

3-1

Promoting the wise use of land
Helping build great communities

**COUNTY OF SAN LUIS OBISPO
DEPARTMENT OF PLANNING AND BUILDING
STAFF REPORT**

PLANNING COMMISSION

MEETING DATE August 9, 2012	CONTACT/PHONE Karen Nall 781-5606 knall@co.slo.ca.us	APPLICANT County of San Luis Obispo	FILE NO. LRP2008-00012
SUBJECT Hearing to consider a request by the County of San Luis Obispo to amend Sections 22.22 and 22.24, of the Land Use Ordinance, Title 22 of the County Code and the Land Use Element, Framework for Planning, referring to the Transfer of Development Credits (TDC) program. The proposed amendments will make minor word changes to the ordinance and will update the general plan language to reflect the current program.			
RECOMMENDED ACTION Recommend to the Board of Supervisors: Approval of the Land Use Ordinance amendment LRP2008-00012 and amendments to the Land Use Element Framework for Planning based on the findings listed in Exhibit A.			
ENVIRONMENTAL DETERMINATION This project is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. It can be seen with certainty that there is no possibility that this project may have a significant effect on the environment; therefore, the activity is not subject to CEQA. [Reference: State CEQA Guidelines sec. 15061(b)(3), General Rule Exemption]			
LAND USE CATEGORY All	COMBINING DESIGNATION Not Applicable	ASSESSOR PARCEL NUMBER Not Applicable	SUPERVISOR DISTRICT(S) 1,3,4 & 5
PLANNING AREA STANDARDS: Not Applicable			
EXISTING USES: Not Applicable			
SURROUNDING LAND USE CATEGORIES AND USES: Not Applicable			
OTHER AGENCY / ADVISORY GROUP INVOLVEMENT: The project was referred to: Inland Community Advisory Groups, Public Works, Environmental Health, Ag Commissioner, County Parks, CAL FIRE, County Assessor's Office, and APCD			
TOPOGRAPHY: Not Applicable		VEGETATION: Not Applicable	
PROPOSED SERVICES: Not Applicable		AUTHORIZED FOR PROCESSING DATE: February 2012	
ADDITIONAL INFORMATION MAY BE OBTAINED BY CONTACTING THE DEPARTMENT OF PLANNING & BUILDING AT: COUNTY GOVERNMENT CENTER γ SAN LUIS OBISPO γ CALIFORNIA 93408 γ (805) 781-5600 γ FAX: (805) 781-1242			

3-2

Planning Commission
Land Use Ordinance Amendment # LRP2008-00012 County of SLO
Page 2

PROJECT SUMMARY

On May 10, 2011, the Board of Supervisors approved amendments to the Land Use Ordinance, Title 22 of the County Code, relating to the Transfer of Development Credit (TDC) program. The previously approved amendments place limitations on the creation of new sending sites and new receiving sites and required credits for general plan amendments and rural subdivisions. After these amendments were approved staff found errors in the adopting ordinance. In addition, based on the Board's action staff is recommending making changes to the Framework for Planning consistent with the recommendations of the TDC Blue Ribbon Committee.

These proposed amendments are essentially a cleanup amendment. The changes proposed will make minor word changes to the ordinance and will update the general plan (Framework for Planning) language to be consistent with the ordinance and to reflect the current program. The specific changes are outlined and discussed below under "Staff Comments".

HISTORY

The TDC Program is a land use planning tool that allows for the movement (transfer) of development from one parcel of land to another; from a "sending" site to a "receiving" site. The reason for moving development from one place to another is primarily to guide development to locations that can better support it. The transfer of the credits reduces the development possible on the sending site and increases the development possible on the receiving site.

The County's TDC program was adopted October 8, 1996 as a Countywide program that incorporated criteria for determining sending and receiving site eligibility, procedures for establishing sending and receiving sites, and how credit transfers would occur. Since its inception, the program has been amended five times.

On July 25, 2006, the Board of Supervisors directed that a Transfer of Development Credit Blue Ribbon Committee (TDC BRC) be created to review the existing TDC program. This direction was generated by issues raised about the program from the Planning Commission and the public. The committee met 33 times over a two-year period and ultimately prepared a final report. The Board of Supervisors reviewed and discussed the TDC BRC final report on January 13, January 20, and January 27, 2009 and authorized changes to the TDC ordinance on March 10, 2009 based on some of the recommendations of the committee's final report. These changes were ultimately adopted by the Board of Supervisors on May 10, 2011. After adoption staff found some errors in what was adopted. These amendments will correct these errors. In addition, staff is recommending that the description of the program in Framework for Planning be amended based on the recommendation of the Blue Ribbon Committee.

LEGISLATIVE HISTORY

This ordinance amendment's purpose is to fix inaccurate section references and clarify the TDC program description contained in the Framework for Planning. It is supported by policies of the Land Use, Agriculture and Conservation/Open Space Elements of the County of San Luis Obispo's General Plan.

3-3

Planning Commission
Land Use Ordinance Amendment # LRP2008-00012 County of SLO
Page 3

AUTHORITY

Land Use Ordinance Amendment

The Land Use Element sets forth the authority by which the Ordinance can be amended. The following factors should be considered in making a decision.

Guidelines for Amendments to Land Use Ordinance

The Land Use Ordinance guides new development so as to be in character with its surroundings and to maintain amenities for living. These principles implement the general goals that are stated in Chapter 1 of Framework for Planning, Part I of the Land Use Element.

Development of new or amended Land Use Ordinance standards should be guided by the following principles for implementation of the general plan goals:

1. All developments should be designed with maximum consideration of the characteristics of project sites and their surroundings:
 - a. To enhance and achieve full use of special site potentials such as natural terrain, views, vegetation, natural waterways or other features;
 - b. To respect and mitigate (or avoid) special site constraints such as climatic conditions, noise, flooding, slope stability, significant vegetation or ecologically sensitive surroundings;
 - c. To be compatible with present and potential adjacent land uses within the context of the area's urban, suburban or rural character.
2. Designs for proposed residential uses should include:
 - a. Provisions for privacy and usable open space;
 - b. Orientation and design features to shelter from prevailing winds and adverse weather, while enabling use of natural light, ventilation and shade.
3. All developments should be designed to provide safe vehicular and pedestrian movement, adequate parking for residents, guests, employees and emergency vehicles.

The proposed amendments are consistent with these guidelines as the design of individual TDC projects takes into consideration the characteristics of project sites and their surroundings, provides for privacy and usable open space and evaluates orientation. In addition, projects are required to be designed to provide for safe circulation and adequate parking.

STAFF COMMENTS

Proposed Ordinance Modifications

The attached Exhibit B shows the proposed Ordinance deletions with strikeouts, and proposed additions with underlined text. The following is a discussion of the proposed amendments:

1. Section 22.22.020 – Land Divisions of the Land Use Ordinance, D. Transfer of Development Credit Program.

Added the word "Section" which was missing.

3-4

Planning Commission
Land Use Ordinance Amendment # LRP2008-00012 County of SLO
Page 4

2. Section 22.24.010 – Voluntary Transfer of Development Credit Program. A. Purpose and intent.

Minor text changes for readability.

3. Section 22.24.100 - TDC Administrator. B. Annual review. and C. Report review.

Modified language to require a report of the program be provided to the Board of Supervisor on an “as needed basis” instead of annually. Due to changes to the program and the current economic downturn, the Department has not processed any subdivision applications proposing the use of TDC’s in a number of years. The annual report requires staff time and time on the Board’s agenda. Given the limited use of the program, the proposed change will allow the reporting to be conducted if and when TDC’s activity increases.

4. Amend Chapter 6 of the Framework for Planning, Part I of the Land Use Element of the County General Plan, Voluntary Transfer of Development Credits (TDCs), Countywide Voluntary TDC Program

Modified language as proposed by the TDC Blue Ribbon Committee and to be consistent with changes made to the ordinance by the Board in May 2011.

ATTACHMENTS

Exhibit A - Findings

Exhibit B - LRP2009-00012 Proposed Land Use Ordinance Changes

Exhibit C - Amendment to Chapter 6, Framework for Planning, Part I of the Land Use Element, Voluntary Transfer of Development Credits (TDCs)

Exhibit D – Summary Report on TDC Use

3-5

Planning Commission
Land Use Ordinance Amendment # LRP2008-00012 County of SLO
Page 5

EXHIBIT A - FINDINGS

Environmental Determination

- A. This project is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. It can be seen with certainty that there is no possibility that this project may have a significant effect on the environment; therefore, the activity is not subject to CEQA. [Reference: State CEQA Guidelines sec. 15061(b)(3), General Rule Exemption]

Amendment

- B. The proposed amendment is consistent with the Land Use Element and other adopted elements of the general plan because the changes are consistent with the general goals of the Land Use Element.
- C. The proposed amendment is consistent with the guidelines for amendments to the Land Use Ordinance because the modifications do not include changes to the processing of transfer of development credit sending and receiving sites. The current process will allow future development to be designed with maximum consideration of the characteristics of project sites and their surrounding, to enhance and achieve full use of special site potentials such as natural terrain, views, vegetation, natural waterways or other features, to respect and mitigate (or avoid) special site constraints such as climatic conditions, noise, flooding, slope stability, significant vegetation or ecologically sensitive surroundings and to be compatible with present and potential adjacent land uses within the context of the area's urban, suburban or rural character.
- D. The proposed amendment will protect the public health, safety and welfare of the area residents by allowing for development that is compatible with the existing development of the surrounding area and by retiring the development potential in areas that are environmentally sensitive, have agricultural capability or are within antiquated subdivisions.

3-6

EXHIBIT B - LRP2008-00012

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 22 OF THE SAN LUIS OBISPO COUNTY CODE, THE LAND USE ORDINANCE, SECTIONS 22.20.020 AND SECTIONS 22.24.010 RELATING TO THE TRANSFER OF DEVELOPMENT CREDIT PROGRAM

The Board of Supervisors of the County of San Luis Obispo ordains as follows:

SECTION 1: Section 22.22.020 Land Divisions of the Land Use Ordinance, Title 22 of the San Luis Obispo County Code, is hereby amended by adding the following subsection as follows:

- D. Transfer of Development Credit Program.** Where parcels proposed for division are located outside of urban or village reserve areas, the provisions of Section 22.24.070. B.2. apply, in addition to the requirements set forth in Chapter 22.22.

SECTION 2: Chapter 22.24 of the Land Use Ordinance, Title 22 of the San Luis Obispo County Code, is hereby amended as follows:

22.24.010 - Voluntary Transfer of Development Credit Program.

- A. Purpose and intent.** The provisions of this Chapter implement the voluntary Transfer of Development Credits Program (TDC) established by the Land Use Element ~~for all applications received by the Department,~~ by providing a procedure for transferring ~~to allow the voluntary transfer of development credits~~ from one parcel of land to another. Consistent with applicable Land Use Element goals, policies and programs, the objective of this section is to relocate development from environmentally sensitive land, land with agricultural capability or antiquated subdivisions, to more suitable areas. This program is *voluntary, incentive-based, and market-driven between willing sellers and buyers.*

Properties located within the South County Planning Area as defined by Part II of the Land Use Element are subject to Section 22.24.200. Receiving Sites located within the South Atascadero area, as defined by Section 22.24.300 are subject to Section 22.24.300.

22.24.100 - TDC Administrator.

- B. Program Annual review.** The TDC Administrator shall comply with all provisions of Sections 22.24.010 et seq.. Annually ~~Annually~~ On an as needed basis, the TDC Administrator shall provide the Board of Supervisors with a full accounting of all transactions that occurred ~~within~~ since the previous reporting period ~~preceeding~~ calendar year.
- C. Report review.** The Board of Supervisors shall annually review the a report from the TDC Administrator and the Department regarding the operation of the TDC program. This report shall be considered on the Board's agenda. The report will be available to all interested parties, including community advisory groups. The Commission shall be provided a copy of the report

3-7

which may be considered on their consent agenda.

SECTION 3. This project is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. It can be seen with certainty that there is no possibility that this project may have a significant effect on the environment; therefore, the activity is not subject to CEQA. [Reference: State CEQA Guidelines sec. 15061(b)(3), General Rule Exemption]

SECTION 4. If any section, subsection, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION 5: This ordinance shall take effect and be in full force on and after 30 days from the date of its passage hereof. Before the expiration of 15 days after the adoption of this ordinance, it shall be published once in a newspaper of general circulation published in the County of San Luis Obispo, State of California, together with the names of the members of the Board of Supervisors voting for and against the ordinance.

PASSED AND ADOPTED by the Board of Supervisors of the County of San Luis Obispo, State of California, on the _____ day of _____, 2012, by the following roll call vote, to wit:

AYES:

NOES:

ABSENT: None

ABSTAINING: None

Chairman of the Board of Supervisors,
County of San Luis Obispo,
State of California

ATTEST:

County Clerk and Ex-Officio Clerk
of the Board of Supervisors
County of San Luis Obispo, State of California

[SEAL]

3-8

ORDINANCE CODE PROVISIONS APPROVED
AS TO FORM AND CODIFICATION:

WARREN R. JENSEN
County Counsel

By: _____
Deputy County Counsel

Dated: _____

3-9

EXHIBIT C LRP 2008-00012:B

Amend Chapter 6 of the Framework for Planning, Part I of the Land Use Element of the county General Plan, as follows:

Voluntary Transfer of Development Credits (TDCs)

Countywide Voluntary TDC Program

A voluntary Transfer of Development Credits (TDC) Program is a land use planning tool that allows the right to develop (called credits) to be separated from one site (the sending site) and moved to another (the receiving site). The transfer of the credits reduces the development possible on the sending site and increases the development possible on the receiving site. This program is voluntary, incentive-based, and market-driven between willing sellers and willing buyers.

Consistent with the applicable goals in Chapter 1 of this element, the goal of the voluntary TDC Program ~~will relocate~~ is to retire development potential from natural areas and environmentally sensitive land, land with agricultural capability and the business of agriculture itself, or antiquated subdivisions that are largely undeveloped and under common ownership, or open space and the outlying remote areas of the county. This development potential is then transferred to more suitable areas. The authority to establish a voluntary TDC Program is within the scope of police power established in Article XI, Section 7 of the State Constitution. The establishment of this voluntary program is also an exercise of the county's planning and zoning authority as set forth in the California Planning and Zoning Law, Title 7, Division One of the Government Code.

There are a number of objectives the voluntary TDC Program seeks to accomplish. The primary purpose is to promote appropriate settlement patterns ~~while that~~ maintaining an overall level of development within the capacities of transportation and other public service systems. The objectives of the program are to: As a voluntary countywide program it endeavors to:

- protect both land with agricultural capability and the business of agriculture itself;
- reduce development potential within land divisions or other areas that do not have adequate services for residents;
- protect ~~important or extraordinary natural~~ and environmentally sensitive areas that have special environmental and scientific qualities such as biologically unique habitats, sensitive natural communities, riparian habitats, wetlands, habitats or cultural resources;
- reduce development potential in areas that may have the potential for landslides, fires, or other hazards;

3-10

- reduce development potential in areas that separate urban and village areas in order to preserve the visual identities of those communities;
- and reduce air quality impacts and other impacts associated with locating residential development distant from jobs, schools, shopping and recreation.

~~This program is voluntary, incentive-based, and market-driven between willing sellers and willing buyers. Landowners are not obligated to use this technique to request an amendment to the general plan or to subdivide property in conformance with existing regulations.~~

The voluntary TDC ordinance is adopted in the Land Use Ordinance. The ordinance allows the voluntary transfer of development potential from a sending site to a receiving site. The receiving site would then be allowed to develop at a higher density than would otherwise be allowed by the land use category. The ordinance sets forth the criteria for an applicant to voluntarily request designation as either a sending or receiving site, the means of assigning credits to both the sending and receiving sites, and the procedures for transferring credits from one landowner to another. Both the sending and receiving sites must conform to all standards and criteria for the use of TDCs as set forth in the Land Use Ordinance.

3-11

Exhibit D Summary Report

This summary report covers the period since adoption of the TDC Program on October 8, 1996 to the present.

Sending Site Approvals

- 7 Sending Site Applications have been approved (691 total credits).
- 3 Sending Sites have recorded conservation easements and have credits available for sale (252 credits created).
- 4 Sending Sites have not recorded conservation easements and do not have credits available for sale. (all have expired)
- 196 credits retired (contracted for sale or recorded map)
- 8,679.95 acres approved for sending sites
- 5,463.95 acres have been preserved in conservation easements in perpetuity
- 3,216.00 acres that could have been preserved as sending sites have now expired
- 33 credits remaining in North County
- 23 credits remaining in South County

Receiving Site Approvals

- 56 total Receiving Site Applications
 - 7 South County Projects
 - 49 North County Projects
- 40 Receiving Site Applications have been approved.
- 3 Receiving Site Applications were not supported
- 2 Receiving Site Applications are still in process
- 11 Receiving Site Applications were withdrawn