# *MEMORANDUM*

January 16, 2009

TO: DEVON MUTO
CHIEF, ADVANCED PLANNING

FROM: KEITH KELLEY

RE: COMMENT ON GENERAL PLAN UPDATE

CC: JIMMY WONG; DIXIE SWITZER

Thank you for your recent phone call. I am sorry that I was not available when you called. As you know, I met briefly with Jimmy Wong and Dixie Switzer, who were both very helpful, to inquire about the reasons that a transfer of development rights (TDR) program was not included in the Draft General Plan. I am a retired developer. I have a particular interest in trying to create programs that encourage, at the same time, BOTH the preservation of open space and the development of affordable housing. As discussed in the Housing Element of your Draft General Plan, these goals, at times, may be inconsistent, an issue that has been compounded by the RHNA allocation process. You are required to demonstrate that lower-income housing can be built in the unincorporated County at densities less than 30 units per acre. I believe the inclusion of a TDR process in the General Plan is the best way to facilitate that goal.

Proposals, such as the Draft Conservation Subdivision Program, designed to encourage higher densities through (a) improved design techniques, (b) the relaxation of lot size, slope-density regulations, and open space requirements, (c) the use of lot averaging, and the like, are innovative and helpful. But they will not necessarily result in substantial increases in affordable housing since they are limited by the fact that they provide flexibility only within individual ownership boundaries. Also, such programs only require an affordable housing component for projects that may otherwise be directed primarily to the development of market rate housing.

Proposals to merely increase density entitlements (in areas where infrastructure permits) perhaps are the least helpful. While such proposals may lead to an increase the housing inventory, there is no guarantee that there will be a corresponding increase in affordable units or, once built, that the units will remain affordable, thus leading to a never ending cycle in the need to provide such housing. Density increases through zoning entitlements only serves to drive up the price of the land. This leaves little incentive for developers to construct affordable units except by reducing design, amenities or quality, resulting in marginal projects that do not stand the test of time and serve only to further fuel understandable community resistance and opposition to such projects.

Proposals for density bonus programs and zoning incentives are more helpful, since they permit bonuses to be achieved post-purchase, thus allowing a developer to somewhat side-step the market in the purchase of property. I am not familiar with the programs that the County has developed in this regard, and thus cannot comment on their efficacy. Nevertheless, it is true that such programs are somewhat uni-dimensional in the sense that while they may encourage developers to develop affordable housing, and thus may assist the County in achieving its housing goals and complying with its State-imposed mandates, they do not assist the County in achieving its other, equally laudatory, goals.

A TDR program is a form of density bonus or incentive, but it is multi-dimensional, serving to help the County achieve multiple goals at the same time. I know that you are familiar with this concept. The beauty of a TDR program is that it creates *financial* incentives (i.e. actual market mechanisms) that encourage landowners to do the "right" thing by facilitating the transfer of development entitlements from areas where rural or environmental

preservation are desired ("sending" areas) to urban areas where increased densities are consistent with existing land uses and infrastructure is available to support their development ("receiving" areas).

It seems to me that the way to do this is through the use of "***incentive zones***". Rather than merely designating certain properties for more intense, *entitled* densities, thus driving the cost of the land, I think the County might do well to create zones where the maximum permitted densities, or density bonuses, can only be achieved by implementation of certain incentives including, but not necessarily limited to, a transfer of development rights from designated sending areas. Depending on how urgent the County's need is to meet certain General Plan or State-mandated goals, other incentives potentially may include the obligation to develop only certain housing types (e.g. affordable housing).

Sending areas more than likely would include land in rural or semi-rural areas where preservation of agricultural or environmentally sensitive lands is most desired, but might also include certain other targeted properties other regional categories. The process may be wide open to permit the transfer of rights from any designated sending area to any designated receiving area within the unincorporated area of the County. Or, the transfer of rights may be more restricted in certain areas in order to generate political support for the incentive zones. Thus, for example, the City of Vista and the County may agree that in order to establish higher density incentive zones for affordable housing in the North County Metro Community Planning Area, the transfer of rights may be restricted to sending areas within Vista's sphere of influence boundary as defined by LAFCO. By doing so, the benefits to the local community may be more immediate and, thus, more easily recognized because it will be readily realized that the establishment of incentive zones might encourage the transfer of rights from areas the community would like to see maintained as more open, rural buffer zones.

Further, I know that the County must be interested in motivating major non-profits like Volunteers of America or Habitat for Humanity to assist in developing affordable housing and, thus, helping the County meet its State mandated housing goals. A TDR program would be especially well-suited to do so for well-established 501(c)(3) corporations. As an example, I have attached a letter sent to Karen Youel, Director of Special Projects and Planned Giving at San Diego Habitat for Humanity, in which I have conveyed some basic ideas of how such a program might work for them. I have talked with Karen and she confirms that land acquisition costs are a major impediment to their mission of providing affordable housing, and Habitat would be very interested in discussing the concept further.

I have submitted this memorandum in order to meet today's deadline for community input on the General Plan. I did not intend for this to be exhaustive, only suggestive of a possible tool that may, and I think should, be utilized to further assist the County in meeting its General Plan goals. I have a great many other thoughts about the concept that I would like to share with Staff. I assume that there is time in the coming weeks to do that, but I wanted to plant the seed of the idea before the input deadline.

Should you find my suggestions worthy of further consideration, I would be pleased to meet with you or whomever you designate to further pursue development of the concept. As I say, I am retired. I have the time, expertise and energy to work on this idea, and I know of others who are equally interested in doing so. You may contact me as follows:


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Thank you for your consideration of this letter.

KEITH KELLEY <kkpcut@gmail.com>

# Conceptual Transfer of Development Rights Program

**KEITH KELLEY <kkpcut@gmail.com>** **Thu, Jan 15, 2009 at 7:52 PM**
To: kareny@sdhfh.org

Karen:

It was a pleasure talking with you today.

As mentioned, I am a retired developer that has had a continuing interest in affordable housing, and Habitat for Humanity in particular. I am aware that the State of California has mandated San Diego County (and all other counties), through new planning and zoning initiatives, to promote affordable housing in all areas of the County, including rural and semi-rural areas. This mandate, while a laudatory goal, runs counter to many equally laudatory goals of the County, most particularly the desire to (a) locate development where infrastructure can support it, (b) preserve rural and semi-rural areas, and (c) preserve open space and environmentally sensitive lands. I have been working on a solution that would allow the County to achieve its affordable housing goals without sacrificing those other goals, while at the same time offering an opportunity to developers of affordable housing projects, especially major non-profit organizations like Habitat, to acquire substantial development entitlements at little or no cost.

Organizations like Habitat do a wonderful job of generating material and labor donations to construct homes. However, it has been my assumption that the most difficult task for such organizations must be the acquisition of land and development entitlements needed to construct affordable homes, particularly in San Diego County where land prices have been unusually high. First and foremost, I would like to confirm that this assumption is correct.

Second, San Diego County currently is in the process of revising its General Plan. This is an opportune time to present creative new ideas. One such idea is a transfer of development rights (TDR) program. This is not a novel concept, but it is NOT a program that the County draft General Plan currently includes. I developed such a program in Summit County, Utah -- a program that has already produced major dividends by generating lots worth between $75 and $100 Million Dollars, proceeds from the sale of which have been used to purchase and preserve thousands of acres of valuable open space in that County. The program that I envisage for San Diego County would have many of the same components, but would work just a little differently so as to conform to unique circumstances here.

Such programs have as many variations as the mind can conjure up. But, in a nutshell, the basic concept looks like this:

(1) most rural property owners love their land and would love to see it preserved, consistent with the County planning goals. However, agriculture, ranching, or other rural pursuits oftentimes produce marginal revenues, and such property owners are often open to programs that allow them to preserve their land and at the same time derive (or preserve) income by means of the sale (or donation) of development entitlements on their land. As you probably know, federal tax laws allow land owners to strip development entitlements from their land and to donate them to legitimate 501(c)(3) corporations. Oftentimes, these corporations are land trusts, and the entitlements are simply "surrendered" in perpetuity in order to achieve the tax deductions. Such donations can shelter substantial portions of their adjusted gross income. Through such donations, the property owner substantially reduces his taxable income (which potentially results in making marginal farming or ranching operations more profitable, thus sustaining the rural uses of the land).

(2) development entitlements that are donated to a non-profit, like Habitat, can then be "transferred" from the rural "sending" property to a more urban "receiving" property, thus preserving the rural property and increasing the density permitted on the urban property. Because the entitlements are donated, they are acquired at little or no cost to the non-profit.

(3) property still must be acquired to "receive" the entitlements. In the past, in order to meet its affordable housing goals, the County has simply re-zoned properties to permit higher densities, hoping that such higher density zoning will promote more units. Unfortunately, such zoning only succeeds driving up the value of the property to which the zoning attaches. More units can be developed, but typically they are market rate product since the increased land costs allow no incentives for affordable housing developers. By increasing the acquisition cost of the property, it actually works contrary to the goals of keeping land costs low so as to encourage affordable housing projects. My concept proposes to create "incentive" zones, in which maximum densities permitted in that zone can ONLY be achieved by the use of TDR's.

Example: a rural property owner donates development entitlements to Habitat, thus achieving a major tax deduction. An urban property owner wants to sell his land. It is located in an incentive zone where the "base density" may permit a maximum of, say, 5 units per acre. Habitat, using donated cash, acquires land in an incentive zone at a value consistent with the base density. It then transfers the entitlements (for which it has paid nothing) to the property, thus increasing the density to, say, 30 units per acre. If cash is limited, Habitat can then sell a portion of the land with the higher density (more than likely at below market price) to replenish the cash used for acquisition. The result is: (1) residual land and density at no net cost to Habitat, and (2) recaptured cash that can be used to repeat the process, thereby creating a continuing stream of property for its affordable housing projects. In order to ensure the stock of units is such zones remain truly affordable, deed restrictions that limit the appreciation in value to amounts consistent with cost of living increases may be required in incentive zones.

Naturally, the details are considerable to creating such a program. However, there is still time in the General Plan process to develop and implement such a plan. If appropriate, support from organizations such as yours would be very effective in moving it forward.

I will be most interested in discussing my concept with you to determine if such a program would appear to be consistent with the goals and operations of your organization. I know the County is motivated to work with major non-profits like Habitat. Further, such a concept would be best suited to organizations like Habitat, since 501(c)(3) status is essential to the TDR process. Further, I suspect that the flow of donations may limit the number of potential units that Habitat is able to construct in any one year. However, if new land and entitlements can be generated at no net cost, Habitat may wish to consider using some of the land for development in partnership with other affordable housing developers, thus creating income to Habitat that would allow it to expand the number of projects undertaken, thus helping both (a) Habitat to expand its mission and (b) the County to achieve its goals and to satisfy its State-ordered mandates.

I look forward to discussing this with you tomorrow morning.

Regards,

Keith Kelley
(858) 456-5295

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