

# **Attachment J**

## Equity Mechanisms Fact Sheet



## BACKGROUND

“Equity mechanisms” is a term that has been used as part of the General Plan (GP) Update to generally refer to means of reducing negative economic impacts to property owners that may result from the GP Update. Since the initiation of the GP Update, one key aspect of the project has been the substantial reduction in planned densities in certain areas of the unincorporated County. It was acknowledged that these reductions would have both a real and perceived impact to property owners and agricultural operations. Therefore, potential equity mechanisms have been discussed as part of the GP Update since early in the process with the Interest Group and Steering Committee stakeholder groups, as well as discussion by the Planning Commission and endorsement by the Board of Supervisors.

# FACT SHEET

## EQUITY MECHANISMS

REVISED 04/2010

### GP UPDATE EQUITY IMPACTS

The advocates for equity mechanisms base their argument on the fact that the GP Update will result in a loss of property value on lands proposed to receive designations with lower densities than those assigned under the current General Plan. DPLU agrees that there may be an impact to property values as a result of the GP Update, but in most cases that impact has been greatly exaggerated. Many of the densities in the existing General Plan are unachievable for the following reasons:

- Many properties are highly constrained by topography and watercourses
- Many properties are constrained by regulations for sensitive species, wetlands, and groundwater
- Some properties lack fundamentals for development (e.g., lack of adequate access)

The effect that development potential has on property value varies greatly by property. A number of factors exist that often limit the added value that development potential may bring, including:

- Any future development potential is speculative and at the discretion of the County of San Diego
- Preparing and processing a subdivision is typically costly due to the surveys, plans, and studies required

- Subdividing land often requires significant expenditures to provide necessary infrastructure, roads, and connection fees
- There is limited demand for subdivided land in the backcountry as evident by the numerous vacant parcels that currently exist and SANDAG forecasts

### GP UPDATE GROWTH IMPACTS

Concerns have been raised that the reduced backcountry densities in the GP Update will not provide for sufficient growth in those communities. These concerns have been used to advocate for an equity mechanism that provides additional growth potential to backcountry areas. DPLU and many stakeholders believe that the planned growth is appropriate for the following reasons:

- The proposed designations were based on substantial community and public input.
- The GP Update allows for a reasonable amount of growth in all communities as shown in the following table.

GP Update Housing Projections for Select Backcountry Communities			
Community	Existing Homes	Future Homes	% Inc.
Cuyamaca	287	159	55%
Descanso	667	235	35%
Pine Valley	1185	207	20%
Julian	1772	483	27%
Boulevard	726	552	76%
Jacumba	314	1714	546%
Lake Morena/Campo	1065	787	74%
Potrero	251	355	141%
Tecate	43	103	240%
Palomar Mountain	299	172	58%
North Mountain	1149	1,562	108%

\*Existing homes based on 2005 SANDAG estimates

- The proposed densities reflect a variety of constraints and sensitive resources.
- SANDAG forecasts indicate that the GP Update supply will satisfy housing demands in the backcountry.
- On-going monitoring of the GP Update and more regular maintenance amendments will accommodate adaptation to changing circumstances.

### GP UPDATE EQUITY MECHANISMS

Two, often overlooked, benefits of the GP Update are its focus on density-based planning and the Conservation Subdivision Program. These

### GENERAL PLAN UPDATE INFORMATION

**Website:**  
[www.sdcounty.ca.gov/dplu/gpupdate](http://www.sdcounty.ca.gov/dplu/gpupdate)

**Informational Hotline:**  
 619.615.8289

**E-mail:**  
[gpupdate.DPLU@sdcounty.ca.gov](mailto:gpupdate.DPLU@sdcounty.ca.gov)

**Mailing Address:**  
 County of San Diego  
 Department of Planning and Land Use  
 5201 Ruffin Rd, Suite B  
 San Diego, CA 92123

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components will facilitate property owners in realizing the full value of their land and have been heavily supported by the Farm Bureau. Programs to transfer or purchase development rights have also been considered for the GP Update and are discussed in greater detail below.

## DENSITY BASED PLANNING AND CONSERVATION SUBDIVISION PROGRAM

The GP Update's density-based planning approach and proposed Conservation Subdivision Program allow for flexibility in subdivision design to respond to constraints or regulations which in the past may have reduced overall development yield. The Conservation Subdivision Program also allows for the preservation of large areas of agricultural lands while dividing remaining portions for residential use and monetary gain. Therefore, while the designated density on a property may decrease the "paper" yield for the property, these new approaches to density in the General Plan may remove obstacles that make subdivision of the land more feasible and add to the value of the land.

## TRANSFERRING OR PURCHASING DEVELOPMENT RIGHTS

Transfer of Development Rights (TDR) and Purchase of Development Rights (PDR) are planning techniques mainly developed to protect open space through acquisition of the development rights of land. Both are based on the idea that land ownership involves a bundle of rights (e.g. surface rights, air rights, mineral rights, or development rights, etc.) and that these rights can be separated and sold individually. TDR and PDR are typically incentive-based programs that allow property owners to separate and sell the development rights for their property from the bundle of property ownership rights they retain.

TDR is the sale of one parcel's development rights to the owner of another parcel, which allows more development on the second parcel while reducing or preventing development on the first parcel. Under such a program, development rights are severed from the property designated for protection (sending area), and the severed rights are transferred to a property in an area where additional development is permitted (receiving area).

PDR is typically the sale of development rights to a qualified conservation entity (typically an approved

non-governmental organization or a government agency), resulting in the retirement of those development rights from the property and a conservation easement placed on the parcel in perpetuity.

## GP UPDATE TDR/PDR HISTORY

TDR/PDR programs have been the subject of many public meetings, with ten Interest Group meetings from 2001 to 2004, two Steering Committee meetings and four meetings with the Board of Supervisors and Planning Commission.

During these meetings many criteria were discussed that could be included in a TDR or PDR program. This included work from a hired consultant who held a workshop on similar programs throughout the country. Through these discussions, concerns were raised about the scale of an equity program for the entire unincorporated County of San Diego. Additional concerns were raised by stakeholders, stating that the point of a General Plan was to direct development into appropriate areas; therefore, properties that are appropriate for development should not be required to purchase development rights from areas that are less suitable for development. An inherent difficulty with a TDR program stems from the fact that the GP Update would result in a net reduction in overall development rights for the County. Sending sites would substantially outnumber receiving sites, thereby resulting in an unworkable TDR program. For a PDR program, a viable funding source to cover all of the GP Update could not be identified.

Eventually the Interest Group developed and endorsed assumptions that would be the basis for establishing the current equity mechanism approach: a PDR program primarily for agricultural lands. This information was presented to the Board of Supervisors and endorsed in May 2004. It is available on the General Plan Update Website at:

[http://www.sdcounty.ca.gov/dplu/docs/bos\\_may04\\_equity.pdf](http://www.sdcounty.ca.gov/dplu/docs/bos_may04_equity.pdf)

The endorsed program was as a component separate from the GP Update, allowing for PDR on a small scale. The program is now being developed by staff as the Purchase of Agricultural Conservation Easements (PACE) Program.

Meeting minutes from the Steering Committee and Interest Group Meetings are located on the General

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Plan Update website  
<http://www.sdcountry.ca.gov/dplu/gpupdate/>

## PURCHASE OF AGRICULTURAL CONSERVATION EASEMENTS (PACE)

The County is contracting with American Farmland Trust (AFT) to serve as the County’s consultant on the development and initiation of the PACE program. AFT is the first nationwide nonprofit membership organization solely dedicated to protecting America's farmland and has more than 23 years of experience protecting farms, ranches and forestry operations. AFT works with land use planners, the agricultural community, elected officials, land trusts and others to build support for the protection of productive land. It also helps create effective local-level and statewide strategies for making farming, ranching and forestry economically viable and environmentally sustainable. The PACE program will be used to provide monetary compensation to farmers that are willing to place agricultural conservation easements over their land. Farmers often also receive tax reductions due to the easements. Development of the program will focus on providing compensation to those farmers negatively affected by the GP Update. Work on the program is underway and a conceptual program will be presented to the Board of Supervisors this fall.

## ADDITIONAL EQUITY OPTIONS AND CONSTRAINTS

Despite the equity mechanisms already included in the GP Update and the long-standing approach to focus only on those programs, significant interest was voiced during the 2009-2010 Planning Commission hearings by the public and the

commissioners for a program that could provide additional compensation to property owners that would be negatively impacted by the GP Update. The most viable option appears to be some form of TDR that allows property owners to sell the potential units that they would lose from the GP Update to those either receiving increased density from the GP Update and/or from future General Plan Amendments.

A major challenge for a TDR program with the GP Update is the disproportionate number of dwelling units being removed from downzones compared to those being added by upzones. When adjusting for constraints, the numbers are still substantially out of balance because the GP Update decreases densities in areas where units could theoretically be physically built but are undesirable because of fire risk, environmental sensitivity, distance from access or jobs, and other factors.

COMPARISON OF PLANNED DWELLING UNITS ADDED TO THOSE REMOVED WITH GP UPDATE		
	In CWA	Out CWA
<u>Units Added</u>	11,850	1,161
less Housing Element sites	5,843	310
<u>Units Removed</u>	12,938	29,685
less constraints	9,704	9,895

\*Constraints assumed at 25% in CWA and 67% out of the CWA

There are also a number of legal and practical issues associated with implementing a TDR as summarized below. In order to determine possible options for development of a TDR program, other successful TDR programs from around the nation were reviewed. There are several good summaries available on-line and in publications. A summary of various options for developing a TDR program is presented on the following page.

### TRANSFER OF DEVELOPMENT RIGHTS – LEGAL AND PRACTICAL ISSUES

- Implementation of a TDR has potential implications on the County’s Housing Element and its compliance with state law.
- Lawsuits on TDR programs are common. Even the nation’s most successful TDR program has been subjected to 3 lawsuits.
- Many aspects of a TDR will likely require additional environmental review in compliance with CEQA.
- Once a TDR is implemented, due to fairness and an expectation of compensation, it will be difficult for the County to deviate from it if it determines exceptions are appropriate or if the program should be terminated.
- Of over 190 TDR programs reviewed throughout the nation only 20 have been considered successful.
- Costs of developing and administering TDRs can be substantial and are often born by the jurisdiction.
- Developing TDRs can be extremely complex and often includes extensive feasibility studies and other reports.
- Relying on future GPAs for receiving sites may pre-bias the County and will be undesirable for many stakeholders.
- Relying on properties upzoned as part of the GP Update for receiving sites may affect the likelihood of achieving planned densities and is opposed by the Building Industry Association and other stakeholders.

## TRANSFER OF DEVELOPMENT RIGHTS PROGRAM OPTIONS

### Voluntary vs. Mandatory Programs

- **Voluntary** – Voluntary programs allow property owners to decide to transfer their development rights at their discretion. Incentives are typically provided to compel the transfers. In the context of the GP Update, decreased densities under a voluntary program would become voluntary.
- **Mandatory** – Mandatory programs reduce onsite development allowances but allow for those reductions to be transferred elsewhere. In the context of the GP Update, decreased densities under a mandatory program would become mandatory.
- **Combination** – A combination of these two programs can also be implemented. The S.O.R.E. proposal is an example of a combination approach where a reduction to densities of 1 dwelling unit per 12 acres or 1 dwelling unit per 24 acres is a mandatory reduction but the transfer of the rights is voluntary.

### Transferable Rights Allocation

This component of the program refers to how transferable development rights of a particular property are calculated and assigned to a given property. It is recommended that any approach other than a straight calculation include a process for appeals.

- **General Plan Designation Based** – The most straight forward determination of transferable rights is a simple calculation of the maximum possible yield under the existing General Plan Designation and the decrease with the desired yield. For example, an existing 100 acres currently designated at 1 dwelling unit per 4 acres (max. 25 units possible) but proposed for 1 dwelling unit per 40 acres (max. 2 units possible) would result in 23 transferable units.
- **Constraints Formula Driven** – Using a formula that accounts for known constraints on a particular property is another fairly simple approach to determining transferable rights; however, it can become increasingly complex depending on how many constraints are applied and the formulas for reductions. The more factors and discretion that are added will also increase the likelihood for disagreements from property owners and the need for reevaluations/appeals.
- **Constraints Formula w/ Property Specific Assessment** – This is an expanded approach to using a formula that accounts for constraints where each property is subjected to a basic evaluation by staff to assist in determining the transferable rights. This allows for additional constraints not easily integrated into a standard formula to be considered.
- **Property Specific Design Based** – This approach would base the determination of transferable rights off of a conceptual development design of the property to demonstrate what the actual achievable number of units would be. It would likely be the most precise approach but also time-intensive and extremely subjective.

### Transfer Ratios

Transfer ratios may be used to adjust the value of each transferable unit. Different transfer ratios could be applied to normalize different areas that have a discernible difference in value. For example, a dwelling unit in the remote areas of Boulevard would likely have less value than a dwelling unit on the outskirts of Julian, but unless a normalization factor is applied, such as a transfer ratio, the different units will have the same value on the open market.

- **1:1** – For each dwelling unit transferred from a sending site, one dwelling unit is possible for a receiving site
- **Positive Ratio** – Each dwelling unit transferred is equivalent to more than one dwelling unit at a receiving site
- **Negative Ratio** – Each dwelling unit transferred is worth less than a single unit at a receiving site, resulting in the need to acquire more transfer units compared to the units being added at the receiving site.

### Transfer Incentives

Successful TDR programs, especially voluntary ones, require motivated parties on either end. Sending site owners can be motivated by:

- **Development Restrictions** – Some communities adopt restrictions which make it more profitable for a sending site owner to sell TDRs rather than to build on the sending site or simply prohibit the development.
- **Development Constraints** – Sometimes the physical constraints alone, or in combination with government constraints, provide the necessary motivation for sending site owners to sell TDRs.
- **Transfer Ratios** – A positive transfer ratio (see above) can result in a higher value to a sending site owner for a unit transferred compared to one built onsite.

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## TRANSFER OF DEVELOPMENT RIGHTS PROGRAM OPTIONS

(Transfer Incentives continued)

Receiving site developers will generally be motivated to purchase TDRs because it will allow them to achieve higher, more profitable densities. However, if they can already achieve their desired density, or if there is limited added value in additional units, then additional motivations such as the following may be used:

- **Density Limits** – Some programs reduce density limits unless a TDR is used. This motivates developers to purchase TDRs in order to achieve their desired density without increasing the planned density on the site. This option may result in Housing Element compliance issues.
- **Pre-Planned Density** – Some programs will pre-plan areas for higher density but will only allow achievement of that density when TDRs are purchased. By pre-planning the areas, the time and cost of processing the planning and environmental documents and gaining approval for the density is taken care of in advance, thereby reducing costs and uncertainty that the development would face if undertaking that planning independently.
- **Density Bonus** – Some programs offer density bonuses for developers purchasing TDRs to improve the profitability of a TDR project. This option would likely require additional CEQA review.
- **Exemptions from Fees or Standards** – Less common incentives for using TDRs employed by some communities include exemptions from certain fees or standards.

### Receiving Areas and Other Applications of TDRs

The most common application of a TDR sold from a sending site is to apply it to a receiving area to increase the density that a developer can achieve. Receiving areas vary significantly by program. Additionally, some programs allow for applications of TDRs to gain other benefits or to sell or trade them as a separate commodity. The following are some options for the uses of TDRs in the context of the GP Update:

- **Limited Density without TDRs** – As mentioned above, some communities will reduce densities across the map unless TDRs are purchased. This option may result in Housing Element compliance issues.
- **Upzoned GP Update Sites** – Upzoned GP Update, except low income Housing Element sites, could be restricted from achieving the increased densities unless TDRs are purchased. This option may also result in Housing Element compliance issues.
- **Private GPAs adding density** – Privately initiated General Plan Amendments that propose to add density could be required to purchase TDRs.
- **Public GPAs adding density** – County initiated General Plan Amendments or updates, or community specific updates, that add density could provide pre-planned areas for the application of TDRs.
- **Used for other Development Benefits** – Some programs have created an expanded market for TDRs by accommodating other development benefits such as height increases, variances, or certain development exceptions when TDRs are purchased.
- **Purchased for retirement** – TDRs don't always have to be used and built. They can also be retired if purchased by a conservation organization or by the County itself. For example, if a TDR program is developed, the County's Purchase of Agricultural Conservation Easement (PACE) Program could retire TDRs from farmland.

### Other Program Considerations

- Current zoning could be maintained in a new part of the zone box to use as a baseline for determination of TDRs.
- An independent oversight Board could be used to monitor implementation, hearing appeals, and provide other necessary decisions.
- The open market is the most common means to dictate price. Buyers and sellers could negotiate directly but the County could facilitate connections by hosting a "marketplace" website or similar forum. If necessary, price floors or ceilings could be established.
- Transfers could be geographically limited as suggested by S.O.R.E. For example, TDRs from sending sites outside the CWA must be used for receiving sites outside the CWA.
- The County could create a TDR bank to facilitate transfers. Developers that cannot find sufficient credits to purchase may purchase a substitute credit from the County.
- Once a credit is purchased, records are needed to show that it is removed from the land. This could be accomplished by deed restriction or easements on the property. Another approach could be to maintain the record and then modify zoning on a periodic basis to remove density.

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## TDR PROPOSALS

### *Shibley*

One of the proposals for an equity mechanism was proposed by Dave Shibley in his letter on the Draft General Plan. In his proposal, all of the downzoned units, about 33,000, from the existing General Plan to the General Plan Update would have the ability to be placed into a “Development Bank” that property owners can apply to place units in for potential reimbursement. Under the proposed program, property owners that apply for reimbursement would be reimbursed as demand for the units occurs, and under the proposal the receiver sites would be both the rural villages and future General Plan amendments. Under the program, a property owner would be required to process a TM/TPM to determine how many units would be allowed under the existing General Plan, because it is acknowledged that the density under the existing General Plan is not always attainable.

### *Save Our Rural Economy (S.O.R.E.)*

S.O.R.E. presented an equity mechanism proposal to the Planning Commission on Nov. 19, 2009, and in presentations and discussions with DPLU staff and various other entities. Under their proposal, densities of Rural Lands 20, 40 and 80 would be designated as sending sites, with a density of 1 du/12 acres or 24 acres with further density reductions for slopes exceeding 50%. Units from these sites could be developed on site or transferred to receiving sites in rural villages that would be identified through an additional planning process. To motivate transfers, the sending site property

owner would receive a positive transfer ratio increasing the densities to 1 du/10 acres or 20 acres respectively.

The application of this approach to all Rural Lands 20, 40 and 80 would affect up to 450,000 acres. Therefore, S.O.R.E. has been willing to discuss a reduced approach. An example of a reduced approach would be removing parcels affected by the Forest Conservation Initiative, parcels already designated at one dwelling unit per 40 acres under the existing General Plan, and parcels in the Desert Subregion. These reductions reduce the total acreage to 221,000. At a possible average density of 1 du/15 acres, this approach would potentially accommodate 14,733 units compared to 5,525 units applying an average of 1 du/40 acres.

### *DPLU Assessment of Shibley and S.O.R.E. Proposals*

While on the face these proposals appear simple, there are several issues with their implementation. First, many of the Rural Villages that would act as receiver sites do not have sufficient infrastructure capacity to warrant expansion, especially on the magnitude that could be allowed under the draft program. These villages include areas like Pine Valley or Julian, which are historically developed and would not support extensive expansion. Substantial development in many of these villages would be in direct conflict with General Plan Update principles. Second, these units would be over and above what was studied in the Draft Environmental Impact Report for the General Plan Update and any would require new analysis resulting in costly and lengthy delays to the project. Additionally, according to the recent draft SANDAG 2050 Forecast, there is sufficient capacity in the County’s General Plan Update for growth beyond 2050. Therefore, there is little rationale for adding additional growth capacity into the County’s General Plan at this time.

Should the S.O.R.E. concept be pursued as a viable option for the GP Update, even in a reduced form, substantial changes to the project documentation would be necessary. As the alternative with the greatest possible environmental impacts, the S.O.R.E. concept would be treated as the proposed project in the Draft EIR requiring significant revisions to the document and recirculation. Because the approach is a considerable change from the GP Update framework, significant changes would also be required for the GP Update documents, land use maps, Implementation Plan,



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community plans, and Conservation Subdivision Program. Consultant and staff costs for the modifications would be approximately \$2 million with an additional 2 years added to the project schedule.

## *DPLU Recommended Concept*

DPLU continues to recommend against including a TDR program as an equity mechanism for the GP Update. However, should a TDR be implemented with the GP Update, DPLU recommends that the following criteria be applied:

- The TDR should be mandatory based on the GP Update density designations.
- Sending sites should be limited to properties that were impacted the greatest by the GP Update. One approach would be to limit sending sites to those properties that were designated as Semi-Rural Land 10 or less dense and received at least a 50% reduction in potential unit yield.
- Receiving sites should include all properties that were upzoned by the GP Update and any future General Plan Amendments that add density above the GP Update.
- Transferable rights should be based on a formula that factors in site constraints as well as a general review of property specifics.
- Transfers from areas outside the CWA to within the CWA should be allowed, but a limit could be imposed to ensure that a certain number of transfers are directed to areas outside the CWA.
- The program should include an expiration date (such as 20 years from inception) that provides sufficient time for the transfers to be realized and the program to be reevaluated for its effectiveness.
- Other program specifics should be recommended by the Planning Commission and developed through coordination with stakeholders.

Lastly, as the concept of a TDR program has been addressed several times in the past as part of the GP Update, direction to undertake a TDR program must come from the Board of Supervisors. Should the Planning Commission wish to recommend that a TDR program be included with the GP Update, they should recommend that staff develop the conceptual program over the upcoming months and present it along with the GP Update to the Board for consideration in the Fall of 2010.

## REFERENCES

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