



550 Hoover St.  
Oceanside CA 92054  
[nadia550@sbcglobal.net](mailto:nadia550@sbcglobal.net)  
760-803-6813

**Kindly make part of the official record.**

May 8 , 2022

City of Oceanside

Jonathan Borrego, City Manager  
300 N Coast Hwy  
Oceanside CA 92054

Jonathan Borrego [jborrego@oceansideca.org](mailto:jborrego@oceansideca.org)  
cc: Darlene Nicandro [dnicandro@oceansideca.org](mailto:dnicandro@oceansideca.org)  
Sergio Madera [smadera@oceansideca.org](mailto:smadera@oceansideca.org)  
City Clerk [CityClerk@oceansideca.org](mailto:CityClerk@oceansideca.org)

**RE: SOUTH MORRO HILLS COMMUNITY PLAN, TDRs & CLUSTERED HOUSING**

To whom it may concern,

Friends of Loma Alta Creek (Friends) want to ensure all development in the City is appropriate and will not overly impact the natural resources of the area, will significantly contribute to sustainability of the City and complies with existing zoning without imposing significant environmental impacts, including indirect impacts. We also want to ensure ANY General Plan (GP) Amendments are consistent as required by law with all the elements of the GP including the Climate Action Plan, the Housing Element, the new natural resources element, the Smart and Sustainable Corridors Plan, the Economic Development Element, the draft as of the not yet finalized South Morro Hills Community Plan and any other such Elements as are being considered for amendments.

Overall we have significant issues with the proposal to implement a Transfer of Development Rights in concert with a Clustered Housing scheme in the South Morro Hills Agricultural Area (SMHA).

This paper explains what a Transfer of Development Right is, what TDRs are used for, where they are successful, how they fail and why clustered housing will lead to the eventual destruction of all agricultural land in So. Morro Hills through abandonment of farming, potential and predictable requests for General Plan Zoning Changes and very predictable litigation by unhappy neighbors. Such a scheme as proposed by staff is not consistent with any other TDR program in California.

By any measure and utilizing any benchmarks, ONE DOESN'T DESTROY 25% OF THE FARMLAND BY BUILDING CLUSTERED HOUSING ON IT AND ASSERT THAT SAVES IT. No studies in California support this proposition. None!

### **WHAT IS TDR --- TRANSFER OF DEVELOPMENT RIGHTS?**

Simply put a TDR rewards a landowner with development credits he can sell and/or a reduction in taxes; that landowner voluntarily sets aside or severs the right to develop their land to preserve it rather than develop it. The landowner then puts a conservation easement on their property with the legal promise and deed restriction not to develop it in perpetuity and in this case the land would remain zoned agricultural and continue to be farmed.

The transfer of the benefit *always* goes to another area and can add density for developments in OTHER areas where density is being targeted, usually residential but sometimes to commercial or industrial areas.

For a more in depth discussion on TDRs please see the Cornell University study.<sup>1</sup>

### **WHAT ARE THE ELEMENTS OF THE TDR PROPOSAL IN OCEANSIDE?**

The key elements in the Oceanside plan are as follows:

Would allow farmers to set aside 25% of their farmland and allow highly dense development on that land. A land owner can transfer their development rights for the entire property which is currently 1 (one) dwelling on 2.5 acres (could include ADU and Junior ADU as well) that would be placed within 25% of the property. The proposal allows for much more dense development than would follow with the zoning and ADUs-- up to as much as 160 units on 10 acres!

The proposal only allows for TDRs on properties that are 20 acres or more so 25% of that would be 5 acres. For example, if current zoning and legislation was honored, and an ADU and Junior ADU were to be built, *only about 48 units could be built, NOT 160!* There has been no justification for the much denser proposal that we could find to analyze. This maximum figure does not account for environmental or governmental impediments such as slopes, preservation of natural resources, the costly absence of infrastructure, etc.

The balance of the property would be placed in an agricultural easement thus preserving **only** 75% of the farmland. There is no indication permanent easements would be required to follow the title of the land at this stage in the development of the proposal.

---

<sup>1</sup> <https://www.mildredwarner.org/gov-restructuring/privatization/tdr>

*The proposal for clustered housing leads to destruction rather than preservation of agricultural lands. That destruction will predictably happen sooner under this proposal than without it. To date, few owners in SMHA have shown any interest in developing their land. One of my colleagues was told by Planner Russ Cunningham that there have only been a handful of residential farmland conversions to estate homes in 13 years that he has been with the City. It certainly doesn't look like owners in SMHA are rushing to develop the land. Further the City has an unsupportable fantasy of 'pegboard' development on every parcel. Constraints both regulatory and environmental would preclude that as would the lack of infrastructure in the area.*

A minimum of 25% of that land is lost forever right away if clustered housing is allowed.

(See discussion below about gross acreage being the benchmark in Oceanside for increased density allowances and how that leads to even more agricultural land loss)

### **WHO BENEFITS FROM THE PROPOSAL**

The Oceanside proposal seems aimed squarely at a very *few* wealthy landowners that want to cash out portions of their farmland for big profits through dense development and help with their estate planning issues in the event their heirs don't wish to continue farming. This creates a windfall in land values they **didn't have** when they purchased their land. It certainly doesn't seem to be for the Public Good by any measure!

*We'd like to remind the readers that over 88% of the farmers surveyed by the City in SMHA did NOT want clustered housing. Further, staff failed to define TDRs in a full and complete manner and certainly don't seem to fully understand the concept either. Regardless TDRs were not supported in the City survey either.*

### **WHY THE PROPOSAL TO COMBINE TDRs AND CLUSTERED HOUSING IS WRONG**

- Land in SMHA is not needed to satisfy the state's housing requirements and clearly is not Smart Growth but is the very definition of sprawl. Sprawl leads to more destruction of habitat lands and open space, increased traffic, adds massive costs for infrastructure, in this case sewer, water and roads, as well as generating increases in Greenhouse Gasses that would violate the City's own Climate Action Plan. No one should forget the evacuation nightmare during the Lilac Fire with people sitting in their vehicles up to 2 or 2 ½ hours with the fire and smoke approaching them. Adding more houses in the SMHA area will obviously make that even worse as no major additional escape routes have *any realistic potential to be built or funded*.

## **RIGHT TO FARM ORDINANCES HAVE VALUE**

- The SMHCP claims a Right to Farm ordinance will protect the farming operations. However there is NO perfect Right to Farm Ordinance that will protect active farms from lawsuits by adjacent neighbors. The classic case for this is *Spur Industries vs. Del Webb Development Company*.<sup>2</sup> In that case, Del Webb built a retirement community that was close to feed lots. The stench of manure and dust were enough for Del Webb to sue using the theory of nuisance in order to continue to build these homes and eventually Spur was ordered to shut down. Building dense housing (as in the *Del Webb* case) in SMHA would inevitably lead to lawsuits based on misapplication of pesticides, drift, dust, noise and so forth.
- However the Right to Farm does provide some protections for existing agricultural operations as long as they follow established regulations and rules.
- It also requires notification to potential land purchasers that there is a Right to Farm Ordinance and to be aware that dust, noise, pesticide applications etc. are part of normal farming operations.<sup>3</sup> We'd propose introduction of an Ordinance immediately along with an agricultural easement by prescription so the notification is strengthened and would be included in the property's Title Insurance and Search. This type of easement has been done adjacent to the Oceanside Airport where the aviation easement shows on the title documents giving fair and legal notice of the easement rather than just relying on Realtor disclosures that may or may not be given..
- Plus the community has been asking for this type of Ordinance for years! Why the delay?

## **HOW TDRs HAVE BEEN USED IN CALIFORNIA & ELSEWHERE**

In order to support our complete opposition to staff's proposed TDR and clustered housing proposal, we reviewed 37 Transfer of Development Rights [TDRs] summaries in California.<sup>4</sup> [See appendix attached with summaries of same.] We were unable to find any others to review and the City's consultant failed to provide any either even though we requested it several times. **None of the 37 programs were successful at preserving agriculture.**

**For the reasons below, we will not analyze any programs outside of the State of California as they are not comparable or useful.**

- other states have very well financed programs in place to purchase the easements

<sup>2</sup> Spur Industries vs. Del Webb 108 Ariz. 178, 494 P.2d 700 (1972)

<sup>3</sup> CA Civil Code Section 3428.5

<sup>4</sup> <http://smartpreservation.org>

- their easement programs are supported by laws and explicit regulations
- their land values are set **extremely low** compared to the SMHA
- For example in Pennsylvania, the rate for land is approximately \$7K per acre.
- Some states also had well-funded public-private partnerships, conservancies and an agricultural transfer tax base to purchase the TDRs. However in Pennsylvania and other states their funds are running out and it's doubtful they will create any further TDRs.<sup>5</sup>
- **NONE OF THE TDR PROGRAMS BUILD ON LAND THEY ARE TRYING TO PRESERVE.**
- Most of the programs outside the state are used to save open space or historical districts. Some do save agricultural land but those are typically **voluntary conservation easements placed on the land with NO RIGHT OR EXPECTATION to develop ANY of it.**

We looked at 37 TDRs in California. 36 of 37 TDRs in California are used to protect historic resources, protect areas from hillside development and to build mass commercial enterprises including things like the preservation of the movie studios in Hollywood so they could build huge office complexes elsewhere. None of those 36 utilizes TDRs for preservation of agriculture.

The nearest example to the City's proposal, and a significantly different program, is in the County of San Luis Obispo. It has a TDC (transfer of development credits=same as a TDR basically) plan to preserve agriculture but does **NOT allow building on the agricultural land itself**, which is what Oceanside's staff is proposing = to build clustered housing ON agricultural land. Right away staff's proposal could lead to the loss of agricultural land by a minimum 25%! How this basic logic can escape the planners is beyond us. Destroying a minimum of 25% to save 75%? **That is not farmland preservation.**

Further, the San Luis Obispo program dictates that building would be **outside** natural habitat areas, on less than a 30% slope, environmental review finds no significant, unavoidable adverse impacts, outside sensitive resource areas including where risk of earthquake, flooding, geology and wildfires are not an issue. Clearly SMHA has too many natural resources, habitat areas, and wildfire risk to ever qualify under those criteria. What criteria has staff proposed? NONE. Is there a plan for that? That doesn't appear to be likely.

We also strongly object to not excluding non-building acreage and using a *gross acreage figure to determine density*. Other areas we examined simply do not do this. For example if a hillside is unbuildable such acreage is excluded from the acreage used to determine what the density can be. If there are at risk environmental areas that acreage is also excluded from the developable acreage.

---

5

[https://www.montgomerycountymd.gov/ag/services/Resources/Files/agpreservation/SettingthePhaseIIgoalrevised\\_11\\_21\\_2016.pdf](https://www.montgomerycountymd.gov/ag/services/Resources/Files/agpreservation/SettingthePhaseIIgoalrevised_11_21_2016.pdf)

This then consists of net buildable acreage, *not gross acreage*. If net acreage restrictions and environmental exclusions aren't the rule, then much, much more than 25% of the land will be destroyed simply by allowing greater densities than should be permitted.

Additionally in San Luis Obispo the credit price (TDC) as set by the Land Conservancy found the market could support each credit at \$25,000. Only two large acreages have utilized this program: Bonheim Ranch @ 5,634 acres and the Black Lake Canyon Preserve @ 160 acres and owned by the Conservancy. Those both preserved open space. ***Does anyone in Oceanside think it's realistic that farmers will sell their development rights for \$25,000 a credit? That could be the value as currently zoned for each 2 ½ acre parcel.***

### **WHY TDRs FAIL ELSEWHERE AND WILL IN OCEANSIDE**

So far, none of the details essential to determine if such a TDR program is viable have been provided. There are no regulations, funding mechanisms, land inventory of realistic buildable acreage or values, any designation of who would manage the program and keep track of it or any other *required details*. Right now it's simply a 'blind concept' that might sound ok on paper but is clearly unworkable in Oceanside.

Many factors lead us to call this proposal dead-on-arrival:

- Lack of funding mechanism
- No details/regulations to protect hillsides, views, and protect against environmental impacts
- Lack of adequate management--Staff said in an April, 2002 Zoom meeting we attended that the City did not intend to 'broker' the TDRs. We take this to mean they would NOT implement the program, manage the easements, value the TDR credits, and inventory them to ensure preservation takes place on the real property deed, among other things that should be required for *any* TDR program. See how to properly collect data.<sup>6</sup>
- The Cornell Study cited above and at footnote 1 clearly describes TDRs as more complicated and expensive to implement compared to traditional zoning. Further they require some type of municipal administration. Again staff indicated they are not willing to take on that role so who will?
- Failure to develop a fair compensation based on how many properties would sever their development rights compared with how many properties outside of SMHA would purchase those rights; a limited market can lead to failure. Remember NO TDR PROGRAMS DEVELOP THE LAND THEY WANT TO PRESERVE.

---

<sup>6</sup> <https://farmsreach.com/welcome/wp-content/uploads/2013/07/SavingFarmlandGrowingCities.pdf>



- In the instant case, there is NO loss to the landowners as this land is not unlimited residential zoning so how would that be valued properly?
- Failure to outline environmental restrictions similar to San Luis Obispo's as outlined above
- Lack of enough properties to make TDRs marketable and useful
- Complete absence of any California jurisdiction implementing such a program as proposed **that is successful.**
- **NO program builds on the land they are trying to preserve!**

### **TDR PROPOSAL CONFLICTS WITH SMART & SUSTAINBLE CORRIDORS PLAN**

The proposal to highly densify the Corridors as proposed in the Draft Sustainable Corridors Plan will further disincentivize developers from purchasing TDRs. This is the case even if ways were found to pay for the extreme land costs that would be required to preserve agricultural land from development. Let us remind the reader that residential conversions on the 2.5 acres as zoned have simply NOT occurred over the last many years. Staff indicated there were only a handful of these conversions. The City's checkerboard or pegboard assumptions are wholly unsupportable. Much of the land cannot and will not be converted due to environmental and governmental constraints.

Last, why would a developer purchase any rights to develop more density when they are being handed that densification on a silver platter in the Corridors without having to pay a premium to buy a transferred development right?

### **THE PROPOSAL WILL FRUSTRATE THE GOALS OF THE CITY'S CLIMATE ACTION PLAN (CAP) & WILL DESTROY AG LAND, NATURAL RESOURCES & OPEN SPACE**

It is clear at this time the City is NOT prepared nor do they desire to create, implement, fund or manage an adequate agricultural preservation program such as San Diego County's PACE program.<sup>7</sup> Few properties have qualified for that program. However, the County is wise enough to understand that perpetual easements will help it meet its Climate Action Plan Goals<sup>8</sup> and contribute as wildlife buffers as spelled out in the Multiple Species Conservation Plan.<sup>9</sup>

Why doesn't Oceanside grasp that the densification proposed in the Smart & Sustainable Corridors Draft Plan Greenhouse gasses and that **agricultural land and open spaces are REQUIRED to offset those gains?**

<sup>7</sup> <https://www.sandiegocounty.gov/pds/advance/PACE.html>

<sup>8</sup> See p. 5 <https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/PACE/PACE-Guidelines-2021.pdf>

<sup>9</sup> See p. 6 <https://www.sandiegocounty.gov/content/dam/sdc/pds/advance/PACE/PACE-Guidelines-2021.pdf>

**THE CITY’S PROPOSAL IS IN CONFLICT WITH THE ECONOMIC  
DEVELOPMENT ELEMENT**

This proposal will create more housing rather than jobs, lowering the already terrible jobs-to-housing ratio to make it the worst ratio in the County!

**CONCLUSIONS & STEPS TO MOVE FORWARD:**

It’s time to just say NO to the handful of self-interested farmers who want to develop their land. The **giveaway** to them is simply a way to assist them with their estate planning issues while creating *unsustainable* sprawl and huge taxpayer’s burden for unnecessary and massively costly infrastructure.

The proposal also robs the City of the inherent value of open space and natural resources.<sup>10 11</sup>

Statewide policy recognizes this value:

The Legislature finds and declares as follows:

(a) That the preservation of open-space land, as defined in this article, is necessary not only for the maintenance of the economy of the state, but also for the assurance of the continued availability of land for the production of food and fiber, for the enjoyment of scenic beauty, for recreation and for the use of natural resources. *(CA Government Code Section 65561)*

The City’s proposal also conflicts with other general plan elements including the Climate Action Plan and any natural resources element as well as the Smart & Sustainable Corridors Plan. Further such a proposal does ZERO to increase the City’s woefully low jobs-to-housing ratio. Creating more sprawl housing will lower that ratio to a very low, unacceptable figure.

We find it impossible to come up with suggestions for staff to improve or modify their draft SMHA other than to abandon the Destined to Fail TDR/clustered housing scheme! You don’t preserve land by destroying over 25% of it at the outset. **Building on Agricultural land destroys it.**

There are several unexplored techniques to preserve this precious, unique farmland. We urge the City to get started in seriously developing some of the following:

- Farmers in SMHA can grow value added crops<sup>12</sup>

<sup>10</sup> See CA Govt. Code 65561; Statewide Policies Favor Preservation of Open Space

<sup>11</sup> <https://www.cdfa.ca.gov/oefi/climate/docs/Farmland-Conservation-in-California.pdf>

<sup>12</sup> <https://www.uky.edu/ccd/marketing/market-resources/v-a/overview>



- City can develop low impact agritourism programs<sup>13</sup> that do not require extensive infrastructure improvements; there are massive resources and technical advice available online from the Department of Agriculture- Natural Resources Conservation Service, University of California at Davis<sup>14</sup> Research & Education Program etc. NRCS has a field office in Escondido. Mission RCD, a state-created special district, offers many agricultural programs including irrigation management.<sup>15</sup>
- Farmers can place voluntary perpetual agricultural easements on their properties **and** prepare adequate succession plans and estate plans to protect their land
- City can develop a program similar to San Diego County's PACE program
- City can develop an agricultural tax to purchase easements
- City can develop public-private partnerships to purchase the easements on the condition that agricultural land and natural resources are NOT developed/destroyed
- City can sponsor comprehensive seminars on estate planning for farmers
- City can sponsor comprehensive seminars about agritourism and value added concepts
- City can do outreach with the local Farm Bureau to see what programs are being used and ask for real-life examples on a potential Farming for Success panel
- City can sponsor seminar to teach farmers how to take advantage of local tax benefits for farmland and the State Williamson Act easement program.
- City can develop a Right to Farm Ordinance **to show their commitment to preservation of agriculture in the SMHA**
- City can and should sponsor a local film specifically to generate interest in the SMHA area
- There are unlimited opportunities that farmers can explore if the City is willing to do their research and drop the doomed-to-fail TDR/clustered housing proposal

We ask that **this** 'novel' TDR/clustered housing proposal be abandoned and staff's time be better spent in developing the many other tools available, including education, to preserve Oceanside's remaining agricultural land, natural resources and open space. Clearly the proper investigative foundation for any TDR program has not been done. We would suggest the city, if it intends to move forward, direct staff to do more research and learn how the proper analyses are done.<sup>16</sup>

The City should not place itself in the position to *enrich* a handful of landowners while sacrificing so much to the detriment of the many and the environment. The City also cannot and

---

<sup>13</sup> <https://ucanr.edu/sites/agritourism/Projects/>

Also see <https://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/technical/?cid=stelprdb1041566>

<sup>14</sup> <https://sarep.ucdavis.edu/sustainable-ag/agritourism>

<sup>15</sup> <https://www.missionrkd.org/agriculture>

<sup>16</sup> <https://farmsreach.com/welcome/wp-content/uploads/2013/07/SavingFarmlandGrowingCities.pdf>

should not create huge inconsistencies within the General Plan Elements which is *precisely* what this proposal does.

We have deep concerns about the motivation behind this terrible proposal and can see no rational justification for it. Destroying land one is trying to preserve goes against all logic and any existing programs in California.

Sincerely,

A handwritten signature in cursive script that reads "Nadine Scott".

Nadine Scott, Attorney at Law  
Founder, Friends of Loma Alta Creek

## APPENDIX – SUMMARY OF EXAMPLES OF TDRs in CALIFORNIA<sup>17</sup>

1. **Agoura Hills** – (pop. 21,000)
  - intent is to preserve hillsides
  - development is to go to residential zone
  - cannot increase density greater than 20%
  - 9 transactions for 700 acres voluntarily for tax benefits
  
2. **Belmont-** (pop. 27,000)
  - Preservation of hillsides
  - Also to combine very small, irregular lots without infrastructure
  - Restricts size of dwelling to 3500 square feet
  - Deemed more cost effective than putting in infrastructure
  
3. **Brentwood** (pop. 52,000)
  - Program designed to preserve farmland through credits
  - 2004 rec'd 1<sup>st</sup> application, unsure if ever completed
  - Had a fund (BALT) that paid \$5,500 per acre to a fund to preserve farmland via easements;
  - no longer funded
  
4. **Brisbane** (pop. 5000)
  - intent to preserve hillsides
  - all parcels are residential
  - 2005 1<sup>st</sup> application rec'd
  - 2 add'l parcels on 1/2 acre in exchange for 1 acre of land
  
5. **Burbank**
  - media specific district plan
  - limited density from one area near housing and transferred to another
  - applied credit to commercial & industrial districts only
  - 2 properties: NBC Plaza, Warner Brothers Office Building
  
6. **Chico** (pop 86,000)
  - Intent to direct development away from environmentally significant lands
  - In their municipal code with several restrictions
  - Sending parcels (which in this case would be land in So Morro Hills) **MUST BE CONSERVED, no building on them**

---

<sup>17</sup> <http://smartpreservation.org> These TDR programs are representative of TDRs and how they are used in California