

**OVERVIEW AND COMMENT:**  
**BROWARD COUNTY LAND USE PLAN**  
**AND TRANSFER OF RESIDENTIAL DENSITY**  
**April 3, 2014**

*Prepared by the Broward County Planning and Redevelopment Division*

**PART I**

**COMMENT ON FEBRUARY 11 COUNTY COMMISSION AGENDA ITEM**

**1. County Commission Agenda Item of February 11, 2014**

On February 11, 2014, the County Commission considered an agenda item (Regular Agenda Item 27) requesting the Board to initiate an amendment to the Broward County Land Use Plan to provide for the "transfer of residential development rights" between adjacent properties on the barrier island. The "barrier island" in Broward County is defined as all lands east of the Intracoastal Waterway.

During the Board's consideration of the agenda item, County staff was asked to comment and staff verbally asked to be given an opportunity to further explore the intent and potential consequences of the proposal and concept, as it was not well defined and appeared to represent a significant departure from the current policies and provisions of the Broward County Land Use Plan and Broward County Comprehensive Plan.

The Board deferred the item for 60 days to allow staff to conduct an evaluation and provide recommendations.

**2. General Description of "Transfer of Development Rights" Programs**

"Transfer of Development Rights" programs, or TDR, are utilized in many communities throughout the United States. Generally, TDR programs involve the removal of the right to develop unbuilt permitted uses from land in a defined "sending zone," and transfer such permitted development rights to land in a defined "receiving zone," which permits the use. TDR programs are commonly used to promote a public purpose, such as, but not limited to, preserving open space, farmland, or historic preservation, and also to direct development to achieve a public policy (e.g. direct population growth outside of Coastal High Hazard Area). TDR, to be successful, requires a market condition that creates a demand for the rights to be sold. Such programs may require establishing a "TDR bank" to accommodate the demand.

**3. Discussion of February 11 Agenda Item Request In Relation To TDR**

Based on the limited information available as part of the February 11 agenda item and follow-up discussions with representatives of property owners on the barrier island, it is staff's opinion that the concept contemplated as part of the February 11 request would not be consistent with a traditional TDR program. It appears that the concept would involve the transfer of undeveloped or unused residential density rights from one or more scattered "sender" parcels on the barrier island to one or more scattered "receiver" parcels on the barrier island. A public purpose in the traditional sense is not achieved with this proposal. Instead, a proponent cites potential economic development for the "receiving" parcel, and potential continuation of vacant parcels held in open space. No overall plan or strategy has been identified by proponents that would further a public purpose, such as enabling the creation of significant public or private open space areas or corridors, protect environmentally sensitive areas or lands subject to climate change impacts, and/or direct development to more suitable areas outside of the Coastal High Hazard Area.

To further illustrate the concept presented on February 11, please see Attachment 1, which is a graphic depicting "residential" parcels on the barrier island in south Broward which appear to be vacant.

**4. Discussion of February 11 Agenda Item Request in Relation to the Broward County Land Use Plan "Flexibility Rules"**

The concept put forward on February 11 would not fall under the umbrella of the Broward County Land Use Plan's (BCLUP) residential "flexibility rules." Residential "flexibility" is created as a result of the difference between the total units allowed by the BCLUP map designations for parcels within an area, or "flexibility zone," and the municipal map designations for parcels with the same area. For example, if the BCLUP allows 1000 dwelling units within an area, or "flexibility zone," and the municipal plan allows 900 dwelling units within the same area, then 100 "flexibility units" are created. In addition, "flexibility units" are not vested to particular parcels or property owners. "Flexibility units" may be assigned or allocated to parcels only by the municipality. Specifically regarding the barrier island of Broward County (i.e. lands east of the Intracoastal Waterway), please see Attachment 2, which is a table indicating the current potential availability of residential "flexibility" for the barrier island by municipality.

**5. Summary of February 11 Agenda Item Concept**

As noted under (3.) above, it appears that the concept as currently understood would involve the transfer of undeveloped or unused residential density from one or more scattered “sender” parcels on the barrier island to one or more scattered “receiver” parcels on the barrier island. Additional more specific information is not available such as whether a “unity of title” would be used or if such transfers would only be allowed if parcels are contiguous or adjacent.

As noted under (4.) above, the concept of allowing the transfer of unused or unbuilt residential density between parcels is unrelated to the County Land Use Plan “flexibility rules,” and would provide an unanticipated increase in density, as this proposed mechanism was not foreseen or intended by the current BCLUP provisions concerning “flexibility.” The concept would instead focus on whether a parcel has been built to the maximum number of dwelling units allowed by the land use plan. For example, if a parcel was permitted 50 units by the land use plan but was vacant, the owner of the vacant property would be able to sell or transfer the unbuilt density to another property owner. The overall policy or program to allow such would require County and/or municipal approval, but unlike “flexibility,” the property owner would have control over the decision of whether or not to sell or otherwise allow the transfer of unused or unbuilt permitted residential density from their parcel to another.

**6. “PROS” of February 11 Agenda Item Concept**

- (A) Potential preservation, as open space, of vacant “sender” parcels on the barrier island.
- (B) Would provide an additional method to achieve residential development on the barrier island without requiring a County Land Use Plan amendment to approve new residential units.
- (C) Potential tax base benefit resulting from development of “receiver” parcels that would not otherwise be economically feasible.

**7. “CONS” of February 11 Agenda Item Concept**

- (A) The Broward County Land Use Plan and Natural Disaster Component of the Coastal Management Element currently discourage new high density and intensity residential development on the barrier island.

- (B) The barrier island is vulnerable to anticipated sea level rise effects resulting from climate change.
- (C) Transfer of unbuilt residential density raises questions about effects resulting from such additional residential density, including, but not limited to:
  - a. environmental impacts on designated sensitive areas and protected wildlife
  - b. compatibility with adjacent existing and planned land uses
  - c. traffic circulation and mobility
  - d. applicability of maximum limit (i.e. 50 dwelling units per acre) on residential density for development parcel
  - e. evacuation times
  - f. property loss from disasters
  - g. "sender" properties with no residual value
  - h. legal mechanisms and municipal (and County) approvals required to accomplish transfer (e.g. "bank")
- (D) Transfer of unbuilt residential density raises questions about status of "sender" parcels, including, but not limited to:
  - a. Legal rights to develop parcel with other permitted uses.
  - b. Management of parcel restricted as "open space," or stripped of all development rights.
- (E) Application of the concept in the barrier island will probably spark interest in a countywide application of the same. A countywide application of the concept may be considered in conflict County Land Use Plan Objective 17.01.01 and the BCLUP "flexibility rules" which seek to direct growth to the designated "Urban Infill, Urban Redevelopment and Downtown Revitalization Areas." Please see Attachment 3 for a graphic depicting the areas where allocations of "residential flexibility" are limited.

**8. Staff Comments Regarding February 11 Agenda Item Concept**

Our review finds that the concept presented on February 11 is generally inconsistent with County policy as it relates to density on the barrier island.

If the County Commission wishes to revise current County policy and encourage additional residential development on the barrier island, several options may be pursued such as, but not limited to; reinstating municipal allocations of Residential "Flex" up to 50 units/acre; reinstating the "Regional Activity Center" land use classification on barrier island; and/or permitting municipalities to develop a "transfer of residential density" program with required criteria such as the "sender" parcel must be within ½ mile of "receiving" parcel, and overall development limited to no more than 50 dwelling units per acre. All options identified herein would require amendment to the existing Broward County Land Use Plan policies and criteria.

However, staff is also of the opinion that the concept presented on February 11 speaks to broader current discussions and issues involving the Broward County Land Use Plan and County Comprehensive Plan. These broader issues are addressed in the following part of this paper.

**PART II**  
**COMMENT ON THE BROWARD COUNTY LAND USE PLAN AND**  
**COMPREHENSIVE PLAN**

**1. February 11 Agenda Item Concept - Indicator of a Broader Issue**

Staff felt that this paper provides an opportunity to comment on a broader issue that we have observed. Specifically, staff proposes that a discussion may be ripe at this time about the existing policies and function of the Broward County Land Use Plan (BCLUP) and County Comprehensive Plan, including as they relate to municipalities and the County's interest in addressing issues that affect the county as a whole.

Within the past several years, many issues of note have been or are being raised which speak to the role of the County and municipalities within the context of the BCLUP and countywide comprehensive planning. For example, the following topics are noted as a sample:

- Climate Change
- Environmental Protection
- Complete Streets and Transit
- Municipal Use of BCLUP "Flexibility Rules"
- Affordable Housing
- Community Redevelopment Areas
- Post Disaster Planning

**2. Brief Overview of Countywide Planning – Past and Present**

As per Article 8 of the Broward County Charter, approved by a vote of the electorate in the 1970's, the Broward County Commission has oversight authority in land use planning matters, including Broward's municipalities.

The Broward County Land Use Plan (BCLUP) originally reflected a "suburban" model, with a spread-out, lower density, auto-oriented pattern.

During the last approximately ten years, it has become apparent that under “build-out” status, the need for additional housing, economic development opportunity, and transportation mobility remain. Population projections indicate continued growth in the County. However, traditional roadway construction and the provision of additional vehicle capacity have become constrained due to limits on land availability and funding. In addition, further constraints on the County’s future will be introduced as a result of impacts from climate change, necessitating an identification and implementation of feasible mitigation and adaptation strategies.

In this light, the BCLUP and the County Comprehensive Plan has been amended on an “ad hoc” basis to incorporate policies and plans to promote, where appropriate, more dense and transit friendly “cores” and “corridors” to accommodate projected population growth (due to both in-migration and natural increase) and economic growth (e.g. “Regional Activity Centers,” “Local Activity Centers,” “Transit Oriented Corridors,” and “Transit Oriented Development”).

### **3. Countywide Planning – Moving Forward**

It is suggested that the County investigate the foundations and assumptions of the existing Countywide planning program, which were largely established in the 1970’s and 1980’s when much of the County was undeveloped and unincorporated, and seek to comprehensively update the program within the context of meeting the challenges of Broward County’s future. A positive result of such an effort could be a renewed relationship between the County and municipalities. It may be possible to reorient the Plan’s current “map-change” focus, including sufficiency of the Plan’s “flexibility rules,” to focus on regional policy priorities (e.g. transit and mobility, affordable housing, climate change mitigation and adaptation, regional economic development, environmental protection, enhancement and protection of recreation and open space areas, disaster preparedness, etc.).

The municipal focus on local land use decisions could encourage municipal support and participation in the proposed update, for municipal engagement would be essential to ensure appropriate tools (i.e. availability of sufficient flexibility) are identified to accomplish a refocus of the Countywide planning program, including an intent to not seek to reduce the net benefits currently available to municipalities.

#### **4. RECOMMENDATION**

It is recommended that the County staff, in coordination with the Broward County Planning Council, identify a working group framework and initiate an evaluation of the Broward County Land Use Plan and County Comprehensive Plan program, with a progress report provided to the Board within 90 days.

For the Broward County Land Use Plan, as per the County Charter, the Broward County Planning Council would serve as the coordinating agency, but the multi-party evaluation would fully engage County staff as active and lead participants, and should be structured to include County Commission member participation during the investigation and evaluation process. In addition, full representation and participation from municipalities and their staff's would be a vital component.

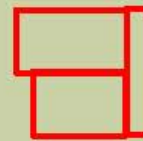
It is anticipated that such an endeavor would be significant and take an estimated 18 to 24 months. It is also envisioned that the evaluation would engage a wide variety of public and private sector community leaders and stakeholders. (e.g. South Florida Regional Planning Council/League of Cities/Broward MPO/Florida Department of Transportation/Climate Change Task Force/ Smart Growth Partnership/etc.)

#### **ATTACHMENTS**

1. Vacant "Residential" Parcels on the Barrier Island in South Broward
2. Table – "Residential Flexibility" for the Barrier Island by Municipality
3. Broward County Areas Subject to Restrictions on "Residential Flex"



## Vacant Residential Parcels



Methodology: All subject area parcels with use codes of 00 or 'vacant residential' were visually inventoried using the 2013 aerial photography.

Parcels appearing vacant are shown in this map.  
No vacant parcels were seen in Hallandale Beach.



EXHIBIT 2  
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Attachment 1

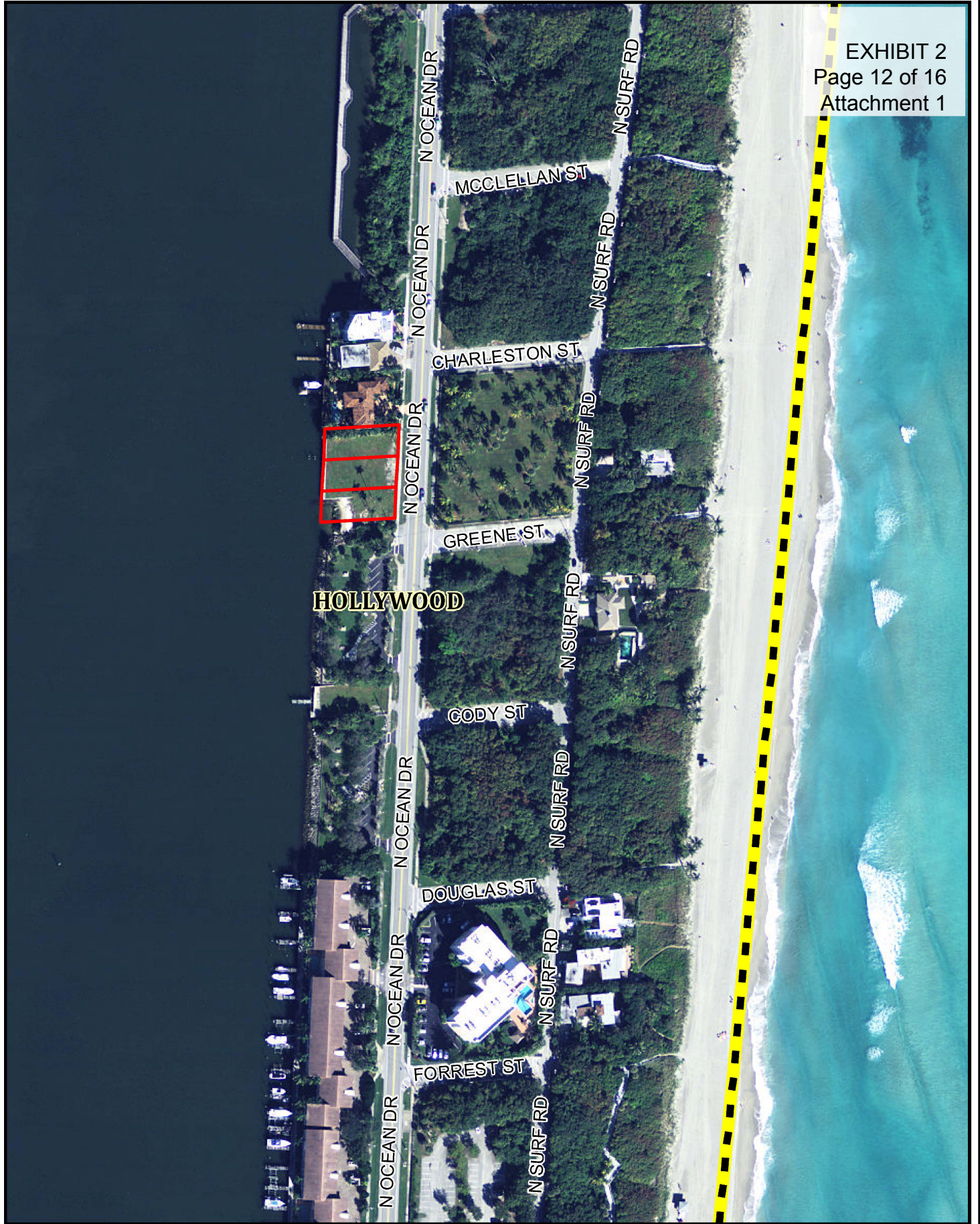






EXHIBIT 2  
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Attachment 1



Municipality	Flex Zone	Remaining Res. Flex Units	Remaining Res. AFU Flex Units	Remaining Reserve Units	Remaining AFU Reserve Units	Total
Deerfield Beach	1	39	-	58	-	97
Fort Lauderdale		6,274	-	290	731	7,295
	47	4,407	-	217	514	
	48	1,867	-	73	217	
Hallandale	93	754	259	289	-	1,302
Hillsboro Beach	13	1,279	-	69	-	1,348
Hollywood		-	-	151	15	166
	78	-	-	15	-	
	92	-	-	136	15	
Lauderdale-by-the-Sea		1,593	177	204	22	1,996
	24	1,215	135	101	11	
	39	378	42	103	11	
Pompano Beach*		9,939	436	1,061	768	12,204

\*This municipality has a unified flex zone and does not allow the allocation of Flex or Reserve units on the barrier island

# BROWARD COUNTY AREAS SUBJECT TO RESTRICTIONS ON RESIDENTIAL FLEXIBILITY

EXHIBIT 2  
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Attachment 3

