involving prime agricultural land; and (iv) sites that are currently proposed for upzoning or for which second dwellings are otherwise allowed, regardless of all other criteria.
- Enacting a process for assigning density credits. A four step process discretionary is suggested: (i) abbreviated applications are filed by owners/developers; (ii) requests are prescreening by County staff to determine receiver site eligibility; (iii) preliminary non-binding assignments of density credits are made by the Planning Commission; and (iv) development plans are processed for approval along with assignment of density credits.
- Establishing a “TDR Authority” to serve as an investment and administrative intermediary in the TDR process. Activities of the Bank would include: (i) establishing fair market prices and transfer ratios; (ii) buying development rights and selling density credits; (iii) attracting capital investment and servicing a revolving trust fund for ongoing TDR transactions; and (iv) facilitating inter-jurisdictional TDR agreements between the County and other potential participants (e.g., cities, USCB, etc).
- Incentivizing receiver site areas and award of density credits through establishment of “amenity funds.” For each five density credits that area sold and exercised in a particular community plan area, it is proposed that 10% of the total sale proceeds be earmarked for amenity enhancements and infrastructure improvements in those specific neighborhoods where density credits are awarded.
- Mitigating investment risk and retaining commodity value through policies that limit developer alternatives for achieving greater market-rate densities. This would be accomplished by requiring that all upzoning, including agricultural land conversions, occur

within the framework of the TDR Program (i.e., purchase of density credits or equivalent measures).

### 4.3 Policy Considerations

In summary, the simple policy objective of the TDR Ordinance is to transfer or otherwise extinguish as much development potential as possible in furtherance of specific preservation goals. At present, there are 274 legal lots at Naples as compared to an underlying agricultural land use designation that allows for a residential density that is far less (i.e., 14 lots). Rather than focus on specific receiver sites or debate valuation methodology, the TDR Ordinance is programmatic in nature. That is, the determination of where density may be transferred is a matter to be determined by the Planning Commission on a case-by-case basis. In other words, the Ordinance merely outlines a procedure to be followed in designating receiver sites; its adoption by no means compromises the County's control over specific projects or land use.

## 5.0 ISSUE SUMMARY

The Ordinance appearing in Attachment A was presented to the County Planning Commission on May 5 and incorporates specific changes endorsed by the Commission at a following meeting on June 4 (e.g., exempting zone change applications received before the effective date of the Ordinance, incorporating provisions regarding culturally significant sites, and miscellaneous clarifications). After a third hearing continued to June 5th, the Commission conceptually endorsed the Ordinance subject to the changes summarized below. A final version of the Ordinance is scheduled for final consideration by the County Commission on July 23, 2008, after the Montecito Commission offers its opinion on the matter. The specific changes endorsed by the County Commission consist of the following:

- **Geographic Applicability:** The County Planning Commission recommends that the geographic eligibility of potential receiver sites be limited to urban areas of the South Coast Housing Market Area. As presently written and contained in Attachment A, the Ordinance allows for rural sites to be considered at the discretion of the Board of Supervisors once, in their sole judgment, potential urban sites have been exhausted.
- **Setting of Priorities:** The County Planning Commission recommends that: (i) the process for prioritizing sender site lots proceed incrementally as funds are raised; and (ii) voluntary donors be allowed to designate their own priorities while requiring those who purchase TDR credits to abide by the priorities set by the County. As presently written and contained in Attachment A, the Ordinance anticipates a one-time designation of priorities once the outcome of entitlement hearings on the Santa Barbara Ranch Project have concluded.
- **Application Process:** The County Planning Commission recommends that an expedited process for processing receiver site applications be instituted without actually defining

specific time frames within the Ordinance. As presently written and contained in Attachment A, the Ordinance prescribes an initial period of 30 days for the P&D Director to determine basic eligibility; afterwards, the process would follow normal County protocols.

- **Upzoning:** The County Planning Commission recommends that the purchase of TDR Credits not be mandatory; rather, is it proposed that a density bonus program be substituted in place of compulsory participation. As presently written and contained in Attachment A, the Ordinance requires that all upzoning that results in higher residential density be subject to the purchase of development credits.
- **Amenity Funds:** The County Planning Commission recommends that: (i) an allowance for neighborhood amenities be provided up to an amount equal to 10% of the value of TDR credits for each receiver site; and (ii) actual amenity fund allocations be subject to Planning Commission approval as part of the entitlement process for each receiver site. As presently written and contained in Attachment A, the Ordinance leaves the amenity fund negotiation and allocation process to the discretion of the TDR Authority, subject to the 10% valuation threshold.
- **TDR Pricing:** The County Planning Commission recommends that the methodology for valuing TDR credits be established in guidelines approved by the Board of Supervisor so as to ensure equitable treatment and provide certainty to prospective receiver site applicants early on in the process. As presently written and contained in Attachment A, the Ordinance does not prescribe appraisal guidelines and leaves the valuation process largely to the TDR Authority.
- **Administrative Options:** The County Planning Commission recommends that the Board play as active role as possible taking into account budget constraints and other competing priorities. As presently written and contained in Attachment A, the Ordinance provides flexibility for County participation but does not prescribe a specific level of involvement beyond the processing procedures for determining receiver site eligibility.

<b>TABLE 2</b>	<b>ADMINSTRATIVE OPTIONS</b>	
	<b>Active Participation</b>	<b>Passive Participation</b>
<b>Program Administration</b>	Discount or Waive Fees for Processing TDR Applications	Obtain Full Cost Recovery as With All Other Land Use Matters
<b>TDR Authority Designation</b>	Designate County as the TDR Authority & Provide Staff Support	Assign Responsibility to a Non-Governmental Organization (NGO)
<b>Program Capitalization</b>	Help Capitalize the TDR Program Through Direct Contributions	Provide No Financial Support and Defer Fund Raising to the TDR Authority

## 6.0 FINDINGS

### 6.1 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.4<sup>th</sup> 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.4<sup>th</sup> 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.3<sup>rd</sup> 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.

### 6.2 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.



## 7.0 APPEALS PROCEDURE

As noted in Section 3.0, the Planning Commission's role is advisory to the Board of Supervisors. The proposed TDR Ordinance is not an appealable action; instead, the Board will serve as the decision making body.

## ATTACHMENTS

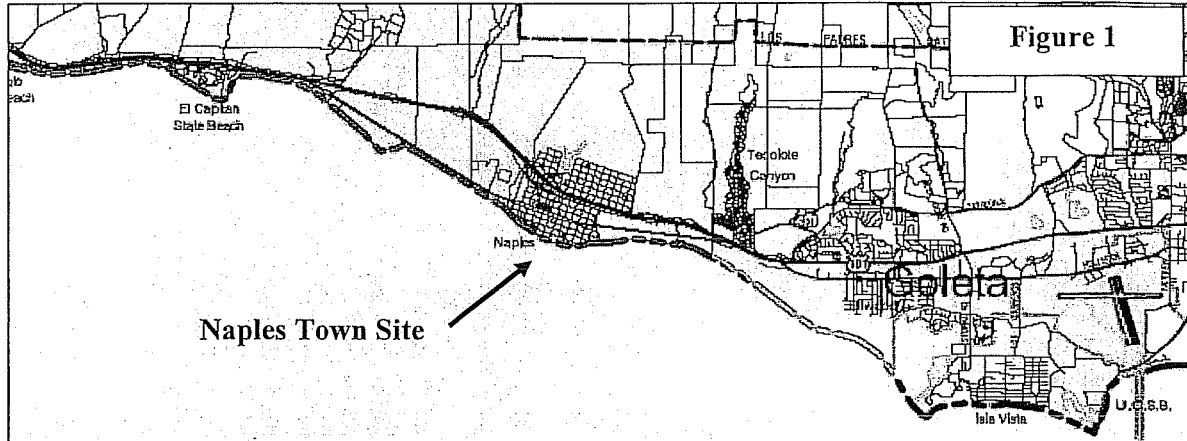
- A. TDR Ordinance

*(NOTE: For additional background on TDR feasibility analysis and program development, please visit the P&D website for Santa Barbara Ranch <http://sbcountyplanning.org/projects/03DVP-00041/index.cfm>)*

**SANTA BARBARA COUNTY PLANNING COMMISSION**  
**Staff Report for Transfer of Development Rights**  
**Enabling Ordinance**

Hearing Date: June 4, 2008  
Staff Report Date: May 23, 2008  
Case Nos.: 08ORD-00000-00008  
Environmental Document: Exempt

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



## REQUEST

Request by County staff that the County Planning Commission receive a report on a draft Ordinance establishing a policy and procedural framework for transferring development rights and make a recommendation to the Board of Supervisors in association with the Naples town site located two miles west of the City of Goleta, APN's 079-080-026 to 081-240-018, Third Supervisorial District. (Continued from May 7, 2008).

## 2.0 RECOMMENDATION AND PROCEDURES

Staff recommends that the Commission take the following actions:

1. Receive a report on a draft TDR Ordinance;
2. Identify Ordinance changes as the Commission may determine appropriate; and
3. Recommend that the Board of Supervisors: (i) adopt the findings in Attachment A; (ii) adopt the TDR Ordinance in Attachment C, as revised; (iii) endorse designation of non-governmental organization ("NGO") to serve as the TDR administrative authority pursuant to Section 35.64.090 of the Ordinance; and (iv) provide all reasonable assistance (without financial obligation) to facilitate implementation of the TDR Ordinance, including recruitment of an NGO to administer the program.

### 3.0 JURISDICTION

The TDR Ordinance is associated with the Santa Barbara Ranch Project which entails a variety of legislative and quasi-judicial land use entitlements. The Planning Commission's role in each instance is advisory to the Board of Supervisors.

### 4.0 INTRODUCTION

At its hearing on May 7, 2008, a draft TDR Ordinance was presented for Planning Commission consideration. The Ordinance is an outgrowth of the Santa Barbara Ranch Project and affirmatively furthers the requirements of CLUP Policy 2-13 to "encourage and assist" property owners at Naples in transferring development rights to more appropriate urban locations. The Ordinance presented to the Commission reflects input provided by a stakeholder Working Group, with further refinements suggested by County Counsel and the Auditor-Controller. At the conclusion of its deliberations, the Commission requested staff to give study to an assortment of issues and craft alternatives for further considerations. Section 5.0 of this report addresses what staff believes to be the fundamental issues. Accompanying this report as Attachment B is the current proposed Ordinance without further changes; Attachment C provides a redlined version of the ordinance with changes discussed in Section 5.0 that provide the most flexibility and broadest application (denoted by an asterisk "\*").

### 5.0 ISSUE ANALYSIS

#### 5.1 Geographic Applicability

Sections 35.64.010.C.1, 35.64.020 and 35.64.060.A.1.a. limit development transfers to areas of the South Coast Housing Market Area. This limitation reflects the symbiotic relationship of Naples in terms both of geography and property valuation. One body of opinion is to broaden the geographic reach to encompass the entire County regardless of transfer ratios that would likely require far greater densities in the North County to achieve equivalent values that occur along the South Coast. A related geographic consideration is the priority given to urban and rural areas. As presently written, the Ordinance allows the geographic reach to extend into rural areas only at such time as the Board of Supervisors determines that potential receiver sites in urban areas have been exhausted. While there is general agreement on the priority given to urban areas, there are disparate views on how much and by what means development might be allowed to extend beyond the urban/rural limit line. To help achieve consensus on these points, the following options are offered:

**Option 1A.** Retain the current Ordinance structure regarding geographic reach, limiting transfers to the South Coast Housing Market Area.

**Option 1B.** Modify the Ordinance to allow transfers to occur within any part of Santa Barbara County.\*

**Option 2A.** Retain the current Ordinance structure regarding urban/rural transfers, allowing transfers to rural areas to be made at Board discretion.

**Option 2B.** Modify the Ordinance to limit transfers to urban areas or any parcel immediately contiguous (as opposed to “adjacent”) to the urban/rural boundary. Eliminate Sections 35.64.010.C. and 35.64.060.A.3 regarding discretionary judgments on urban/rural transfers and receiver site criteria.

**Option 2C.** Modify the Ordinance to: (i) allow both urban and rural transfers; (ii) eliminate Sections 35.64.010.C. and 35.64.060.A.3 regarding discretionary judgments on urban/rural transfers and receiver site criteria; and (iii) incentivize urban transfers by requiring the purchase of two development credits for each density bonus unit in rural areas, as opposed to a 1:1 purchase within urban areas.\*

## 5.2 Transfer Priorities

The targeting of specific Naples lots for transfer or extinguishment is deferred to the point of Ordinance implementation (Section 35.90.010.C). The Ordinance outlines a number of competing policy objectives from which to choose: public viewsheds, oceanfront bluffs, scenic coastal areas, prime agricultural land or sensitive environmental resources. These choices are influenced by underlying valuation and disparate transfer ratios; lots with ocean frontage command higher values than lots located north of Hwy 101. Consequently, fewer bluff lots can be transferred with the same amount of capital compared to lots inland of the Coastal Zone. Some commenters have questioned the mechanics of the process: if the sender site owner offers to sell a lot that is *not* one of the established priorities, does that preclude the opportunity for purchase and does the County’s establishment of transfer priorities obligate “Participating Entities” to the same priorities? In response to these questions, the following options are offered:

**Option 1A.** Retain the current Ordinance structure on the setting of transfer priorities, limiting transactions to those which conform to priorities established by the Board.

**Option 1B.** Modify the Ordinance to: (i) link priorities to deposits in the TDR Authority<sup>1</sup>; and (ii) allow Participating Entities and financial contributors to designate their own transfer priorities for which their own financial contributions would be earmarked.\*

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<sup>1</sup> As an example, if the preservation of bluff lots is selected by the County as the top priority, the overall estimated development right value under the Grid scenario is \$115 million. Until funds held by the TDR Authority reach this benchmark, the purchase of development rights would be restricted to bluff lots and offers to sell lots outside of the bluff would not be eligible. Once funds exceed this threshold, development rights could be purchased from the next highest priority category. In the event no secondary priority is selected, any lot at Naples would be eligible.

### 5.3 Application Process

A two-step application process has been built into the TDR Ordinance for the purpose of qualifying potential receiver sites and awarding density bonuses. This approach represents a blending of ideas on how to incentivize receiver site applicants without relinquishing the County's discretionary land use and design review authorities. Beyond the initial determination of eligibility (for which a period of 30 days is prescribed), the Ordinance is not specific as to processing timelines. To provide greater certainty, the following processing changes are proposed to Section 35.64.060.B: Step #1 - Director Determination of Eligibility (30 days from the date that a pre-screen application is deemed complete); Step #2 - Planning Commission Public Hearing to Determine Site Appropriate and Maximum Allowable Density (150 days from date that an applicant's submittal of a conceptual development plan is deemed complete); Step #3 – Planning Commission Public Hearing on Formal Project Application (one year from date of application completeness or the timelines prescribed in the Permit Streamline Act, whichever is lesser).<sup>\*</sup> This translates to an overall timeline of 18 months as compared to more open ended and uncertain process.

### 5.4 Up-Zone Participation

The Ordinance, as currently drafted, requires that all rezones resulting in higher residential density be subject to the purchase of development credits (Sections 35.64.070). It is believed that without such a requirement, the value of TDR credits would be undermined by giving applicants alternatives for achieving greater market-rate density. However, it has also been argued that such a requirement is contrary to the “voluntary, free market” principles on which the TDR Program is based. Additional commenters have noted instances where such a restriction might undermine other County land use initiatives or inadvertently deprive property owners of their vested rights. Removing the “captive market” concept altogether would effectively eliminate the need for a TDR Ordinance, relying instead on funding that would extinguish development rights through direct purchase rather than accomplish this through density transfers. Given these considerations, the following options are offered:

**Option 1A.** Retain the current Ordinance structure, requiring all upzoning that results in higher residential density to purchase development credits.

**Option 1B.** Modify the Ordinance to eliminate the requirement for compulsory participation altogether (Section 35.64.070).

**Option 1C.** Modify the Ordinance to exclude the following categories: (i) rezoning that achieves conformity with a property's underlying land use designation; (ii) land use actions (rezones and density bonus) that implement County policy initiatives (e.g., affordable housing under the Housing Element, Housing Policy 6 of the Isla Vista Master Plan, updating the Goleta Valley Master Plan, etc.); and (iii) circumstances that would result in extraordinary hardship or legal vulnerability as determined at the discretion of the Board of Supervisors.<sup>\*</sup>

**Option 2A.** Retain the current Ordinance structure, requiring compulsory participation of all pending rezones in process as of the date of TDR Ordinance adoption.

**Option 2B.** Modify the Ordinance to exclude all rezoning applications which have been accepted as complete for purposes of processing as of the date of TDR Ordinance adoption.\*

## 5.5 Amenity Funds

As presently written, Section 35.64.080 of the proposed Ordinance provides the TDR Authority with administrative flexibility for determining when and how best to allocate amenity funds. Participating entities would be allowed to define their own methods for using these monies. Under the proposed Ordinance, 10% of the revenue derived from the sale of every five development credits would be earmarked for neighborhood enhancement projects. This fund diversion would effectively reduce the capacity to acquire sender site lots. On the other hand, the Amenity Fund is seen by many as a necessary means to incentivize neighborhoods to accommodate receiver site densities. Exactly who should determine how and when to utilize Amenity Funds remains in question. To help achieve consensus on these points, the following options are offered:

**Option 1A.** Retain the current Ordinance structure including the 10% funding contribution, granting discretion to the TDR Authority for determining when and how Amenity Funds may be allocated.

**Option 1B.** Modify the Ordinance to eliminate the Amenity Fund (Section 35.64.080) altogether.

**Option 1C.** Modify the Ordinance to remove the County and TDR Authority as intermediaries in the Amenity Fund allocation process. Replace the Amenity Fund concept with the authority of receiver site applicants to: (i) negotiate directly with recipient neighborhoods; and (ii) reduce their payment for development credits by the actual cost of constructing neighborhood amenity projects, not to exceed a maximum of 10% of the value of development credits.\*

## 5.6 TDR Pricing

In earlier versions of the TDR Ordinance, an elaborate set of procedures were outlined for determining the price for buying and selling development credits. At the urging of County Counsel and Auditor-Controller, these procedures were removed and replaced with provisions that provide for the adoption of operating guidelines outside of the Ordinance. This change was made to further distance the County from Federal banking regulations and to provide flexibility for the TDR Authority in negotiating TDR transactions. An unintended consequence of this action could be to impede potential applicants from investing the time and expense in seeking receiver site approvals. To provide greater certainty in the determination of TDR values, a new paragraph K is proposed to Section 35.64.090 to read as follows:

*“K. Valuation Process. The methodology for establishing the value of development rights and development credits, as well as the process and limits of negotiation, shall be determined by the TDR Authority. Upon the determination of receiver eligibility pursuant to Section 35.64.060.B.2., and within 30 days of the applicant’s submittal of a preliminary conceptual plan and processing fee as provided in Section 35.64.060.B.3, the TDR Authority shall furnish the applicant with an estimate of value of the development credits associated with the preliminary conceptual plan. Within 30 days following the Commission’s determination of maximum density pursuant to Section 35.64.060.B.3, the TDR Authority shall furnish the applicant with an update of its estimate to reflect the maximum density determined by the Commission. The estimates of valuation, in each instance, shall be non-binding as to the ultimate purchase of development credits and shall be furnished solely to assist the applicant in determining project feasibility.”\**

### 5.7 Administrative Options

The proposed TDR Ordinance is expressly intended to facilitate transfers and extinguishment of development potential at Naples in furtherance of Policy 2-13. However, beyond the requirement to “encourage and assist” such transfers, the County is under no obligation to expend funds or dedicate staff resources to affirmatively further these objectives. In this regard, the County may choose to actively engage in the implementation of a TDR Program or merely provide the administrative apparatus to support its execution. These basic options are outlined in Table 1 below. Previously, it was recommended that the County not take a proactive role in the process largely for reasons of budget limitations and staff capacity. A further consideration is the perceptual conflict that would exist by virtue of the County controlling land use decisions and TDR valuations (e.g., market manipulation). As such, it continues to be staff’s recommendation that the Commission endorse a supportive, but passive role. The specific recommendation is for the County to: *“provide all reasonable assistance (without financial obligation) to facilitate implementation of the TDR Ordinance, including recruitment of an NGO to administer the program.”*

TABLE 1	ADMINSTRATIVE OPTIONS	
	Active Participation	Passive Participation
Program Administration	Discount or Waive Fees for Processing TDR Applications	Obtain Full Cost Recovery as With All Other Land Use Matters
TDR Authority Designation	Designate County as the TDR Authority & Provide Staff Support	Assign Responsibility to a Non-Governmental Organization (NGO)
Program Capitalization	Help Capitalize the TDR Program Through Direct Contributions	Provide No Financial Support & Defer Fund Raising to the NGO

## 6.0 APPEALS PROCEDURE

As noted in Section 3.0, the Planning Commission's role is advisory to the Board of Supervisors. The proposed TDR Ordinance is not an appealable action; instead, the Board will serve as the decision making body.

### ATTACHMENTS

- A. TDR Ordinance Findings
- B. TDR Ordinance (Proposed From 5-7-08 Without Further Changes)
- C. TDR Ordinance (With Redlined Changes Proposed by Staff)

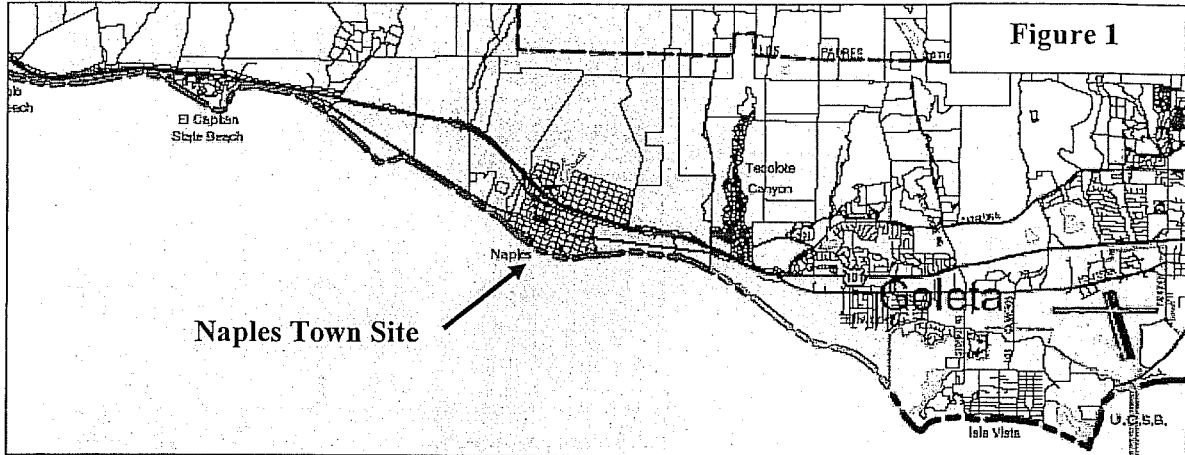
*(NOTE: The staff report from the Planning Commission hearing of May 7, 2008, has been posted on the Santa Barbara Ranch Project webpage and may be viewed at: <http://sbcountyplanning.org/projects/03DVP-00041/index.cfm>).*



**SANTA BARBARA COUNTY PLANNING COMMISSION**  
**Staff Report for Transfer of Development Rights**  
**Enabling Ordinance**

Hearing Date: May 7, 2008  
Staff Report Date: April 25, 2008  
Case Nos.: 08ORD-00000-00008  
Environmental Document: Exempt

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



## REQUEST

Request by County staff that the County Planning Commission receive a report on a draft Ordinance establishing a policy and procedural framework for transferring development rights and make a recommendation to the Board of Supervisors in association with the Naples town site located two miles west of the City of Goleta, APN's 079-080-026 to 081-240-018, Third Supervisorial District

## 2.0 RECOMMENDATION AND PROCEDURES

Staff recommends that the Commission take the following actions:

1. Receive a report on a draft TDR Ordinance; and
2. Recommend that the Board of Supervisors: (i) adopt the TDR Ordinance and findings as proposed (Section 6.0 and Attachment B, respectfully); (ii) that a non-governmental organization ("NGO") be designated as the administrative authority pursuant to Section 35.64.090 of the Ordinance; and (iii) that the County provide all reasonable assistance (without financial obligation) to facilitate implementation of the TDR Ordinance, including recruitment of an NGO to administer the program.

### 3.0 JURISDICTION

The TDR Ordinance is associated with the Santa Barbara Ranch Project which entails a variety of legislative and quasi-judicial land use entitlements. The Planning Commission's role in each instance is advisory to the Board of Supervisors.

### 4.0 INTRODUCTION

#### 4.1 Background

The Naples town site is a small lot subdivision dating back to 1888, encompassing an 800-acre area on the Gaviota coast, located two miles west of the City of Goleta. Under an Official Map approved by the County in 1995, the town site is divided into 274 legal parcels as compared to an underlying agricultural land use designation that permits only 14 lots. As a means of resolving the disconnect between legal lots and land use density, the County's Coastal Land Use Plan encourages TDR to relocate or otherwise extinguish development from Naples.

Under the terms of a cooperative Memorandum of Understanding entered into with the County in late 2002, the owner of Santa Barbara Ranch has made application for a 54-unit large lot residential development totaling 485 acres and encompassing 80% of the lots comprising Naples (commonly referred to as the "MOU Project"). The owner of the adjacent Dos Pueblos Ranch property subsequently consented to include its property with Santa Barbara Ranch to form a larger proposal known as Alternative 1. Together, Santa Barbara and Dos Pueblos Ranch represent 86% of the Official Map lots and 90% of acreage comprising Naples.

In compliance with CLUP Policy 2-13, a series of studies were undertaken to evaluate the feasibility of TDR for three possible scenarios: (i) the existing baseline condition known as the "Grid"; (ii) the MOU Project; and (iii) Alternative 1. The TDR studies conclude that: "...while it may be possible to extinguish at least some development potential at Naples, a complete extinguishment of development rights is improbable." These findings and relevant documents were the subject of separate public hearings by the Planning Commission and Board of Supervisors in late 2007 and early 2008.

As provided in CLUP Policy 2-13, the determination of TDR feasibility is made by the County. Pursuant to this authority, the Board of Supervisors affirmed the Commission's recommendation and declared on February 5, 2008, that: (i) only a partial transfer of development potential at Naples/SBR is possible; and (ii) the land use designation of AG-II-100 should be re-evaluated as provided by Policy 2-13 of the CLUP. The Board also concurred with the Planning Commission's recommendation that a TDR program should be market-based and voluntary in scope. In so doing, the Board authorized and directed staff to finalize a TDR Ordinance and initiate the adoption process.

## 4.2 Ordinance Summary

Following initial release of the TDR Study in March 2006, a series of informal discussions subsequently ensued between various stakeholders. The informal TDR Working Group consisted of representatives of the County, City of Santa Barbara, Naples Coalition (and constituent members), and SBR applicant/landowner. Representatives from Bermant Development as well as officials from the Cities of Goleta and Carpinteria also participated at key points in the process. Rather than focus on specific receiver sites or debate valuation methodology, the Group agreed on a programmatic approach that would provide the administrative apparatus for implementing TDR. With the assistance of the Solimar Research Group, a Program Framework was devised with geographic focus on the South Coast Housing Market; that is, transfers of development rights from Naples would be initially restricted to areas which generally share common market values, internal geographies and land preservation goals. The Framework was then translated to an Enabling Ordinance that incorporates the following elements:

- Prioritizing Naples lots for preservation, identified by the Board of Supervisors, for the purposes of extinguishing development rights from one combination of the following locations: (i) lots most visible for Highway 101; (ii) lots located within the coastal zone; (iii) lots located on the bluff south of Highway 101; (iv) lots located on productive agricultural land; and/or (v) lots located within or near environmentally sensitive habitat.
- Creating a commodity for receiving sites called “density credits.” Each credit represents one residential unit above the existing baseline density of each receiver site. Developers would purchase credits based on the market value associated with each receiver site. Market value is benchmarked against what developers are willing to pay, generally ranging between 18% and 20% of the selling price for an additional residential unit.
- Adopting receiver site eligibility criteria. In this regard, the following criteria has been proposed: (i) sites located within or adjacent to the South Coast Urban Growth Boundary; (ii) sites without severe environmental constraints so as to preclude development by virtue of slopes, flood plains, geologic hazards and ESHA; (iii) sites not involving prime agricultural land; and (iv) sites that are currently proposed for upzoning or for which second dwellings are otherwise allowed, regardless of all other criteria.
- Enacting a process for assigning density credits. A four step process discretionary is suggested: (i) abbreviated applications are filed by owners/developers; (ii) requests are prescreening by County staff to determine receiver site eligibility; (iii) preliminary non-binding assignments of density credits are made by the Planning Commission; and (iv) development plans are processed for approval along with assignment of density credits.

- Establishing a “Bank” to serve as an investment and administrative intermediary in the TDR process. Activities of the Bank would include: (i) establishing fair market prices and transfer ratios; (ii) buying development rights and selling density credits; (iii) attracting capital investment and servicing a revolving trust fund for ongoing TDR transactions; and (v) facilitating inter-jurisdictional TDR agreements between the County and cities.
- Incentivizing receiver site areas and award of density credits through establishment of “amenity funds.” For each five density credits that area sold and exercised in a particular community plan area, it is proposed that the Bank award 10% of the total sale proceeds for amenity enhancements and infrastructure improvements in those specific neighborhoods where density credits are awarded.
- Mitigating investment risk and retaining commodity value through policies that limit developer alternatives for achieving greater market-rate densities. This would be accomplished by requiring that all upzoning, including agricultural land conversions, occur within the framework of the TDR Program (i.e., purchase of density credits or equivalent measures).

Following Board action in February, the draft TDR Ordinance was reformatted for codification and circulated for internal review. This process resulted in a variety of changes to the draft that are highlighted in Attachment A (underlining denotes additions while stricken language denotes deletions). Most of the revisions merely clarify terminology and intent. However, several areas of the Ordinance have been reworked to address legal/financial concerns and Planning Commission comments. The most substantive of these changes are discussed in Section 5.0 below. The proposed Ordinance, with all revisions incorporated, accompanies this report as Attachment B.

## 5.0 ISSUE SUMMARY

### 5.1 TDR Bank

As previously noted, a TDR Bank serves as an investment and administrative intermediary in the TDR process. Activities of the Bank would include: (i) establishing fair market prices and transfer ratios; (ii) buying development rights and selling density credits; (iii) attracting capital investment and servicing a revolving trust fund for ongoing TDR transactions; and (iv) facilitating inter-jurisdictional TDR agreements between the County and cities. On the advice of County Counsel and the Auditor-Controller, the “Bank” has been renamed the “TDR Authority.” While the functional purpose remains unchanged, the redesignation distances the “Authority” from what might be viewed as a financial institution and the myriad of banking regulations that would otherwise apply. It has also been suggested that the operating parameters of the Authority be deferred to “Bylaws and Rules” which would be developed and adopted independent of the Ordinance. This would allow greater latitude to devise procedures specific to the entity that is designated as the TDR Authority.

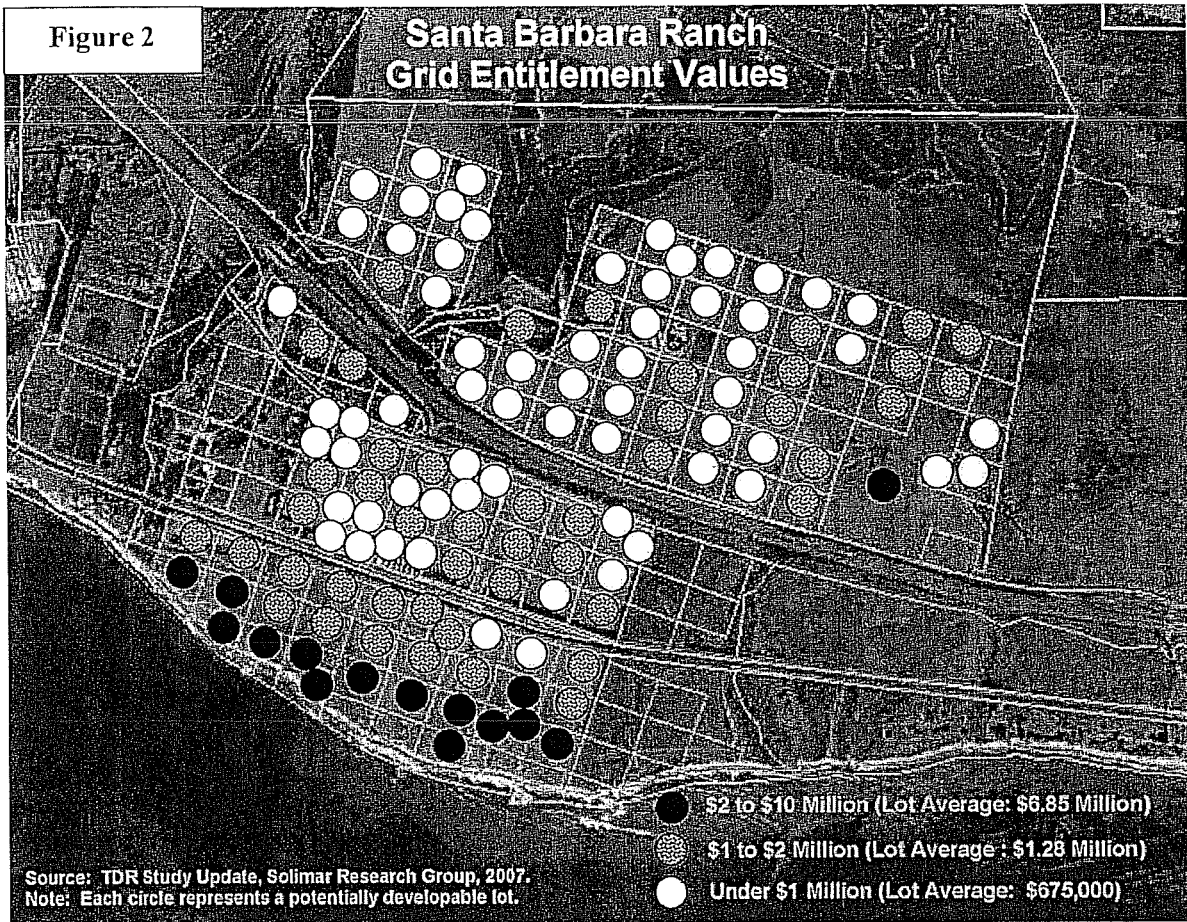
## 5.2 Amenity Funds

The concept of amenity funds is simple enough, but its execution is somewhat problematic. In the current proposed draft, Section 35.64.080 has been rewritten to provide the Authority with administrative flexibility for determining when and how best to allocate amenity funds. The procedures applicable to the County would also be distinguished from those of Participating Entities. A more fundamental question is whether the benefits of incentivizing neighborhoods outweigh the financial drain on TDR resources. For every five development credits that are sold, 10 percent of the revenue would be earmarked for neighborhood enhancement projects. This fund diversion would effectively reduce the capacity to acquire sender site lots. As such, the Commission may wish to consider a reduction in the amount of money that is siphoned to the Amenity Fund or simply eliminate this provision altogether.

## 5.3 Transfer Priorities

The targeting of specific Naples lots for transfer or extinguishment is deferred to the point of Ordinance implementation (Section 35.90.010.C). The Ordinance outlines a number of competing policy objectives from which to choose: public viewsheds, oceanfront bluffs, scenic coastal areas, prime agricultural land or sensitive environmental resources. These choices are influenced by underlying valuation and disparate transfer ratios; lots with ocean frontage command higher values than lots located north of Hwy 101. Consequently, fewer bluff lots can be transferred with the same amount of capital compared to lots inland of the Coastal Zone. The disparity in transfer ratios is illustrated in Table 1 and Figure 2. It is staff's recommendation that this particular policy question be decided *after* the Commission and Board have each acted on the Santa Barbara Ranch Project. This would allow the decision makers to affirmatively further preservation objectives through the entitlement process first. Once final actions have been taken, the Board (upon the Commission's recommendation) could establish priorities for transfer of lots that remain.

<b>TABLE 1 TDR Transfer Ratios</b>	<b>Scenario #1 Maximum Transfers</b>	<b>Scenario #2 Protect Viewshed</b>	<b>Scenario #3 Protect Bluff</b>
<b>Grid Scenario</b>			
Lots Transferred	37	32	4
% of Total (125 Lots)	30%	26%	3%
Development Value	\$20.1 Million	\$20 Million	\$24 Million
<b>MOU Project</b>			
Lots Transferred	31	25	3
% of Total (54 Lots)	57%	46%	6%
Development Value	\$19.9 Million	\$19.7 Million	\$21.8 Million
<b>Alt 1</b>			
Lots Transferred	35	24	3
% of Total (72 Lots)	49%	33%	4%
Development Value	\$20.6 Million	\$21.1 Million	\$19.3 Million
<b>Sources:</b> SBR TDR Feasibility Study Update, Solimar Research Group, Inc., August 30, 2007.			
<b>Notes:</b> Each Transfer/Extinguishment Scenario is based on an initial TDR capitalization of \$20 million.			



## 5.4 Voluntary Participation

In their respective action on the question of TDR feasibility, the Commission and Board qualified their endorsement of a TDR Program by retaining an unconstrained free-market approach: “...whereby there would be no expressed hold period on entitlements nor would the property owner be compelled to sell development credits to a TDR Bank.” These principals are reflected in Section 35.64.090.C. of the proposed Ordinance. What remains unchanged, however, is the requirement that all upzoning that results in higher residential density be subject to the purchase of development credits (Sections 35.64.070). It is believed that without such a requirement, the value of TDR credits would be undermined by giving applicants alternatives for achieving greater market-rate density. Should the Commission choose to abandon this approach, the program would become largely dependent on capital raised from other sources (e.g., bond funds, donations, grants, etc.). Conceivably, this could include fees charged as mitigation for loss of open space in new development (provided a legal nexus could be established).

## 5.5 Administrative Options

The proposed TDR Ordinance is expressly intended to facilitate transfers and extinguishment of development potential at Naples in furtherance of Policy 2-13. However, beyond the requirement to “encourage and assist” such transfers, the County is under no obligation to expend funds or dedicate staff resources to affirmatively further these objectives. In this regard, the County may choose to actively engage in the implementation of a TDR Program or merely provide the administrative apparatus to support its execution. These basic options are outlined in Table 2 below. Under “Passive Participation,” the County could opt for full cost recovery of program administration, appoint an NGO as the TDR Authority and provide no direct financial support. “Active Participation,” on the other hand, would entail direct staff and financial support, including appointment of County officials to serve on the Board of the TDR Authority. Staff recommends that the County pursue a supportive, but passive role. In this regard, staff recommends that the County actively recruit an NGO to administer the overall program.

TABLE 2	ADMINISTRATIVE OPTIONS	
	Active Participation	Passive Participation
Program Administration	Discount or Waive Fees for Processing TDR Applications	Obtain Full Cost Recovery as With All Other Land Use Matters
TDR Authority Designation	Designate County as the TDR Authority & Provide Staff Support	Assign Responsibility to a Non-Governmental Organization (NGO)
Program Capitalization	Help Capitalize the TDR Program Through Direct Contributions	Provide No Financial Support & Defer Fund Raising to the NGO

## 6.0 FINDINGS

### 6.1 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.4<sup>th</sup> 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 develop-

ment. *Kaufman and Broad South Bay, Inc. v Morgan Hill Unified School District*, (1992) 9 Cal. App.4<sup>th</sup> 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.3<sup>rd</sup> 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.

## 6.2 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.

## 7.0 APPEALS PROCEDURE

As noted in Section 3.0, the Planning Commission’s role is advisory to the Board of Supervisors. The proposed TDR Ordinance is not an appealable action; instead, the Board will serve as the decision making body.

## ATTACHMENTS

- A. TDR Ordinance (Redlined)
- B. TDR Ordinance (Updated Version Proposed for Adoption)
- C. Reference Materials (<http://sbcountyplanning.org/projects/03DVP-00041/index.cfm>)