



# CITY OF SANTA BARBARA

## COUNCIL AGENDA REPORT

**AGENDA DATE:** July 22, 2008

**TO:** Mayor and Councilmembers

**FROM:** Administration Division, Community Development Department

**SUBJECT:** Transfer Of Development Rights Ordinance For Santa Barbara County

### **RECOMMENDATION:**

That Council hear a presentation from County of Santa Barbara Staff on the status of a Transfer of Development Rights Enabling Ordinance for Santa Barbara County.

### **DISCUSSION:**

Discussion continues at the County of Santa Barbara regarding a proposed Transfer of Development Rights (TDR) enabling ordinance for the Naples area of the Gaviota Coast. The attached County staff report summarizes the proposed ordinance under consideration.

In essence, the ordinance proposes to allow for the transfer, or otherwise extinguish, as much development potential as possible on the Naples development site. The ordinance focuses on receiver sites on the South Coast in the unincorporated County, but the Ordinance also establishes the framework for other local jurisdictions (e.g., the Cities of Santa Barbara, Goleta, and/or Carpinteria) to participate in a TDR program as well – called an Inter-jurisdictional Agreement. This is essentially a legal agreement between the County and the City which articulates the conditions tied to the transfer of development rights to ensure that both jurisdictions mutually benefit.

The City Council has in the past expressed interest in participating in a TDR program to minimize development on the Gaviota Coast. In April, 2006 the City Council was presented with a feasibility study prepared for the County about how a TDR program could work with regard to reducing development potential at the Naples site. The Council expressed interest in pursuing a TDR program at that time, but expressed concerns about a site-specific approach.

In August, 2006 the Council appropriated \$15,000 to a follow-up study on the development and implementation of a TDR program, with the developer of the Naples site and the County also financially participating in the study.

Mayor Blum and Councilmembers Williams and House have also participated in an informal TDR working group, headed by Supervisors Carbajal and Firestone, which included representatives from the Naples Coalition, and the Naples applicant and landowner, among others.

If the City of Santa Barbara chose to participate in a TDR program with the County, it could be on specific receiver sites, a programmatic approach applied to a more general area of the City, or through financial contributions, like an impact fee of some sort. Regardless, the City's participation would need to create economic value that is not currently available under existing zoning, in order to create the economics to transfer or extinguish development rights at Naples. At this point, the City has not identified specifically how it might participate in such an effort.

The next step is for the County Planning Commission to consider the draft ordinance at its meeting on July 23<sup>rd</sup>, 2008. After action by the County Planning Commission, the draft ordinance will be forwarded to the County Board of Supervisors, possibly in September, 2008.

If the County Board of Supervisors approves the ordinance, staff will schedule a meeting with the City Council to get direction regarding the City's interest in participating in the program and formally entering into an Inter-jurisdictional Agreement. If Council wants to pursue such an agreement, the Plan Santa Barbara process would be the appropriate community forum to deliberate whether to upzone parcels or areas of the city as receiver sites, implement impact fees on new development to raise funds to purchase development rights, or some other mechanism.

**SUSTAINABILITY IMPACT:**

Consideration of a Transfer of Development Rights program could be considered beneficial to the City's sustainability efforts as its focus is to reduce development in the environmentally sensitive portion of the Gaviota Coast and transfer such development to an urban area like the City of Santa Barbara.

**ATTACHMENT:** Santa Barbara County TDR Ordinance Staff Report for the meeting of July 23, 2008

**PREPARED BY:** Paul Casey, Community Development Director

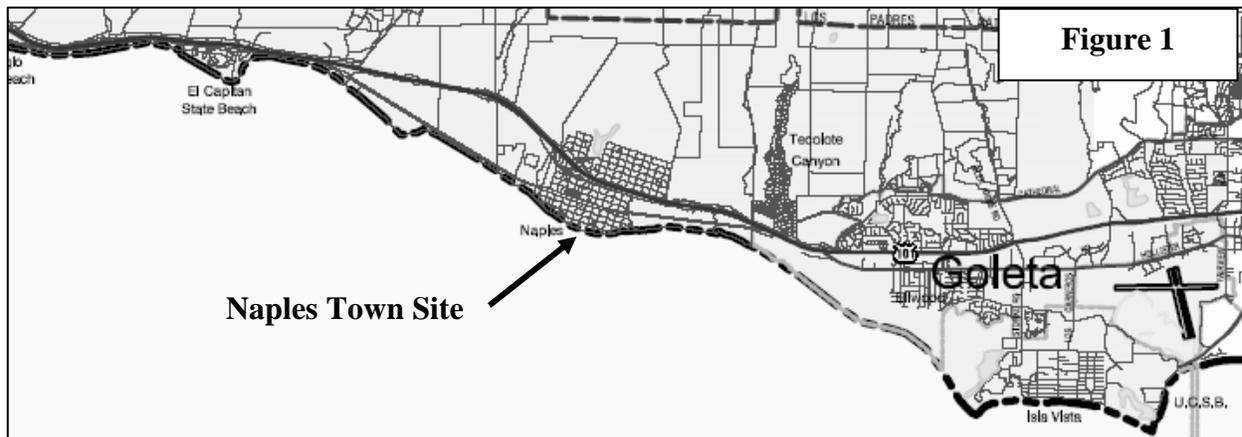
**SUBMITTED BY:** Paul Casey, Community Development Director

**APPROVED BY:** City Administrator's Office

**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 5<sup>th</sup>, 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.

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 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 is 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>).*

## ATTACHMENT A

### TDR ORDINANCE FINDINGS

#### California Environmental Quality Act (“CEQA”)

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

- The formation of an assessment district to raise revenue for a water district. *Not About Water Comm. V. Board of Supervisors*, (2002) 95 Cal. App.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.

## 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.

**DRAFT**

Transfer of Development Rights – 08ORD-00000-00008

Attachment B

Page 1

**ATTACHMENT B**

**REVISED DRAFT TDR ORDINANCE**

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING SECTION 35-1, THE SANTA BARBARA COUNTY LAND USE AND DEVELOPMENT CODE, OF CHAPTER 35, ZONING, OF THE COUNTY CODE, BY AMENDING ARTICLE 35.6 (RESOURCE MANAGEMENT), TO ADD A NEW CHAPTER 35.64 (TRANSFER OF DEVELOPMENT RIGHTS) TO IMPLEMENT A TRANSFER OF DEVELOPMENT RIGHTS PROGRAM IN SANTA BARBARA COUNTY.

Case Nos. 08ORD-00000-00008

The Board of the County of Santa Barbara, State of California, ordains as follows:

SECTION 1:

ARTICLE 35.6, Resource Management, of Section 35-1, the Santa Barbara County Land Use and Development Code, of Chapter 35, Zoning, of the Santa Barbara County Code, is amended to add a new Chapter 35.64, Transfer of Development Rights, to read as follows:

**Chapter 35.64 - Transfer of Development Rights**

**Sections:**

- 35.64.010 - Program Purpose and Intent, Description and Goals
- 35.64.020 - Applicability
- 35.64.030 - Definitions
- 35.64.040 - Program Administration
- 35.64.050 - Sending Sites
- 35.64.060 - Receiving Sites
- 35.64.070 - County Restrictions on Zoning Map Amendments
- 35.64.080 - Amenity Funds
- 35.64.090 - Transfer of Development Rights Authority
- 35.64.100 - Inter Jurisdictional Agreements
- 35.64.110 – General Limitations

**35.64.010 - Program Purpose and Intent, Description and Goals**

**A. Purpose and intent.**

The provisions of this Chapter implement the Transfer of Development Rights program. The intent of this program is to transfer development potential from eligible Naples lots to eligible receiving sites along the South Coast of Santa Barbara County in furtherance of Coastal Land Use Plan Policy 2-13. The overriding purpose is to extinguish the rights to develop Naples lots determined to have the greatest public benefit by the Board.

**B. Description.**

1. The Transfer of Development Rights program is a market-driven program involv-

ing willing sellers and willing buyers. Landowners are not obligated to use the program but may participate voluntarily. The Transfer of Development Rights program allows eligible sending site (lots targeted for preservation) landowners to sever the development right(s), as defined in this Chapter, from rights associated with land ownership. Sending site landowners that choose to participate in the program are compensated at fair market value for the lost development potential through market sales of those development rights. Once the development rights are sold, the land is protected from future development in perpetuity through conservation easements. Sending site landowners are incentivized to participate since they can forego the lengthy and often costly development approval and building process yet receive payments commensurate with the realized profits of their property built to its highest and best use.

2. Eligible receiving sites (lots to accommodate development) in the unincorporated areas of the County may be developed at higher densities than otherwise allowed under current zoning with requisite purchases of “density credits.” So called receiving site developers are incentivized to participate since they are able to realize greater profits through enhanced entitlements.
3. Participating Entities that adopt plans and ordinances to allow for increased density on receiving sites may opt to participate in the County’s Transfer of Development Rights program through legally binding inter-jurisdictional agreements.

## C. Goals.

1. The primary goal of the Transfer of Development Rights program shall be to transfer the maximum number of development rights from Naples Townsite lots that serve one or a combination of the following objectives, ~~as determined and prioritized by Resolution of the Board,~~ onto properties more suitable for development that lie within ~~or adjacent to~~ Urban areas designated on the Comprehensive Plan maps that are located within the South Coast ~~that~~ and provide for the:
  - a. Preservation of Naples lots most visible from Highway 101.
  - b. Preservation of Naples lots located within the Coastal Zone.
  - c. Preservation of Naples lots located on or adjacent to a coastal bluff.
  - d. Preservation of Naples lots located on prime agricultural land.
  - e. Preservation of Naples lots within or near environmentally sensitive habitat areas.
  - f. Preservation of Naples lots within or near culturally or archaeologically sensitive areas.
2. For funds derived from the purchase of transferable development credits, the Board, upon a recommendation from the Planning Commission, shall designate

~~and prioritize transfers by Resolution at such intervals as it may so determine is appropriate in relation to funds available to effectuate transfers. For all other funds deposited with the TDR Authority pursuant to Section 35.64.090, priorities may be designated by the contributor (e.g., Participating Entity, private donor, etc.); if priorities are not so established by the contributor, the priorities established by Board Resolution shall apply. In order to facilitate the primary goal, it is a secondary goal of this Chapter to create a market for development right transfers within the South Coast. Once Naples development right transfers to existing urban areas are fully exhausted, the Program shall seek to extinguish development rights at Naples by transferring development potential into Rural areas as designated on the Comprehensive Plan maps located within the South Coast that do not meet the criteria below. The Board shall decide when such transfers are appropriate as indicated in Subsection 35.64.060.A.3 of this Article.~~

a. ~~Criteria:~~

- ~~(1) Land located with Rural areas that have sensitive natural resources value, prime agricultural/grazing land, coastal bluffs or cultural/archaeological sites.~~
- ~~(2) Land located within Rural areas that lie within the public viewshed of Highway 101.~~

### **35.64.020 - Applicability**

The provisions of this Chapter shall apply to eligible Naples Townsite sender lots and designated receiving sites along the South Coast of Santa Barbara County.

### **35.64.030 - Definitions**

The Section provides definitions of terms and phrases used in this Chapter that are technical or specialized, or that may not reflect common usage. If any of the definitions in this Section conflict with definitions in other sections of this Development Code or other provisions of the County Code, these definitions shall control for the purposes of this Chapter.

**Amenity funds.** A percent of the revenue collected from ~~Transfer of Development Rights~~TDR Authority sales of Transferable Development Credits that are set aside to fund infrastructure and park/recreational enhancements in receiving site neighborhoods as both an incentive and reward for accepting increased density.

**Base density.** The number dwelling units allowed on the receiving site under the property's current zoning.

**Conservation easement.** A legal deed restriction recorded on the title to the property that severs in perpetuity the right to develop dwelling unit(s), commercial, and/or industrial facilities on said property.

**Development right.** One of the rights associated with land ownership that entitles a landowner to develop his property in compliance with the local government General Plan and zoning

regulations. For purposes of this Chapter, a development right is limited to principal permitted uses (i.e., uses that do not require the approval of a Conditional Use Permit or Minor Conditional Use Permit in compliance with Section 35.82.060 (Conditional Use Permits and Minor Conditional Use Permits)) that entail physical alteration of real property including residential, commercial and industrial uses; however open space, grazing and agricultural crop production are expressly excluded.

**Grid lots.** Legal lots recognized under the Official Map.

**Inter-jurisdictional agreement:** A legal agreement to transfer development potential between the County and a Participating Entity. The agreement articulates the conditions tied to the transfer of development rights to ensure that both jurisdictions mutually benefit.

**Naples lots.** One or a combination of: (a) grid lots; or (b) reconfigured lots resulting from lawful mergers, line adjustments and re-divisions approved by the County in connection with rezoning of all or part of the Naples Townsite pursuant to Coastal Land Use Plan Policy 2-13.

**Naples Townsite.** The area encompassed by the Official Map.

**Neighborhood Enhancement Projects.** Infrastructure and park/recreational enhancements constructed in receiving site neighborhoods as an incentive or concession to approving receiver sites which are in addition to any developer impact fees or mitigation otherwise required in compliance with the California Environmental Quality Act..

**Official Map.** The Official Map of Naples approved by the Board on October 3, 1995, and filed for the record on December 19, 1995, in Book 99, at Pages 4 through 9 of Maps.

**Participating Entity.** A governmental organization having land use authority within Santa Barbara County (e.g., incorporated Cities, University of California, California Division of Fairs and Expositions, United States Government, etc.) that has entered into an inter-jurisdictional agreement to participate in the Transfer of Development Rights program.

**Pre-screen.** A preliminary application and non-binding advisory determination of the appropriate density for a potential receiver site.

**Receiving site.** Legal lot(s) the County (or Participating Entity) has determined to be appropriate for increased development density with the purchase of transferable development credits.

**Residual land value analysis.** A land residual methodology calculates the value of a development based on its income potential, and subtracts the costs of development and an expected developer profit to yield what receiver site owner would pay for the land with enhanced entitlements.

**Rural and Urban areas.** Rural and Urban areas as designated on the Comprehensive Plan maps.

**Sending site.** Legal lots identified by the County pursuant to Section 35.64.050 (Sending Sites), the underlying development rights to which, at the landowner's discretion, may be severed and sold to the ~~Transferable Development Rights~~ TDR Authority.

**South Coast.** The unincorporated area located east of Highway 101 at Gaviota, south of the ridge of the Santa Ynez Mountains, and west of the Ventura County line.

**TDR Authority.** The Transferable Development Rights Authority established pursuant to Section 35.64.090, which may be a governmental agency, or a non-governmental agency such as a local land trust or national conservation organization, established and given authority by the County to buy transferable development rights and sell transferable development credits..

**Transferable Development Credit.** A certificate which grants one additional dwelling unit above base density, on specified receiving sites, that can only be purchased from the ~~Transferable Development Rights~~ TDR Authority.

**Transferable Development Credit Density Bonus.** The number of additional units above base density that can be built in association with a County approved receiving site project with the purchase of transferable development credits.

**Transferable Development Rights.** Development rights, as defined in this Chapter, from sending sites that can voluntarily severed from the associated with the property's ownership at the initiation of the landowner and sold to the ~~Transferable Development Rights~~ TDR Authority.

~~**Transferable Development Rights Authority.** The entity, which may be a governmental agency, or a non-governmental agency such as a local land trust or national conservation organization, established and given authority by the County to buy Transferable Development Rights and sell transferable development credits.~~

### **35.64.040 - Program Administration**

The Department and Director shall have principal responsibility for administration of Transfer of Development Rights under the provisions of this Chapter. Except or unless otherwise noted, the provisions of this Chapter are expressly applicable to the County. Terms, conditions and procedures applicable to Participating Entities shall be clarified through inter-jurisdictional agreements.

### **35.64.050 - Sending Sites**

**A. Sending site eligibility.** Properties that meet all the criteria listed below shall qualify as eligible sending sites:

1. Lots within the Naples Townsite that the Board prioritizes for transfer in compliance with goal number one of Subsection 35.90.010.C.
2. If lots have not received approval for rezoning from their current agricultural designation pursuant to Coastal Land Use Plan Policy 2-13, then only the development rights that correspond to the lot arrangement shown on the Official Map shall be transferred. If rezoning occurs as provided under Coastal Land Use Plan Policy 2-13, then the development rights associated with the rezoning and lot reconfigurations (if any such lot reconfigurations are concurrently approved) shall be subject to transfer.

3. All eligible Naples lots shall be ranked as to their priority for transfer by resolution of the Board. The rank shall determine the order by which the ~~Transferable Development Rights Authority~~ (hereafter “~~the Authority~~”) TDR Authority purchases transferable development rights from sending sites.

**B. Allocation of transferable development rights to sending sites.** Each eligible Naples lot shall be entitled to one transferable development rights. Each transferable development right shall represent the legal right to build a primary and secondary dwelling unit on a legal lot which can be voluntarily severed from the rights associated with the property’s ownership at the initiation of the landowner. Sending site transferable development rights shall only be sold to the ~~Authority~~ TDR Authority.

**C. Sending site application process.**

1. **Application.** Landowners of lots that meet the eligibility requirements under Subsection 35.90.040.A and desiring to sell their transferable development rights shall file with the Department an application containing two copies of a preliminary title report no older than six months concerning the lot.
2. **Notice of eligibility.** Following submittal of an application, the Department shall prepare a written notice to the applicant that confirms the lot(s) as those the Board has approved, the lots priority rank, and a statement of the number of transferable development rights that can be allocated to each approved Naples sending lot.
3. **Issuance of sending site certificate.** Following recordation of a conservation easement(s), a certificate allocating transferable development rights shall be issued to the owner(s) of the property by the Department. A transferable development rights certificate shall be issued for each transferable development rights assigned to a legal lot as determined by Subsection 35.64.030.B that has a recorded a conservation easement. The certificate shall include a full legal lot description and its respective priority ranking.
4. **Sending site transferable development rights.** Sending site transferable development rights shall only be available for purchase by the ~~Authority~~ TDR Authority, in order of their respective prioritization, after a certificate allocating transferable development rights has been issued to the lot owner(s) by the Department.
5. **Record of conservation easement.** As a condition prerequisite to the ~~Authority~~ TDR Authority’s purchase of transferable development rights, evidenced by certificates issued pursuant to this section, a conservation easement shall be recorded as a deed restriction on the property’s title (or equivalent legally enforceable mechanism). The conservation easement (or equivalent legally enforceable mechanism) shall be reviewed and approved by County Counsel prior to its recordation or execution. The easement (or equivalent legally enforceable mechanism) must sever, in perpetuity, the development right(s) from ownership of the property.

## 35.64.060 - Receiving Sites

### A. Receiving site eligibility.

1. **Unincorporated County sites.** Unincorporated properties that qualify as eligible receiving sites to exceed base zoning density through the purchase of transferable development credits as defined in Section 35.64.030 (Definitions) of this Chapter must comply with all the following criteria:
  - a. The site must be located within the County's South Coast Housing Market Area as delineated in the County's Housing Element.
  - b. The site must be within ~~or adjacent to~~ a designated ~~urban~~ Urban area.
  - c. The developable footprint of the site must have less than 30 percent slope.
  - d. The developable footprint of the site must not be located in a designated flood or geologic hazard area
  - e. The developable footprint of the site must not be under agricultural production and shall have less than 25 percent Class I soils.
  - f. The developable footprint ~~developable portion~~ of the site must not be located in an environmentally sensitive habitat area.
  - g. The developable footprint ~~portion~~ of the site must not be located in a culturally or archaeologically sensitive area.
2. **Participating Entity sites.** Properties within the land use authority of a Participating Entity that qualify as eligible receiving sites to exceed base zoning density through the purchase of transferable development credits, as defined in Section 35.64.030 (Definitions) of this Chapter, shall be determined by the Participating Entity in accordance with the terms and conditions of the inter-jurisdictional agreement.
3. ~~**Exceptions.** Exceptions to the criteria set forth in Subsection 35.64.050.A.1. may be granted by the Board on a case by case basis, when it so determines at its sole discretion, that provisions of Subsection 35.64.010.C.2. apply.~~

### B. Receiving site application process/determination of density bonus. The processing of applications for receiver site designation and award of density bonus shall be expedited to the maximum extent feasible. The following procedure shall be used to approve receiving sites and identify the density bonuses obtainable on eligible receiving sites through transferable development credit purchases.

1. Landowners seeking designation of their properties as eligible receiving sites must file an application with the Department. The application must include the lot(s) Assessor's Parcel Number(s), current property ownership, preliminary title report not more than six months old, current zone designation and evidence supporting

that the site meets the eligibility criteria.

2. The Department shall, within 30 days of the date an application is accepted as complete, notify the applicant if the site is an eligible receiving site based on the criteria of Subsection 35.64.050.A.
3. Sites that are determined to be eligible receiving sites shall require a pre-screen by the Commission, upon recommendation of the Director, to set: (a) the base density, and (b) the maximum allowable density obtainable on the site with transferable development credit purchases. The applicant must submit a preliminary draft conceptual plan and processing fee for the pre-screen analysis. The Director shall evaluate the application and report its findings to the Commission in the form of a recommendation as follows:
  - a. The matter shall be considered by the Commission at a noticed, public hearing with notice provided in the time and manner required for Development Plans in compliance with Section 35.82.080 (Development Plans).
  - b. The base density shall represent the number of dwelling units allowed on the property under its existing zone designation;
  - c. The Director shall recommend an assignment of maximum density based upon neighborhood compatibility and existing surrounding land uses. This preliminary staff study shall serve as an initial assessment in an eventual environmental review in compliance with the California Environmental Quality Act to achieve final receiving site approval in compliance with Subsection B.4, below.
  - d. The Commission may accept, reject or modify the recommendation of the Director. The Commission's determination of maximum density is not vested "by right" to the property; rather, it shall only represent a maximum number of additional units not be exceeded with transferable development credit purchases. The actual additional transferable development credit density granted to the property shall be determined in compliance with Subsection B.4, below.
  - e. The action of the Commission to determine the maximum density is final subject to appeal in compliance with Chapter 35.102 (Appeals).
4. Following the determination of density in compliance with Subsection 35.64.060.B.3, the applicant may submit a development application seeking a density less than or equal to the maximum density determined in compliance with Subsection 35.64.060.B.3. The application shall encompass all permits required for the project as specified in this Development Code and shall include, at a minimum, a Development Plan that provides details on the physical attributes of the project and environmental data necessary to conduct an initial study evaluation.

- a. The matter shall be considered by the Commission at a noticed, public hearing with notice provided in the time and manner required in compliance with this Development Code. All permit applications associated with the proposed project, as well as the related environmental documents, shall be noticed and heard concurrently.
  - b. If and when the development application is approved or conditionally approved, the Department will calculate the transferable development credit density bonus which shall reflect the number of transferable development credits available to the project based on the difference between the previously determined base density and the project density as approved by the County. The following criteria shall apply in calculating the transferable development credits density bonus:
    - (1) One transferable development credit shall equal one additional dwelling unit above base density;
    - (2) The vested transferable development credit density bonus shall be an option in addition to State density bonus law for receiving site applicants to achieve greater density. Where a receiving site applicant has requested a density bonus under both State housing law and this Transfer of Development Rights program, and such request exceeds the maximum allowable density obtainable on the site with transferable development credit purchases, State density bonus awards must be made before determining whether transferable development credits can be granted under this Transfer of Development Rights program.
  - c. Affordable units required under the Inclusionary Housing Policy of the County's Housing Element shall only apply to the base density of the receiving site that is determined in compliance with Subsection 35.64.050.B.3.b.
5. Within the 30 calendar days following the County's final action on the project, the Department shall issue to the receiving site applicant transferable development credit certificates for each of the additional dwelling units, obtainable through transferable development credit purchase, that are granted by the Commission. The issuance of transferable development credits by the County to projects that may be appealed to the Coastal Commission may also be appealed to the Coastal Commission. If the project and/or the issuance transferable development credits is appealed to the Coastal Commission, the County shall not issue the transferable development credit certificates until the Coastal Commission takes final action.
  6. The receiving site applicant shall be allowed to purchase, only from the ~~Authority~~ TDR Authority, a commensurate number of transferable development credits that are granted by the Commission for each receiving site.

7. The Department shall only grant authority to construct (e.g., Coastal Development Permit, Land Use Permit, or Zoning Clearance, and Building Permits) to a receiving site applicant for a project with additional units that have certificates possessing official ~~Authority~~TDR Authority approval as indicated in Subsection 35.64.090.E. The ~~Authority~~TDR Authority approval shall be evidence to in-whole payment(s) by the receiving site applicant for the transferable development credit(s).

### **35.64.070 - ~~County Restrictions on Rezones~~Density Bonus Incentives**

- A. To facilitate the designation of receiver sites and award of density bonuses, the applicant may request the following incentives in connection with applications filed under Section 35.64.060.B.: (i) a reduction of site development standards including, but not limited to, lot sizes and/or dimensions, setbacks, open space, lot coverage, building height, structural separation, street widths, architectural design or off-street parking; (ii) a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the California Health and Safety Code; or (iii) other regulatory incentives or concessions which result in identifiable cost reductions or avoidance.~~All applications for zone change that are filed with the County on or after the effective this Section, the County shall require that all rezones within the South Coast that result in an increase in residential density for market-rate dwelling units on sites that meet the criteria in Subsection 35.64.060.A. are contingent upon the purchase of transferable development credits from the Authority. No other means of obtaining greater market rate residential density, other than the State density bonus law, shall be allowed on sites that meet the receiving site eligibility requirements.~~
- B. The Planning Commission, at its sole discretion, may grant approval of one or more density bonus incentives for which application is made pursuant to Section 35.64.070.A. provided that the following findings can be made: (i) the proposal will not be a hazard or nuisance to the community or adversely impact the health, safety or welfare of neighborhoods in the immediate vicinity; (ii) the proposal will not exceed existing or planned infrastructure capacities; or (iii) the proposal will not establish a use inconsistent with applicable Comprehensive Plan, Coastal Land Use Plan or Community Plan policies. The granting of an incentive or concession shall not be interpreted, in and of itself, to require a Comprehensive Plan or Local Coastal Program amendment, Development Code text amendment, Zoning Map amendment, variance or other discretionary approval separate from the discretionary approval otherwise required for the project.~~If a property is being considered by the County for a rezone that results in an increase in residential density for additional market rate dwelling units which has not submitted an application for receiving site status, it shall be reviewed by the Director for receiving site eligibility. The Director's decision is subject to review and approval by the Commission. The action of the Commission is final subject to appeal in compliance with Chapter 35.102 (Appeals). The Commission's determination of eligibility shall be processed in compliance Subsection 35.64.060.B.3. If the Commission determines that the site is an eligible receiving site, any~~

~~rezone that results in an increase in residential density for additional market rate units shall require the purchase of transferable development credits from the Authority or the provision of affordable housing in compliance with State density bonus law.~~

### 35.64.080 - Amenity Funds

The Transfer of Development Rights program shall require the ~~Authority~~TDR Authority, subject to agreement between the County and ~~Authority~~TDR Authority pursuant to Section 35.64.100.A, to allocate amenity funds, as defined in Section 35.64.030 (Definitions), as both an incentive and reward for accepting increased density in receiving site neighborhoods.

- A. Upon recommendation of the Planning Commission, Aamenity funds may only be allocated by the ~~Authority~~TDR Authority for infrastructure enhancements in neighborhoods with receiving sites built at greater densities than would normally be allowed under the zone designation. The designated use of Amenity Funds, if any, shall: (i) be made in conjunction with the receiver site application process pursuant to Section 35.64.060.B.; (ii) not exceed a maximum allocation of 10 percent of the value of the transferable development credits that are approved for a particular project; (iii) Amenity funds may only be used to fund projects benefiting the area where the receiver site is located; and (iv) shall be in addition to any developer impact fees and mitigation required in compliance with the California Environmental Quality Act.
- B. The ~~Authority~~TDR Authority, ~~if authorized by agreement between the County and Authority pursuant to Section 35.64.100.A~~upon the recommendation of the Planning Commission (or Participating Entity, as the case may be), shall allocate a maximum of 10 percent of the revenue received forfrom the purchase of transferable development credits for a particular project into an every five transferable development credits sold to a dedicatedenterprise fund managed by the ~~Authority~~TDR Authority (for receiver sites within unincorporated areas) or the Participating Entity (for receiver sites within incorporated municipal jurisdictions), the monies in which shall be expressly and solely pledged to plan, design, construct, install and administer infrastructure and park/recreational enhancements in receiving site neighborhoods.
- C. For receiver sites ~~within incorporate municipal boundaries~~outside of the land use jurisdiction of the County, participatingParticipating jurisdictions Entities shall establish their own process and procedures for receiving and allocating Amenity Funds subject to the terms and conditions set forth in the Inter-Jurisdictional Agreement pursuant to Section 35.64.100.

### 35.64.090 - Transferable Development Rights Authority

- A. **Purpose.** The County shall create a ~~Transferable Development Rights~~TDR Authority. The purpose of the ~~Authority~~TDR Authority shall be to:
1. Act as the sole intermediary between transferable development rights/transferable development credit sellers and buyers to facilitate the market between the often disparate values of sending site transferable development rights and receiving site

transferable development credits;

2. Manage a fund for continued land preservation with the Transfer of Development Rights program;
3. Hold and/or transfer conservation easements to a third party trustee;
4. Manage and allocate amenity funds;
5. Maintain records of all commodity transactions; and
6. Facilitate the drafting of inter-jurisdictional transferable development rights agreements between County and Participating Entities.

**B. Administration of the ~~Transferable Development Rights~~ TDR Authority.** The County shall designate, by resolution of the Board, the entity which shall be empowered and authorized to serve as the ~~Authority~~ TDR Authority. The entity designated by the County shall be a non-profit organization, among whose purpose it is to conserve open space and/or natural resources of the conservation easement, preferably with experience in administering TDR programs and conservation easements. The designation may be changed from time to time at the convenience of the Board and shall be formalized by written agreement between the County and the ~~Authority~~ TDR Authority which stipulates the terms and conditions of participation, including, at a minimum, compliance with the provisions of this Chapter.

**C. Voluntary participation.** The transferable development rights purchase price shall be mutually agreed-upon by the ~~Authority~~ TDR Authority and the transferable development rights owner. The ~~Authority~~ TDR Authority and/or the transferable development rights owner shall not be obligated to participate in transactions if one or both parties find the appraisal valuation inappropriate. The transferable development credits selling price shall be mutually agreed-upon by the ~~Authority~~ TDR Authority and the transferable development credit purchaser. Either party shall not be obligated to participate in transactions if one or both parties find the determination of ~~minimum~~ selling price inappropriate. Subject to such refinements and modifications as may be authorized under the rules approved by the Board pursuant to Section 35.64.090.J., the valuation of transferable development rights and credits shall be governed by the following:

1. For all transactions, a third-party fair market valuation shall be required by a certified MAI appraiser using before and after standards as set forth by the Standards of Professional Appraisal Practice (USPAP).
2. The appraiser shall be mutually agreed upon by the buyer, seller and TDR Authority. The appraiser's determination of value (both as to transferable rights and credits) shall serve as the price at which the TDR Authority engages in its negotiations with the parties.

3. A residual land value analysis shall used as the basis of determining the price of transferable credits. The difference between the current price of land, with its base density, and the residual land value with extra units allowed via transferable development credit density bonus, shall serve as the price benchmark.

**D. Conservation easements.** As part of each transaction involving the purchase of development rights, the ~~Authority~~TDR Authority shall record a conservation easement on the title of the sending site property (or equivalent legally enforceable mechanism). The conservation easement (or equivalent legally enforceable mechanism) must sever, in perpetuity, all rights to develop or use the property except for open space, grazing and agricultural crop production. The ~~Authority~~TDR Authority shall hold, or transfer to a third party trustee (the “Trustee”) the conservation easement from said property (or equivalent legally enforceable mechanism). The Trustee shall be designated by the Board and shall be a conservation organization, among whose purposes it is to conserve open space and/or natural resources of the conservation easement.

**E. Sender site priorities.** The ~~Authority~~TDR Authority shall obtain transferable development rights from sending sites in order of priority as set forth by resolution of the Board in Subsection 35.64.050.A.3. In so doing, the ~~Authority~~TDR Authority shall be required to purchase transferable development rights from lots with higher priority ranking before purchasing transferable development rights from lots with lower priority ranking. As an example, and by way of illustrative purposes only, if the preservation of bluff lots is selected by the Board as the top priority and the overall estimated development right value of such lots is \$115 million, the purchase of development rights shall be restricted to bluff lots until the amount of funds on deposit with the TDR Authority exceed this threshold. Once funds exceed the amount of \$115 million, development rights can be purchased from the next highest priority category. In the event no secondary priority is selected, any lot at Naples would be eligible.

**F. Transferable development credit seller authorization.** The ~~Authority~~TDR Authority can be designated as the sole seller of transferable development credits and shall be allowed to sell transferable development credits to applicants of approved receiving sites as determined in Section 35.64.060 (Receiving Sites) or other interested parties.

**G. ~~Authority~~TDR Authority expenditures of funds.** The ~~Authority~~TDR Authority shall only use the revenue collected from the sales of transferable development credits in the following ways:

1. Purchase transferable development rights from Naples sending sites.
2. Allocation of amenity funds.
3. Cover administrative and overhead costs.
4. Repay investment contract obligations made with the ~~Authority~~TDR Authority.
5. Purposes explicitly agreed to by any contract between the County and the ~~Authori-~~

tyTDR Authority.

- H. AuthorityTDR Authority management of investment funds.** The AuthorityTDR Authority Board, in addition to buying transferable development rights and selling transferable development credits, may seek to attract private capital and public loans or grants to capitalize the AuthorityTDR Authority's revolving fund for continued land preservation.
- I. Facilitate inter-jurisdictional agreements.** The AuthorityTDR Authority shall serve to facilitate and negotiate with Participating Entities the terms and conditions of any inter-jurisdictional agreement involving the transfer of transferable development rights and/or transferable development credits. The AuthorityTDR Authority Board shall, prior to finalization of an inter-jurisdictional agreement, seek Board approval of the conditions put forth.
- J. Adoption of rules.** The AuthorityTDR Authority Board shall adopt bylaws or operating guidelines that include rules for the transaction of business and shall keep a public record of its resolutions, transactions and investments. The bylaws and rules adopted by the AuthorityTDR Authority Board shall be subject to review and approval by the Board of Supervisors.

### 35.64.100 - Inter-Jurisdictional Agreements

- A. Purpose.** The County and any jurisdictions that voluntarily participate in the County's Transfer of Development Rights program shall enter into an inter-jurisdictional agreement. The purpose of such an agreement shall be to ensure that each jurisdiction can condition development right transfers such that both parties mutually benefit.
- B. Key components.** A binding inter-jurisdictional agreement between the County and Participating Entity shall address at minimum the following components:
1. Specific sending sites mutually-agreed upon by the County and the Participating Entity from which to transfer development rights.
  2. The ways by which the Participating Entity interfaces with the AuthorityTDR Authority; at minimum these shall include:
    - a. The terms by which the Participating Entity and the AuthorityTDR Authority negotiate to determine the transferable development rights purchase price.
    - b. The terms by which the Participating Entity agrees to transfer funds to the AuthorityTDR Authority.
    - c. The terms by which the Participating Entity uses the AuthorityTDR Authority, if at all, to sell density credits in its jurisdiction.
  3. The process by which the AuthorityTDR Authority pays receiving site amenity

funds, if any, to the Participating Entity; this shall address at minimum:

- a. The amount of money the County is to pay the Participating Entity.
- b. The purposes for which the money will be used and how it will be expended.
- c. The timeframe for the Participating Entity to exercise the County’s funds.
- 4. Notification process for the Participating Entity and County to inform each other.
- 5. The effective date and duration of the agreement.
- 6. The conditions that would terminate the agreement.
- 7. The situations that constitute Participating Entity and/or County negligence.

### 35.64.110 – General Limitations

- A. **Functional Separation.** The ~~Authority~~TDR Authority’s designation and appointment Section 35.64.090 shall be subject to and contingent upon the ~~Authority~~TDR Authority’s acceptance of the provisions of Section 35.64.090 and other such terms as the parties may agree to including, but not limited to, liability and indemnification.
- B. **Applicable Law.** Nothing in this chapter shall abrogate, limit, expand or otherwise affect any powers, rights, or duties granted to, or imposed on, the board of supervisors by division 3 of title 3 of the Government Code or any other applicable law.
- C. **Severability.** If any section, subsection, clause or provision of this chapter is held invalid, the remainder of this chapter shall not be affected by such invalidity.

### SECTION 2:

This ordinance shall take effect and be in force 30 days from the date of its passage and before the expiration of 15 days after its passage, it, or a summary of it, shall be published once, together with the names of the members of the Board of Supervisors voting for and against the same in the Santa Barbara News-Press, a newspaper of general circulation published in the County of Santa Barbara.

PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of Santa Barbara, State of California, this \_\_\_\_ day of \_\_\_\_\_, 2008, by the following vote:

- AYES:
- NOES:
- ABSTAINED:
- ABSENT:

\_\_\_\_\_  
SALUD CARBAJAL

# DRAFT

Chair, Board of Supervisors  
County of Santa Barbara

ATTEST:

MICHAEL F. BROWN  
Clerk of the Board of Supervisors

By \_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM:

DENNIS MARSHALL  
County Counsel

By \_\_\_\_\_  
Deputy County Counsel