

CAMBRIA COMMUNITY SERVICES DISTRICT

TO: Board of Directors

AGENDA NO. **6.E.**

FROM: Jerry Gruber, General Manager

Meeting Date: June 22, 2017 Subject: CONSIDERATION TO APPROVE
A MEMORANDUM OF
UNDERSTANDING WITH THE
LAND CONSERVANCY OF SAN LUIS
OBISPO COUNTY FOR THE
TRANSFER DEVELOPMENT CREDITS
LOT RETIREMENT PROGRAM

RECOMMENDATIONS:

Staff recommends that the Board of Directors consider approving a Memorandum of Understanding (MOU) with the Land Conservancy of San Luis Obispo County (LCSLO) for the Transfer Development Credits (TDC) Lot Retirement Program and authorizing the Board President to execute the MOU.

FISCAL IMPACT:

Under the TDC Lot Retirement Program, the CCSD will be accepting parcels acquired by LCSLO. There will be ongoing maintenance costs that staff will need to continue to evaluate in relation to accepting the lots. Staff will make recommendations to the Board, as necessary, regarding funding ongoing maintenance costs.

DISCUSSION:

The attached MOU is being presented to the Board of Directors for consideration to facilitate LCSLO's Cambria Transfer of Development Credits Program. In March 2016, the Board of Directors authorized the reactivation of the relationship with LCSLO and the Lot Retirement Program, and at that time accepted the transfer of 52 lots. As the Board is aware, LCSLO has a long history of acquiring parcels in Cambria to protect the habitat of the Monterey Pine forest, primarily using revolving loans and grants from the California State Coastal Conservancy.

The North Coast Area Plan (NCAP) contains provisions relating to LCSLO's promotion of the TDC Program, as well as implementation of the CCSD's Buildout Reduction Program (BRP) through the acquisition of vacant lots and retirement of development rights. The TDC program voluntarily retires lots within designated sensitive resource areas of Monterey Pine Forest Habitat by recording a conservation easement or other document on the property. The building potential of the retired lot is then transferred to a buildable lot outside of the CCSD to allow for development of dwellings with a larger square footage than would otherwise be allowed by planning area standards. LCSLO manages the program, coordinating land purchases or donations with lot owners and eventually turning the land over to the CCSD for long term management.

The TDC Lot Retirement Program was established in the late 1980's as a way to address concerns over the development of antiquated and substandard lots in Cambria. Several thousand parcels created in the 1920's and 1930's are located on densely forested and steeply sloped lands. Rapid development threatened the rare Monterey Pine Forest and presented erosion and sedimentation concerns, as well as further straining the area's already limited water supply.

MEMORANDUM OF UNDERSTANDING
(Cambria / Lodge Hill TDC Program)

This Memorandum of Understanding (“MOU”) is entered into as of the date last written below by and between THE LAND CONSERVANCY OF SAN LUIS OBISPO COUNTY, a California nonprofit corporation (“LCSLO”), and the CAMBRIA COMMUNITY SERVICES DISTRICT, a special district (“CCSD”).

Recitals

A. WHEREAS, LCSLO is a California nonprofit corporation, qualified under Section 501(c)(3) of the Internal Revenue Code, whose primary purpose is the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, and/or open space condition.

B. WHEREAS, LCSLO administers a Transfer of Development Credits (“TDC”) Program, pursuant to which LCSLO acquires fee title to real property within the Lodge Hill area of Cambria, California that has been identified as a priority for acquisition, because it contains sensitive natural resources and subsequently sells the development rights associated with the real property, transferring the potential development away from the property containing the sensitive natural resources to a location where additional development is desired or deemed more appropriate.

C. WHEREAS, upon the acquisition of a property within the Lodge Hill area of Cambria, California (each a “Lot”) and the removal of the development rights pursuant to the TDC Program, LCSLO desires to transfer the Lots to a public entity to serve as the long-term fee title owner.

D. WHEREAS, due to small size of the Lots established by the antiquated subdivision of the Lodge Hill area of Cambria, landowners frequently own groups of one or more contiguous Lots. ~~A group of one or more contiguous Lots is referred to herein as “Parcel.”~~

E. WHEREAS, CCSD is willing to serve as the public entity owner of the Parcels, with each Parcel to be transferred to CCSD in accordance with the terms of this MOU.

F. WHEREAS, LCSLO and CCSD desire to enter into this MOU to memorialize the terms and conditions on which Parcels acquired by LCSLO will be transferred to CCSD going forward from the date of this MOU.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

1. Acquisition of Parcels by LCSLO. LCSLO will acquire Parcels by donation or purchase from landowners. ~~The transfer of title to a Parcel from the landowner to LCSLO will be accomplished through an escrow. It is the parties’ intent that as Parcels are acquired by LCSLO, they will be immediately transferred to CCSD, either through one single escrow or two related escrows. In deciding whether to accept a particular Parcel proposed for acquisition by LCSLO, LCSLO will conduct such due diligence as LCSLO deems prudent. Upon identification of a Parcel for acquisition by LCSLO and no later than the opening of escrow for the acquisition of a Parcel, LCSLO will notify CCSD of the pending Parcel acquisition. Upon request by CCSD, LCSLO will provide CCSD with copies of any contracts entered into with the donating-conveying landowner, as well as any and all due diligence materials obtained by LCSLO in connection with a Parcel acquisition, including without limitation preliminary title reports, appraisals, surveys and donor disclosures. For each Parcel acquisition transaction, the contract or escrow instructions between the LCSLO and the donating-conveying landowner shall provide CCSD with the right to conduct due diligence concerning the Parcel and the right to approve the acquisition of the Parcel, and that as a condition of close of escrow, CCSD shall have approved of the acquisition in writing. If CCSD desires any additional due diligence be conducted, CCSD shall be free to conduct such due diligence at its own expense. LCSLO shall be~~

responsible for any other costs and expenses of the Parcel acquisition transaction with the landowner that are not otherwise paid for by the landowner. Upon fee title to a Parcel being transferred to LCSLO, LCSLO will record on title to said Parcel an Offer to Dedicate Conservation and Scenic Easement and Declaration of Restrictions in substantially the form attached hereto as Exhibit A (“OTD”).

2. Transfer of Parcels to CCSD. Immediately following transfer of title of a Parcel from a landowner to LCSLO and recordation of an OTD, LCSLO shall transfer fee title to said Parcel to CCSD by recordation of a Grant Deed in substantially the form attached hereto as Exhibit B (“Grant Deed”). There shall be no monetary consideration paid by CCSD to LCSLO for conveyance of a Parcel to CCSD. LCSLO and CCSD shall split equally ~~split~~ (on a 50/50 basis) any escrow fees charged in connection with the transfer of a Parcel from LCSLO to CCSD, and CCSD shall be responsible for any other expenses of the transfer (such as recording fees, transfer taxes (if any), and title insurance premiums).

3. AS IS Transfer. CCSD acknowledges and agrees that the Parcels will be transferred by LCSLO to CCSD in their AS IS, WHERE IS condition without any representations or warranties of any kind, including but not limited to representations or warranties relating to the physical condition of the Parcels, the boundaries of the Parcels, title to the Parcels or any matters affecting title to the Parcels. CCSD shall have satisfied itself with all matters concerning a given Parcel prior to LCSLO’s acquisition of the Parcel from the landowner. The parties further acknowledge that LCSLO shall retain the rights to the TDCs from the Parcels and may sell and transfer those TDCs pursuant to the TDC program.

4. Conservation Easement. As a condition of the transfer of title to each Parcel to CCSD, LCSLO and CCSD shall execute a Deed of Conservation Easement in substantially the form attached hereto as Exhibit C (“Conservation Easement”), as well as Baseline Documentation (as defined in the Conservation Easement). The Conservation Easement shall be recorded on title to each Parcel immediately following recordation of a Grant Deed.

5. Number of Transactions. Commencing on the date that this MOU is fully executed and continuing thereafter until duly terminated, CCSD agrees to accept the transfer of up to twenty (20) Parcels per calendar year under the terms and conditions of this MOU.

6. State Coastal Conservancy. The parties agree to comply with any requirements of the State Coastal Conservancy regarding the transfer of title to Parcels from LCSLO to CCSD; LCSLO shall bear the costs associated therewith.

7. Term and Termination. This MOU shall be effective as of the date it is fully executed by LCSLO and CCSD and shall continue in effect until terminated in accordance with this Section 7. Either LCSLO or CCSD may terminate this MOU by providing prior written notice of termination to the other. Any Parcel acquisitions ~~in~~ process for which CCSD has given written approval pursuant to Section 1, above, at the time a termination notice is given shall be completed according to the terms set forth in this MOU, unless both LCSLO and CCSD agree otherwise in writing.

8. Prompt Action. In performing their respective rights and obligations in connection with both a Parcel acquisition and the transfer of a Parcel from LCSLO to CCSD, both LCSLO and CCSD will act promptly so as not to cause delays in the transaction.

9. General Provisions.

a. Binding on Successors. This MOU shall be binding on, and inure to the benefit of, the parties to it and their respective heirs, legal representatives, successors and assigns.

b. Entire Agreement. This MOU, including the foregoing recitals and the attached exhibits, constitute the entire agreement between the parties relating to the transfer of the Property. Any prior agreements, promises, negotiations, or representations not expressly set forth in this MOU are of no force and effect. Any

IN WITNESS WHEREOF, the parties have executed this MOU effective as of the date last written below.

CCSD:

LCSLO:

CAMBRIA COMMUNITY SERVICES
DISTRICT, a special district

THE LAND CONSERVANCY OF SAN LUIS
OBISPO COUNTY, a California nonprofit
corporation

By: _____

By: _____

Name: _____

Name: Kaila Adriane Dettman Hooker

Title: _____

Title: Executive Director

Date: _____

Date: _____

List of Exhibits

- Exhibit A OTD
- Exhibit B Grant Deed
- Exhibit C Conservation Easement

EXHIBIT A

OTD

EXHIBIT B

CONSERVATION EASEMENT

EXHIBIT 3
CONSERVATION EASEMENT