



## MEMORANDUM

Date: December 16, 2016

To: Honorable Board of County Commissioners

From: Matthew T. Trepal, Principal Planner

RE: TDU-VAR-16-01, A petition for a Variance to Section 3-5-429(h)(1)(i)B of the Transfer of Density Units (TDU) Code, Charlotte County Code of Laws and Ordinances

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**Staff Recommendation:**

Staff recommends the approval of this TDU Variance.

**Purpose of This Amendment:**

TDU-VAR-16-01 involves a request by Lux Biscayne Properties, LLC, for a variance from certain provisions of Section 3-5-429(h)(1)(i)B of the TDU Code in order to allow unused certified density units transferred onto an eligible Receiving Zone (RZ) to be certificated and available for transfer to another eligible RZ.

**Background:**

The subject site, 106.96 acres located north of SR 776 (El Jobean Road) and east of Biscayne Drive, in the Port Charlotte area, was the subject of Petition PA-01-11-35, amending the 1997-2010 Future Land Use Map from Low Density Residential and Parks and Recreation to Medium Density Residential and Petition Z-01-11-36-TDR, amending the Zoning Atlas from Residential Single-family 3.5 (RSF) to Planned Development (PD). Both were approved in 2003, by Ordinance 2003-039 and Ordinance 2003-050, respectively. These petitions allowed the maximum residential density on the subject site to be increased from 300 units to 828 units through the transfer of 528 units using the Transfer of Development Rights (TDR) program then in effect.

At that time, the TDR program – the predecessor to the County's current TDU program – required a TDR petition to be *"accompanied by a petition for a FLUM amendment or a Rezoning, whichever is applicable..."*. The TDR program further stated that any proposed TDR required either a *"binding agreement between all*

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*legal and equitable owners of the S[ending] Z[one] and the R[ecieving] Z[one] acknowledging and approving the submittal of the petition, and the proposed transfer and acceptance of development rights” or a “contribution fee to be deposited in the County Land Acquisition Trust Fund in an amount equal to the number of density units desired for the RZ multiplied by the unit price equivalent for a unit of density...”. As shown above, the original owners of the site submitted the required FLUM amendment and Rezoning and subsequently chose the first option to increase the density on the site, agreeing to transfer the required 528 density units from a platted but unbuilt subdivision on environmentally sensitive land south of the north branch of Washington Loop Road, along Shell Creek.*

The current owners of the property, Lux Biscayne Properties, LLC, have submitted plan amendment and rezoning petitions for property that includes the subject site and would reduce the maximum residential density on the site from 828 units to 400 units. Their intent is to sever the 428 excess density units from the subject site for transfer to another eligible RZ.

***Applicant's Request:***

Lux Biscayne Properties, LLC, is requesting a Variance to Section 3-5-429(h)(1)(i)B of the TDU Code, quoted below:

Sec. 3-5-429. - Process and procedures.

(h) *Effective date of the Certification or TDU.*

(1) A certification shall not become effective until the covenant and management plan, as applicable, has been recorded by the petitioner in the Public Records of Charlotte County with the Clerk of the Circuit Court of Charlotte County.

(i) Upon the effective date of a certification approved pursuant to this article, the community development director, or his/her designee, shall issue a certificate to the property owner(s) of the SZ. The issuance of the certificate shall establish the quantity of density units for the property at the time the certificate is issued and shall be considered a final determination. Once a certificate has been issued for the SZ, the property owner shall maintain the property in accordance with the requirements of the covenant.

A. ...

B. Density credits transferred to an eligible RZ pursuant to this article, which are not used for the intended RZ development, may be retransferred to another eligible RZ. The RZ owner shall simultaneously petition to revise the zoning district and/or FLUM, whichever is applicable, of the original RZ from which these credits were transferred to reflect the decrease in density.

Specifically, they request a Variance from the first sentence of subsection B: “Density credits transferred to an eligible RZ pursuant to this article, which are not used for the intended RZ development, may be retransferred to another eligible RZ.”

**Lux Biscayne Properties, LLC, is requesting** to be allowed to Certificate 428 of the 528 units of the density transferred to the subject site in 2003 instead of requiring them to be transferred immediately to a new eligible RZ.

Staff Response: The language of this subsection is not consistent with the language throughout the remainder of the TDU Code. It implies that the unused transferred density must be immediately transferred to a new eligible RZ. While the immediate transfer of density from SZs

to RZs was an aspect of the TDR Code when Petition Z-01-11-36-TDR was approved, transferring the 528 density units to the subject site, the current TDU program creates a Certificate of Transferrable Density Credits when density is severed from an approved SZ. This certificate can then be held for any length of time prior to applying the certificated units to an eligible RZ. This inconsistency between the language of this particular subsection and the overall TDU Code means that there is not an effective process for allowing unused transferred density to be reused. The conclusion is that a variance is required for this subsection.

***TDU Ordinance provisions applicable to this request:***

When the TDR Code was replaced by the TDU Code in 2004, some new conditions were implemented that are relevant to this requested variance. Under the new Code, approved SZ owners became able to sever density and keep that density in the form of a certificate until they had a purchaser for that density or an eligible RZ to transfer it to. Eligible RZ owners also became able, if they rezoned to a Planned Development, to delay a transfer of density to their site until final site plan approval. Thirdly, the owner of an RZ that had received transferred density gained the ability to sever unused, transferred density from that site and move it to another eligible RZ, if they simultaneously petitioned to revise the Zoning and FLUM on the site to reflect the decrease in density.

***Findings:***

**The following prerequisites must be established to the satisfaction of the Board:**

1. The strict application of the requirements of the TDU code would create an unnecessary hardship, as distinguished from a mere inconvenience, on the property owners:

As currently written, the language allowing unused, transferred density to be retransferred required that retransfer to occur concurrently with a plan amendment or rezoning to decrease the maximum residential density on the original RZ. This is not consistent with the overall TDU program, which allows density to be severed and certificated for use at a later time. The subject site does not have an eligible RZ available for immediate transfer of the 428 density units transferred to the site in 2003 as part of Z-01-11-36-TDR, and which would be eliminated through the approval of the current proposed plan amendment and rezoning to reduce the maximum density on the subject site from 828 units to 400 units.

**Finding: Staff finds this standard met.**

2. The conditions giving rise to the prohibition or hardship were not created by any person presently having an interest in the affected properties:

Inconsistencies between the language in Section 3-5-429(h)(1)(i)B and the remainder of the TDU Code arose as a result of the changes from the County's TDR to TDU program in 2004.

**Finding: Staff finds this standard met.**

3. The variance requested is the minimum modification of the regulation at issue to effectuate the relief necessary:

The request to forego immediate transfer of unused, transferred density units to a new eligible RZ in favor of certification of the density units is the minimum modification necessary to grant relief.

**Finding: Staff finds this standard met.**

4. The granting of a variance would not be injurious to or incompatible with the surrounding neighborhood or otherwise detrimental to the public welfare:

Allowing the applicant to re-use density credits previously transferred to the subject site would not be injurious to the public welfare. It is also not incompatible with the surrounding neighborhood. The original SZ remains under conservation easement regardless of the end use of the severed density.

**Finding: Staff finds this standard met.**

5. Owing to the specific circumstances which gave rise to the prohibition or hardship, the spirit and intent of this article would be preserved by granting the variance:

The original property owners used the TDR ordinance in the spirit and intent for which it was created by transferring density from environmentally sensitive lots in the Rural Service Area unsuitable for development into the Urban Service Area. While drafting the TDU Code, Staff recognized that plans change and transferred density may not always be used on the RZ it was sent to. A process was created to allow an applicant to remove unused, transferred density. Allowing the applicant to remove transferred density credits from the property would retain the spirit and intent of the ordinance.

**Finding: Staff finds this standard met.**

6. The requested variance is consistent with the Charlotte County Comprehensive Plan:

The following Charlotte 2050 policies are applicable to this Variance request:

**FLU Policy 1.2.7: Transfer of Density Units (TDU) Program Intent**

The County shall employ a transfer of density units (TDU) program whereby the development rights of property may be severed in perpetuity and transferred to designated locations that are more appropriate for development. The TDU program identifies sending and receiving zones. The intent is to create a TDU process that will:

1. Assist and encourage the removal of old, outdated, platted lots and subdivisions throughout the County.
2. Assist and encourage the replacement of an unsustainable and inefficient form of development with compact, higher density, mixed use development that is more sustainable and efficiently utilizes resources.
3. Incentivize the retention of long-term agricultural activities and the clustering of rural development densities as an alternative to rural large lot sprawl in order to reduce the premature conversion of rural lands and preserve rural character and viewsheds.
4. Incentivize the voluntary preservation of environmentally sensitive lands.
5. Help preserve archeological and historic sites.
6. Prevent density increases within the Coastal High Hazard Area.

The original transfer of density to the subject site in 2003 was consistent with standards 1. and 4., and the reuse of the unused transferred density on the subject site would be consistent with standard 2.

**Finding: Staff finds this standard is met.**

**Analysis and Conclusion:**

Lux Biscayne Properties, LLC, is attempting to make legitimate use of provisions within the TDU Code, but the inconsistencies within the language of the Code make it unreasonably difficult to comply. It is staff's conclusion that all six of the variance criteria have been met and also that the request meets the standard of being an unnecessary hardship.

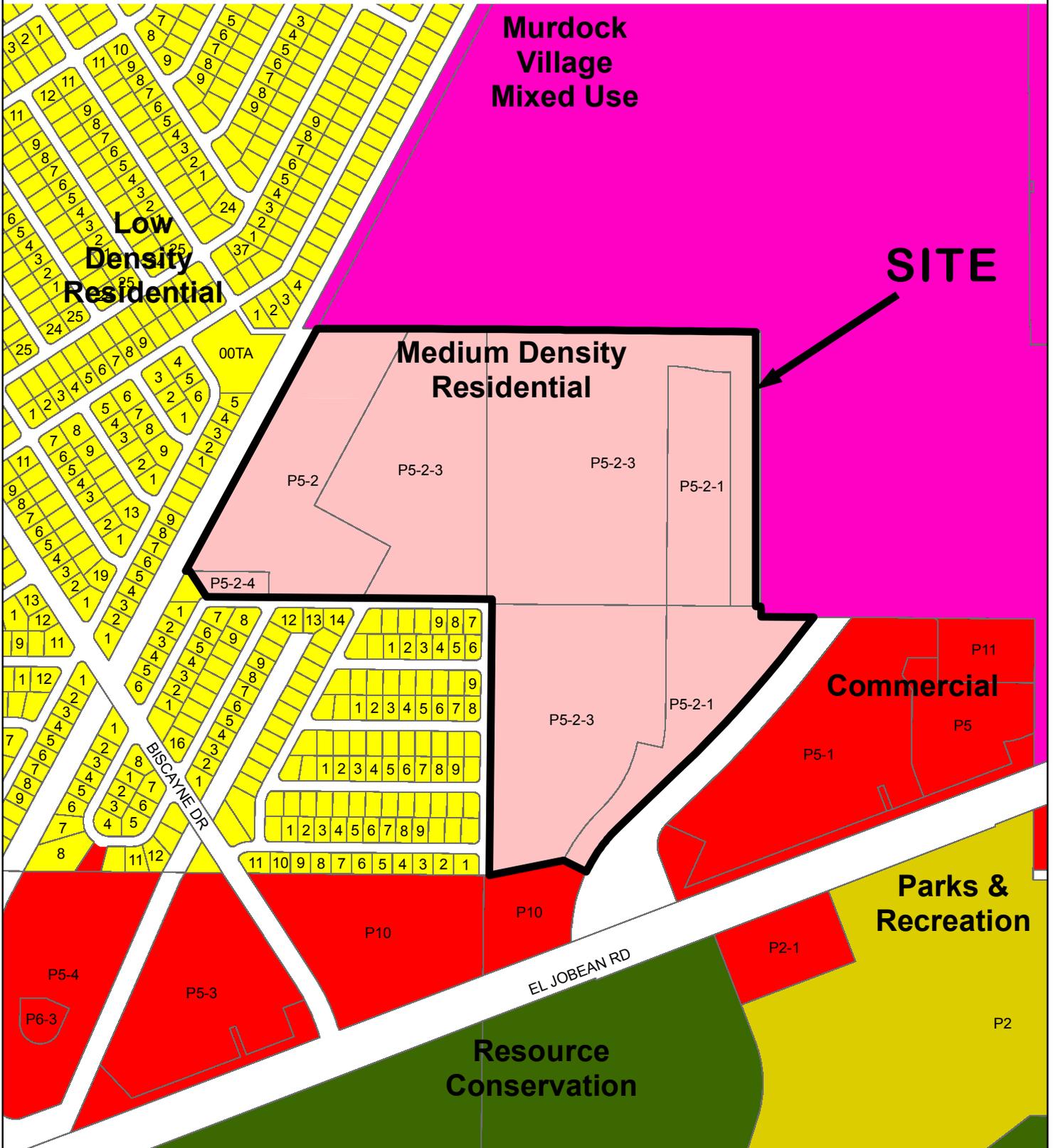




Community Development

# CHARLOTTE COUNTY

## Future Land Use Map for TDU-VAR-16-01



### 10,11,15/40/21 Mid-County

This map is a representation of compiled public information. It is believed to be an accurate and true depiction for the stated purpose, but Charlotte County and its employees make no guaranties, implied or otherwise, to the accuracy, or completeness. We therefore do not accept any responsibilities as to its use. This is not a survey or is it to be used for design. Reflected Dimensions are for Informational purposes only and may have been rounded to the nearest tenth. For precise dimensions, please refer to recorded plats and related documents. Created By: Land Information-D. Vance 463 Date Saved: 12/15/2016 9:05:42 AM

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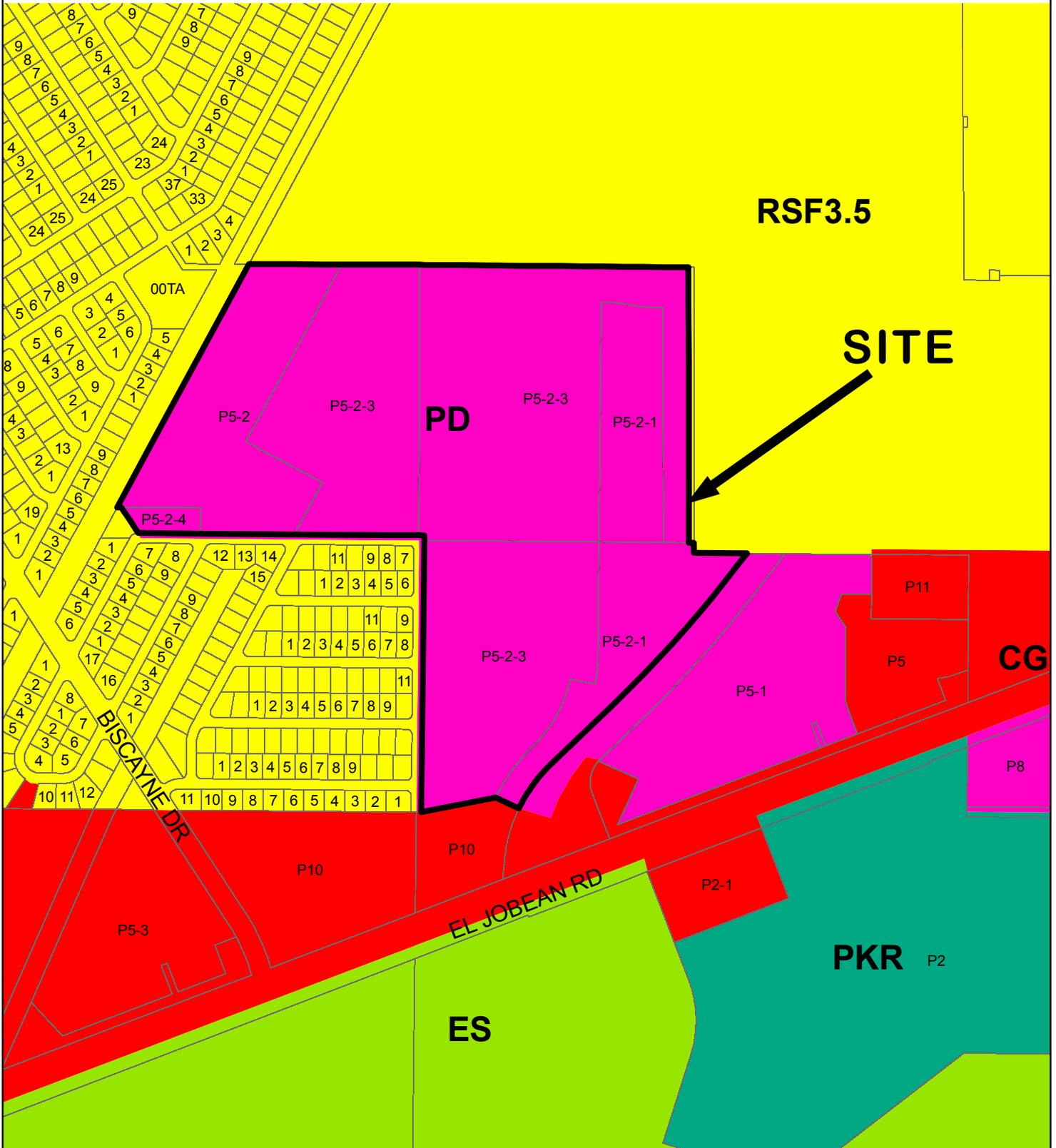
# CHARLOTTE COUNTY

## Zoning Map for TDU-VAR-16-01

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### 10,11,15/40/21 Mid County

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 Room 205  
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 Port Charlotte, FL. 33948



**CHARLOTTE COUNTY  
 COMMUNITY DEVELOPMENT DEPARTMENT**

**APPLICATION TO  
 Request a Variance from the TDU Code**

Date Received: 12/6/2016	Petition #: <i>Aceta Number: pos-16-00856</i> <i>TDU-VAR-16-01</i>
Date of Log-in:	Receipt #: Amount Paid: \$1,485.00

**The County will only process this application if the petitioner is also the owner of the Receiving Zone (RZ) property or the Sending Zone (RZ) property, as applicable.**

**The variance procedure allows a petitioner to seek limited relief from the requirements of this section of the code. Submit one paper copy of the application and a disc containing a copy of the application in PDF format to the Growth Management Department. (Any changes or additions to the application will require you to resubmit the PDF document)**

**Fee is \$1,485, made payable to the Charlotte County Board of County Commissioners**

**APPLICANT INFORMATION**

**1) Applicant's:** (add an attachment to the application if there is more than one owner and include % interest of each owner)

Name: Lux Biscayne Properties, LLC

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Mailing Address: c/o BHS, P.O. Box 3431

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City: Crofton	State: MD	Zip Code: 21114
Phone Number: (443) 983-1230		Fax Number:

**2) Agent's:**

Name: Geri L. Waksler, McCrory Law Firm

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Mailing Address: 309 Tamiami Trail

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City: Punta Gorda	State: FL	Zip Code: 33950
Phone Number: (941) 205-1122		Fax Number: (941) 205-1133



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OFFICIAL RECEIPT

Trans Number : 231125

Date Issued. : 12/08/2016

Application No. : POS-16-00856

Project Name : N/A Request a Variance from the TDU code

Received From : Boman K Najmi Mehrangis Najmi C/O BHS INT

Applicant : Lux Biscayne Properties, LLC

PAYMENT INFO

Method of Payment Fee / Description	Ref Doc	Amount Paid	Comment
<b>Check</b>			
TDU_APPEAL APPEAL OF TDU ORDINANCE	3433	\$1,485.00	
		<b>\$1,485.00</b>	Total Check

Total Receipt Amount: \$1,485.00

Change Due: \$0.00

Cashier ID : TRAVISC

APPLICATION INFO

Application #	Invoice #	Invoice Amt	Job Address
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Total Amount : \$0.00

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3) Parcel(s) Property Account #: 402110477001

4) Land Size (Square Feet or Acres): 106.90 +/-

5) Existing Zoning Classification of Property: PD

6) Existing Future Land Use Map Designation of Property: Medium Density Residential

7) **Attach a narrative.**

- A. Explain what section(s) of the TDU are you requesting relief from; and
- B. Explain the nature of the relief; and
- C. Draft a response to conditions 1 through 6 below.

8) **Once the petition is evaluated by Growth Management Staff, additional information may be requested if deemed necessary for a true and complete evaluation of the variance.** If the application is found to be insufficient, you will be notified within ten (10) working days from the submittal of the application and you will be responsible for supplying the additional information and/or clarification.

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CRITERIA APPLICABLE TO VARIANCE

**Section 3-5-433 Charlotte County Code**

After hearing the application for a variance, together with such other reports or testimony as may be relevant, the Board of County Commissioners may deny the requested variance or grant such variance from the terms of this section if the request meets the conditions hereinafter set forth. Action by the Board of County Commissioners shall require the concurrence of a majority of the members present.

**A variance can be granted only if all of the following conditions are found to exist:**

**Condition 1.** The strict application of the requirements of the TDU code prohibiting the Certification or Transfer of Density would create an unnecessary hardship as distinguished from a mere inconvenience, on the property owners; and

**Condition 2.** The conditions giving rise to the requested variance have not been created by any person presently having an interest in the affected properties; and

**Condition 3.** The variance requested is the minimum modification of the regulation at issue to effectuate the relief necessary; and

**Condition 4.** The granting of the variance would not be injurious to or incompatible with the

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surrounding neighborhood or otherwise detrimental to the public welfare; and

**Condition 5.** Owing to the specific circumstances which gave rise to the prohibition or hardship, the spirit and intent of this article would be preserved by granting the variance; and

**Condition 6.** The requested variance is consistent with the Charlotte County Comprehensive Plan.

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**AFFIDAVIT**

I, the undersigned, being first duly sworn, depose and say that I am the

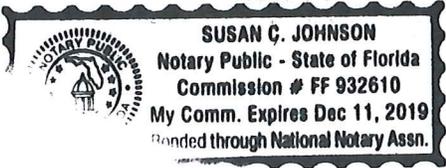
fee owner

part owner (% of ownership - )

of the property identified by the account number(s) listed in this application. I understand this application must be complete and accurate before the hearing can be advertised. I acknowledge that all items listed in the application must be submitted concurrent at the time the County accepts the application. I swear that all information submitted with the application is honest and true to the best of my knowledge and belief.

STATE OF Florida, COUNTY OF CHARLOTTE

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of December, 2016, by Boman K. Najmi who is personally known to me or has produced \_\_\_\_\_ as identification and who did/did not take an oath.

 Notary Public Signature	LUX BISCAVNE PROPERTIES, a Florida limited liability Company
Susan C. Johnson Notary Printed Signature	 Signature of Applicant & Title
 Commission Bonded through National Notary Assn.	BOMAN K. NAJMI Printed Signature of Applicant
 Commission Bonded through National Notary Assn.	PO Box 3431 Address
	Crofton, MD 21114 City, State, Zip
	443-983-1230 Telephone Number

Application to  
Request a Variance from the TDU Code

Required Narrative

Lux Biscayne Properties, LLC

(Narrative responses are shown as ***bold italics***)

SECTION OF THE TDU ORDINANCE FROM WHICH RELIEF IS REQUESTED

Relief is requested from Section 3-5-429(h)(1)(i)B. which reads as follows:

***Density credits transferred to an eligible RZ pursuant to this article, which are not used for the intended RZ development, may be retransferred to another eligible RZ. The RZ owner shall simultaneously petition to revise the zoning district and/or FLUM, whichever is applicable, of the original RZ from which these credits were transferred to reflect the decrease in density.***

NATURE OF THE RELIEF

***Section 3-5-429(h)(1)(i)B requires that unused density be retransferred to another eligible RZ while the owner of the original RZ simultaneously revises its zoning or FLUM to reflect the decreased density. Lux Biscayne Properties, LLC requests a variance from this provision to allow for the unused density to be certificated rather than transferred to another RZ.***

CRITERIA APPLICABLE TO VARIANCE

Condition 1. The strict application of the requirements of the TDU code prohibiting the Certification or Transfer of Density would create an unnecessary hardship as distinguished from a mere inconvenience, on the property owners.

***Five hundred twenty eight (528) density units were transferred to the subject property from an East County Sending Zone at the time of approval of Ordinance 2003-039, approving a future land use map amendment for the property. A Planned Development consisting of 828 units was also approved for the site. The then-existing Transfer of Development Rights ("TDR") ordinance did not provide for a certification process, so the units had to be purchased and transferred to a Receiving Zone concurrent with the plan amendment and rezoning. Concurrent with this variance request, the applicant is seeking a new Planned Development zoning approval which would reduce density on the site to 400 units. The Property no longer requires the entirety of the transferred density, therefore the applicant is requesting the ability to certificate the density for future use on another qualified Receiving Zone. Strict application of the TDU ordinance would***

***prohibit the retransfer unless the applicant purchased and rezoned another site. Given that the TDU code contemplated and provided for the retransfer of excess density, prohibiting its application because density must be immediately transferred rather than certificated creates an unnecessary hardship, particularly since the end result is the same - the density will ultimately be transferred to an eligible RZ.***

Condition 2. The conditions giving rise to the requested variance have not been created by any person presently having an interest in the affected properties.

***At the time of the original transfer in 2003, the option of obtaining a certificate for transferred density was not available. The only option under the TDR ordinance was an immediate transfer off of an approved Sending Zone onto an approved Receiving Zone. With the adoption of the TDU Ordinance in 2007, a new process was created whereby density purchased from a Sending Zone could be certificated for later use. Unfortunately, Section 3-5-429(h)(1)(i)B was not updated to reflect the newly created certificate process. The applicant did not create this omission.***

Condition 3. The variance requested is the minimum modification of the regulation at issue to effectuate the relief necessary.

***The TDU ordinance clearly intended that transferred density could be retained and retransferred to another site. The requested variance simply acknowledges the later-adopted certificate process. It is not just the minimum modification, it is the only modification that can be requested to this particular provision.***

Condition 4. The granting of the variance would not be injurious to or incompatible with the surrounding neighborhood or otherwise detrimental to the public welfare.

***The granting of the variance would have no effect on the surrounding neighborhood. Allowing for the retransfer of the density would be consistent with the intent of the current TDU Ordinance. Any subsequent transfer of the certificated density to a new Receiving Zone would have to comply with the requirements of the current TDU Ordinance ensuring that the density is utilized in a manner that would not be detrimental to the public welfare.***

Condition 5. Owing to the specific circumstances which gave rise to the prohibition or hardship, the spirit and intent of this article would be preserved by granting the variance.

***The intent of the TDU ordinance is stated as follows:***

***(a) It is the intent of this article to provide a mechanism, consistent with protection of the health, safety and welfare of the public, by which the following may be accomplished:***

- (1) Residential development rights associated with real property with environmentally sensitive resources, historic or archeological resources, or which contains a bona fide agricultural use, or real property otherwise deemed less suitable for development, may be properly transferred to property better suited for higher density residential development upon satisfaction of the requirements of this article;***
- (2) Future growth will be directed in a logical, economical, and efficient manner away from those areas of the county less suited for such growth, and toward those areas of the county best suited to provide the public services and facilities necessary for such growth;***
- (3) The county can provide a record of transfers of density units and impose appropriate restrictions on the properties involved in such transfers.***

***The original density was transferred from environmentally sensitive land in East County. This location is not suitable for residential development. The goal of transferring density off of unsuitable development locations was accomplished by this transfer. Though the density was originally transferred to the current site as part of a plan for residential development, that plan never came to fruition and the pending Planned Development rezoning would reduce density on the site. To accomplish the goal of transferring density to properties better suited for development, this density should be certificated for future use.***

***Further, the second goal is to direct growth to areas best suited to provide the public services and facilities necessary to support such growth. Under the TDU ordinance, all increases in density must be achieved with a transfer of density. Density units have been rendered finite by the TDU ordinance. Density severed from unsuitable areas will be needed to accomplish the County's goal of creating development at a density that can support the provision of infrastructure and services. This goal is thwarted if severed density is lost merely because a process for certification did not exist at the time of original transfer.***

***The final goal of providing a record of transfers will not be affected by the granting of this variance, which will simply utilize the record keeping process developed for certification of transferred density units.***

Condition 6. The requested variance is consistent with the Charlotte County Comprehensive Plan.

#### **FLU Policy 1.2.7: Transfer of Density Units (TDU) Program Intent**

The County shall employ a transfer of density units (TDU) program whereby the development rights of property may be severed in perpetuity and transferred to designated locations that are more appropriate for development. The TDU program identifies sending and receiving zones. The intent is to create a TDU process that will:

1. Assist and encourage the removal of old, outdated, platted lots and subdivisions throughout the County.
2. Assist and encourage the replacement of an unsustainable and inefficient form of development with compact, higher density, mixed use development that is more sustainable and efficiently utilizes resources.
3. Incentivize the retention of long-term agricultural activities and the clustering of rural development densities as an alternative to rural large lot sprawl in order to reduce the premature conversion of rural lands and preserve rural character and view sheds.
4. Incentivize the voluntary preservation of environmentally sensitive lands.
5. Help preserve archeological and historic sites.
6. Prevent density increases within the Coastal High Hazard Area.

***Approval of the requested variance would be consistent with numbers 1, 2 and 4 of FLU Policy 1.2.7 (numbers 3,5 and 6 are inapplicable to this transfer). The original transfer did, in fact, remove density from an outdated and environmentally sensitive subdivision in East County, consistent with subsections 1 and 4. Denying the applicant's request to have its density certificated would be inconsistent with subsection 2. The current TDU ordinance recognizes the value of transferred density. It derives this value from the fact that density that qualifies for transfer is finite and scarce. Further limiting the already limited supply of transferable density units reduces the likelihood that sufficient units will be available to achieve the densities required to create sustainable and efficient, higher density, mixed use development.***

#### **FLU Policy 1.2.9 TDU Sending Zones**

The following sending zones are recognized by the County:

1. Lands within Managed Neighborhoods.
2. Lands within the Rural Service Area retaining a bona fide agricultural use or consisting of substandard platted lots.
3. Lands within the Resource Conservation and Preservation FLUM categories.
4. Land within the Coastal High Hazard Area.
5. Any land containing historical or archeological resources, or land deemed to contain environmentally sensitive resources.
6. Lands within the Prime Aquifer Recharge Area.
7. Lands within the one-half mile setback of the Watershed Overlay District and Tippen Bay and Long Island Marsh.
8. Land within a Public Water System Wellhead Protection Area.
9. Land designated as a Wildlife Corridor Critical Linkage. These lands may sever density at one unit per five acres, gross, if designated as Agriculture or Burnt Store Limited Development on the FLUM, and two units per five acres if designated Rural Estate Residential on the FLUM.

***The density that would be certificated and eventually retransferred was severed from substandard platted lots located within the Rural Service Area, a recognized Sending Zone under FLU Policy 1.2.8.***

### **FLU Policy 1.2.10 Restrictions on Sending Zones**

The County shall apply the following restrictions to sending zone sites:

1. Once density is removed from a sending zone it shall not be restored to that site unless such area becomes targeted as a growth area through an amendment to this Plan.
2. Sending zone sites qualifying under item 1 of FLU Policy 1.2.9 shall be placed under a conservation easement and all density severed except that owners of contiguous lots may retain one unit of density per each contiguous acre.
3. Sending Zone sites qualifying under item 2 and 9 of FLU Policy 1.2.9 shall be placed under a conservation easement if environmentally sensitive land or agricultural easement if under active agricultural use and the intent is to continue that use.
  - a. For sending zones that qualify under item 2, if under active agricultural use, density may be retained for use by the property owner, family members of the property owner, and a land manager at one unit per 30 acres of active agricultural use, up to a maximum of 5 units.
  - b. For sending zones that qualify under item 9 that contain an active agricultural use, one unit of density may be retained and active agricultural uses may continue but not be intensified or expanded. If the property owner does not choose to manage the land for wildlife, the County or appropriate State or non-profit agency will be given rights to manage any non-agricultural and non-residential portions of the property for wildlife usage.
4. Sending zone sites qualifying under items 3, 4, 5, 6, 7, and 8 of FLU Policy 1.2.9 shall be placed under a conservation easement and no density shall be retained.
5. The more restrictive of the sending zone qualifications shall apply.

***The transferred density was from a sending zone that qualified under item 2 and 5 of FLU Policy 1.2.9. The sending zone was placed under a conservation easement.***

**ARTICLE XX. TRANSFER OF DEVELOPMENT RIGHTS\*****Sec. 3-5-431. Short title/applicability.**

This article shall be known and may be cited as the Charlotte County Transfer of Development Rights Ordinance. This article shall apply only in the unincorporated areas of the county.

(Ord. No. 01-050, § 1, 8-28-01)

**Sec. 3-5-432. Declaration of intent and purpose.**

It is the intent of this article to provide a mechanism by which development rights and residential densities associated with real property with ecologically valuable resources, or historic or archaeological resources, or real property deemed unsuitable for development due to location, may be severed from such property, properly recorded, and transferred to property better suited for higher density residential development. The transfer of development rights concept contained herein is designed to direct future growth in a logical, economical, and efficient manner away from those areas of the county less suited for such growth, and toward those areas of the county best suited to provide the public services and facilities necessary for such growth and for the protection of the health, safety and welfare of the general public. In addition, the intent and purpose of this article is to provide a record of transfers of development rights and impose appropriate restrictions on the properties involved in such transfers.

(Ord. No. 01-050, § 1, 8-28-01)

**Sec. 3-5-433. Definitions.**

Unless specifically defined below, all words, terms or phrases used in this article shall be ascribed the meaning which they have in common usage and which give this article the most reasonable application. The following words, terms and phrases, when used in this article, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Board:* The Board of County Commissioners of Charlotte County, the elected governing body of unincorporated Charlotte County, Florida.

*Comprehensive plan:* The document, and its amendments, adopted by the board, which meets the requirements of sections 163.3177 and 163.3178, Florida Statutes.

*County Code:* The Code of Laws and Ordinances, Charlotte County, Florida, as the same may be amended.

**\*Editor's note**—Ord. No. 01-050, adopted Aug. 28, 2001, repealed former Art. XX, Transfer of development rights, §§ 3-5-431—3-5-437, derived from Ord. No. 94-37, adopted Aug. 23, 1994, and enacted a new Art. XX, §§ 3-5-431—3-5-437, which pertained to the same subject matter and such provisions are set out herein.

*Density:* The number of dwelling units permitted within a given property based on its gross acreage, zoning classification, FLUM designation, and any applicable requirements of the County Code and/or comprehensive plan.

*Development:* The construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; any mining, excavation, landfill or land disturbance including, but not limited to, clearing, cutting, excavating, filling, or grading of land or any other activity that alters land topography or vegetation. This definition shall not include the removal of invasive, nonindigenous plant species either listed as prohibited trees in section 3-2-186(r) of the County Code or as determined by the director, activities undertaken pursuant to a habitat management plan approved by the USDA Natural Resources Conservation Service, or activities associated with bona fide agricultural practices.

*Development right:* A right in real property that entitles its owner to improve said property as may be permitted by the common law, statutory law of real property, United States or State Constitution, the County Code, or other applicable federal or state regulations, and as further defined and delineated in this article.

*Director:* The administrative director of the community development department of the county, or any successor county department charged with the planning and administration of land development services for the unincorporated areas of the county.

*Dwelling unit:* An increment of housing designed and intended for residential use by one (1) family, whether a single-family residence, mobile home, or as part of a duplex, apartment, or condominium project.

*Ecologically valuable resource:* Any vegetation community, or wetland, or wildlife or plant species listed by the State of Florida as endangered or threatened or listed by the FNAI as imperiled.

*FLUCCS:* The Florida Land Use Cover and Forms Classification System.

*FLUM:* The future land use map contained in the comprehensive plan, as the same may be amended.

*FNAI:* The Florida Natural Areas Inventory, or any successor entity performing similar functions or duties.

*Historic or archeological resource:* Any prehistoric, historic, or archaeological district, site, building, structure, or object included in the National Register of Public Places, Florida Master Site File or Local Register; such term includes mounds, artifacts, records, and remains which are related to such a district, site, building, structure, object, or culture.

*Receiving zone or RZ:* A property into which development rights may be transferred or density may be increased.

*Rezoning:* An amendment to the zoning atlas pursuant to the procedures and requirements of the County Code for such amendments.

*Sending zone or SZ:* A property from which development rights may be severed and transferred.

*SLOSH atlas:* An atlas of maps which identify the landfall scenario of hurricane storm surge inundation during the worst likely hurricane flooding conditions to impact Southwest Florida region. The maps summarize surge height estimates made using the sea, lake, and overland surges from hurricanes (SLOSH) model.

*TDR:* A transfer of development rights from a SZ to a RZ or an increase in development rights to a RZ, as governed by this article.

*Urban service area overlay district or USA:* Locations within a jurisdiction that are planned to receive publicly funded infrastructure and services within a planning timeframe, as depicted in the FLUM.

*Vegetation community:* Plant assemblages as defined using level 3 of the FLUCCS.

*Zoning district:* An area assigned a specific classification of uses and structures pursuant to section 3-9 of the County Code.

*Zoning atlas:* An atlas containing half-section maps depicting the boundaries of the various zoning districts, as the same has been and shall be amended from time to time.  
(Ord. No. 01-050, § 1, 8-28-01)

**Sec. 3-5-434. Reserved.**

**Sec. 3-5-435. Application, review and approval process.**

(a) *General.* Any owner of real property in Charlotte County may petition the board for a TDR in accordance with the provisions of this article.

- (1) A TDR petition must be accompanied by a petition for a FLUM amendment or a rezoning, whichever is applicable to the property involved in the TDR petition.
- (2) When proposed density within a proposed RZ exceeds that which would be allowed under the RZ's existing FLUM designation, there must be a petition to amend the FLUM to reflect a designation that would allow the proposed density. When proposed density within a proposed RZ exceeds that which would be allowed under the RZ's existing zoning district, there must be a petition to amend the zoning atlas to reflect a zoning district for the RZ that would allow the proposed density.
- (3) If the proposed density in an RZ would exceed by more than fifty (50) percent the number of units allowed in the existing zoning district for the RZ, or if the type of development proposed within the RZ differs in type (e.g. multifamily structures vs. single-family structures) from that which would have been allowed in the existing zoning district for the RZ, then the petition to amend the zoning atlas must reflect an amendment to a planned development zoning district in accordance with section 3-9-49 of the County Code.

(b) *Pre-petition meeting.* A petitioner for a TDR shall meet with the director, or his/her designee, prior to submitting a petition for a TDR. The meeting may include representatives from other county departments or government agencies who may attend the meeting and provide input, at the director's discretion. The purposes of the pre-petition meeting shall be to discuss the requirements for a TDR as they apply to the petitioner's proposal, any applicable provisions of this article, and other concerns related to the proposed TDR.

(c) *Petition process for petitions containing a sending zone.* When a petitioner proposes a TDR involving a SZ, the petitioner shall submit a TDR petition with a petition for a FLUM amendment or rezoning, whichever is applicable to the petitioner's proposal. The FLUM amendment or rezoning petition review process shall incorporate review of the TDR petition. In addition to any information and documents required pursuant to the accompany petition for a FLUM amendment or Rezoning, a petition for a TDR that involves a SZ shall include the following:

- (1) A binding agreement between all legal and equitable owners of the SZ and the RZ acknowledging and approving the submittal of the petition, and the proposed transfer and acceptance of development rights. In the event the owners of the SZ and the RZ are the same entity, an affidavit acknowledging the unity of ownership and approval of the TDR will satisfy this requirement.
- (2) A notarized affidavit that lists the names and addresses of owners of property located within two hundred (200) feet of the SZ and the RZ.
- (3) Legal descriptions of the SZ and the RZ accompanied by signed and sealed surveys for the SZ and the RZ that illustrate boundaries, elevations, and all existing easements.
- (4) A narrative which describes the existing zoning districts and FLUM designations for the SZ and the RZ, as well as descriptions of any ecologically valuable resource, and any historic or archaeological resource located in the SZ and the RZ along with maps of the SZ and the RZ on which the existing land cover is illustrated according to the FLUCCS, and surveys of all listed species within the SZ and the RZ as well as a map depicting the locations of these species.
- (5) A management plan for the SZ which shall include narratives explaining the proposed uses in the SZ following the completion of the TDR and describing how the ecologically valuable resources and the historic or archaeological resources, whichever is applicable, of the SZ will be maintained following the completion of the TDR, and any other information reasonably requested or required by the director regarding the use of the SZ following the completion of the TDR.
- (6) A proposed conservation easement or other similar restrictive covenant granted by all owners of the SZ to the county, or some other entity acceptable to the director, in a form acceptable to the director, limiting the uses of the SZ to those described in the management plan required by subsection (5) above. Such easement or other restrictive covenant shall be binding upon all legal and equitable owners of the SZ, their heirs, successors and assigns.

- (7) When the TDR requires the establishment of a planned development zoning district in the RZ pursuant to section 3-5-435(a)(3) hereof, a narrative explaining the proposed uses in the RZ following the completion of the TDR must accompany all applications.

When the TDR includes the establishment of a PD as provided above, the narrative must include proposed development standards which establish lot size, building heights, setbacks, parking provisions, perimeter buffering and landscaping, and other requirements, as necessary, specific to the development proposed within the RZ. These standards will reflect the character of the RZ's neighborhood to ensure that the proposed development is harmonious with its surroundings and will not detract from the surrounding neighborhood. An appropriately scaled site plan of the RZ which illustrates, at a minimum, the placement of structures on the property; provision for ingress and egress; off-street parking and loading areas (where applicable); refuse and service areas (where appropriate); utility locations and hookups; plans for perimeter landscaping and buffering with references to type, dimensions, and character, as well as proposed yards and other spaces as deemed appropriate to accommodate additional structures must be included with the narrative.

(d) *Petition process for petitions not involving a sending zone.* In the event a petitioner does not have a proposed SZ from which to transfer density to a proposed RZ, the petitioner may apply for a TDR to increase the density in the proposed RZ pursuant to this subsection. When a petitioner proposes such a TDR that does not involve a SZ, the petitioner shall submit a TDR petition with a petition for a FLUM amendment or rezoning, whichever is applicable to the petitioner's proposal. The FLUM amendment or rezoning petition review process shall incorporate review of the TDR petition. In addition to any information and documents required pursuant to the accompany petition for a FLUM amendment or rezoning, a petition for a TDR that that does not involve a SZ shall include the following:

- (1) An affidavit from all legal and equitable owners of the RZ acknowledging and approving the submittal of the petition, and the proposed TDR and increase in development rights.
- (2) A notarized affidavit that lists the names and addresses of owners of property located within two hundred (200) feet of the RZ.
- (3) Legal description of the RZ accompanied by a signed and sealed survey for the RZ that illustrate boundaries, elevations, and all existing easements.
- (4) A narrative which describes the existing zoning district and FLUM designation for the RZ, as well as descriptions of any ecologically valuable resource and any historic or archaeological resource located in the RZ along with a map of the RZ on which the existing land cover is illustrated according to the FLUCCS, and a survey of all listed species within the RZ as well as a map depicting the locations of these species.
- (5) When the TDR requires the establishment of a planned development zoning district in the RZ pursuant to section 3-5-435(a)(3) hereof, a narrative explaining the proposed uses in the RZ following the completion of the TDR must accompany all applications.

When the TDR includes the establishment of a PD as provided above, the narrative must include proposed development standards which establish lot size, building heights, setbacks, parking provisions, perimeter buffering and landscaping, and other requirements, as necessary, specific to the development proposed within the RZ. These standards will reflect the character of the RZ's neighborhood to ensure that the proposed development is harmonious with its surroundings and will not detract from the surrounding neighborhood. An appropriately scaled site plan of the RZ which illustrates, at a minimum, the placement of structures on the property; provision for ingress and egress; off-street parking and loading areas (where applicable); refuse and service areas (where appropriate); utility locations and hookups; plans for perimeter landscaping and buffering with references to type, dimensions, and character, as well as proposed yards and other spaces as deemed appropriate to accommodate additional structures must be included with the narrative.

- (6) A contribution fee to be deposited in the county land acquisition trust fund in an amount equal to the number of units of density desired for the RZ multiplied by the unit price equivalent for a unit of density to be established by resolution of the board.

(e) *Notice and public hearing.* Notice of inclusion of a TDR petition with a petition for a FLUM amendment or a rezoning shall be included in the notices for the accompanying FLUM amendment or rezoning required under the County Code provisions. Discussion and decision by the board regarding the approval or denial of a TDR petition shall be conducted concurrently with the discussion and decision regarding the accompanying petition for FLUM amendment or rezoning.

(f) *Standards for approval.* The board may grant a TDR if it finds that the TDR complies with the intent, purpose and procedural requirements of this article, that the proposed increase in density in the RZ complies with the comprehensive plan, and, if a SZ was involved in the TDR, that the post-TDR uses in the SZ maintain the ecological viability and ecologically valuable resources and the historic and archaeological resources of the SZ.

(g) *Approval and recording.* A TDR shall not become effective until approval by the board and until the documents required under subsections (c)(1), (c)(3), (c)(5), (and (c)(6) of this section 3-5-435, and any documents indicating acceptance of the documents required under subsection (c)(6), or the documents required under subsections (d)(1) and (d)(3), whichever set of documents are applicable to the petition, are recorded by the petitioner, at the petitioner's cost, in the Official Records of Charlotte County with the Clerk of the Circuit Court of Charlotte County. The petitioner shall provide the director proof that these documents have been recorded with the clerk of the circuit court before any permits will be issued for development within the RZ.

(h) *Record keeping.* Upon approval of a TDR and compliance with the requirements for recordation of documents contained in section 3-5-435(g), the director shall cause the FLUM and zoning atlas to be annotated to reflect the TDR using an alphanumeric system.  
(Ord. No. 01-050, § 1, 8-28-01)

**Sec. 3-5-436. Limitations/conditions for TDRS.**

(a) *Limitations/conditions for eligibility of property as a SZ or a RZ.* Properties eligible to be used in a TDR are limited to the following:

- (1) In order for a particular property to qualify as a SZ for a TDR, the property must comply with one of the following criteria:
  - a. The property contains one (1) or more ecologically valuable resource;
  - b. The property contains one (1) or more historic or archaeological resource;
  - c. The property is located within the coastal high hazard area as identified by the comprehensive plan;
  - d. The property is located within the tropical storm surge and category 1 storm surge zones as identified by the most recently updated SLOSH atlas issued by the Southwest Florida Regional Planning Council; or
  - e. The property is located outside the USA and is either platted with lots of substandard size or dimension or it is platted with lots at a density which is not in compliance with the comprehensive plan as it applies to the property.
- (2) In order for a particular property to qualify as a RZ for a TDR, the property must comply with all of the following criteria:
  - a. The property must be located within the USA or within a new community or rural community (as those terms are defined and described in the comprehensive plan and chapter 163, Florida Statutes);
  - b. The property must be either currently designated or proposed to be designated either low density residential, medium density residential, high density residential, RV park, mixed use, new community or rural community, or a combination of those designations, on the FLUM;
  - c. The property, or any portion thereof, is not utilized by wildlife species listed by the State of Florida as endangered or threatened;
  - d. The property, or any portion thereof, is not located within the tropical storm surge and category 1 hurricane storm surge zone as indicated on the most recently updated SLOSH atlas issued by the Southwest Florida Regional Planning Council; and

The property, or any portion thereof, is not located within the coastal high hazard area as identified in the comprehensive plan.

(b) *General limitations/conditions.*

- (1) Nothing in this article shall be construed to preclude the use of a SZ as a mitigation bank or park, or to limit relocation of a protected plant or animal species to an SZ, as such use or relocation may be allowed by federal and state regulations.

- (2) Any use of a SZ subsequent to an approved TDR must maintain the ecological viability and value of any ecologically valuable resource and the historic or archaeological value of any historic or archeological resource located within the SZ.
  - (3) Once a TDR is approved and effective and density is transferred out of a SZ, density shall not be restored to any SZ unless the area in which the SZ is located becomes designated as an infill area of the USA. In such situations, the property may become a RZ if it meets all qualifications for a RZ under this article.
  - (4) Once transferred or added to a RZ, density shall not be retransferred out of that RZ.
  - (5) Density for any TDR shall only be transferred in whole units.
- (Ord. No. 01-050, § 1, 8-28-01)

**Sec. 3-5-437. Land acquisition trust fund.**

The board shall establish by resolution the land acquisition trust fund (LATF) and any procedures governing such fund in accordance with this section. Funds contributed to the land acquisition trust fund (LATF) pursuant to section 3-5-435(d)(6) and any other source shall be used to acquire and manage properties that comply with one of the following criteria:

- (1) Property that consists of platted lots containing one (1) or more ecologically valuable resources;
- (2) Property that consists of non-platted land containing one (1) or more ecologically valuable resources;
- (3) Property that consists of platted lots outside the USA; or
- (4) Property that consists of platted lots within the coastal high hazard area.

Prior to any expenditure of LATF funds for the purchase of a parcel of land, the director of the Charlotte County Community Development Department shall review any proposal for such purchase of land and shall coordinate the provision of input from county staff to the board regarding any such proposal. Use of ecologically valuable lands purchased with LATF monies shall be managed by the county so as to maintain or enhance their ecological functions and values. Nothing shall be construed to prevent the board from combining and re-selling property acquired with money from the LATF provided such property does not contain ecologically valuable resources, and provided further that the densities assigned to such property at the time of sale comply with the comprehensive plan and County Code, and provided further that the proceeds from any reselling are deposited into the LATF.

(Ord. No. 01-050, § 1, 8-28-01)

**Secs. 3-5-438—3-5-440. Reserved.**

**ARTICLE XXI. EXCAVATIONS\*****Sec. 3-5-441. Short title.**

This article shall be known as the "Charlotte County Excavation Ordinance."  
(Ord. No. 94-49, § 1, 11-1-94)

**Sec. 3-5-442. Findings.**

The board of county commissioners finds that properly designed excavations can provide important resources for Charlotte County in supplying vital building materials, supporting agricultural operations, controlling stormwater run-off, enhancing wildlife habitat and cre-

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\***Editor's note**—Ord. No. 94-49, adopted Nov. 1, 1994, did not specifically amend this Code; hence, inclusion as Ch. 3-5, Art. XXI was at the discretion of the editor.

**Cross reference**—Mines and mining, § 1-10-221 et seq.



1 fide agricultural uses, or which contains substandard platted lots or which are located in  
2 a Tropical Storm Surge or Category 1 Hurricane Storm Surge zone; and  
3

4 **WHEREAS**, in order to alleviate such constraints on landowners, the Board has  
5 found in the past, and continues to find, that it is desirable and in the public interest to  
6 create and maintain a process whereby density units associated with properties  
7 containing environmentally sensitive, historic and archeological resources, and bona  
8 fide agricultural uses, properties located in the Tropical Storm Surge or Category 1  
9 Hurricane Storm Surge zone, and properties with surplus or substandard platted lots  
10 may be transferred to other properties more suitable for such development; and  
11

12 **WHEREAS**, the Board desires to create a transfer of density units process which  
13 will direct future growth in a logical, economical, and efficient manner away from those  
14 areas of the County less suited for such growth, and toward those areas of the County  
15 better suited to provide the public services and facilities necessary for such growth, and  
16 for the protection of environmentally sensitive, historic and archeological resources and  
17 bona fide agricultural uses, and the health, safety and welfare of the general public; and  
18

19 **WHEREAS**, the Board further desires to create a transfer of density units  
20 process which will assist and encourage private and public interests in reducing and  
21 reallocating the surplus and substandard platted lots throughout the County as is  
22 contemplated by the Comprehensive Plan; and  
23

24 **WHEREAS**, the Board desires to provide a record of the transfers of density  
25 units and impose appropriate restrictions on the properties involved in such transfers;  
26 and  
27

28 **WHEREAS**, on July 26, 1994, the Board adopted Article XX, Chapter 3-5, of the  
29 Code of Laws and Ordinances of Charlotte County, Florida, which provided a process  
30 whereby development rights associated with certain properties could be transferred to  
31 more suitable areas; and  
32

33 **WHEREAS**, on August 28, 2001, the Board amended Article XX, Chapter 3-5, of  
34 the Code of Laws and Ordinances of Charlotte County, Florida to more effectively  
35 provide for the transfers of development rights and further the Goals, Objectives and  
36 Policies of the then-current Comprehensive Plan; and  
37

38 **WHEREAS**, the Board finds it desirable to again amend Article XX, Chapter 3-5,  
39 to more effectively and efficiently provide for the transfers of density units and further  
40 the Goals, Objectives and Policies of the Comprehensive Plan.  
41

1           **NOW, THEREFORE, BE IT ORDAINED** by the Board of County Commissioners  
2 of Charlotte County, Florida:

3  
4           **SECTION 1.** Article XX. Chapter 3-5, of the Code of Laws and Ordinances of  
5 Charlotte County, Florida, containing Sec. 3-5-431 through Sec. 3-5-437 of such Code,  
6 shall be deleted in its entirety and replaced with the following:

7  
8                           **ARTICLE XX. TRANSFER OF DENSITY UNITS**

9  
10           **Sec. 3-5-431. SHORT TITLE.**

11  
12           This article shall be known and may be cited as the Charlotte County "Transfer of  
13 Density Units Code."

14  
15           **Sec. 3-5-432. DECLARATION OF INTENT AND PURPOSE.**

16  
17           (a)    It is the intent of this article to provide a mechanism by which:

18  
19                   (1)    Residential development rights associated with real property with  
20 environmentally sensitive, historic, or archeological resources, or bona fide agricultural  
21 uses or real property otherwise deemed less suitable for development due to location,  
22 may be properly transferred to property better suited for higher density residential  
23 development upon satisfaction of the requirements of this article; and

24  
25                   (2)    Future growth will be directed in a logical, economical, and efficient  
26 manner away from those areas of the County less suited for such growth, and toward  
27 those areas of the County best suited to provide the public services and facilities  
28 necessary for such growth and for the protection of the health, safety and welfare of the  
29 general public; and

30  
31                   (3)    Density may be reduced County-wide and density from  
32 Substandard lots or parcels can be reduced and/or reallocated to property better suited  
33 for such development and density; and

34  
35                   (4)    The County can provide a record of transfers of density units and  
36 impose appropriate restrictions on the properties involved in such transfers; and

37  
38                   (5)    The County can promote creative and compact development in  
39 appropriate areas of the County.

40  
41           (b)    The adoption of this article shall not affect the existing FLUM or Zoning  
42 designation of any property. It shall provide a mechanism for increasing or creating  
43 density on a property.

1                   **Sec. 3-5-433. DEFINITIONS.**  
2

3                   Unless specifically defined below, all words, terms or phrases used in this article  
4 shall be ascribed the meaning which they have in common usage and which give this  
5 article the most reasonable application. The following words, terms and phrases, when  
6 used in this article, have the meanings ascribed to them in this section, except where  
7 the context clearly indicates a different meaning:  
8

9                   *Agriculture:* The business of cultivating the soil, producing crops and raising  
10 horses, production of horticultural, aqua cultural, and silvicultural products; and raising  
11 livestock to provide food or fiber for society.  
12

13                   *Barrier Island:* a broadened barrier beach entirely surrounded by water,  
14 habitable in places, and providing a measure of protection for the mainland, as during  
15 hurricanes and tidal waves.  
16

17                   *Board:* The Board of County Commissioners of Charlotte County, the elected  
18 governing body of unincorporated Charlotte County, Florida.  
19

20                   *Bona fide Agricultural Use:* Use of a property for agriculture, which property has  
21 been classified as agricultural by the Charlotte County Property Appraiser pursuant to  
22 Section 193.461, Florida Statutes.  
23

24                   *Certificate:* A certificate of transferable Density Credits calculated and issued  
25 pursuant to this article.  
26

27                   *Comprehensive Plan:* The document, and its amendments, adopted by the  
28 Board, which meets the requirements of Section 163.3177 and Section 163.3178,  
29 Florida Statutes.  
30

31                   *County Administrator:* The chief administrative officer of Charlotte County,  
32 Florida, or his/her designee.  
33

34                   *County Code:* The Code of Laws and Ordinances, Charlotte County, Florida, as  
35 the same may be amended.  
36

37                   *Covenant:* A perpetual conservation easement and/or other perpetual restrictive  
38 covenant that encumbers the property that constitutes an SZ, granted by the owner (s)  
39 thereof to the County or to some other entity acceptable to the County Administrator.  
40

41                   *Density:* The number of Density Units permissible within a given property.  
42

43                   *Density Credit:* A Density Unit that has been severed from a property through  
44 the processes identified in this article and recognized by a Certificate of Transferable  
45 Density Credits.  
46

1           *Density Unit:* A Development Right which equals one increment of housing  
2 designed and intended for residential use by one (1) family, whether a single family  
3 residence, mobile home, or as part of a duplex, apartment, or condominium project .  
4

5           *Development:* The construction, reconstruction, conversion, structural alteration,  
6 relocation, or enlargement of any structure; any mining, excavation, landfill or land  
7 disturbance including, but not limited to, clearing, cutting, burning, excavating, filling, or  
8 grading of land or any other activity that alters land topography or vegetation. This  
9 definition shall not include the removal of invasive, nonindigenous plant species either  
10 listed as Prohibited Trees in Subsection 3-2-186(r) of the County Code or as determined  
11 by the County Administrator, activities undertaken pursuant to a land management plan  
12 approved by the USDA Natural Resources Conservation Service or similar agencies, or  
13 activities associated with bona fide agricultural practices.  
14

15           *Development Permit:* Any building permit, zoning permit, plat approval, or  
16 rezoning, certification, variance, or other action having the effect of permitting  
17 development.  
18

19           *Development Right:* A right that entitles an owner of real property to develop  
20 said property as may be recognized by the common law, statutory law, the United  
21 States or Florida constitution, the County Code, the Comprehensive Plan or other  
22 applicable federal or state regulations.  
23

24           *Encumbrances:* Restrictions, liens or other matters which affect the SZ.  
25

26           *Environmentally sensitive resource:* Any Vegetation Community, plant  
27 assemblages as defined using level 3 of the FLUCCS, or wetland, or wildlife, or plant  
28 species listed by the State of Florida or the United States as endangered or threatened  
29 or listed as globally imperiled by the Florida Natural Areas Inventory, or any successor  
30 entity performing similar functions or duties.  
31

32           *FLUCCS:* The Florida Land Use Cover and Forms Classification System.  
33

34           *FLUM:* The Future Land Use Map contained in the Comprehensive Plan, as the  
35 same may be amended.  
36

37           *Historic or archeological resource:* Any prehistoric, historic, or archeological district,  
38 site, building, structure, or object included in the National Register of Public Places, Florida  
39 Master Site File or Local Register or which may be deemed to be a prehistoric, historic, or  
40 archeological district, site, building, structure, or object by an archeologist registered with  
41 the Society of Professional Archaeologists; such term includes mounds, artifacts, records,  
42 and remains which are related to such a district, site, building, structure, object, or culture.  
43

44           *Land Acquisition Trust Fund or LATF:* The fund established by the Board pursuant  
45 to Sec. 3-5-457 below.  
46

1            *Management-Ready:* The condition of the proposed SZ, as determined by the  
2 County Administrator, where any initial management activities required to get the  
3 proposed SZ into a condition so that only routine maintenance is required to maintain it  
4 in a functional state have been completed. These initial activities may include, but are  
5 not limited to, removing all debris, removing exotic vegetation and securing or removing  
6 a structure.

7  
8            *Ownership and Encumbrance Report or O&E:* A title report on the proposed  
9 Sending Zone issued by an attorney or a title insurance company acceptable to the  
10 County Attorney.

11  
12            *Plan Amendment:* Any change to the Comprehensive Plan including any change  
13 to any map of the Future Land Use Map series of the Comprehensive Plan.

14  
15            *Preliminary Plat:* A preliminary map or delineated representation of the  
16 subdivision of lands, being a complete exact representation of the subdivision and other  
17 information in compliance with the requirement of all applicable sections of Chapter 3-7,  
18 Subdivision Regulations, and of any other local ordinances, and may include the terms  
19 "replat, or revised plat," as defined in F.S. section 177.031(14), as amended.

20  
21            *Receiving Zone or RZ:* The area of property into which Density Credits may be  
22 transferred and/or Density Units may be increased.

23  
24            *Rezoning:* An amendment to the Zoning Atlas pursuant to the procedures and  
25 requirements of the County Code for such amendments.

26  
27            *Sending Zone or SZ:* The area of property from which Density Credits may be  
28 severed and transferred.

29  
30            *Substandard lot or parcel:* Property which does not meet the minimum  
31 dimension or area requirements established pursuant to the Zoning Atlas, County  
32 Zoning Regulations, FLUM, County Land Development Regulations, County Subdivision  
33 Regulations, or the Comprehensive Plan.

34  
35            *TDU:* A transfer of Density Units from an SZ to an RZ, or an increase in Density  
36 Units to an RZ, as governed by this article.

37  
38            *Unacceptable Encumbrances:* Encumbrances that, in the judgment of the County  
39 Attorney, would impair or otherwise adversely affect the recorded Covenant, whether in  
40 whole or in part, in the event of their enforcement or foreclosure.

41  
42            *Urban Service Area Overlay District or USA:* Locations within a jurisdiction that  
43 are planned to receive publicly funded infrastructure and services within a planning  
44 timeframe, as depicted on Map #2 of the Future Land Use Map series of the  
45 Comprehensive Plan, as may be amended.

1  
2           *Zoning District:* An area assigned a specific classification of uses and structures  
3 pursuant to Sec. 3-9 of the County Code.  
4

5           *Zoning Atlas:* An atlas containing half-section maps depicting the boundaries of  
6 the various Zoning Districts, as the same may be amended.  
7

8           **Sec. 3-5-434. APPLICATION OF ARTICLE.**  
9

10           (a) This article shall apply within the unincorporated areas of Charlotte  
11 County.  
12

13           (b) This article shall not apply within the City of Punta Gorda boundaries as it  
14 existed as of July 15, 2004. This article shall apply to areas annexed within the City of  
15 Punta Gorda or any new municipal area created after July 15, 2004 within Charlotte  
16 County.  
17

18           (c) Any owner of property governed by Subsections 3-5-434(a) and (b) above  
19 may petition the Board for a TDU in accordance with the provisions of this article.  
20

21           (d) Except as provided in Subsection 3-5-455(c), any petition for a Plan  
22 Amendment and/or Rezoning which proposes to increase the permitted density on a  
23 proposed RZ beyond that amount permitted by the existing FLUM designation and/or  
24 the existing Zoning Atlas, whichever is the most restrictive, shall require a TDU petition  
25 which proposes to transfer the number of Density Units that will be increased by the  
26 Plan Amendment and/or Rezoning.  
27

28           (e) A TDU petition shall be submitted with a Plan Amendment which, through  
29 its adoption, automatically increases density on a property without need for further  
30 amendments or Rezoning. For a Large Scale Plan Amendment, the petition may be  
31 submitted subsequent to the transmittal of the petition to the Department of Community  
32 Affairs. The Resolution approving the TDU shall be adopted concurrent with the  
33 adoption of the Plan Amendment. The transfer of density is not required to be  
34 completed until prior to submittal to the County for Preliminary Plat approval, or, in the  
35 event a Preliminary Plat will not be requested by the applicant, prior to request for other  
36 Development Permits for any portion of the property. If the project will be submitted in  
37 phases, the applicant may submit individual TDU petitions to transfer density equivalent  
38 to that necessary for development of that phase. If the Plan Amendment is  
39 accompanied by a Rezoning to a Planned Development Zoning District in accordance  
40 with Sec. 3-9-49 of the County Code, both to be adopted concurrently, the applicant  
41 may proceed with the TDU petition as outlined in Subsection (f) below.  
42

43           (f) A petition which proposes to increase density in a proposed RZ by more  
44 than two (2) units must request a Rezoning to a Planned Development Zoning District in  
45 accordance with Sec. 3-9-49 of the County Code. The TDU petition may be submitted  
46 subsequent to the adoption of the Planned Development Rezoning but must be

1 approved by the Board, and the density transferred to the SZ, prior to submittal by the  
2 applicant for Preliminary Plat Approval. A project which proposes to phase  
3 development in over time may submit individual TDU petitions to transfer density  
4 equivalent to that necessary for development of that phase. When a Rezoning petition  
5 requests an increase of density for one (1) or two (2) units total, the TDU petition must  
6 be submitted and heard concurrent with the adoption of the Rezoning petition, and the  
7 density transferred at the time of adoption of the petition.

8  
9 **Sec. 3-5-435. DETERMINATION OF DENSITY FOR AN SZ**

10  
11 Within the Urban Service Area, the Density for a lot or parcel is calculated by  
12 determining the minimum lot size for the Zoning District as influenced by the  
13 Comprehensive Plan, as may be amended, divided into the developable square footage  
14 of the property, be it one parcel, one lot, or a combination of lots containing the same  
15 development standards. Outside the Urban Service Area, the Density for each legally  
16 created and recorded lot or parcel shall be, at a minimum, one (1) Density Unit per  
17 legally created and recorded lot or parcel.

18  
19 **Sec. 3-5-436. PROPOSED SZ WITHOUT A DESIGNATED RZ.**

20  
21 (a) Any owner of real property in Charlotte County may petition the Board to  
22 have his property approved as an SZ, even if there is no RZ involved. In such a case,  
23 the petitioner need not concurrently petition the County for a Plan Amendment,  
24 Rezoning, or TDU.

25  
26 (b) The property owner(s) shall petition the Board in accordance with the  
27 provisions of this article, but shall not be required to provide information pertaining to a  
28 proposed RZ. The petition shall include an affidavit from the owner(s) of the proposed  
29 SZ consenting to the County's initiation of and taking of action on the appropriate  
30 modification of the FLUM designation, and/or Zoning District, and/or vacation of plat of  
31 the proposed SZ to reflect the reduced density permitted on the proposed SZ once it is  
32 approved.

33  
34 (c) The petition shall include a request to have the Density Units for the  
35 property calculated and severed from the property by a Certificate pursuant to Sec. 3-5-  
36 456.

37  
38 (d) The Board may approve the petition if it finds that the intent and purpose  
39 of this article will be complied with, as those purposes pertain to the appropriateness of  
40 the property as an SZ, and that the property meets the criteria of an SZ set within this  
41 article.

42  
43 (e) No subsequent transfer to an RZ shall take place without an approval of a  
44 TDU pursuant to the requirements of this article.

1           **Sec. 3-5-437. EFFECTIVE DATE OF PROPOSED SZ WITHOUT A**  
2 **DESIGNATED RZ.**

3  
4           An SZ created pursuant to Sec. 3-5-436 shall not be considered valid and no  
5 Certificate shall be issued until:

6  
7           (a)    The proposed SZ has been approved by the Board, and

8  
9           (b)    The documents required by Sec. 3-5-443 have been recorded by the  
10 County in the Public Records of Charlotte County with the Clerk of the Circuit Court of  
11 Charlotte County, and

12  
13           (c)    Within 10 days after the recording of the documents required by Sec. 3-5-  
14 443, the County has received and approved an updated O&E which does not contain  
15 any Unacceptable Encumbrances or which shows that the recorded Covenant is prior in  
16 dignity to any Unacceptable Encumbrance. If the O&E indicates otherwise, the SZ  
17 approval shall be null and void. The County Attorney may waive this requirement in the  
18 event that the initial O&E did not reflect Unacceptable Encumbrance(s) and the County  
19 Attorney deems the likelihood of the development or imposition of Unacceptable  
20 Encumbrance(s) prior to the recording of the Covenant to be minute.

21  
22           **Sec. 3-5-438. PRE-PETITION MEETING.**

23  
24           (a)    A petitioner for a TDU shall meet with the County Administrator prior to  
25 submitting a petition for a TDU. The meeting may include representatives from other  
26 County departments or government agencies who may attend the meeting and provide  
27 input, at the County Administrator's discretion.

28  
29           (b)    The purpose of the pre-petition meeting shall be to discuss the  
30 requirements for a TDU as they apply to the petitioner's proposal, any applicable  
31 provisions of this article, and other concerns related to the proposed TDU. This meeting  
32 may occur simultaneously with a Development Review Committee, or succeeding body,  
33 pre-application meeting when such is required by the County Code.

34  
35           **Sec. 3-5-439. TDU PETITION REVIEW.**

36  
37           The TDU petition review process shall commence as outlined in Subsection 3-5-  
38 434(e) and (f).

39  
40           **Sec. 3-5-440. CONTENTS OF TDU PETITION.**

41  
42           (a)    In addition to any information and documents required pursuant to the  
43 accompanying petition for a Plan Amendment and/or Rezoning, a petition for a TDU  
44 shall include the following items:

1 (1) Notarized affidavits from all owners of the proposed SZ and the  
2 proposed RZ authorizing the TDU petition. The affidavit from the owners of the  
3 proposed SZ shall also provide consent to the modification of the FLUM and/or Zoning  
4 District of the proposed SZ to conform with the revised and reduced density applicable  
5 to the proposed SZ upon the approval of the TDU, and/or consent to vacate the plat if  
6 one is in existence and the action is deemed necessary to accomplish the reduction in  
7 density. In the event the owners of the proposed SZ and the proposed RZ are the same  
8 party, a single affidavit acknowledging the unity of ownership and authorizing the TDU  
9 will satisfy this requirement. A copy of the most current deed or title to the SZ property  
10 must be included with the affidavit in order for the County to be able to verify that the  
11 person(s) signing the affidavit is the owner of the property. The County Administrator  
12 may also require evidence that the person(s) executing the affidavit(s) has the  
13 appropriate authority to do so.

14  
15 (2) Legal descriptions (with acreages) of the proposed SZ and  
16 proposed RZ.

17  
18 (3) Signed and sealed surveys of the proposed SZ and the proposed  
19 RZ that illustrate boundaries and all existing easements. The survey of the proposed  
20 SZ is not required if the proposed SZ is a platted lot and the proposed SZ comprises the  
21 entire lot. A copy of the most recent plat of the lot(s) with the proposed SZ outlined is  
22 sufficient.

23  
24 (4) Maps illustrating the location of the proposed SZ and the proposed  
25 RZ.

26  
27 (5) All documents necessary for the preparation and execution of the  
28 Covenant pursuant Sec. 3-5-443, including an O&E, a management plan as required in  
29 Subsection 3-5-443(c), and a narrative outlining any special considerations or requests  
30 the petitioner wishes the County to consider including in the Covenant.

31  
32 (6) A narrative which describes how the proposed SZ and the  
33 proposed RZ meet the criteria of this article.

34  
35 (7) Maps of the proposed SZ and the proposed RZ illustrating the  
36 existing land cover according to Level 3 of the FLUCCS. This requirement may be  
37 eliminated for one or both of the proposed zones by the County at the Pre-Petition  
38 Meeting for the TDU. The circumstances under which this requirement may be  
39 eliminated include: a property that is severely disturbed or developed and which clearly  
40 does not contain an environmentally sensitive, historic and archeological resource, or a  
41 bona fide agricultural use; property whose only unmistakable value as an SZ is that it is  
42 a Substandard lot or is located within the Tropical Storm Surge or Category 1 Hurricane  
43 Storm Surge zones; property of which the County already has detailed knowledge of as  
44 relates to environmentally sensitive, historic and archeological resources, or bona fide  
45 agricultural uses; and other circumstances that will be determined on a case by case  
46 basis.

1 (8) Surveys of all listed species within the proposed SZ and the  
2 proposed RZ, and a map depicting the locations of these species. This requirement  
3 may be eliminated for one or both of the proposed zones by the County at the Pre-  
4 Petition Meeting for the TDU. The circumstances under which this requirement may be  
5 eliminated include: a property that is severely disturbed or developed and which clearly  
6 does not contain an environmentally sensitive, historic and archeological resource, or a  
7 bona fide agricultural use; property whose only unmistakable value as an SZ is that it is  
8 a Substandard lot or is located within the Tropical Storm Surge or Category 1 Hurricane  
9 Storm Surge zones; property of which the County already has detailed knowledge of as  
10 relates to environmentally sensitive, historic and archeological resources, or bona fide  
11 agricultural uses; and other circumstances that will be determined on a case by case  
12 basis.

13  
14 (9) An application fee, to be established by resolution of the Board.

15  
16 (b) If the petitioner in the application for the accompanying Rezoning and/or  
17 Plan Amendment has provided the information required in Subsections (a)(1)-(9) above,  
18 the petitioner may not be required to submit the same information with the TDU petition.

19  
20 (c) If the proposed TDU does not involve a proposed SZ, the petitioner shall  
21 not be required to include the information required in Subsections (a)(1)-(9) above as to  
22 a proposed SZ.

23  
24 (d) If the proposed TDU involves an SZ which has already been approved by  
25 the County in accordance with Sec. 3-5-436, the petitioner shall not be required to  
26 include the information required in Subsections (a)(1)-(9) above as to the proposed SZ.  
27 However, the petitioner shall be required to submit with the petition a copy of the  
28 Certificate pertaining to the SZ.

29  
30 **Sec. 3-5-441. OWNERSHIP AND ENCUMBRANCE REPORT.**

31  
32 The O&E required by Subsection 3-5-440(a)(4) shall show that the signatories  
33 who will execute the Covenant constitute the owners of all interests in the proposed SZ.  
34 The O&E shall further indicate that there are no Unacceptable Encumbrances against  
35 the proposed SZ. If Unacceptable Encumbrances exist, they shall be fulfilled, removed,  
36 satisfied, released, subordinated or limited to the satisfaction of the County Attorney  
37 such that the enforcement of the Encumbrances will not impair or otherwise adversely  
38 affect the Covenant, whether in whole or in part, or that the Covenant will be prior in  
39 dignity to the Encumbrances.

40  
41 **Sec. 3-5-442. COUNTY MANAGEMENT OF SZ.**

42  
43 (a) A petitioner may request that the County assume responsibility for  
44 management of a proposed SZ upon the approval of the proposed SZ and the fulfillment  
45 of the requirements of Sec. 3-5-437 or 3-5-447, whichever is applicable, and upon the

1 fulfillment of the requirements of this section. The request shall be in writing and shall  
2 accompany the petition.

3  
4 (b) The County may accept management responsibility of the proposed SZ if  
5 the County Administrator determines either:

6  
7 (1) The proposed SZ contains environmentally sensitive resources of  
8 which the County has a current or future need for mitigation for capital projects; or

9  
10 (2) If the proposed SZ were under County management, it would  
11 address a deficit in the County's recreational, educational, cultural, or other programs  
12 which the County is required to provide pursuant to the Comprehensive Plan, the  
13 County Parks Master Plan, the State Comprehensive Outdoor Recreation Plan or a  
14 similar mandate; or

15  
16 (3) Having the proposed SZ under County management would better  
17 fulfill other goals and objectives of this article and the Charlotte County Comprehensive  
18 Plan pertaining to environmentally sensitive, historic or archeologically valuable  
19 resources than would be achieved by leaving the proposed SZ under private  
20 management.

21  
22 (c) If the County agrees to assume responsibility for management:

23  
24 (1) This fact and any details of the assumption of responsibility shall be  
25 included in the Covenant.

26  
27 (2) The petitioner shall submit a detailed list for County approval  
28 identifying activities and deadlines for completion of those activities that shall place the  
29 property in Management-Ready condition.

30  
31 (3) The petitioner will submit a performance bond granted to the  
32 County in an amount and in a form acceptable to the County Administrator, to ensure  
33 that the property is in Management-Ready condition upon the time the County takes  
34 over responsibility for management of the proposed SZ. This bond shall be submitted  
35 prior to the public hearing for the TDU.

36  
37 (d) The County shall not assume management responsibilities pursuant to  
38 this Subsection (b) above until the proposed SZ is in Management-Ready condition.

39  
40 **Sec. 3-5-443. COVENANT.**

41  
42 (a) The Covenant shall be prepared and executed in accordance with the  
43 requirements of this article. The Covenant shall be signed by the petitioner and held in  
44 escrow pending the approval of the TDU.

1 (b) The form of each Covenant shall be prescribed by the County Attorney  
2 and the Covenant shall contain such provisions that are reasonably required by the  
3 County Attorney proscribing the use of the proposed SZ following the approval of the  
4 TDU including the following:

5  
6 (1) If the property contains environmentally sensitive resources,  
7 historic or archeological resources, or bona fide agricultural uses, the Covenant shall  
8 limit or preclude uses of the proposed SZ such that the environmentally sensitive,  
9 historic or archeological resources, or agricultural use of the proposed SZ, whichever  
10 may be applicable, will be maintained in perpetuity following the completion of the TDU.

11  
12 (2) Limit or preclude activities which are determined though the  
13 processes of this article to be detrimental to the appropriate maintenance of the  
14 proposed SZ.

15  
16 (3) Indicate the property or portions thereof that is restricted from future  
17 development and/or subject to limitations on future development. If the SZ consists of  
18 only a portion of the property, the Covenant shall not contain provisions over the use of  
19 the remainder of the property unless such provisions are deemed necessary to ensure  
20 the viability of the SZ. The Covenant may provide for spreading the remaining density  
21 onto the portion of the property used as an SZ. If that portion used as an SZ contains  
22 environmentally sensitive, or historic or archeological resources, such resources shall  
23 be protected.

24  
25 (4) Bind all owners of the proposed SZ and their respective heirs,  
26 successors and assigns.

27  
28 (c) The Covenant shall be accompanied by a management plan if required  
29 herein.

30  
31 (1) A management plan shall be required if the applicant proposes to  
32 qualify the property as an SZ because it contains environmentally sensitive, historic,  
33 and/or archeological resources, and/or bona fide agricultural uses. The management  
34 plan shall describe how the proposed SZ will be maintained in perpetuity, how the  
35 resource shall be protected, and shall contain any other information reasonably  
36 requested or required by the County Administrator regarding the use, maintenance and  
37 the protection of the resources of the proposed SZ following the approval of the TDU.

38  
39 (2) Substandard lots and property located within the Tropical Storm  
40 Surge and Category 1 Hurricane Storm Surge zones shall not require a management  
41 plan.

42  
43 (d) Upon approval of the TDU, the Covenant, the accompanying management  
44 plan, if applicable, and any other documents indicating acceptance of the Covenant,  
45 shall be recorded by the County Administrator, at the petitioner's cost, in the Public  
46 Records of Charlotte County with the Clerk of the Circuit Court of Charlotte County.

1  
2 (e) Nothing herein shall preclude the retention of density on the SZ if such  
3 use is deemed to be consistent with the provisions of this article and the Covenant.  
4

5 **Sec. 3-5-444. LAND ACQUISITION TRUST FUND FEE.**  
6

7 (a) If a petitioner does not choose to include an SZ with a proposed TDU, the  
8 petitioner shall pay a contribution fee to be deposited in the County Land Acquisition  
9 Trust Fund. The amount of the fee shall be equal to the number of Density Units  
10 approved for the proposed RZ multiplied by the unit price equivalent for a Density Unit  
11 to be established by resolution of the Board. The petitioner shall be issued a Certificate  
12 in accordance with Sec. 3-5-456.  
13

14 (b) The payment of the fee required by Subsection (a) above will be required  
15 prior to Preliminary Plat approval, or, in the event a Preliminary Plat will not be  
16 requested by the applicant, prior to request for other Development Permits for any  
17 portion of the property. The amount of the fee required upon payment shall be the unit  
18 price equivalent for a Density Unit at the time of payment, which may not be the same  
19 price as would have been paid by the petitioner at the time of approval of the TDU by  
20 the Board. The timing of the payments shall be included as part of the Resolution  
21 adopting the TDU.  
22

23 (c) A petitioner who is proposing to transfer density onto property located in a  
24 Tropical Storm Surge or Category 1 Hurricane Storm Surge zone can not utilize the  
25 Land Acquisition Trust Fund option. In such a situation, the petitioner shall be required  
26 to acquire density from an SZ in keeping with the stipulations of Subsection 3-5-455(a).  
27

28 (d) A petitioner who is proposing to increase density on property within the  
29 West County Planning District, which constitutes all property west of the Myakka River,  
30 can not utilize the Land Acquisition Trust Fund option. In such a situation, the petitioner  
31 shall be required to acquire density from an SZ in keeping with the stipulations of Sec.  
32 3-5-452.  
33

34 **Sec. 3-5-445. NOTICE AND PUBLIC HEARING.**  
35

36 A Plan Amendment and/or a Rezoning which shall require a TDU petition shall  
37 have notice of such included in the notices for the Plan Amendment and/or Rezoning  
38 required under the applicable provisions of the County Code. Discussion and decision  
39 by the Board regarding the TDU requirements shall be conducted concurrently with the  
40 discussion and decision regarding the petition for Plan Amendment and/or Rezoning.  
41

42 **Sec. 3-5-446. STANDARDS FOR APPROVAL.**  
43

44 (a) The Board may not grant a TDU unless it finds all of the following:

45 (1) The TDU complies with the intent and purpose of this article;  
46

1  
2 (2) The proposed increase in density in the proposed RZ is consistent  
3 with the Comprehensive Plan as it exists or is proposed to be amended; and  
4

5 (3) The proposed increase in density in the proposed RZ complies with  
6 the County Code.  
7

8 (4) If an SZ is involved in the TDU, the intent and purpose of this article  
9 will be complied with, as those purposes pertain to the appropriateness of the property  
10 as an SZ, and that the property meets the criteria of an SZ set within this article. Also,  
11 the entity responsible for managing the proposed SZ will perpetually maintain the  
12 viability of the proposed SZ, as required in accordance with Subsection 3-5-443(c), or  
13 other management action(s) as required by the Covenant.  
14

15 (5) The petitioner has signed and notarized the Covenant.  
16

17 (6) If the County shall assume management responsibilities over the  
18 proposed SZ in accordance with Sec. 3-5-442, the petitioner shall have complied with  
19 the requirements of Subsection 3-5-442(c).  
20

21 (b) In granting the TDU, the Board may impose such other conditions and  
22 restrictions upon either the proposed SZ or the proposed RZ as may be necessary to  
23 allow the positive finding to be made on any of the foregoing factors or to minimize the  
24 impacts of the TDU.  
25

26 **Sec. 3-5-447. EFFECTIVE DATE OF TDU.**  
27

28 A TDU shall not become effective and neither Preliminary Plat nor other  
29 Development Permits shall be issued for development within the proposed RZ, until:

30 (a) The TDU has been approved by the Board.  
31

32 (b) The Land Acquisition Trust Fund fee required by Sec. 3-5-444, if  
33 applicable, has been paid to the County, or  
34

35 (c) The documents required by Subsection 3-5-443(d) have been recorded by  
36 the County in the Public Records of Charlotte County with the Clerk of the Circuit Court  
37 of Charlotte County, and  
38

39 (d) Within 10 days after the recording of the documents required by  
40 Subsection 3-5-443(d), the County has received and has approved an updated O&E  
41 which does not contain any Unacceptable Encumbrances or which shows that the  
42 recorded Covenant is prior in dignity to any Unacceptable Encumbrance. If the O&E  
43 indicates otherwise, the TDU approval shall be null and void. The County Attorney may  
44 waive this requirement in the event that the initial O&E did not reflect Unacceptable  
45 Encumbrance(s) and the County Attorney deems the likelihood of the development or  
46

1 imposition of Unacceptable Encumbrance(s) prior to the recording of the Covenant to be  
2 minute, or  
3

4 (e) The Certificate, if applicable, has been surrendered to the County for  
5 appropriate modification or extinguishment.  
6

7 **Sec. 3-5-448. RECORD KEEPING.**  
8

9 Upon the TDU becoming effective pursuant to Sec. 3-5-447, the County  
10 Administrator shall cause the FLUM and Zoning Atlas to be annotated to reflect the  
11 TDU.  
12

13 **Sec. 3-5-449. LIMITATIONS**  
14

15 (a) Once a TDU is approved and effective and Density Credits have been  
16 transferred out of an SZ, Density Units shall not be restored to any SZ unless the area  
17 in which the SZ is located becomes designated as an Infill Area, as defined in the  
18 Comprehensive Plan, of the USA. In such situations, the property may become an RZ if  
19 it meets all other requirements for an RZ under this article and the property has not  
20 been used for mitigation purposes for other developments.  
21

22 (b) Density Units for any TDU shall only be transferred in whole units. A  
23 fractional unit shall not entitle the petitioner to an additional Density Unit.  
24

25 (c) A TDU may not be derived from Density Units which have been already  
26 sold, transferred, or limited by easements, deed restrictions, equitable servitudes,  
27 restrictive covenants or similar measures.  
28

29 **Sec. 3-5-450. ADMINISTRATIVE RELIEF.**  
30

31 (a) The petitioner may request of the County Administrator that procedural  
32 requirements contained in this article be waived as to the petition. This section shall not  
33 apply to any substantive requirements of this article.  
34

35 (b) The request shall be in writing and shall contain, at a minimum, the  
36 following information:  
37

- 38 (1) The County Code section from which relief is sought;
- 39 (2) The nature of the relief; and
- 40 (3) The reasons why the relief should be granted.  
41  
42

43  
44 (c) Upon receipt of the written request for relief, the County Administrator  
45 shall conduct an investigation to determine if the request is in compliance with the intent  
46 and purpose of this article and/or is adverse to the public interest.

1  
2 **Sec. 3-5-451. APPEAL.**  
3

4 (a) Upon determination that a petition does not meet the substantive  
5 requirements of this article, the petitioner may appeal the provisions of this article to the  
6 Board.  
7

8 (b) The request shall be in writing and shall contain, at a minimum, the  
9 following information:  
10

11 (1) The County Code section from which relief is sought;  
12

13 (2) The nature of the relief; and  
14

15 (3) The reasons why the relief should be granted.  
16

17 (c) Upon receipt of the written appeal, the County Administrator shall place  
18 the item, which constitutes the written appeal and an evaluation report of the appeal, on  
19 the nearest available agenda date of the Board that is within 30 days of the receipt of  
20 the appeal.  
21

22 (d) The Board may provide relief to the substantive requirements of this article  
23 based on the following findings:  
24

25 (1) The proposed TDU petition furthers the intent and purpose of this  
26 article;  
27

28 (2) The proposed TDU petition furthers the Goals, Objectives, and  
29 Policies of the Comprehensive Plan;  
30

31 (3) The proposed TDU petition directs future growth in a logical,  
32 efficient, and economical manner away from those areas of the County less suited to  
33 such growth, and toward those areas of the County better suited to provide the public  
34 services and facilities necessary for such growth.  
35

36 (4) The proposed TDU petition will further the protection of  
37 environmentally sensitive, historic and archeological resources, or bona fide agricultural  
38 uses;  
39

40 (5) The proposed TDU petition will shift density from one area to  
41 another area, where such shift is found to be in the best interest of the County; and  
42

43 (6) The proposed TDU will further the health, safety and welfare of the  
44 general public.  
45  
46

1 **Sec. 3-5-452. WEST COUNTY PLANNING DISTRICT**  
2

3 There shall be no transfer of Density Credits into the West County Planning  
4 District, which constitutes all property west of the Myakka River, from other areas of the  
5 County. Density on property within the West County Planning District may only be  
6 increased by a transfer of density from other property located within the West County  
7 Planning District. This transfer of Density Credits between properties within the West  
8 County Planning District shall comply with the provisions of this article. In order to  
9 ensure that density is not inadvertently increased in West County, a petitioner can not  
10 purchase density from the County's Land Acquisition Trust Fund.  
11

12 **Sec. 3-5-453. REQUIREMENTS FOR SENDING ZONE.**  
13

14 (a) In order for property to qualify as an SZ, the proposed SZ must contain at  
15 least one (1) Density Unit and it must comply with *one* of the following criteria:  
16

17 (1) The proposed SZ must contain one or more environmentally  
18 sensitive resources;  
19

20 (2) The proposed SZ must contain one or more historic or  
21 archeological resources;  
22

23 (3) The proposed SZ must be located within the Tropical Storm Surge  
24 or Category 1 Hurricane Storm Surge Zones as identified on the map, as may be  
25 amended, adopted as part of the Comprehensive Plan entitled "Hurricane Vulnerability  
26 Zones Based on Surge of Land Falling Storms";  
27

28 (4) The proposed SZ must be a Substandard lot or parcel;  
29

30 (5) The proposed SZ must be located outside the USA and must be  
31 used for a Bona fide Agricultural use and it must be the intention of the property  
32 owner/petitioner to continue agricultural use of the subject property. This may be  
33 accomplished in conjunction with farmland conservation efforts of agencies such as, but  
34 not limited to, the Natural Resource Conservation Service, the water management  
35 districts, or the American Farmlands Trust;  
36

37 (6) The proposed SZ must be located within the Suburban area of the  
38 Urban Service Area Overlay District and must be platted and not currently served by  
39 water or sewer or within any utility's 5 year Capital Improvements Program for extension  
40 of water and sewer; or  
41

42 (7) The proposed SZ must be vacant and have an approved residential  
43 development plan that creates surplus density on the property.  
44

45 (b) Density on those portions of a proposed SZ that are considered  
46 environmentally sensitive, or which contain a historic or archeological resource, shall

1 not be retained. Density on all other SZ property may be retained if such retention is  
2 deemed consistent with the provisions of this article and the Covenant.

3  
4 (c) Nothing in this article shall be construed to preclude the use of an SZ for  
5 mitigation or to limit relocation of a protected plant or animal species to an SZ, as such  
6 use or relocation may be allowed by federal and state regulations, provided the terms of  
7 the Covenant are satisfied.

8  
9  
10 **Sec. 3-5-454. REQUIREMENTS FOR RECEIVING ZONE.**

11  
12 Except as provided in Subsections 3-5-455(a) and (b), in order for property to  
13 qualify as an RZ, the proposed RZ must comply with *all* of the following criteria:

14  
15 (a) The proposed RZ must be located within the USA or within a New  
16 Community or Rural Community (as those terms are defined and described in the  
17 Comprehensive Plan and Chapter 163, Florida Statutes).

18  
19 (b) The proposed RZ must be either currently designated on the FLUM or  
20 proposed to be designated in the accompanying Plan Amendment petition as Low  
21 Density Residential, Medium Density Residential, High Density Residential, Mixed Use,  
22 Rural Estate Residential, New Community, or Rural Community; In the event that a  
23 petitioner is requesting an extension of the Urban Service Area without an  
24 accompanying amendment to the FLUM designation and the FLUM designation of the  
25 property is Agriculture, the property may retain the Agricultural FLUM designation until  
26 such time as a Plan Amendment is approved to change the designation.

27  
28 (c) The proposed RZ must not contain environmentally sensitive, historic or  
29 archeological resources, unless such areas can be designated as a preserve through a  
30 Planned Development. Mitigation of environmentally sensitive resources may be  
31 permitted by appropriate state and/or federal permitting agencies.

32  
33 (d) The proposed RZ must not be located within the Tropical Storm Surge or  
34 Category 1 Hurricane Storm Surge Zone as identified on the map, as may be amended,  
35 adopted as part of the Comprehensive Plan entitled "Hurricane Vulnerability Zones  
36 Based on Surge of Land Falling Storms".

37  
38 **Sec. 3-5-455. EXCEPTIONS.**

39  
40 (a) Property which does not fall within the criteria of an RZ in Sec. 3-5-454  
41 because it is located within a Tropical Storm Surge or Category 1 Hurricane Storm  
42 Surge Zone may be eligible as an RZ if it is proposed to receive Density Credits from an  
43 SZ also located in a Tropical Storm Surge or Category 1 Hurricane Storm Surge Zone.  
44 In this event, however, the proposed RZ must not contain environmentally sensitive,  
45 historic or archeological resources (unless such areas can be protected through a  
46 Planned Development or mitigation is permitted through appropriate state and/or federal

1 permitting) or be located on a barrier island and, notwithstanding this Subsection (a), no  
2 Density Credits may be transferred within these zones from a less restrictive flood zone  
3 to a more restrictive flood zone or from a Category 1 Hurricane Storm Surge zone to a  
4 Tropical Storm Surge zone.

5  
6 (b) Notwithstanding Subsection (a) above, any property located within the  
7 Charlotte Harbor Community Redevelopment Area (CHCRA) that is not zoned CR-3.5  
8 shall qualify as an RZ. Such properties shall be permitted to receive density from any  
9 property located within the CHCRA or from any property located in the Tropical Storm  
10 Surge and Category 1 Storm Surge zones throughout the county with no restrictions  
11 based on storm surge or flood designation.

12  
13 (c) A project that proposes to increase Density Units on a property through a  
14 Plan Amendment and/or Rezoning where at least fifty (50) percent of the total number  
15 of Density Units built will be available as affordable housing for low or very low income  
16 persons, as such is defined in Section 420.602, Florida Statutes, will not be required to  
17 petition the Board for a TDU. However, the proposed increase of density may only be  
18 placed on a property which has been determined by the County Administrator to meet  
19 the qualifications of an RZ in accordance with Sec. 3-5-454. The County Administrator  
20 is authorized to certify that an application qualifies as an affordable housing  
21 development under this exemption.

22  
23 **Sec. 3-5-456. CERTIFICATE OF TRANSFERABLE DENSITY CREDITS.**

24  
25 (a) Upon the effective date of a TDU approved pursuant to this article, the  
26 County Administrator shall issue a Certificate (or Certificates) to the property owner(s)  
27 of the eligible RZ in accordance with the provisions of this article.

28  
29 (b) Upon the date an SZ without a designated RZ, approved pursuant to this  
30 article becomes valid, the County Administrator shall issue a Certificate (or Certificates)  
31 in accordance with the provisions of this article to the property owner(s) of the eligible  
32 SZ.

33  
34 (c) The issuance of the Certificate shall establish the quantity of Density Units  
35 for the property at the time the Certificate is issued and shall be considered a final  
36 determination. Once a Certificate has been issued for the SZ, the property owner shall  
37 maintain the property in accordance with the requirements of the Covenant.

38  
39 (d) If the SZ consists of only a portion of the entire property, the Certificate  
40 shall reflect only that portion of the property.

41  
42 (e) If the SZ property owner is not removing all of the density units from the  
43 SZ, the Certificate shall reflect only that amount that is to be transferred.

1 (f) If the TDU does not involve an SZ, the Certificate shall reflect only the  
2 Density Units actually paid for by the petitioner to the County in accordance with Sec. 3-  
3 5-444.

4  
5 (g) In the event an SZ property owner has not found a willing RZ to which it  
6 can transfer its Density Credits, Density Credits from the SZ may be transferred to the  
7 County, in the County's sole discretion.

8  
9 (h) Density Credits transferred to an eligible RZ pursuant to this article, which  
10 are not used for the intended RZ development, may be re-transferred to another eligible  
11 RZ, as set forth herein. This transfer shall be considered to be from the original SZ and  
12 shall comply with the requirements of this article relating to an approval of an RZ. The  
13 TDU petitioner shall simultaneously petition to have revised the zoning district and/or  
14 FLUM, whichever is applicable, of the proposed RZ from which these credits are  
15 transferred to reflect the decrease in density.

16  
17 (i) Density Credits from an SZ approved by the Board pursuant to this article  
18 without a designated RZ may subsequently be transferred to an eligible RZ. This  
19 transfer shall comply with the requirements of this article relating to the approval of a  
20 TDU.

21  
22 (j) Subsequent to the issuance of a Certificate to the owner of an RZ upon  
23 approval of a TDU, and upon the future transfer or use of such Density Credits, the  
24 owner of the RZ shall surrender the Certificate to the County for appropriate  
25 modification or extinguishment.

26  
27 (k) Subsequent to the issuance of a Certificate to the owner of an SZ upon  
28 approval of an SZ without a designated RZ, and upon the future transfer of such Density  
29 Credits, the owner of the SZ shall surrender the Certificate to the County for  
30 modification of the Certificate in the name of the RZ. Upon the future transfer or use of  
31 such Density Credits by the RZ, the owner of the RZ shall surrender the Certificate to  
32 the County for appropriate modification or extinguishment.

33  
34 **Sec. 3-5-457. LAND ACQUISITION TRUST FUND.**

35  
36 (a) The Board shall establish the LATF and any procedures governing the  
37 LATF by resolution in accordance with this section. The purpose of the LATF is to  
38 create a mechanism by which eligible RZs may increase density on the property without  
39 having a designated SZ from which to transfer the Density Units. Funds contributed to  
40 the LATF pursuant to Sec. 3-5-444 and any other source shall be used to acquire and  
41 manage properties that qualify as SZs pursuant to Sec. 3-5-453.

42  
43  
44 **SECTION 2. SEVERABILITY.** In the event this ordinance conflicts with any other  
45 provision of the Charlotte County Code or other applicable law, the more restrictive shall  
46 apply. If any subsection, sentence, clause, phrase, or portion of this ordinance is for

1 any reason held invalid or unconstitutional by any court of competent jurisdiction, such  
2 portion shall be deemed a separate, distinct, and independent provision, and such  
3 holding shall not affect the validity of the remainder of the ordinance.  
4

5

6

7 **SECTION 3. EFFECTIVE DATE.** This ordinance shall take effect upon filing in the  
Office of the Secretary of State, State of Florida.

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PASSED AND DULY ADOPTED this 13<sup>TH</sup> day of DECEMBER, 2004.

BOARD OF COUNTY COMMISSIONERS  
OF CHARLOTTE COUNTY, FLORIDA  
By Sara J. Devos  
Sara J. Devos, Chairman

ATTEST:  
Barbara T. Scott, Clerk of Circuit  
Court and Ex-Officio Clerk to the  
Board of County Commissioners

By Anne L. Pfahler  
Deputy Clerk

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:  
Brendan Bradley, Jr.  
Janette S. Knowlton, County Attorney  
JW, III

p:\wpdata\public\lynn\ord\TransferDensityUnits.doc  
LR2003-250 & 2003-349



*Page # 14  
BCC*

FILED WITH THE DEPARTMENT OF STATE

*July 15, 2003*

*(LEGAL DESCRIPTION CORRECTED)  
RES 2003-193*

ORDINANCE  
NUMBER 2003 - *039*

FILE 1088177 OR BK 02275 PG 0702 RECD 07/28/2003 12:33:06 PM  
BARBARA T. SCOTT, CLERK, CHARLOTTE CO  
REC 42.00

AN ORDINANCE PURSUANT TO SECTION 163.3184, FLORIDA STATUTES, ADOPTING AN APPROVED LARGE SCALE AMENDMENT TO THE 1997-2010 CHARLOTTE COUNTY COMPREHENSIVE PLAN, PETITION PA-01-11-35-LS, JAMES E. MOORE, III, TRUSTEE; PROVIDING AN EFFECTIVE DATE.

RECITALS

WHEREAS, the Charlotte County Board of County Commissioners, in a public hearing, held on Tuesday, July 8, 2003, reviewed land use amendment Petition PA-01-11-35-LS, which amendment is a large scale comprehensive plan amendment; and

WHEREAS, James E. Moore, III, Trustee, has filed Petition PA-01-11-35-LS seeking amendment to the Charlotte County Comprehensive Plan from Low Density Residential and Parks and Recreation to Medium Density Residential on the 1997-2010 Future Land Use Map for 106.96 acres more or less of properties owned by James E. Moore, III, as Trustee of the Biscayne Trust, c/o Moore and Waksler, P.L., 1107 W. Marion Ave., Suite 112, Punta Gorda, Florida 33950, as described in Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, Petition PA-01-11-35-LS has previously been heard before the Charlotte County Planning and Zoning Board and, based on the findings and analysis presented in the Planning Division Report dated May 28, 2003, and the evidence presented to the Planning and Zoning Board, has been recommended for approval; and

WHEREAS, approval of Petition PA-01-11-35-LS would require a transfer of 528 units of density to the property that is the subject of the Petition, pursuant to Chapter 3-5, Article XX, Code of Laws and Ordinances, Charlotte County, Florida ("TDR Code"); and

IMAGED L.T.

*Minutes* 

WHEREAS, the applicant has provided evidence of an agreement to transfer the applicable TDRs from a Sending Zone ("SZ") to the subject property, and has submitted a Conservation Easement to Charlotte County for the Board of County Commissioners' approval; and

WHEREAS, after due consideration, the Charlotte County Board of County Commissioners has found that the requirements and conditions of Chapter 163, Florida Statutes, as they relate to this Petition, have been met.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Charlotte County, Florida:

Section 1. Approval. The following amendment to the Charlotte County Future Land Use Map be and hereby is approved:

Petition PA-01-11-35-LS by applicant, James E. Moore, III, as Trustee of the Biscayne Trust, requesting a large scale comprehensive plan amendment from Low Density Residential and Parks and Recreation to Medium Density Residential on the 1997-2010 Future Land Use Map for 106.96 acres more or less of properties owned by James E. Moore, III, as Trustee of the Biscayne Trust, c/o Moore and Waksler, P.L., 1107 W. Marion Ave., Suite 112, Punta Gorda, Florida 33950, as described in Exhibit "A" attached hereto and incorporated herein by reference.

Section 2. Effective date. The effective date of this plan amendment shall be the date a final order is issued by the Department of Community Affairs or the Administration Commission finding the adopted amendment to be in compliance with Section 163.3184, Florida Statutes, whichever occurs earlier; provided this ordinance has been filed in the Office of the Secretary of State, State of Florida, and provided further that a Resolution authorizing the transfer of 528 units of density to the property that is the subject of Petition PA-01-11-35-LS has been approved by the Board of County

Commissioners; and provided, further that all requirements for such transfer of 528 units of density contained in the TDR Code have been met. No development orders, development permits, or land uses dependent on this amendment may be issued or commenced before it has become effective. If a final order of noncompliance is issued by the Administration Commission, this amendment may nevertheless be made effective by adoption of a resolution affirming its effective status, a copy of which resolution shall be sent to the Florida Department of Community Affairs, Division of Community Planning, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100.

Section 3. Transmittal. County staff is hereby directed to forward a certified copy of this ordinance and its attachments to the Florida Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, and to the Executive Director, Southwest Florida Regional Planning Council, 4980 Bayline Drive, 4th Floor, North Fort Myers, Florida 33918-3909.

PASSED AND DULY ADOPTED this 8 day of July, 2003.

BOARD OF COUNTY COMMISSIONERS  
OF CHARLOTTE COUNTY, FLORIDA

By Matthew D. DeBoer  
Matthew D. DeBoer, Chair

ATTEST:  
Barbara T. Scott, Clerk of Circuit  
Court and Ex-officio Clerk to the  
Board of County Commissioners

By Anne L. Bahler  
Deputy Clerk

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

Renée Francis Lee  
Renée Francis Lee, County Attorney

Exhibit "A"

**DESCRIPTION:**

(PARCEL "A")

A PORTION OF LAND SECTION 15, TOWNSHIP 40 SOUTH,  
RANGE 21 EAST, CHARLOTTE COUNTY, FLORIDA, BEING  
BOUNDED AS FOLLOWS:

ON THE NORTH BY THE SOUTH RIGHT-OF-WAY LINE OF GENARO  
AVENUE, AS IT NOW EXIST; ON THE EAST BY THE WESTERLY  
RIGHT-OF-WAY LINE OF GRAMERCY STREET, AS IT NOW EXIST,  
ON THE SOUTH BY THE NORTH LINE OF LOT 19 THROUGH 34,  
BLOCK 3069 (AS SHOWN ON PLAT OF PORT CHARLOTTE SUBDIVISION  
SECTION FIFTY SEVEN, AS RECORDED IN PLAT BOOK 5, AT PAGES  
71A THROUGH 71C, OF THE PUBLIC RECORDS OF CHARLOTTE COUNTY,  
FLORIDA) AND IT'S EASTERLY PROLONGATION TO THE SAID CENTERLINE  
OF GRAMERCY STREET; AND ON THE WEST BY THE BACK LOT LINE OF  
LOT 1 THROUGH 16, BLOCK 3069, AND IT'S SOUTHERLY PROLONGATION  
TO THE LAST DESCRIBED SOUTH LINE, ALSO EXTENDED NORTHERLY TO  
TO THE NORTH LINE OF SAID SECTION 15. LESS THOSE PORTIONS FOR  
ROAD RIGHT-OF-WAY.

OR BOOK 02275 PAGE 0705

**DESCRIPTION:**

**PARCEL B**

A portion of land Section 15, Township 40 South, Range 21 East, Charlotte County, Florida; being bounded as follows:

On the North by the South line of Lot 13, of Block 3084, as shown on the said plat PORT CHARLOTTE SUBDIVISION SECTION FIFTY-SEVEN; on the East by the West line of Crestwood Waterway; on the South by the North line of Lot 13, Block 3080 and its Westerly prolongation to the Easterly boundary line of the said plat of PORT CHARLOTTE SUBDIVISION SECTION FIFTY-SEVEN; and on the West by the East Right-of-Way Line of said Gramercy Street, as it now exists.

AND

**PARCEL C**

A portion of land Section 15, Township 40 South, Range 21 East, Charlotte County, Florida, being bounded as follows:

On the North by the South line of Lots 8, 9, 10, 11 and 12, of Block 3085, of the said plat of PORT CHARLOTTE SUBDIVISION SECTION FIFTY-SEVEN; on the East and South by the Westerly Right-of-Way Line of Eastwind Waterway; and on the West by the East Right-of-Way Line of Crestwood Waterway.

AND

**PARCEL D**

A portion of land Section 15, Township 40 South, Range 21 East, Charlotte County, Florida, being bounded as follows:

On the North by the South boundary line of the said plat of PORT CHARLOTTE SUBDIVISION SECTION FIFTY-SEVEN; on the East by the Westerly Right-of-Way Line of Biscayne Drive; and on the West by the East Right-of-Way Line of Eastwind Waterway.

OR BOOK 02275 PAGE 0706

**DESCRIPTION:**

**PARCEL 1**

A portion of land Section 14, Township 40 South, Range 21 East, Charlotte County, Florida, being bounded as follows:

On the North by the South boundary line of said plat of FORT CHARLOTTE SUBDIVISION SECTION THIRTY-FIVE, on the East by the Westerly/boundary line of the plat of PORT CHARLOTTE SUBDIVISION SECTION FORTY-SIX, as recorded in Plat Book 5, at Pages 57-A through 57-D, of the Public Records of Charlotte County, Florida, and the Westerly line of Lot 20 Block 3314, as shown on the plat of PORT CHARLOTTE SUBDIVISION SECTION THIRTY-FIVE; on the Southwest by the Easterly Right-of-Way Line of Seaboard Airline Railroad (now abandoned); on the Southeast by the Easterly Right-of-Way Line of East Fork Waterway; and on the Northwest by the following described line: Beginning from the Southwest by the Easterly line of Lot 7; Thence Southerly along the Easterly line of Lot 10 and 11; Thence Westerly along the Southerly line of said Lot 11; Thence Southwesterly along the Easterly line of Lot 7; Thence Southeasterly along the Easterly line of Lot 5; Thence Southerly along the Easterly line of said Lot 8 to the Southerly line of said Lot 8; Thence Southwesterly to the Southwesterly corner of Lot 19, Block 5271; Thence Southerly along the Easterly line of said Lot 8; Thence Southwesterly to the Southwesterly corner of Lot 19, Block 5271; Thence Northerly along the Westerly line of said Judith Court to the Southwesterly line of said Lot 20, Block 5271; Thence Northwesterly along the Southwesterly line of said Lot 20 to the Easterly Right-of-Way Line of said East Fork Waterway.

UND

Tract "C" PORT CHARLOTTE SUBDIVISION SECTION FORTY-SIX, as per plat thereof recorded in Plat Book 5, Pages 57-A through 7-D, Public Records of Charlotte County, Florida. Containing 13.71 acres, more or less.

**DESCRIPTION:**

**PARCEL E**

A portion of land Section 10, Township 40, South, Range 21 East, Charlotte County, Florida, being bounded as follows:

On the Northwest by the Southerly Right-of-Way Line of Bowman Terrace, as shown on the plat of PORT CHARLOTTE SUBDIVISION SECTION TWENTY-NINE, as recorded in Plat Book 5, at Pages 22-A through 22-G, of the Public Records of Charlotte County, Florida; on the Northeast by the Southwesterly line of Lot 4, Block 5256, as shown on the plat of PORT CHARLOTTE SUBDIVISION SECTION ONE HUNDRED, as recorded in Plat Book 13, at Pages 7-A through 7-H, of the Public Records of Charlotte County, Florida; on the Southeast by the Westerly Right-of-Way Line of Crastwood Waterway, and on the South by the North line of Lot 5, Block 5257, as shown on the said plat of PORT CHARLOTTE SUBDIVISION SECTION ONE HUNDRED.

**ALSO DESCRIBED AS:**

Lots 1, 2 and 3, Block 5258, and Tract "A", together with the 30.0 foot drainage Right-of-Way lying Northerly and adjacent to said Tract "A", PORT CHARLOTTE SUBDIVISION SECTION ONE HUNDRED, as recorded in Plat Book 13, Pages 7-A through 7-H, of the Public Records of Charlotte County, Florida.

OR BOOK 02275 PAGE 0708



**DESCRIPTION:**

**PARCEL H**  
(Formerly known as Tract "S")

A portion of land Section 14, Township 40 South, Range 21 East, Charlotte County, Florida, being bounded as follows:

On the North by the South Right-of-Way Line of Jalan Avenue (now known as Jenks Drive), as shown on the PORT CHARLOTTE SUBDIVISION SECTION THIRTY-FIVE; on the East by the Westerly Right-of-Way Line of East Fork Waterway, as shown on the said plat of PORT CHARLOTTE SUBDIVISION SECTION ONE HUNDRED; and on the South and West by the boundary line of said Tract "D". Containing 0.35 acres, more or less.

T

# SUN NEWSPAPERS

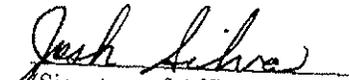
Charlotte • DeSoto • Englewood • North Port • Venice

PUBLISHER'S AFFIDAVIT OF PUBLICATION  
STATE OF FLORIDA  
COUNTY OF CHARLOTTE:

Before the undersigned authority personally appeared Josh Silva, who on oath says that he is legal clerk of the (Charlotte Sun, Englewood Sun, DeSoto Sun, North Port Sun, Venice Gondolier Sun), a newspaper published at Charlotte Harbor in Charlotte County, Florida; that the attached copy of advertisement, being a Notice of Public Hearing, was published in said newspaper in the issues of:

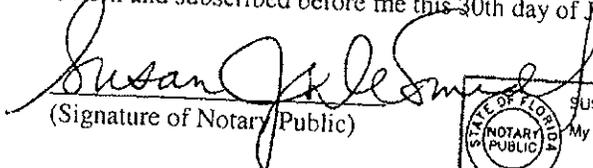
June 28, 2003

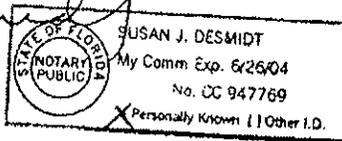
Affiant further says that the said newspaper is a newspaper published at Charlotte Harbor, in said Charlotte County, Florida, and that the said newspaper has heretofore been continuously published in said Charlotte County, Florida, Sarasota County, Florida and DeSoto County, Florida, each day and has been entered as periodicals matter at the post office in Punta Gorda, in said Charlotte County, Florida, for a period of 1 year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

  
(Signature of Affiant)

$3 \times 12 \times 4.95 = 178.20$

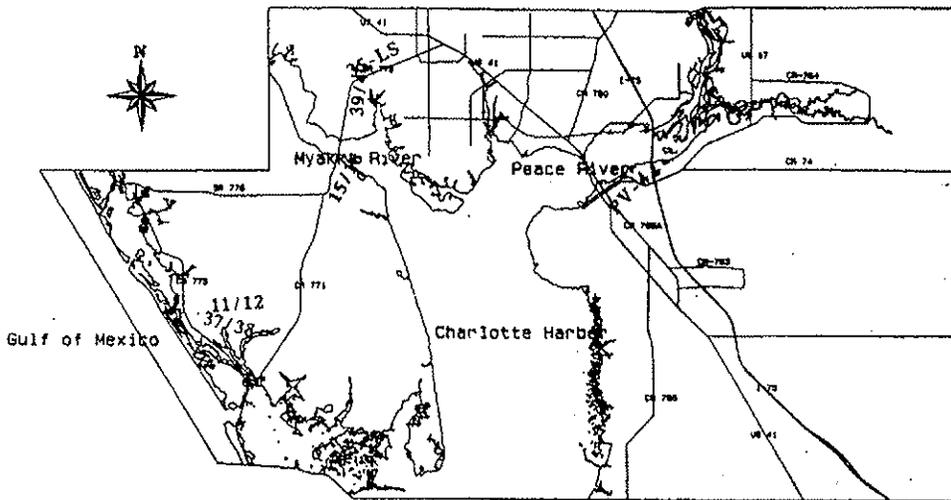
Sworn and subscribed before me this 30th day of June, 2003.

  
(Signature of Notary Public)



**NOTICE OF PUBLIC HEARING  
LARGE SCALE PLAN AMENDMENTS, REZONINGS,  
A TEXT AMENDMENT, AND A PLAT VACATION**

PURSUANT TO SECTION 125.66 AND CHAPTER 163, FLORIDA STATUTES, SECTION 3-9-11, CODE OF LAWS AND ORDINANCES OF CHARLOTTE COUNTY, FLORIDA, AND CHAPTER 177, FLORIDA STATUTES, AND CHAPTER 3-9-7 CODE OF LAWS AND ORDINANCES OF CHARLOTTE COUNTY, FLORIDA, THE CHARLOTTE COUNTY BOARD OF COUNTY COMMISSIONERS HEREBY GIVE NOTICE OF A PROPOSAL TO CHANGE THE USE OF LAND AS DESCRIBED BELOW.



A PUBLIC HEARING ON PROPOSALS AND PETITIONS AS DESCRIBED BELOW WILL BE CONDUCTED BY THE BOARD OF COUNTY COMMISSIONERS ON JULY 8, 2003 AT 2:00 P.M. OR AS SOON THEREAFTER AS THE MATTER MAY BE HEARD DURING THE COURSE OF ACTION. THE HEARING WILL BE HELD IN THE COMMISSIONERS MEETING ROOM, ROOM 119, FIRST FLOOR, BUILDING A, THE CHARLOTTE COUNTY ADMINISTRATION CENTER, 18500 MURDOCK CIRCLE, PORT CHARLOTTE, FLORIDA. COPIES OF SAID PETITIONS WITH COMPLETE LEGAL DESCRIPTIONS AND SUBSEQUENT STAFF REPORTS WILL BE AVAILABLE FOR REVIEW AT THE FOLLOWING LOCATIONS:

CHARLOTTE COUNTY COMMUNITY  
ALL CHARLOTTE COUNTY PUBLIC LIBRARIES  
INTERNET ADDRESS  
ALL INTERESTED PERSONS ARE URGED TO ATTEND THESE PUBLIC HEARINGS

**PETITIONS:**

PA-01-11-35-LS

James E. Moore III as Trustee of the Biscayne Trust under an unrecorded Trust Agreement dated July 15, 1997 requesting a Large Scale Plan Amendment from Low Density Residential and Parks and Recreation to Medium Density Residential. The site is located in Commission District IV, north of El Jobean Road (S.R. 776), south of Trembly Avenue, east of Biscayne Drive, and west of East Fork Waterway, Port Charlotte area. The site contains 106.44 acres more or less. A complete legal description is on file.

PA-02-5-15-LS and Z-02-5-16

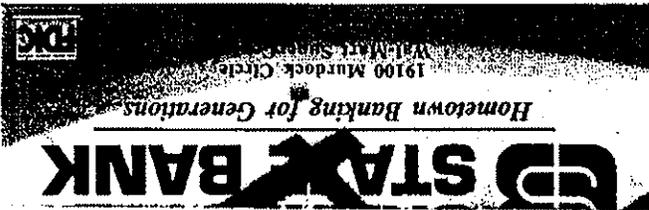
Elaine Miller requesting a Large Scale Plan Amendment from Low Density Residential to Recreational Vehicle Park and a Rezoning from Residential Single Family 2 (RSF-2) to Planned Development (PD). The site is located in Commission District IV, north of Cattle Dock Point Road, south of Fieldcrest Lane, east of Orange Avenue, a.k.a. Oarsman Avenue, and west of Charlotte Harbor Buffer Preserve, Port Charlotte (Town of McCall) area. The site contains 32.71 acres more or less. A complete legal description is on file.

PA-02-11-37-LS and Z-02-11-38

Charlotte County Board of County Commissioners requesting a Large Scale Plan Amendment from Parks and Recreation, Low Density Residential, Medium Density Residential, High Density Residential and Commercial Center to Preservation. The plan amendment also includes a request to remove this property from within the Urban Service Area Overlay District, which is an amendment to Map No. 2 of the Future Land Use Map Series, and a Rezoning from Residential Single Family 3.5 (RSF-3.5), Residential Single Family 5 (RSF-5), Residential Multi-Family 5 (RMF-5), Residential Multi-Family 10 (RMF-10), Residential Multi-Family 15 (RMF-15), Office, Medical, Institutional (OMI), Commercial Tourist (CT), Commercial General (CG), and Commercial Intensive (CI) to Environmentally Sensitive (ES). The site is located in Commission District III, north and east of C.R. 775, and north and west of C.R. 771, Cape Haze area. The site contains 2,635 acres more or less. A complete legal description is on file.

PA-02-11-39-LS and Z-02-11-40

Greg Eagle Trustee requesting a Large Scale Plan Amendment from Commercial Corridor (for 13.3 acres more or less) and from Preservation (for 34.55 acres more or less) to Commercial Center and a Rezoning from Residential Single Family 3.5 (RSF-3.5) to Commercial General (CG) for 34.55 acres more or less. The site is located in Commission District IV, north of Wuchou Avenue, south of Willow Bend, and east of S.R. 776 (El Jobean Road), Port Charlotte area. The site contains 47.85 acres more or less. A complete legal description is on file.



water bottle in his cage, so I  
put petroleum jelly on the bot-  
tle. It works like a dream,  
because the bottle is too slip-  
pery for him to climb on it.  
—Karen Stephenson,  
Arlington, Va.



STATE OF FLORIDA  
DEPARTMENT OF STATE

JEB BUSH  
Governor

GLEND A E. HOOD  
Secretary of State

July 18, 2003

Honorable Barbara T. Scott  
Clerk of the Circuit Court  
Charlotte County Board of County  
Commissioners  
Post Office Box 1687  
Punta Gorda, Florida 33951

Attention: Anne Pfahler

Dear Ms. Scott:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your letter dated July 10, 2003, and certified copies of Charlotte County Ordinance Nos. 2003-036 through 2003-044, which were filed in this office on July 15, 2003.

Sincerely,

*Sarah Jane Bradshaw*

Sarah Jane Bradshaw  
Assistant Director

RECEIVED AT  
CIRCUIT COURT  
2003 JUL 22 PM 2:00  
SJB/mp  
CLERK OF CIRCUIT COURT  
CHARLOTTE COUNTY

BUREAU OF ADMINISTRATIVE CODE • DIVISION OF ELECTIONS  
The Collins Building, Room L43 • 107 W. Gaines Street • Tallahassee, Florida 32399-0250  
Telephone: (850) 245-6270 • Facsimile: (850) 245-6282 • WWW: <http://www.dos.state.fl.us>  
E-Mail: [DivElections@mail.dos.state.fl.us](mailto:DivElections@mail.dos.state.fl.us)

IMAGED  
11-12-03  
AP

August 20, 2003

D  
Chg  
BCC #14

ORDINANCE  
NUMBER 2003-050

FILE 1088531 OR BK 02310 PG 0459 RECD 09/20/2003 10:33:54 AM  
BARBARA T. SCOTT, CLERK, CHARLOTTE CO  
REC-33.00

AN ORDINANCE APPROVING AN AMENDMENT TO THE CHARLOTTE COUNTY ZONING ATLAS FOR JAMES E. MOORE, III, AS TRUSTEE OF THE BISCAYNE TRUST, REZONING 106.96 ACRES MORE OR LESS FROM RESIDENTIAL SINGLE FAMILY 3.5 (RSF-3.5) TO PLANNED DEVELOPMENT (PD), PETITION #Z-01-11-36; AND PROVIDING AN EFFECTIVE DATE.

RECITALS

WHEREAS, on Monday, August 11, 2003, the Board of County Commissioners in a public hearing reviewed Petition Z-01-11-36 which requested a rezoning of 106.96 acres more or less from Residential Single Family 3.5 (RSF-3.5) to Planned Development (PD) on property owned by James E. Moore, III, as Trustee of the Biscayne Trust, under an unrecorded Trust Agreement dated July 15, 1997, Moore & Waxler, P.L., 1107 W. Marion Avenue, Suite 112, Punta Gorda, Florida 33950, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, the applicant, James E. Moore, III, as Trustee of the Biscayne Trust, seeks a rezoning to develop a multi-family residential community; and

WHEREAS, after due consideration, the Board of County Commissioners has found that the request is consistent with the Charlotte County Comprehensive Plan and has determined it to be in the best interest of the public to rezone this site from RSF-3.5 to PD.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Charlotte County, Florida:

IMAGED L.T.

IMAGED  
10-2-03  
AP



Munich

SECTION 1. That the following petition for a zoning amendment to the Charlotte County Zoning Atlas is hereby approved, subject to the conditions contained in this ordinance:

Petition Z-01-11-36 for a rezoning of 106.96 acres more or less of property from Residential Single Family 3.5 (RSF-3.5) to Planned Development (PD) on property owned by James E. Moore, III, as Trustee of the Biscayne Trust, under an unrecorded Trust Agreement dated July 15, 1997, Moore & Waxler, P.L., 1107 W. Marion Avenue, Suite 112, Punta Gorda, Florida 33950 (hereinafter referred to as "Applicant"), more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (hereinafter referred to as "the Property").

SECTION 2. The Planned Development zoning approved by this ordinance shall be subject to the following conditions:

A. The Property shall be used for the development of a residential community with amenities as shown on Petition Z-01-11-36 (hereinafter "the Project").

B. Residential density on the Property shall be limited to 828 units or less.

C. The Property contains oak hammock, as generally defined in the FLUCCS legend and shown in the PD Concept Plan submitted by Applicant, prepared by Charlotte Engineering and Surveying and dated June 26, 2003, and contained as part of Petition Z-01-11-36 which is approved by this ordinance (such PD Concept Plan shall hereinafter be referred to as the "PD Concept Plan"). Design of the development of the Property shall be responsive to the presence of heritage trees and shall comply with all requirements of Chapter 3-2, Article IX, Code of Laws and Ordinances of Charlotte County, Florida (such Code of Laws and Ordinances of Charlotte County, Florida, shall hereinafter be referred to as "County Code"). Roads, sidewalks/ paths and underground utilities located on, above or below the oak hammock communities shown on the FLUCCS legend on the PD Concept Plan shall be laid out and constructed in such a manner that impacts to soil, existing vegetation, and natural water flow are minimal.

D. A tree survey must be supplied to the Community Development Department of County ("CD Department") with the application for final detail plan for the Project. The tree survey must indicate the location of heritage trees. A Tree Removal Authorization, Memorandum of Exemption of Fees, and Tree Preservation permits must be obtained prior to any land clearing or

the issuance of building permits for the Project.

E. No construction or impervious surfaces shall occur or be created within the 25 foot upland buffer shown on the PD Concept Plan around the creeks and low-lying areas. Pedestrian sidewalks and bicycle paths constructed of pervious materials may be allowed within this 25 foot upland buffer, subject to review and approval of the CD Department at the time of construction permit application. Vehicular roads which must cross these 25 foot upland buffers will be exempt from this condition; however, such roads shall be designed and constructed in a manner which minimizes their impervious surfaces' encroachments onto the upland buffers, and preserves the existing natural flow of water.

F. All internal roadways, sidewalks/paths and utilities shall be introduced in a manner which reduces impacts to existing creeks and which maintains the naturally occurring water flow of such creeks. All sidewalks and paths shall be constructed of pervious materials and finishes.

G. The main entrance to the Property shall incorporate landscaped areas and meandering sidewalks on both sides of the access/egress drive; a maximum of one (1) monument sign with the name of the Project will be allowed in these areas.

H. For purposes of regulation of building heights and structure types, the Property shall be divided into Zone "A", Zone "B", and "Zone C". Zone "A" and Zone "B" shall be those zones as they are illustrated on the PD Concept Plan. Zone "C" shall consist of a 200 foot-wide strip of land adjacent to and parallel to the East Fork Waterway. Structures in Zone "A" shall be limited to single family and cluster housing structures. Structures in Zone "C" shall be limited to single family, multi-family and cluster housing structures. No structural element in any structure in Zone "A" or Zone "C" shall exceed 38 feet in height. Structures in Zone "B" may include single family, multi-family and cluster housing structures. No structural element in any structure in Zone "B" shall exceed 38 feet in height for single family or cluster housing, and 60 feet in height for multi-family housing.

I. All residential dwelling units in the Project shall consist of conventionally-built structures only.

J. Development standards for each lot in the Project relating to minimum lot coverage, and minimum lot and yard setback requirements shall be no more restrictive than the development standards contained in the County Code for the use proposed for such lot at the time of final detail plan approval, with the exception that a cluster home lot shall have a maximum lot coverage of 55%.

K. Approval of the PD Concept Plan granted by the approval of Petition Z-01-11-36 contained in this ordinance specifically does not include approval of the legend on such PD Concept Plan titled "Biscayne Trust Development Criteria", or any of the comments and provisions which comprise said legend.

L. The Project shall be served by central potable water and sewer lines.

M. Design of the Project shall include a 25 foot setback as required by Section 3-9-49(2)(d). Hereinafter, such setback shall be referred to as "the PD setback". All native trees located within the PD setback shall be retained. No type of structure or impervious surface shall be allowed to be constructed within the PD setback, except pedestrian sidewalks, bicycle paths, and two (2) instances in which paved roads must encroach onto the PD setback in order to provide access to the Project. Any paved or impervious surface which must encroach onto the PD setback shall be designed and constructed in a manner which minimizes any paved or impervious square footage.

N. The PD setback shall contain and incorporate all buffering requirements as defined by Section 3-5-463, County Code (hereinafter the "buffer code"), as may be amended, and other buffering and landscaping codes which may be present, effective, or applicable at the time of submission of drawings for final site plan approval or construction permits. At a minimum, a Type "B" buffer (as such Type "B" buffer is defined and shown in Chapter 3-5, Article XX, County Code) will be required along the perimeter of the Property wherever multifamily housing is adjacent to areas zoned, designated, or used for residential single-family dwelling units. Existing native vegetation within any buffer area shall be preserved.

O. If final detail plan approval for any development located in Zone "C" is applied for after any approval of development of the portion of property to the north of and adjacent to the East Fork Waterway (in the area commonly known as Murdock Village, as approved in concept by the Board on June 24, 2003), the appearance, dimensions, proportions, and urban furniture of the development of the waterfront section of Zone "C" shall be uniform and compatible with the development approved for the portion of the property north of the East Fork Waterway located in Murdock Village.

P. The design of the Project shall support the intent of the PD district expressed in Section 3-9-49(a), County Code, particularly subsections (2), (3), (6), and (9) of such Section 3-9-49(a). Design features that will be considered as fulfilling this requirement shall include, but not be limited to, the following:

i. **the center:** a demonstration in the final layout of the Project

showing a connection between residential structures, the amenities within the Project, and pedestrian/bike linkages to proximate commercial, civic and open space areas in the vicinity of the Project;

ii. **the five minute walk:** location of amenities within the Project in a manner which facilitates pedestrian trips to amenities, and proximate commercial and civic areas;

iii. **the street network:** maximization of connectivity and minimization of paved areas in the final layout of streets within the Project, and consideration of a pedestrian-friendly layout which may include elements such as medians, changes in pavement materials, and crosswalk islands;

iv. **the open space network:** maximization of connectivity between open spaces, such as parks, amenities, waterways, paths and sidewalks; and

v. **mixed use:** minimization of ground coverage by buildings through structures which contain community amenities as well as residential dwelling units.

Q. A master pedestrian walkway system must be created. This system shall provide for both pedestrian and bicycle travel. The system shall be located on both sides of the main access roads for the Project. The system shall also provide links from the main access road to any common elements of the project, any recreational amenities of the Project, any open space areas of the Project, and to the pedestrian walkway located along the East Fork Waterway. The system must also link to SR776 and other access/egress points as these may be approved for the Project. The pedestrian walkway system must include the possibility for linkage to Murdock Village's pedestrian system if the pedestrian system for the portion of Murdock Village adjacent to the Property has been permitted prior to final detail plan approval for the Project. In the event such pedestrian system for Murdock Village has been permitted, final plan approval for the Project shall indicate the connection points between the Project's pedestrian system and Murdock Village's pedestrian system.

R. All utility lines for the Project shall be placed underground. The only exception to this rule shall be made when Florida Power and Light (FPL) or the competent utility company determines underground lines are in detriment of the well-being and safety of the residents and visitors of the Property. This determination by the competent utility company shall be submitted in writing prior to or concurrent with final detail plan approval application.

S. Prior to final detail plan approval, the signed and sealed surveys and other applicable documents submitted for the Project shall be revised to show the current applicable flood zone and current applicable FEMA map panel. If necessary to comply with FEMA requirements, the provisions of Ordinance 2003-020, or the Building Department of the county,

building design and the building FFE shall be revised.

T. Any applicant for a building permit relating to Biscayne Trust must supply documents sufficient to release any easements affected or encroached upon by any structure, fence or buildings governed by such building permit.

SECTION 3. That the zoning for this site shall run with the land and shall apply to any subsequent owners, heirs and assigns.

SECTION 4. This ordinance shall take effect upon filing in the Office of the Secretary of State, State of Florida.

PASSED AND DULY ADOPTED this 11 day of August, 2003.

BOARD OF COUNTY COMMISSIONERS  
OF CHARLOTTE COUNTY, FLORIDA

By Matthew D. DeBoer  
Matthew D. DeBoer, Chair

ATTEST:  
Barbara T. Scott, Clerk of  
Circuit Court and Ex-Officio  
Clerk to the Board of County  
Commissioners

By Anne L. Pfahler  
Deputy Clerk

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

Anne E. Bast for  
Renée Francis Lee, County Attorney

p:\wpdata\bastford\pd.concept.biscayne.doc  
LR2002-220  
08/11/2003

LEGAL DESCRIPTION PARCEL "A": (PER COMMITMENT NO. 240101183)

A PARCEL OR TRACT OF LAND BEING A PORTION OF VACATED PLAT OF PORT CHARLOTTE SUBDIVISION SECTION 100 AS RECORDED IN PLAT BOOK 13, PAGES 7A THRU 7H PER RESOLUTION OF VACATION RECORDED IN O.R. BOOK 1454, PAGE 1254, ALL BEING RECORDED IN THE PUBLIC RECORDS OF CHARLOTTE COUNTY, FLORIDA LYING AND BEING IN A PORTION OF LAND SECTION 10, 11, AND 14, TOWNSHIP 48 SOUTH, RANGE 21 EAST, CHARLOTTE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE COMMON SECTION CORNER OF SAID SECTIONS 10, 11, 14 AND 15; THENCE SOUTH 89°42'02" EAST, A DISTANCE OF 25.00 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF TULIP STREET (50' RIGHT-OF-WAY) AND THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE NORTH 00°26'07" EAST, ALONG SAID EASTERLY RIGHT-OF-WAY LINE A DISTANCE OF 25.0 FEET TO NORTHERLY RIGHT-OF-WAY LINE OF JENKS DRIVE (50' RIGHT-OF-WAY) (f.k.a. LORRIANE AVENUE); THENCE NORTH 89°42'02" WEST, ALONG THE SAID NORTHERLY RIGHT-OF-WAY LINE OF JENKS DRIVE, A DISTANCE OF 1398.19 FEET; THENCE NORTH 33°33'26" WEST, A DISTANCE OF 150.52 FEET; THENCE NORTH 89°42'02" WEST, A DISTANCE OF 19.87 FEET TO THE EAST RIGHT-OF-WAY LINE OF CRESTWOOD WATERWAY; THENCE NORTH 28°13'01" EAST ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 1319.82 FEET; THENCE SOUTH 89°57'19" EAST, A DISTANCE OF 453.77 FEET; THENCE NORTH 28°13'01" EAST, A DISTANCE OF 34.03 FEET TO THE NORTHERLY PLAT LIMIT OF PORT CHARLOTTE SUBDIVISION SECTION 100, AS RECORDED IN PLAT BOOK 13, PAGES 7A THRU 7H, OF THE PUBLIC RECORDS OF CHARLOTTE COUNTY, FLORIDA; THENCE SOUTH 89°58'05" EAST, ALONG SAID NORTHERLY LINE, A DISTANCE OF 381.05 FEET, TO A CONCRETE MONUMENT MARKING THE NORTHWEST CORNER OF THE SOUTHWEST ¼ OF THE SOUTHWEST ¼ OF SAID SECTION 11; THENCE SOUTH 89°37'04" EAST ALONG THE NORTHERLY PLAT LIMITS OF SAID PORT CHARLOTTE SUBDIVISION SECTION 100, A DISTANCE OF 1316.77 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF ORCHARD STREET (50' RIGHT-OF-WAY) (f.k.a. ORLANDO STREET); THENCE SOUTH 00°14'04" EAST, ALONG SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 1322.94 FEET, TO A POINT OF CURVATURE OF A CIRCULAR CURVE TO THE RIGHT, HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 90°31'39"; THENCE ALONG THE ARC OF SAID CURVE IN A SOUTHWESTERLY DIRECTION, AN ARC DISTANCE OF 39.50 FEET, TO A POINT OF TANGENCY; THENCE NORTH 89°42'02" WEST, ALONG THE SOUTH LINE OF SAID SECTION 11, A DISTANCE OF 145.58 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE TO THE RIGHT HAVING AS ELEMENTS A RADIUS OF 575.0 FEET AND A CENTRAL ANGLE OF 11°43'03"; THENCE ALONG ARC OF SAID CURVE A DISTANCE OF 117.59 FEET TO THE POINT OF A REVERSE CURVE TO THE LEFT HAVING AS ELEMENTS A RADIUS OF 625.0 FEET AND A CENTRAL ANGLE OF 11°43'03"; THENCE ALONG ARC OF SAID CURVE A DISTANCE OF 127.82 FEET TO THE POINT OF TANGENCY; THENCE NORTH 89°42'02" WEST, A DISTANCE OF 25.0 FEET; THENCE SOUTH 0°17'58" WEST, A DISTANCE OF 50.0 FEET; THENCE SOUTH 89°42'02" EAST, A DISTANCE OF 25.0 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE TO THE RIGHT HAVING AS ELEMENTS A RADIUS OF 575.0 FEET AND A CENTRAL ANGLE OF 11°43'03"; THENCE ALONG ARC OF SAID CURVE A DISTANCE OF 117.59 FEET TO THE POINT OF A REVERSE CURVE TO THE LEFT HAVING AS ELEMENTS A RADIUS OF 625.0 FEET AND A CENTRAL ANGLE OF 11°43'03"; THENCE ALONG ARC OF SAID CURVE A DISTANCE OF 127.82 FEET TO THE POINT OF TANGENCY; THENCE SOUTH 89°42'02" EAST, A DISTANCE OF 454.50 FEET TO THE WEST RIGHT-OF-WAY LINE OF EAST FORK WATERWAY (150' R/W); THENCE SOUTH 37°00'00" WEST ALONG SAID WEST RIGHT-OF-WAY, A DISTANCE OF 58.12 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE TO THE RIGHT HAVING AS ELEMENTS A RADIUS OF 5925.0 FEET AND A CENTRAL ANGLE OF 09°00'00"; THENCE ALONG ARC OF SAID CURVE AND SAID WEST RIGHT-OF-WAY A DISTANCE OF 930.70 FEET TO THE POINT OF TANGENCY; THENCE SOUTH 48°00'00" WEST ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 424.49 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE TO THE LEFT HAVING AS ELEMENTS A RADIUS OF 750.0 FEET AND A CENTRAL ANGLE OF 20°28'06"; THENCE ALONG ARC OF SAID CURVE AND SAID WEST RIGHT-OF-WAY, A DISTANCE OF 267.93 FEET; THENCE NORTH 64°28'06" WEST, A DISTANCE OF 125.18 FEET; THENCE SOUTH 78°34'18" WEST, A DISTANCE OF 372.24 FEET, TO THE EAST RIGHT-OF-WAY LINE OF TULIP STREET; THENCE NORTH 0°26'07" EAST ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 1330.55 FEET TO THE POINT OF BEGINNING.

CONTAINING 106.96 ACRES MORE OR LESS.

SUBJECT TO EASEMENTS, RESTRICTIONS, AND RESERVATIONS OF RECORD.

EXHIBIT "A"

V-2 THRU V-15

# SUN



NEWSPAPERS  
Charlotte • DeSoto • Englewood • North Port • Venice

PUBLISHER'S AFFIDAVIT OF PUBLICATION  
STATE OF FLORIDA  
COUNTY OF CHARLOTTE:

Before the undersigned authority personally appeared Amber Freeman, who on oath says that she is legal clerk of the (Charlotte Sun, Englewood Sun, DeSoto Sun, North Port Sun, Venice Gondolier Sun), a newspaper published at Charlotte Harbor in Charlotte County, Florida; that the attached copy of advertisement, being a Notice of Public Hearing, was published in said newspaper in the issues of:

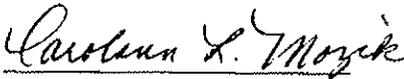
August 1, 2003

Affiant further says that the said newspaper is a newspaper published at Charlotte Harbor, in said Charlotte County, Florida, and that the said newspaper has heretofore been continuously published in said Charlotte County, Florida, Sarasota County, Florida and DeSoto County, Florida, each day and has been entered as periodicals matter at the post office in Punta Gorda, in said Charlotte County, Florida, for a period of 1 year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.



(Signature of Affiant)

Sworn and subscribed before me this 1st day of August, 2003.



(Signature of Notary Public)

$3 \times 21 \times 4.95 = \$ 311.85$

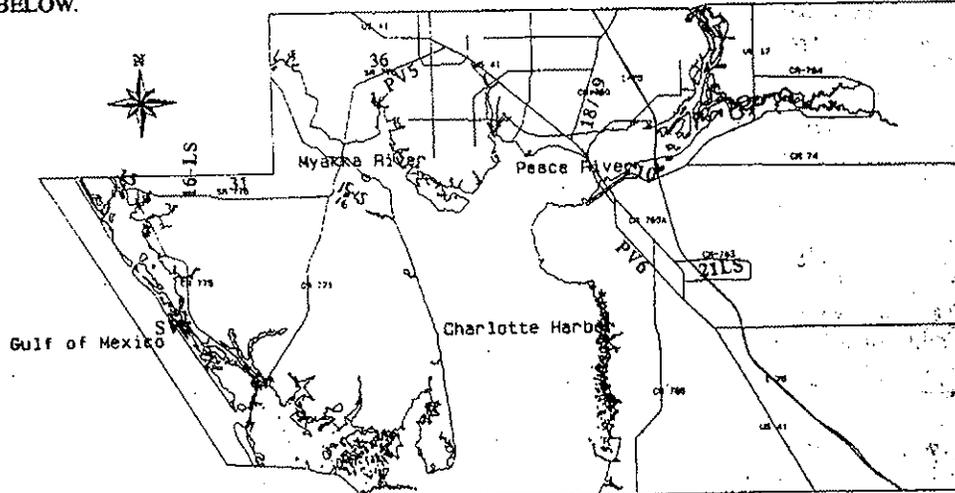
 CAROLANN L. MOZIK  
Notary Public, State of Florida  
My comm. expires Nov. 4, 2003  
Comm. No. CC885950  
I.D. 892317  
Bonded thru Service Insurance Company, inc.

CERTIFIED, TRUE COPY  
OF THE ORIGINAL  
BARBARA T. SCOTT  
CLERK OF THE CIRCUIT COURT  
CHARLOTTE COUNTY, FLORIDA

BY   
DEPUTY CLERK

**NOTICE OF PUBLIC HEARING**  
**LARGE SCALE AND SMALL SCALE PLAN AMENDMENTS, REZONINGS,**  
**TEXT AMENDMENTS, PLAT VACATIONS, A STREET VACATION**  
**AN ORDINANCE and EAR UPDATE**

PURSUANT TO SECTION 125.66 AND CHAPTER 163, FLORIDA STATUTES, SECTION 3-9-11, CODE OF LAWS AND ORDINANCES OF CHARLOTTE COUNTY, FLORIDA, CHAPTER 177, FLORIDA STATUTES, AND CHAPTER 3-9-7 CODE OF LAWS AND ORDINANCES OF CHARLOTTE COUNTY, FLORIDA, THE CHARLOTTE COUNTY BOARD OF COUNTY COMMISSIONERS HEREBY GIVE NOTICE OF A PROPOSAL TO CHANGE THE USE OF LAND AS DESCRIBED BELOW.



A PUBLIC HEARING ON PROPOSALS AND PETITIONS AS DESCRIBED BELOW WILL BE CONDUCTED BY THE BOARD OF COUNTY COMMISSIONERS ON AUGUST 11, 2003 AT 2:00 P.M. OR AS SOON THEREAFTER AS THE MATTER MAY BE HEARD DURING THE COURSE OF ACTION. THE HEARING WILL BE HELD IN THE COMMISSIONERS MEETING ROOM, ROOM 119, FIRST FLOOR, BUILDING A, THE CHARLOTTE COUNTY ADMINISTRATION CENTER, 18500 MURDOCK CIRCLE, PORT CHARLOTTE, FLORIDA. COPIES OF SAID PETITIONS WITH COMPLETE LEGAL DESCRIPTIONS AND SUBSEQUENT STAFF REPORTS WILL BE AVAILABLE FOR REVIEW AT THE FOLLOWING LOCATIONS:

CHARLOTTE COUNTY COMMUNITY  
ALL CHARLOTTE COUNTY PUBLIC LIBRARIES  
INTERNET ADDRESS [WWW.CHARLOTTECOUNTYFL.COM/PZDETAIL.HTM](http://WWW.CHARLOTTECOUNTYFL.COM/PZDETAIL.HTM)  
ALL INTERESTED PERSONS ARE URGED TO ATTEND THESE PUBLIC HEARINGS

**PETITIONS:**

**Z-01-11-36**

James E. Moore III as Trustee of the Biscayne Trust under an unrecorded Trust Agreement dated July 15, 1997 requesting a Rezoning from Residential Single Family (RSF-3.5) to Planned Development (PD). The site is located in Commission District IV, north of El Jobean Road (S.R. 776), south of Trembley Avenue, east of Biscayne Drive, and west of East Fork Waterway, Port Charlotte area. The site contains 106.44 acres more or less. A complete legal description is on file.

**PA-02-10-31**

Charlotte County Board of County Commissioners requesting a Plan Amendment from Parks and Recreation to Low Density Residential. The site is located in Commission District III, north of Wilmington Blvd., south of Grafton Avenue, east of Sunnybrook Blvd., and west of Ceres Street, Englewood area. The site contains 1.8 acres more or less. A complete legal description is on file.

**Z-03-4-10**

Thomas Smith is requesting a Rezoning from Commercial General to Commercial Intensive. The site is located in Commission District II, north of Marion Avenue, south of Union Avenue, west of Florida Street, and east of Charlotte Street, Punta Gorda area. The site contains 1.607 acres more or less. A complete legal description is on file.

**Z-03-5-15**

William J. Robillard is requesting a Rezoning from Office, Medical, Institutional (OMI) to Commercial Intensive. The site is located in Commission District III, north of S.R. 776 (McCall Road), south of Mary Knoll Road, west of Oxford Drive, and east of Mary Knoll Road South, Englewood area. The site contains 0.14 acres more or less. A complete legal description is on file.

**PA-02-5-15-LS and Z-02-5-16**

Elaine Miller requesting a Large Scale Plan Amendment from Low Density Residential to Recreational Vehicle Park and a Rezoning from Residential Single Family 2 (RSF-2) to Planned Development (PD). The site is located in Commission District IV, north of Cattle Dock Point Road, south of Fieldcrest Lane, east of Orange Avenue, a.k.a. Oarsman Avenue, and west of Charlotte Harbor Buffer Preserve, Port Charlotte (Town of McCall) area. The site contains 32.71 acres more or less. A complete legal description is on file.

**PA-03-5-16-LS**

Kerry Keathley, Trustee of Lemon Bay Isles Inc. requesting a Large Scale Plan Amendment from Low Density Residential to Commercial Center. The site is located in Commission District III, south of the Sarasota County Line, west of Winchester Blvd., east of Ivorybill Dr., and north of Partridge Avenue. The site contains 16.76 acres more or less. A complete legal description is on file.

**PA-03-5-18 & Z-03-5-19**

Mark Ascianto and the Community Development Department are requesting a Plan Amendment from Low Density Residential to Commercial Center and a Rezoning from Residential Single Family 3.5 (RSF-3.5) to Commercial General (CG). The site is located in Commission District I, north of Midas Court, south of McCaslin Court, east of Kings Highway, and west of Loveland Blvd., Port Charlotte area. The site contains 4.83 acres more or less. A complete legal description is on file.

**PA-03-6-21-LS**

Michael J. Pilgram, President of Royal Mortgage Corp. requesting a Large Scale Plan Amendment from Agriculture to Low Density Residential. The site is located in Commission District II, north and south of Jones Loop Road, west of Mandy Street, and east of Interstate I-75, Punta Gorda area. The site contains 15.06 acres more or less. A complete legal description is on file.

**Text Amendments**

**PA-03-6-20-LS**

Text amendment to the Future Land Use Element of the 1997-2010 Comprehensive Plan amending the language of existing Policy 2.2.4. This amendment will clarify the language of the Commercial Center and Commercial Corridor Future Land Use Map designations as they pertain to certain properties zoned Commercial Tourists and Office, Medical and Institutional.

**PA-02-11-44A-LS**

The Community Development Department is requesting an amendment to the Goals, Objectives and Policies of the Infrastructure Element of the 1997-2010 Comprehensive Plan to clarify the circumstances under which new utilities may be certificated, and to affirm the density of residential development of the Bridgeless Barrier Islands relative to the availability of water or sewer service.

**Ordinance**

An Ordinance of Charlotte County, Florida, providing for interim development controls affecting certain development applications in the area commonly known as the Airport Commerce Park Overlay District in Charlotte County, Florida; Providing for exemptions; Providing for procedures to seek exemptions; Providing for expiration and extensions of such interim development controls; Providing for severability; and Providing an effective date.

**PV-03-4-5**

Albert Corricelli and Armand Pinard requesting a Plat Vacation for Wooster Street and Ester Avenue. The site is located in Commission District IV, north and east of the Charlotte Sports Park, south of S.R. 776, and west of Torrence Street, Port Charlotte area. The site contains 2.74 acres more or less. A complete legal description is on file.

**PV-03-5-6**

William Robinson requesting a Plat Vacation for a portion of Aqui Esta Unit #2. The site is located in Commission District II, north of Leach Drive, south of Baynard Drive, east of Areca Street, and west of U.S. 41, Punta Gorda area. The site contains 2.82 acres more or less. A complete legal description is on file.

**SV-03-5-7**

Geraldine L. Mason, Trustee requesting a Street Vacation for a portion of Adele Way as described in Exhibit "A". The site is located in Commission District III, north and west of Gulf Blvd., south of Bocilla Pass, and east of the Gulf of Mexico, Englewood area. The site contains 1.0 acres more or less. A complete legal description is on file.

**EAR UPDATE**

SHOULD ANY AGENCY OR PERSON DECIDE TO APPEAL ANY DECISION MADE BY THE BOARD WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING, A RECORD OF THE PROCEEDING, AND FOR SUCH PURPOSE, A VERBATIM RECORD OF THE PROCEEDING IS REQUIRED, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.



STATE OF FLORIDA  
DEPARTMENT OF STATE

JEB BUSH  
Governor

GLEND E. HOOD  
Secretary of State

August 21, 2003

Honorable Barbara T. Scott  
Clerk of the Circuit Court  
Charlotte County Board of County  
Commissioners  
Post Office Box 1687  
Punta Gorda, Florida 33951

Attention: Anne Pfahler

Dear Ms. Scott:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your letter dated August 15, 2003, and certified copies of Charlotte County Ordinance Nos. 2003-045 through 2003-048 and 2003-050 through 2003-057, which were filed in this office on August 20, 2003.

Sincerely,

Liz Cloud  
Program Administrator

LC/mp

RECEIVED AT  
FILED  
2003 AUG 28 PM 3:26  
BARBARA T. SCOTT  
CLERK OF CIRCUIT COURT  
CHARLOTTE COUNTY, FL

IMAGED  
10-2-03  
AP