

# 1. Credits and Bonuses From TDR Sending Areas

## DCA's inconsistency provisions:

The amendments establish a Transfer of Development Rights (TDR) program to transfer development rights from sending lands in the DR/GR area. Although amendment Policy 33.3.4 states that the maximum number of DR/GR TDR credits that may be established may not exceed 9,000 credits, Policy 33.3.4 does not establish meaningful and predictable guidelines and standards to apply and implement the TDR program on individual properties (individual sending areas) addressing:

- (1) a TDR transfer credit generation rate to guide the generation of TDR credits from the TDR sending area; and
- (2) the numerical value of the TDR multipliers that may apply to the TDR sending area and receiving area.

## DCA's recommended remedial actions:

Revise the plan policies to establish meaningful and predictable guidelines and standards for the transfer of development rights (TDR) program addressing:

- (1) a TDR transfer credit generation rate to guide the generation of TDR credits from the TDR sending area; and
- (2) the numerical value of the TDR multipliers that may apply to the TDR sending areas and receiving area

## Lee County's conceptual solution:

These Lee Plan amendments introduced the term "TDR Credit," which is defined and quantified in the new land development code but was not adequately explained in the Lee Plan amendment. This recommended remedial action requests a base TDR credit generation rate (which is simply one credit per allowable dwelling unit) and numerical multipliers (which are increases that are specified as incentives for certain activities). Policy 33.3.4 can be rewritten to consolidate those details in one location. Policies 33.3.2 should be clarified to indicate that certain of these incentives are available without formal TDR transfers between separate parties.

## Lee County's precise solution:

See redraft of Policies 33.3.2.1, 33.3.3.1, and 33.3.4.2-4 & 6 (highlighted in red).

## 2. Transfer Rates to TDR Receiving Areas

### DCA's inconsistency provisions:

Amendment Policies 33.3.3 and 33.3.4 do not establish meaningful and predictable guidelines and standards for a TDR transfer rate defining:

- (1) the relationship between a TDR credit and dwelling units of the receiving areas (within and outside of the DR/GR area);
- (2) the relationship between a TDR credit and Fractional Ownership/Timeshare Units and Bed and Breakfast Establishments of the receiving areas within the DR/GR area; and
- (3) the relationship between a TDR credit and nonresidential development of receiving areas outside of the DR/GR area.

Because the transfer rate from a TDR credit to a dwelling unit (and also to "Fractional Ownership/Time-share Units and Bed and Breakfast Establishments") has not been established by the plan policies, the maximum number of dwelling units (and also "Fractional Ownership/Time-share Units and Bed and Breakfast Establishments") that may result from the TDR program (transfers can be made inside and outside the DR/GR area) cannot be determined and has not been demonstrated to be based on a need. Within the DR/GR area, the total number of potential dwelling units is limited by the maximum density standards (5 dwelling units per acre) for the Mixed-Use Communities where the TDR credits can be utilized. But, the transfers to areas outside the DR/GR area could produce an undetermined number of dwelling units because the transfer rate (the number of TDR credits per dwelling unit) has not been established. The amendment is not supported by data and analysis, based upon TDR transfer rates (the rate at which a TDR credit creates a dwelling unit) established in the plan policies, identifying the potential number of dwelling units resulting from the TDR program and demonstrating a need for the dwelling units.

### DCA's recommended remedial actions:

Revise the plan policies to establish meaningful and predictable guidelines and standards for a TDR transfer rate defining:

- (1) the relationship between a TDR credit and dwelling units of the receiving areas (within and outside of the DR/GR area);
- (2) the relationship between a TDR credit and Fractional Ownership/Timeshare Units and Bed and Breakfast Establishments of the receiving areas within the DR/GR area; and
- (3) the relationship between a TDR credit and nonresidential development of receiving areas outside of the DR/GR area.

### Lee County's conceptual solution:

The solution to the previous item was a clearer use of the term "TDR Credit," specifically how TDR credits are *generated*. This item requests clarification of how TDR credits are *redeemed* in TDR receiving areas. This recommended remedial action requests details as to any incentives that might be provided when TDR credits are redeemed under three specific scenarios; Policy 33.3.4 can be rewritten to provide that information immediately after that policy's details about TDR credit generation rates and incentives.

### Lee County's precise solution:

See redraft of Policies 33.3.2.1, 16.2.7, 33.3.3.1, and 33.3.4.5 (highlighted in blue).

### 3. Location of TDR Receiving Areas Outside DR/GR

#### DCA's inconsistency provisions:

Amendment Policies 33.3.3 and 33.3.4(3) contemplate the transfer of development rights to areas outside of the DR/GR area. Policy 33.3.3 allows the transfer of development rights “to appropriate Future Urban Areas, such as the Mixed Use Overlay and the Lehigh Acres Specialized Mixed-Use Nodes.” Policy 33.3.4(3) states that “The preferred receiving locations for the transfer of TDRs are within appropriate Future Urban Areas such as the Mixed Use Overlay and the Lehigh Acres Specialized Mixed Use Nodes.” However, the language “appropriate Future Urban Areas” does not clearly define the location of TDR receiving areas outside of the DR/GR area. Therefore, Policies 33.3.3 and 33.3.4(3) do not establish meaningful and predictable guidelines and standards defining the location of the TDR receiving areas outside of the DR/GR area.

#### DCA's recommended remedial actions:

Revise the amendments to establish meaningful and predictable guidelines and standards defining the location of the TDR receiving areas outside of the DR/GR area.

#### Lee County's conceptual solution:

This alleged inconsistency stems from the term “appropriate future urban areas” in Policies 33.3.3 and 33.3.4. This can be clarified in two ways:

- Clarify that “future urban area” has a very specific meaning in the Lee Plan (cite Objective 1.1).
- Change the vague qualifier, “such as...” into definitive language (e.g., “specifically”).

#### Lee County's precise solution:

See redraft of Policies 33.3.3 and 33.3.4.2 (highlighted in brown).

## 4. Intensity of Uses Resulting From TDRs

### DCA's inconsistency provisions:

For Mixed-Use Communities within the DR/GR area, Amendment Policy 33.3.2 states the following for density and intensity standards:

- (1) residential density is limited to the existing allowable density based on the upland and wetland acreage;
- (1)(a) when expanded with transferred development rights, the maximum gross density is 5 dwelling units per acre of total land designated as a Mixed-Use Community on Map 17; and
- (1)(b)&(c) the maximum intensity of non-residential development is 75 square feet, per by right clustered dwelling unit; and
  - the maximum intensity of non-residential development is 800 square feet per TDR credit.

However, Policy 33.3.2(1)(c) does not establish a limit on the amount of TDR credits associated with the non-residential development intensity of 800 square feet per TDR credit that can be transferred into the Mixed-Use Communities. Therefore, Policy 33.3.2(1)(c) does not establish meaningful and predictable guidelines and standards for the maximum intensity of nonresidential uses based on the transfer of development rights to the Mixed-Use Communities.

- The amendment does not establish meaningful and predictable guidelines and standards for the maximum intensities of nonresidential uses, based on the transfer of TDR credits, for the TDR receiving areas outside of the DR/GR area.
- The amendment does not establish meaningful and predictable guidelines and standards for the maximum densities of residential uses, based on the transfer of TDR credits, for the TDR receiving areas outside of the DR/GR area.

### DCA's recommended remedial actions:

- Revise Policy 33.3.2(1)(c) to establish meaningful and predictable guidelines and standards for the maximum intensity of nonresidential uses based on the transfer of development rights to the Mixed-Use Communities.
- Revise the amendments to establish meaningful and predictable guidelines and standards for the maximum densities and intensities of uses, based on the transfer of TDR credits, for the TDR receiving areas outside of the DR/GR area.

### Lee County's conceptual solution:

These are two related but essentially different issues, each requiring a different solution:

- DCA is requesting details about the total amount of non-residential uses in the Mixed-Use Communities that could result from the TDR program. The plan amendment can be modified to include a cap on square footage of non-residential uses in each Mixed-Use Community, computed from the designs for each community in the supporting documents for the Lee Plan amendments.
- DCA is also requesting details about the maximum residential density and non-residential intensity OUTSIDE the DR/GR that could result from the TDR program. The plan amendment can be modified to be clearer on this question by stating that the upper limits in the Lee Plan will still apply even when TDRs are redeemed (these upper limits are shown in Table 1(a) of the Lee Plan under the terminology "bonus density").

### Lee County's precise solution:

See redraft of Policies 33.3.2.1.c and 33.3.4.5 (highlighted in pink).

## 5. Meaningful Non-Residential Uses in Mixed-Use Communities

### DCA's inconsistency provisions:

The amendments to Future Land Use Element Objective 33.3, Policies 1.4.5(2)(a), 1.7.14, 33.3.2, 33.3.3, 33.3.4, and 33.3.5 do not establish meaningful and predictable guidelines and standards for the mix of land uses (residential, commercial, and civic uses) allowed within the “Mixed-Use Community” in order to ensure that an appropriate amount of non-residential uses will be developed in association with the residential uses. The policies allow residential use, commercial use, and civic use within the Mixed-Use Community. Policy 33.3.3 states that “*Within the Mixed-Use Community, significant commercial and civic uses are encouraged. Specific requirements for incorporating these uses into Mixed-Use Communities will be found in the Land Development Code.*” Policy 33.3.5 states that “*The Land Development Code will be amended within one year to specify procedures for concentrating existing development rights on large tracts, for transferring development rights between landowners, for seeking approval of additional acreage subdivisions, and for incorporating commercial and civic uses into Mixed Use Communities as designated on Map 17.*” The deferral to the land development code does not establish meaningful and predictable guidelines and standards in the comprehensive plan.

### DCA's recommended remedial actions:

Revise the amendments to establish meaningful and predictable guidelines and standards for the mix of land uses (residential, commercial, and civic uses) allowed within the “Mixed-Use Community” in order to ensure that a meaningful amount of non-residential uses will be developed in association with the residential uses.

### Lee County's conceptual solution:

Many TND developers build their residential areas before the commercial component (and some do the opposite); it would be counterproductive to propose some ratio between residential and nonresidential that must be met every month or every year while development progresses.

A better solution would ensure that meaningful amounts of non-residential uses are provided during the original approvals for each Mixed-Use Community. The plan can also provide explicit guidelines as to the nature of these communities (in addition to the glossary definition of “traditional neighborhood development” as referenced in Policy 33.3.2).

A measurable standard can be provided through “transect zone” assignments that are an essential part of the approval process (as detailed in the land development code). Two transect zones are oriented to intense commercial development, the “Center” and “Core” transect zones. An easy-to-track approach would be to specify a minimum percentage of those two zones in each of the four Mixed-Use Communities along SR 82. (There is no reason for this requirement to apply to the Western Corkscrew community, given the very large commercial developments nearby.)

### Lee County's precise solution:

See redraft of Policies 33.3.2.1.d & .4 and 33.3.3.2 (highlighted in purple).

## 6. Alico Road Extension Maps

### **DCA's inconsistency provisions:**

The amendments to Lee Plan Maps 4, 14, 17, 20, and 25 show the Alico Road Extension from Alico Road to State Road 82. The Alico Road Extension is not shown on the County Comprehensive Plan Future Transportation Map(s) series; and therefore, Lee Plan Maps 4, 14, 17, 20, and 25 are internally inconsistent with the Future Transportation Maps(s) series regarding the Alico Road Extension.

### **DCA's recommended remedial actions:**

Revise the Future Transportation Map(s) Series to include the Alico Road Extension.

### **Lee County's conceptual solution:**

Without any funding source for the Alico Road Extension, Lee County cannot legally follow DCA's recommended remedial action to add the Alico Road Extension to the Future Transportation Map. However, the alleged inconsistency can be resolved by simply deleting the display of the Alico Extension wherever it appears; it had been shown on various Lee Plan maps only for informational purposes.

### **Lee County's precise solution:**

Delete the Alico Road Extension from Lee Plan Maps 4, 14, 17, 20, and 25.

## 7. Need for Dwelling Units Created By TDR Program

### DCA's inconsistency provisions:

The Mixed-Use Community designations on the Map 17 amendment are not supported by relevant and appropriate data and analysis demonstrating coordination of the resulting maximum development potential of the land uses with the short-term and long-term planning and provision of public facilities (central potable water, central sanitary sewer, adequate water supply, roads, and schools) in order to achieve and maintain the adopted level of service standards for public facilities. The amendment is not supported by relevant and appropriate data and analysis for the short-term and long-term planning timeframes based on the maximum development potential of the land uses for the Mixed-Use Communities addressing:

- (1) identifying the amount of demand for water, sanitary sewer, roads, and schools generated by the Mixed-Use Communities;
- (2) the impact of the demand upon the operating level of service and adopted level of service standards of public facilities, and the need for public facilities improvements (scope and timing) in order to maintain the adopted level of service of public facilities; and
- (3) coordination of the public facility improvements with the Capital Improvements Element, Transportation Element, Community Facilities and Services Element, and Public School Facilities Element.

The public facilities improvements that would be needed to support the Mixed-Use Community designations on Map 17 are not coordinated with the elements of the Lee County Comprehensive Plan. The amendment does not coordinate land use planning with the planning and provision of public facilities for the short-term and long-term planning timeframes. The plan policies require that the Mixed-Use Community be developed with central water and sewer, and the TDR program could intensify the development beyond the clustering of existing density. The amendment designates Mixed-Use Communities adjacent to State Road 82, which according to the analysis submitted with the adopted amendment currently operates in a manner that does not meet the adopted level of service standards from Colonial Boulevard to the Hendry County boundary.

### DCA's recommended remedial actions:

Support the amendments with relevant and appropriate data and analysis, based upon TDR transfer rates (the rate at which a TDR credit creates a dwelling unit) established in the plan policies, identifying the potential number of dwelling units resulting from the TDR program and demonstrating a need for the dwelling units. Support the amendments for the Mixed-Use Community (MUC) designations on the Map 17 amendment with relevant and appropriate data and analysis demonstrating coordination of the resulting maximum development potential of the land uses of the MUC with the short-term and long-term planning and provision of public facilities (central potable water, central sanitary sewer, adequate water supply, roads, and schools) in order to achieve and maintain the adopted level of service standards for public facilities. The analysis should address:

- (1) identifying the amount of demand for water, sanitary sewer, roads, and schools generated by the Mixed-Use Communities;
- (2) the impact of the demand upon the operating level of service and adopted level of service of public facilities, and the need for public facilities improvements (scope and timing) in order to maintain the adopted level of service of public facilities; and
- (3) coordination of the public facility improvements with the Capital Improvements Element, Transportation Element, Community Facilities and Services Element, and Public School Facilities Element.

Revise the appropriate elements of the Lee County Comprehensive Plan to address the public facilities improvements and other planning actions (e.g., revision to service area maps) that are needed to support the Mixed Use Communities.

### **Lee County's conceptual solution:**

During several conversations, DCA officials have asked about potential concurrency issues on SR 82 and Lee County's preferred solution, which is a multimodal transportation district. As is customary, DCA officials asked for a clear plan of action with measurable milestones. This can be provided by adding policy language to the Lee Plan. (NOTE: it is definitely not correct that SR 82 currently operates below the adopted levels of service to the Hendry County line; construction to correct one failing link near I-75 is underway at this time.)

Other public facility issues were cited in this objection even though it has already been ascertained that existing elements of the Lee Plan can accommodate the extra increment of development that would be enabled by this plan amendment. Public school needs are governed by the recent adoption of Goal 67 into the education sub-element of the Lee Plan. The recent water and wastewater analysis by Lee County Utilities should be expanded to include non-residential demands and then resubmitted to DCA for their review. Lee Plan Maps 6 and 7 which show future water and wastewater service should be amended at this time to add all five Mixed-Use Communities. Three subsections of Policy 33.3.3 should be amendment at this time to more clearly address public facility demands.

The need for the Mixed-Use Communities does not arise from any shortage of developable land in the unincorporated area; rather, the addition of a small amount of newly developable land in the five Mixed-Use Communities (less than 1,200 gross acres in total, with about 300 acres in developable blocks) will help resolve several much greater needs, particularly the need to protect farmland and environmentally sensitive lands at increasing distances from existing services and amenities. The DR/GR area is about 82,560 acres; the gross acreage of newly developable land is only 1.5% percent of the DR/GR area, in service of protecting vastly more land in its undeveloped state. These factors have been discussed in detail in the support documents for these amendments (particularly in *Prospects for Southeast Lee County*, *Transferable Development Rights in Southeast Lee County*, and *Natural Resource Strategies for Southeast Lee County*).

### **Lee County's precise solution:**

See redraft of Policies 33.3.3.3–5 (highlighted in green).

Add all five Mixed-Use Communities to Lee Plan Maps 6 and 7.