

COLAB SAN LUIS OBISPO COUNTY

PRIOR ACTIONS AND COMING ATTRACTIONS REPORT

WEEK OF MAY 7-14, 2011

BOARD OF SUPERVISORS

Board of Supervisors Meeting of May 3, 2011(Completed). No policy items on this agenda were of concern to COLAB. During the Public Comment period, the attorney for Las Pilitas Resources (the aggregate mine applicant) did appear and again complained about the aborted environmental consultant selection process. She reiterated her prior request that the Board agendize this issue for a full discussion. COLAB reiterated its ongoing suggestions for improving the process, including segregation of duties during the contracting process to insure that CEQA consultants maintain independence.

Board of Supervisors Meeting of May 10, 2011 (Scheduled)

Transfer of Development Credits (TDC). As noted in our Alert in last week's update, the Planning Commission recommendation for amendments of Sections 22.22, 22.24, and 22.26 of the Land Use Ordinance (Title 22 of the County Code), Transfer of Development Credits, is on this week's agenda. The theory of this program/regulation is that an owner of a property in a rural area could agree to promise not to develop a lot. In exchange, a portion of the forgone density could be transferred to an urban area and used to increase the density above the normal allowance on an urban lot. The transferred development credit would have economic value for the owner of the urban (receiving) lot, who could pay the owner of the rural (sending) lot. The professed public policy benefit of this program (which was in vogue in the 1970's and 80's) is to reduce "inefficient" development in rural areas and promote more "efficient" compact development in urban areas, or "smart growth." In San Luis Obispo County it was hoped that this program would help reduce the large number of "antiquated subdivisions" which were created in the nineteenth and early twentieth centuries before the Legislature enacted the Subdivision Map Act. Many of these old subdivisions contain lots which could not be approved today because they are substandard in size; lack access to water, roads, fire protection, etc.; or are otherwise not developable under modern standards.

Like other efforts by government to manipulate the market place, things get complicated in practice. By definition most urban areas are in incorporated cities over which the County has no land use authority, complicating the process even in cases where cities agree to be receiving sites. Residents of existing neighborhoods usually oppose increased densities under any circumstances. The mechanisms to manage TDC programs are legally and administratively complicated because of the necessity to keep track of the credits, place deed restrictions on the sending site land, figure out how to increase the density on the receiving sites, and maintain banks of both receiving sites and sending sites of differing

value. It is also necessary to broker the "deals" and facilitate payment. The County only operates the program in certain geographic areas and restricts the "market" for credits to specific planning areas. It is difficult for experts who work in the development field and even for County staff to fully understand the program as designed by the County. All this requires administrative organization, accounting, record keeping, computer support, legal advice, mapping, deed recordation, and legal services.

In November 2008 the County's TDC Blue Ribbon Committee reported that (as of that date) a total of 252 credits had been created since the inception of the program in 1996. Of these, 209 had been approved for transfer, and of those 174 had been transferred and 35 were remaining. The report indicates that 5,464 acres have been preserved in conservation easements as a result. It does not indicate how much new density in square feet has been created on the receiving site end. It reports that 37 receiving sites had been approved at the time the report was prepared. New data on 2009, 2010, and 2011 are not included in the staff write up. Thus it is not known how the program is currently doing. Reportedly, the Nature Conservancy holds the credits, is administering the program, and is currently selling credits for \$75,000 per lot. The price per credit has not been verified. There are supposedly no takers presently.

This week's proposal before the Board includes:

- "1. Limit new sending sites to only those areas that are located within the existing community based- programs - the South County Area and South Atascadero Area.
2. Limit receiving site locations to be within existing urban and village reserve lines, or within existing community-based programs which include the South County area and South Atascadero area.
3. Additional Uses for Credits: General Plan Amendments. Require the retirement of credits for when a property owner requests to change a land use category which would result in an increase over what is currently allowed.
4. Additional Uses for Credits: Rural Subdivisions. Require retirement of credits for subdivisions that meet current parcel sizes but are located outside urban and village areas."

Item four (4) is a real problem. It means that if a rural owner has a parcel currently zoned for a particular lot size, he/she may not subdivide it without purchasing a credit for each additional lot. In other words, if you have a 40 acre parcel that is currently zoned for 20 acre lots, you cannot split it unless you purchase a credit. Where is the legal nexus for this exaction? The actual imposition of this requirement on a subdivision is an illegal taking of private property.

RECOMMENDATION

1. Delete the requirement that properly zoned land divisions require retirement development credits (Section 22.24.070.B.2).
2. Delete miscellaneous cross references to this section.

REASONS FOR THIS RECOMMENDATION

1. It's a taking. Requiring a developer to pay an unlimited, indeterminate price to utilize his/her properly zoned land violates his/her 5th Amendment rights.
2. It's capricious. The proposed change applies only to property in two areas (South Atascadero and South Inland Planning Area)
3. It's unreasonable. If development credits are available for retirement; a developer must buy them, at whatever price demanded, with no stated price limit.
4. It's arbitrary. If no credits are available, a developer can be (but not need be) exempted from the requirement, apparently at the TDC Administrators discretion.
5. It's inconsistent. If one developer is required to buy needed credits, and thus buys all that are available, the next developer is excused from the requirement.
6. There is no nexus. The present existence of lots in a Planning Area has no rational connection to whether a particular parcel of properly zoned land can be subdivided in accordance with that zoning.
7. It won't accomplish any "smart growth objective." The exceptions in the proposed change, and the limited credits available, virtually assure the procedure will be little used.
8. It will cause expensive litigation, for all the reasons listed above.

Publication Procedures: Legal Requirements. Notices of various County actions such as Land Use Code amendments require publication in a newspaper. Because some matters are so lengthy, the law provides a procedure to allow publication of a summary notice. However, the Board of Supervisors must authorize the summary notice by a vote on its agenda. In the case to the TDC matter above a summary notice was published on April 29, 2011. The problem is the staff is coming to the Board on May 10, 2011 (item A- 5) to request authorization for the summary publication which already took place. What if the Board had wanted more detail? Since this matter, in part, attacks a 5th Amendment right, it should probably receive more widespread notice and attention. Is the publication even legal since the Board is being asked to approve it after the fact?

OTHER GOVERNMENT ENTITIES

Planning Commission Meeting of May 12, 2011 (Scheduled)

Topaz Solar Farm. This is the continued hearing on the Topaz Solar Farm. Staff believes that this may be the last hearing and that the Commission may be able to take action. If it is approved and then appealed, it will come to the Board of Supervisors. The smaller solar plant (SunPower) was appealed, and the Board denied the appeal and approved the project. As of this writing no Court appeal has been filed on the SunPower project.

Central Coast Regional Water Quality Control Board Meeting of May 4, 2011 and May 5 2011 (Completed)

Agricultural Order. The continued hearing on the Agricultural Water Order which started at 10 AM lasted until about 7 PM. The Board (which still lacks sufficient members for a quorum) continued the issue until September. It directed its staff to examine the Ag Alternative proposal to see if there are areas where it could be incorporated. A big issue is that the Water Board insists on independent well monitoring and reporting. There was a certain amount of rhetoric about how the Board and Agriculture are "getting closer" on the provisions. This being said, Executive Director Roger Briggs gave a summation in which he criticized agriculture's deleterious effect on water quality and sermonized on his intent that the Board adopt strong regulations with teeth. Both Mr. Briggs and the State staff attorney assigned to cover the meetings seemed resistive of both the delay and effort at compromise, and it took some pushing by the Board Chairman to get them to be quiet and let the Board give its direction.

Los Osos Sewer System Discharge Permits. The Board considered a complex staff report which explores many issues related to the ultimate disposal of the effluent from the proposed Los Osos Sewer Treatment Plant. Several disposal methods and multiple sites are proposed. These include agriculture reuse irrigation at 25 different locations; Bayridge Estates leach field which contains two locations; the Bordenson leach field; and urban reuse irrigation at ten different locations. The County must obtain the permits before it can put the plant into operation. Presumably the County will obtain the permits before it starts construction. As the Board report cautions, "The County will not be authorized to provide recycled water until the Water Board adopts separate reclamation requirements." Is it possible that a \$200 million plant could be built and the Water Board would not permit the discharge?

Atascadero Septic Systems. The Water Board is proposing regulations that require jurisdictions to develop Septic System Management Plans. These include expensive expanded leach fields, prohibition of second units on less than two acres, and other requirements. The City of Atascadero and its residents are opposing this. They point out that they have kept meticulous records since 1915 and there are no septic pollution problems with nitrates or other contaminants in the water supply. Executive Director Briggs pushed back saying that this was a broad regulation and it did not just pertain to isolated conditions in Atascadero. Even though there is no problem, the City would have to do the Plan and comply.

IMPORTANT NOTICE: SUPPORT OUR FRIENDS
HOME BUILDERS ASSOOCIATON DINNER
THURSDAY, MAY 19, 2011
EDWARDS BARN IN NIPOMO
1095 POMEROY ROAD 5:30-9:30 PM

Speaker is Sacramento Newspaper Columnist Dan Walters
Beef and Chicken BBQ Dinner, No Host Beer and Wine Bar, Silent Auction, \$75 per person. Call Jerry Bunin, Home Builders Executive Director 805 546 -0418 for tickets.

