

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

615 B



**FROM:** TLMA - Planning Department

**SUBMITTAL DATE:**  
May 6, 2009

**SUBJECT:** Density Purchase and Density Transfer Programs

**RECOMMENDED MOTION:** That the Board of Supervisors:

- 1) Receive and file this report regarding the progress of implementing the Incentives (now called Density Purchase) and Density Transfer programs of the Riverside County General Plan, and
- 2) Approve the staff recommendation to defer further consideration and adoption of the implementing policies for these programs for a period of four months, in order to resubmit them to the Board at the same time that a proposed ordinance establishing requirements and procedures for Development Agreements (DA) is presented to the Board for its consideration for adoption.

**BACKGROUND:** On April 15, 2008 (agenda item 3.26), the Board of Supervisors directed the Planning Director to work with an ad-hoc advisory committee consisting of both public and private sector stakeholders (a list of committee participants is attached) to develop policies to recommend to the Board for adoption to implement the Riverside County General Plan's Incentives (in the Administration Element) and Density Transfer (in the Land Use Element) programs. The purposes of these programs are mainly to assist in the acquisition of open space land for the implementation of the Western Riverside County and Coachella Valley Multiple Species Habitat Conservation Plans, to increase public safety by providing an incentive to landowners to remove potential development from hazardous fire areas, and to encourage the development of moderately higher residential density and mixed land use neighborhoods near transit stations and elsewhere where local infrastructure is adequate and the additional density would be compatible with other neighboring land uses.

Ron Goldman  
Planning Director

(CONTINUED ON ATTACHED PAGE)

RG:jj

REVIEWED BY EXECUTIVE OFFICE

DATE 5/7/09 TML

Tina Grande  
Departmental Concurrence

Policy  
 Policy

Consent  
 Consent

Dept's Recomm.:  
Per Exec. Ofc.:

05-11-09 11:00

Prev. Agn. Ref. 5/05/09 Item No. 3.36 | District: ALL | Agenda Number:

3.30

The Honorable Board of Supervisors

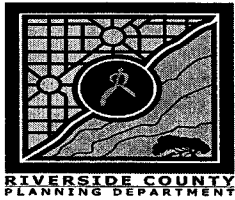
RE: Density Purchase and Density Transfer Programs

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Significant progress has been made toward the development of policies to implement these programs. Although staff is not recommending adoption of the proposed policies at this time, the latest draft of the policies, dated March 5, 2009, is attached, for the Board's information regarding the progress of the development of the policies. Staff notes that there are many key provisions of the proposed policies, including, for example, a proposal to permit developers, on a completely voluntary basis, to purchase the right to build additional residential units (up to 25% above the top ends of the ranges of density for the General Plan's residential land use designations), without the requirement for a General Plan amendment, and the dedication of the funds received from the purchase of the right to build the additional units toward the acquisition of open space land in support of the County's multiple species habitat conservation plans. Under the proposed policies, for each additional dwelling unit built in the High Density Residential [8-14 dwelling units (DU)/acre] or higher density land use designation, \$5,000 would be paid by the developer; for each such unit built in the Medium or Medium High Density (2-5 DU/acre and 5-8 DU/acre, respectively) designations, \$10,000 per unit would be paid; and for each such unit in the Low Density Residential (1-2 DU/acre), or lower density designation, \$20,000 would be paid.

Both the proposed Density Purchase and Density Transfer programs will require the execution of development agreements between participating landowners and the County to govern the terms of the implementation of the policies of the programs. The Board has directed the Transportation and Land Management Agency, Executive office, and County Counsel to work with the development community to prepare a draft ordinance for Board consideration to establish County requirements and procedures regarding development agreements. At this time, staff anticipates that this ordinance will be ready for consideration by the Board within four months. Therefore, staff recommends that the Density Purchase and Density Transfer program policies be brought back to the Board for consideration and adoption at the same time that the development agreement ordinance is presented to the Board for consideration and adoption.

Report: Attachment A



**Riverside County  
Density Purchase/Density Transfer  
Ad-hoc Advisory Committee to the Planning Director\***

**List of Ad-hoc Committee Participants**  
**(April 24, 2009)**

**Organization/Role:**

**Name(s):**

Building Industry Association... ..Fred Bell, Bill Blankenship  
(Riverside County and Desert Chapters) James Brownyard, Kevin Canning

Developers Research, LLC... ..Barry Gross, Scot Oldham  
(development/consultant)

Endangered Habitats League... ..Dan Silver

Environmental Programs Department... ..Greg Neal

Public (Lake Mathews area resident)... ..Cindy Ferry

T & B Planning (planning consultant)... .. Barry Burnell, Joel Morse

William Hezmalhalch Architects, Inc... ..Geoff Scott (also, formerly  
with T & B Planning)

**Riverside County Departments:**

TLMA Administration... ..George Johnson

TLMA/Planning Department... ..Ron Goldman\*, Damian Meins,  
Jerry Jolliffe, Mike Harrod, and  
Mitra Mehta-Cooper

County Counsel... .. Katherine Lind

Executive Office... ..Tina Grande

Legislative Assistants: ... ..Sandy Isom, John Field, Olivia Barnes,  
Mike Gialdini, and Darcy Kuenzi



## COUNTY OF RIVERSIDE

TRANSPORTATION AND LAND MANAGEMENT AGENCY

George A. Johnson · Agency Director

**Planning Department**

Ron Goldman · Planning Director

# Proposed Riverside County Density Purchase (Incentives) and Density Transfer Programs

*Revised Draft Proposal: March 5, 2009*

## I. Density Purchase (Incentives) Program:

A. **Objectives:** The objectives of the Density Purchase Program are:

1. To assist in the implementation of the Multiple Species Habitat Conservation Plans (both the Western Riverside County and the Coachella Valley MSHCPs);
2. To reduce traffic generation and greenhouse gas emissions, promote the development of higher density residential neighborhoods, and promote the development of higher intensity, mixed-use developments near transit stations.
3. To preserve land as necessary in order to increase public safety by removing potential development from hazardous fire areas; and
4. To acquire passive recreational open space lands for the benefit of neighborhoods and for use as community separators.

B. **Applicability:** Additional residential units may be purchased for land in any residential land use land use designation in the Community Development Foundation Component, up to 25% above the top end of the range of density in any such designation, except for projects determined to be transit-oriented developments. The County encourages the development of transit-oriented developments. Therefore, density increases of up to 25% above the top ends of the ranges of density permitted by the General Plan on the sites

of transit-oriented developments will be considered for approval without the need to purchase the additional density.

**C. General Provisions:**

1. A density increase of up to 25% above the top end of the range of densities for any residential land use designation in the Community Development Foundation Component may be purchased, upon approval by the County as described herein. Density increases of up to 25% above the top ends of the ranges of density permitted on the sites of transit-oriented developments will be considered for approval without the need to purchase such additional density, upon approval by the County as described herein.

All calculations relating to the number of additional residential units that could be built on a site proposed for a density increase shall be based on the gross area of the site proposed for residential uses. All such calculations that result in fractional units shall be rounded up to the next whole number.

Any density increase purchased in accordance with this program shall be permitted in addition to any density bonus sought by an applicant in accordance with California Government Code Sections 65915 - 65918.

2. The Density Purchase Program is limited to:
  - a. the purchase of additional density up to 25% above the top end of the range of density of a residential land use designation for any project that is designed to be compatible with existing and planned adjacent land uses, with buffering from such uses incorporated if necessary; and
  - b. the approval (without the need to purchase) of additional density up to 25% above the top end of the range of density on the site of any (TOD\*) Transit-Oriented Development, where such development is located entirely within a five minute walk,

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(\*A TOD is defined as moderate to higher density development, located within an easy walk of a major transit stop, generally with a mix of residential, employment, and shopping opportunities designed for pedestrians without excluding the auto. A TOD can be new construction or redevelopment of one or more buildings whose design and orientation facilitate transit use. Source: Technical Advisory Committee for the "Statewide TOD study: Factors for Success in California.")

or one-quarter mile, of a transit stop, or for major stations offering access to frequent high-speed service (ex.: Metro link or freeway flyer), a ten minute walk, or one-half mile, and where such development is designed to be compatible with existing and planned adjacent land uses, with buffering from such uses incorporated if necessary.

3. A development agreement (DA) shall be required to be filed with the application for the additional density that provides for the terms of the number of additional dwelling units purchased, when payment for the additional units must occur, for what purposes funds are to be disbursed, etc. The period of the DA shall usually be for a period of 10 years, but may be more or less as determined by the Board of Supervisors. In addition, a contract or MOU may be executed between the County and the developer to the effect that if all of the additional units purchased are not developed within the duration of the DA, the undeveloped additional units may be built on the same or another property, upon approval by the Board of Supervisors. The intention of this provision is to facilitate an ongoing, liquid marketplace for any undeveloped additional units that are purchased. However, undeveloped units that were not purchased (units that are not "additional;" i.e. - units already permitted by the General Plan land use designation of the site in question) cannot be utilized outside of the TOD or Community Center for which such units were approved.
4. The 25% additional density may be purchased (or approved, without the need for purchase, in conjunction with transit-oriented developments) without the requirement of a General Plan amendment.
5. Any payments for additional density, as well as all development impact fees over which the County has control of the timing of payment, shall be deferred until final inspection or certificate of occupancy, whichever occurs last.
6. The County will propose an amendment to Ordinance No. 348 to incorporate a form-based code/zone for transit-oriented developments, and for other higher density (more than 5 DU/acre) residential projects, that will at a minimum accomplish the objective of providing for well-designed, higher density residential and mixed-use communities that impart flexibility to developers to maximize saleable or leasable building cover of the land involved, provided that high quality areas of open space, parks, and amenities are included in a unified neighborhood design.

7. A voluntary payment will be made for each additional residential unit in accordance with the underlying General Plan residential land use designation of the site receiving the additional units. The amount of the payment per unit shall be determined by the Board of Supervisors annually. The initial payment amounts and associated density categories are:
  - a. for High Density Residential (HDR): 8-14 dwelling units (DU) per acre, and land use designations of higher densities, the payment is \$5,000 per additional unit;
  - b. for Medium Density Residential (MDR): 2-5 DU per acre and Medium High Density Residential (MHDR): 5-8 DU per acre, the payment is \$10,000 per additional unit; and
  - c. for Low Density Residential (LDR): 1-2 DU per acre, and land use designations of lower densities, the payment is \$20,000 per additional unit.
  
8. The revenue received for additional dwelling units under this program would be spent as follows:
  - a. 75% [less Density Purchase Program administrative costs - subsection "c" (below)] of the revenue received from density purchases would be restricted for use in the acquisition of open space lands determined to be appropriate for conservation pursuant to the criteria set forth in the Western Riverside County & Coachella Valley Multiple Species Habitat Conservation Plans, with the revenue spent toward acquisition of land within the same MSHCP plan in which the fees were generated.
  - b. The remaining 25% [less Density Purchase Program administrative costs - subsection "c" (below)] of the revenue received from density purchases would be spent in the supervisory districts in which the revenue was generated, for use in acquiring natural open space, with passive recreational uses, only, permitted.
  - c. A portion of the revenue received from density purchases would be spent to support Density Purchase Program administration, including the acquisition and management of open space lands.

9. All applications filed to implement the Density Purchase Program shall be eligible for Fast Track Permit Processing (County Board of Supervisors Policy A-32 would be amended accordingly), if approved for fast tracking by the Board of Supervisors. All such applications shall also be subject to final action by the Board of Supervisors, without the prior review and recommendations of the Planning Commission.

## II. Density Transfer Program:

A. **Objectives:** The objectives of the Density Transfer Program are:

1. To assist in the implementation of the Multiple Species Habitat Conservation Plans (both the Western Riverside County and the Coachella Valley MSHCPs) by encouraging the setting aside of habitat lands;
2. to protect the public and minimize public expenses associated with development in high fire hazard lands, floodplains, steep slopes, and other areas of natural hazards, and areas of special scenic qualities, as determined appropriate by the Board of Supervisors;
3. to permanently protect agricultural land; and
4. to provide for community separators as defined by the General Plan.

B. **Applicability:** Potential residential units as allowed by the General Plan may be transferred from any parcel or group of parcels in any General Plan foundation component, to another parcel or group of parcels in the unincorporated area in the same foundation component, or to a more intense foundation component, provided that the density transfer operation is compatible with one of the objectives stated above, and meets all other requirements of the County General Plan's Density Transfer program. All density transfer proposals are subject to the approval of the Board of Supervisors. All financial arrangements between owners of land involved in a Density Transfer operation are strictly private matters.

For the purposes of this program, on-site development clustering of development is not regarded as a density transfer operation (see section on clustering of development for more details on clustering).

### C. General Provisions:

1. All density transfer proposals shall be accompanied by the appropriate development application or set of such applications for the parcel or parcels to which the development potential is proposed to be transferred (Receiving Site).
2. To encourage owners of potential Sending Sites to use this program, the number of potential dwelling units permitted to be transferred from such sites shall be equal to the maximum number of residential units permitted solely by the General Plan land use designation of the site. This shall be the case, regardless of any physical constraints relating to access, steep slopes, floodplains, etc. that may otherwise limit to a lesser number the total dwelling units that might be approved by the County for the site pursuant to an actual development proposal.
3. The County will consider for approval density transfer proposals from proposed Sending Areas in accordance with the priorities enumerated below:
  - a. (Priority No. 1) Both the size, location, condition, and other factors of the site make it a significant resource deserving protection in accordance with an MSHCP, AND preservation of the site as open space would increase public safety by removing potential development from hazardous fire areas;
  - b. (Priority No. 2) the size, location, condition, and other factors of the site make it a significant resource deserving protection in accordance with an MSHCP;
  - c. (Priority No.3) preservation of the site as open space would increase public safety by removing potential development from hazardous fire areas; or
  - d. (Priority No. 4) preservation of the site as open space would assist the County in protecting the public from flooding hazards or in providing for community separators.

In no case will a transfer of density be approved from a Sending Site if the condition of the site, and management factors including access (both access to the site and physical access restrictions, where

necessary), site configuration, and usefulness for its primary purpose – habitat land or fire hazard protection, presence of hazardous materials, adverse modifications to the land including non-permitted grading (or permitted grading, where there are significant adverse residual management issues involved), and other factors, are unacceptable to the intended owning/managing entities and/or the County.

4. Generally, all of the potential density allowed by the General Plan in a Sending Site must be transferred to one or more Receiving sites. In exceptional cases, partial transfers of Sending Site density may be considered on a case-by-case basis in order to advance MSHCP assembly.
5. The density of a Receiving Site may be increased by 25% as a result of a density transfer transaction, without the need for a General Plan amendment. (Increases in density above 25% may be permissible, but will require a General Plan amendment).

All calculations relating to the number of additional residential units that could be built on the Receiving Site shall be based on the gross area of the site proposed for residential uses. All such calculations that result in fractional units shall be rounded up to the next whole number.

Any density increase in accordance with this program shall be permitted in addition to any density bonus sought by an applicant in accordance with California Government Code Sections 65915 – 65918.

6. Receiving Site parcels in the Rural Community, Rural, and Open Space Foundation Components may be smaller than one-half acre, where urban utilities and services are available, and they are arranged in a cluster or clusters of units whereby a large area of open space is incorporated into the site in such a manner as to provide for an effective buffer for nearby rural land uses. Buffers can take many forms, including riparian areas, hills, pastureland, parks, etc.
7. Development proposals on receiving sites shall provide buffering and such other features, as appropriate, to ensure that they are compatible with adjacent and nearby existing and planned land uses. Particular attention shall be paid toward buffering for, and compatibility with, adjacent and nearby land uses and land use designations of lesser intensity than the proposed use on the receiving site.

8. Density Transfers are encouraged to take place in accordance with the following preferred geographical arrangements:
  - a. Density transfers between sites located within the same MSHCP Conservation Areas (Coachella Valley MSHCP), or within the vicinity of the same MSHCP core or linkage areas (Western Riverside County MSHCP) are strongly encouraged.
  - b. Density transfers from sites outside of redevelopment areas to sites inside redevelopment areas are strongly encouraged.
  - c. Density Transfers between adjacent or nearby properties are encouraged, when potential impacts on public safety (fire), on natural resources, on local roads, schools, and other local public facilities, and on nearby neighborhoods, would be the nearly the same, or less.
  - d. Other density transfers between sites located within the same area plan may be permitted, provided that the additional density as applied to the Receiving Site does not result in significant additional environmental impacts and that there is adequate buffering from neighboring land uses.
  - e. Density transfers between sites located in different area plans will generally not be permitted, unless findings are made, at a minimum, that such transfers will not result in any significant unmitigated impacts on the Receiving Site, and that the open space set-aside represented by the Sending Site is significantly in the public interest.
  - f. In no case will a density transfer operation be permitted between the areas covered by the Western Riverside County and Coachella Valley Multiple Species Habitat Conservation Plans, or between either of these plan areas and the areas of the Eastern Desert Land Use Plan (except for the area covered by the Coachella Valley MSHCP) and the Palo Verde Valley Area Plan.
9. Whenever land is proposed to be set aside as open space in a Sending Area, the future status of the site, either as an open space easement or fee dedication, shall be determined, and a permanent open space owner and manager for the site shall be determined, as well as any other

conditions or stipulations of the transaction, such as an endowment, if any.

An agreement shall be executed between the current property owner and the proposed owner of the open space land/easement prior to discretionary approval of the project by the Board of Supervisors. An escrow account shall be opened to hold in custody all executed agreements and financial arrangements, pending Board of Supervisors approval of both the proposed density transfer operation and the proposed project for the Receiving Site. The easement or fee dedication shall be transferred to and accepted by the open space owner/manager(s) immediately following approval of the project by the Board of Supervisors, if so desired by the proposed owner/manager, or, if agreeable to the latter, prior to the recordation of any land division maps, use of any permit, or issuance of any grading or building permits or final inspections for the Receiving Site. Escrow shall not be closed until all stipulations of the transaction affecting all parties have been completed.

After the Sending Site has been formally set aside as open space, the County will designate the site with the appropriate General Plan open space land use designation through a Technical General Plan amendment.

10. For Receiving Sites in the Agriculture, Rural, and Rural Community Foundation Component areas, additional density that results in smaller parcels shall be clustered in the interiors of project sites, with open space and/or large-lot buffers, designed to be compatible with adjacent neighborhoods, located around the perimeter of the project sites. Wherever possible, creeks, hills, open space, parks, drainage facilities, and other topographical features or appropriate facilities shall be used to assist in creating such buffer areas.
11. All applications filed to implement the Density Transfer Program shall be eligible for the County's Fast Track Permit Processing (County Board of Supervisors Policy A-32 would be amended accordingly), if approved for fast-tracking status by the Board of Supervisors. All such applications shall also be subject to final action by the Board of Supervisors, without the prior review and recommendations by the Planning Commission.

### **III. Implementation of the Density Purchase and Density Transfer Programs.**

Implementation of the Density Purchase and Density Transfer Programs would be implemented through the mechanisms described below:

**A. General Plan Policies:** The General Plan would be amended as follows:

#### **1. Incentives Program.**

The existing Incentives Program, which is included in the Administration Element, would be amended as part of the 2009 General Plan update to establish the County's policies for the Density Purchase Program.

#### **2. Density Transfer Program.**

The existing Density Transfer Program, which appears in the land use Element, would be amended as part of the 2009 General Plan update to spell out in more detail the County's policies for this program.

#### **3. Clustering of Development.**

The Land Use Element of the General Plan (Table LU-4) contains the County's existing policies regarding clustering of development. In general, the policies allow for development clustering into lots as small as one-half acre in the Rural Community, Rural, and Open Space Foundation Components, and lots as small as 10,000 square feet in the Rural Community Foundation Component, under certain circumstances where a proposed development borders the Community Development Foundation Component.

In addition to the referenced table, more detailed policies should be adopted to permit and encourage development clustering to protect the public in hazardous fire areas, to facilitate the setting aside of open space land for the County's MSHCPs, to protect floodplains from development and steep slopes from excessive grading, and other important objectives. Also, the policies regarding clustering should be revised to address more specifically the use of buffers between developed areas and clusters of development and hazardous fire areas, MSHCP preserve lands, existing rural communities, etc.

#### 4. Zoning (Ordinance No. 348):

The implementation of both the Density Purchase and Density Transfer Programs will require that the County adopt new zones in Ordinance 348 to facilitate or permit the development of higher density residential and mixed-use residential/commercial, office, etc. projects. If Ordinance 348 is not amended accordingly, only limited benefits will result from amending the General Plan, alone. The zoning ordinance amendments should focus on the following areas of need:

- a. Developers should have the ability to *maximize the gross saleable or leasable area of their residential projects, within the footprint of the area that is actually developed* (minus open space areas, etc.), and the County, in turn, should have *more ability to require higher quality project designs and amenities, particularly parklands, recreational amenities, and open space and buffer areas, where needed*. This is especially important for medium to medium high density residential projects. The reason for this is that the return on investment can be maximized, and costs for items such as grading, development fees, and other expenses can be minimized, thereby permitting the incorporation into such projects of high quality amenities, parks, buffers, and other features that would be of greater benefit to both future project residents and the surrounding community.

The existing zones that accommodate this type of residential development, primarily R-1, R-2, and R-4, provide very little flexibility in regard to lot size, setbacks, etc., or in County requirements for amenities. These zones should either be augmented with overlays, or one or more new zones should be adopted that permit this type of development. Form-based zones (or codes) would be the most effective.

- b. One or more mixed-use zones should be incorporated into Ordinance 348 to permit residential, office, retail commercial, and public facility uses (and possibly others) to be mixed on the same site, both laterally and vertically. There is no existing zone in Ordinance 348 that permits vertically mixed uses, and laterally mixed uses are made impractical by the nature of the development standards of the existing residential and office and retail commercial zones. Mixed-use zoning would increase the potential benefits described under subsection "a" above, and would additionally

facilitate the reduction of off-site traffic trips by encouraging on-site pedestrian trips, improve air quality, etc.

- c. Although the Specific Plan (SP) Zone permits modified development standards and mixed uses, it has generally not been administered in that manner, due to a lack of specified but flexible development standards, to permit effective code writing by developers (and County review and approval of them) for different specific plans. If the County adopts form-based codes, implementation of flexible development standards in specific plans would be more straightforward for all parties.

#### **B. Development Agreements:**

Development agreements (DAs) should be considered for use to specify the commitments of both the County and developers with respect to both Density Purchase (where the developer would voluntarily pay fees for additional density) and Density Transfer (where two or more separated sites are involved) transactions. A standardized "short form" DA would be more appropriate for these types of transactions, especially where smaller projects are involved.

#### **C. Board Policies Regarding Administration of Programs.**

A Board of Supervisors Policy should be adopted to unify all of the main points of the Density Purchase and Density Transfer Programs, including the program objectives, provisions, roles of the different policy and implementation mechanisms, including the General Plan, Ordinance 348, development agreements, fast-track case processing, and program administration. The existing Fast Tracking Permit Processing policy (Board of Supervisors Policy A-32) should be amended to specifically address these programs.

#### **D. SB 375 Implementation.**

The County should work with stakeholders to determine the overall effects on the County of SB 375, and how the Density Increase Purchase and Density Transfer Programs would be affected by this state law.