



September 12, 2008

Salud Carbajal  
Santa Barbara County Board of Supervisors  
123 E. Anapamu Street  
Santa Barbara, CA 93101

**Re: Naples Transfer of Development Rights (TDR)**

Dear Chairman Carbajal & Supervisors,

This letter is submitted by the Environmental Defense Center (EDC) on behalf of the Santa Barbara Chapter of the Surfrider Foundation (Surfrider). Surfrider is a non-profit environmental organization dedicated to the protection and enjoyment of the world's oceans, waves and beaches for all people, through conservation, activism, research and education. EDC protects and enhances the environment through education, advocacy and legal action.

EDC and Surfrider urge the Board of Supervisors to reconsider the recent direction of TDR at Naples and to instead craft a program that complies with Local Coastal Policy 2-13 and that will achieve meaningful preservation on the Gaviota Coast.

Policy 2-13 directs the County to: (1) discourage residential development at Naples; (2) encourage and assist in the transfer of development rights from Naples into an appropriate urban area; and (3) reconsider land use designations at Naples if and only if TDR proves to be infeasible.

To date, the County has not adequately discouraged residential development at Naples. In fact, the Planning Commission has recently endorsed a residential development proposal that would place a number of large homes and related facilities onto the town site.

Also to date, the County has not adequately encouraged or assisted the Naples landowners in effecting TDR. In fact, the development of a TDR program lags far behind the entitlement process that will result in residential development at Naples, and the landowners have indicated on the record that participation in a future TDR program is not likely.

The TDR program as currently presented will only serve to further compound the County's lackluster compliance with Policy 2-13. The proposed program will be inefficient and ineffective, and it sits at a far remove from the original Solimar proposal (which, in itself was flawed).

EDC and Surfrider have continually objected to the lack of controls on sending site participation in the proposed TDR program. Recent direction from the Planning Commission has served to remove similarly necessary controls on receiver site participation, leaving a program that is both toothless and without meaningful incentives.

The following discussion will touch briefly on sections within the proposed TDR ordinance. All previous EDC and Surfrider communications on TDR are echoed and incorporated herein by reference.

### **35.64.010 – Program Purpose and Intent, Description and Goals**

#### **C. Goals**

Transfer priorities should be set via public process at the Board of Supervisors. It may be inefficient and inappropriate to allow a contributor to designate transfer priorities, as this could lead to a scattered and unplanned application of transfers.

### **35.64.050 – Sending Sites**

EDC and Surfrider continue to object to the manner in which transfers are incentivized. As stated in the Solimar report and in countless examples of TDR throughout California and the nation, an effective program must incentivize both the sale and the purchase of density credits. Some mandatory participation on both ends is necessary. Naples lot owners, i.e. the sending sites, must be obligated to participate if market conditions allow.

Furthermore, the County has dragged significantly in its attention to Policy 2-13, and the proposed TDR program will be hindered by the scope and speed of development at Naples. The TDR program must be given an adequate amount of time to coalesce and evolve before ground is broken at potential sending sites. A limited, mandatory hold period on development at the Naples Town Site would allow TDR to grow and become a viable tool for preservation.

### **35.64.060 – Receiving Sites**

Increased density in receiver site areas must be conditioned on meaningful participation in TDR. The original Solimar proposal, which was endorsed through the preliminary Planning Commission process and by your Board, placed controls on rezones and upzones at designated receiver sites. This mechanism would allow the County and the community to capture a benefit from density that would otherwise come as a cost.

In order to generate the maximum revenue for TDR while incurring the minimum level of necessary densification, the TDR program should be expanded to define all County unincorporated areas as a single receiver site. This program is desirable for three reasons:

1. Capturing TDR fees from every rezone or upzone in the County greatly expands the pool of resources available for retiring sending site development rights;
2. Making TDR participation a requirement on all rezones and upzones eliminates unnecessary process and potential delays in project approvals. No applications would be necessary. The County would not have to screen for appropriate receiver sites. Those requesting rezones or upzones would not have to weigh the costs and benefits of minimal additional density;
3. Inappropriate densification would not be encouraged. Because TDR participation would be automatic for *every* rezone or upzone that is approved in the County, no community would be faced with the choice between TDR and densification. Rather, the normal planning process would play out, the County and community would decide if a rezone was appropriate, and then TDR would benefit on the back end if the rezone is granted.

Take a hypothetical property that sits in the County unincorporated area. That property enters the normal County rezone process, with attendant review at both the Planning Commission and the Board. If and only if that property is approved for a rezone, it will be obligated to purchase the entitlements to that rezone through the TDR program. One Planning Commissioner has referred to this as a “development fee,” and in some ways that is accurate. This program does not encourage density, because it only captures a benefit from development that would otherwise be permitted.

On the other hand, the “density bonus” program that is currently envisioned by the Planning Commission will capture a relatively marginal benefit, and it will have the unintended consequence of actually encouraging density at designated receiver sites. Under this program, a property could be rezoned through the normal process without buying into the TDR program. This leads to more density at a cost to the community, and no benefit to the TDR program. The TDR program only sees a benefit if the community accepts a density bonus on top of the cost that would ordinarily be incurred, *and* only if the party requesting a rezone thinks that minor additional density is worth pursuing through a TDR application.

### **Conclusion**

In summary, EDC and Surfrider urge the Board of Supervisors to craft a TDR program that will both effectively transfer development from Naples and that will not be too burdensome on the receiver site communities. Replace the controls on rezone and

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upzones as contemplated earlier in the TDR process, and revisit the idea of controls on the sending sites, as well.

Thank you for your careful attention to EDC and Surfrider's comments.

Sincerely,

/s/

Nathan G. Alley  
Staff Attorney