To: Mayor and Village Council

From: Edward Silva, Village Manager

Date: December 7, 2015

Re: Comp Plan TDR's for 2nd Reading

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO THE COMPREHENSIVE PLAN; CREATING POLICY 1.1.14 OF THE LAND USE ELEMENT OF THE COMPREHENSIVE PLAN RELATING TRANSFER OF DEVELOPMENT RIGHTS; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

UPDATE SINCE FIRST READING:
On November 2, 2015, this item was heard and passed on first reading without changes. The remainder of this report is as it was submitted on November 2, 2015.

BACKGROUND:
One of the principal purposes of the Comprehensive Plan is to provide direction to the Village in its pursuit of maintaining and enhancing those conditions which contribute to an environment where people want to live, work, learn, and play. These directives are contained within the goals, objectives, and policies of the Comprehensive Plan. Among them include the acquisition of park lands, the preservations of natural areas, the protection of residential neighborhoods, provisions for affordable housing, and the (re)development of commercial areas. The Comprehensive Plan calls for the continual effort to identify and implement tools which achieves those aims. One common tool used by some governments involves the Transfer of Development Rights or TDRs.

TDR programs allow for the unused development rights provided by the zoning of one property to be transferred and used on another property. These programs are implemented under the rubric that certain areas that are more suitable for development than others. Such suitability parameters may be driven by the same desires identified in the paragraph above. The essence of the TDR is to move the unused development right from a property identified for limited development or protection to another where appropriate infrastructure is available to handle the increased intensity.

The proposed amendment authorizes the village to establish a TDR program within its land development regulations. It also permits those properties that receive a development right

to have a maximum permitted land use density at an amount not to exceed 25% of the maximum permitted within the receiver's land use category.

ANALYSIS:
The following is a review of the request pursuant to the Village's Comprehensive Plan Amendment criteria found at Section 30-30.8(b) of the Land Development Code. The Background section, of this report is hereby incorporated by reference into this Analysis.

Criteria (1) Whether the proposal is internally consistent with the Comprehensive Plan, including the adopted infrastructure minimum levels of service standards and the concurrency management program.

Analysis: In reviewing the Village's Comprehensive Plan, the following Goals, Objectives, and Policies (GOP) below were identified as relating to the proposed amendment. Each GOP is provided with a brief analysis. The finding of those analysis' are provided at the end of this criterion.

GOAL 1: To guide the Village of Palmetto Bay from birth to early maturity as an outstanding and truly livable community in southeast Florida by building on, and improving, the existing land use blueprint through visionary planning and place-making, cost efficient provision of high quality facilities and services, quality neighborhood protection, and enhancement of its unique and beautiful coastal environmental resources.

Analysis: The proposed TDR provision is reflective of multiple goals, objective and policies which aim to steer development towards higher intensity areas that have available infrastructure, protect the integrity of the village's residential neighborhoods, creates the opportunity to acquire park lands, preserve conservation areas, provide opportunities for affordable housing, and facilitate development along the Franjo Road and South Dixie Highway areas. A listing of those goals, objectives, and policies are provided below.

Policy 1.1.8 Discourage land use patterns indicative of urban sprawl in the FLUM and any amendment applications by dictating compact development, mixed use where appropriate, and efficient use of public facility capacity and resources, while protecting single-family neighborhoods.

Analysis: The intent of the TDR provision is to steer development away from lower density areas to higher density areas consistent with the goals, objectives and policies identified in this analysis.

Objective 1.2 <u>Land Development Code</u>
Maintain, and revise as necessary, an effective Land Development Code (LDC), which clearly implements the goal, objectives and policies of this Element, and the adopted Comprehensive Plan as a whole, and regulates development quality and impacts.

Analysis:	Approval of the proposed ordinance authorizes the creation of TDR provisions within the village's land development regulations.
Policy 1.2.1	Continue to update the Village's Land Development Code so that it is consistent with this Future Land Use Element and other applicable elements of the adopted Comprehensive Plan, and provides Village businesses, residents and developers with a clear and concise set of zoning and other regulations for implementing Palmetto Bay's future vision.
Analysis:	Please see Objective 1.2.
Policy 1.2.2	Utilize creative, yet proven, land development techniques in the new Land Development Code that will allow developers to generate the unique mixed-use character expressed in the community charrettes and the future land use designs for the Franjo Road/U.S. 1 Commercial Area and Palmetto Bay Village Center focus areas.
Analysis:	Please see the Background section of this report. TDR provisions are a common tool used to redirect development away from lower intensity areas to higher intensity areas that have access to public infrastructure. The tool is used not only to encourage development in desired areas, but also to protect other areas from development.
Policy 1.5.4	Protect and enhance the lush flora and fauna of the Village through strong community landscape guidelines, land development regulations, and code enforcement.
Analysis:	Please see Background Section of this report. The TDR provision provides an opportunity for those lands that are undeveloped and in a natural state to transfer their development right to lands more suitable for urban development. The net effect is the preservation of the existing fauna of the sender site.
Policy 3.1.1	Increase and improve affordable housing supply and minimize potential blight of existing residential neighborhoods through the use of good land use planning, urban design, landscaping in development review, and proactive code enforcement.
Analysis:	See Background Section of this report. One of the stated intents of the proposed TDR provision is to encourage affordable housing. One the caveats under which a TDR may be granted is that the TDR units are used to satisfy an affordable housing need.
Policy 3.1.6	By January 2016, consider density bonuses for the provision of affordable housing.

Analysis:	Residential TDRs allocated on the bases of affordable housing may be applied to the receiving property at a rate of 25% above the maximum permitted density of that property.
Policy 3.3.1	Create development regulations and policies to promote and encourage private development of affordable housing in the Village of Palmetto Bay.
Analysis:	See the Background Section of the report and Policy 3.1.1. Application of a TDR could result in a density bonus to the receiving property of 25% above the maximum number of residential units permitted.
Policy 3.3.3	By January 2016, Council should review the provision of providing density bonuses for the establishment of affordable housing on infill sites, particularly for small renter households.
Analysis:	See the Background Section of the report and Policies 3.1.1 and 3.3.1.
Policy 5.1.1	The Village will limit the specific and cumulative impacts of development and redevelopment upon identified wetlands, water quality, water quantity, wildlife habitat, and living marine resources through the development review process.
Analysis:	See Background Section of this report. The proposed TDR provision provides a tool that allows for properties with the qualities described in this policy, to transfer its development rights to a receiver site where development is more appropriate.
Goal 6	Protect and enhance the environmental resources of Palmetto Bay to ensure continued resource availability and environmental quality through prudent management, public education, appropriate regulations and enforcement and active partnerships with governmental and environmental entities.
Analysis:	See Background Section of this report and Policies 1.5.4 and 5.1.1 above.
Policy 6.5.1	Manage environmentally sensitive natural systems in the Village, including, but not limited to, water resources, wetlands, and native habitats of flora and fauna through prudent land use planning and land development regulations.
Analysis:	See Background Section of this report and Policies 1.5.4 and 5.1.1 above.
Objective 6.7	Protection of Plants and Wildlife. Continue to ensure that wildlife and plant species listed as endangered threatened or of special concern that inhabit the environments in Palmetto Bay are protected and enhanced where possible.

Analysis: See Background section of this report. The proposed TDR provision provides a tool to transfer the development rights of lands that may have wildlife or plant species listed as endangered threatened or of special concern, to other areas of the Village where development is more appropriate.

Objective 6.11 Conservation Expansion. Continually seek public acquisition of additional areas for nature preserves and passive open spaces to expand the opportunities for conservation and increase public appreciation of natural habitats within the community.

Analysis: See Background section of this report and Policies 1.5.4 and 5.1.1, and Objective 6.7 above.

Policy 7.1.3 Maintain a balance of active parks, passive parks, and natural areas to meet the needs and expectations of Village residents, and seek future opportunities to increase the number of pocket parks and other urban open spaces distributed throughout the Village.

Analysis: See Background section of this report and Policies 1.5.4 and 5.1.1, and Objective 6.7 above.

Objective 7.4 Park Land Acquisition
Continue to explore opportunities to acquire land necessary for maintaining and enhancing the parks and recreation level-of-service (LOS) standards, strategically located in order to maximize accessibility to residents served.

Analysis: See Background section of this report and Policies 1.5.4 and 5.1.1, and Objective 6.7 above.

Finding: Consistent.

Criteria (2) Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing Comprehensive Plan, and whether the changes support or work against the proposed amendment.

Analysis: See the Background section and Criteria 1 of this analysis. The proposed ordinance is a reflection of goals, objectives, and policies within the Village's Comprehensive Plan. Those policies identified the desired changes the Village wishes to pursue to achieve its aim of becoming a first rate jurisdiction.

Finding: Consistent.

Criteria (3) Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved, the impact on adjacent or neighboring properties, consistency with existing

development, as well as compatibility with existing and proposed neighboring property land use.

Analysis: See Background section and Criteria 1 and 2 of this Analysis. The proposed ordinance attempts to seek a balance between neighborhood protection and growing the Village's economic base. The proposed ordinance steers development away from lower intensity areas to higher intensity areas with the stated aim of fulfilling one or more of the goals objectives and policies of the Village's Comprehensive Plan.

Finding: Consistent.

Criteria (4) Whether, and the extent to which, the proposal would adversely affect the property values in the affected area, or adversely affect the general welfare.

Analysis: See Background section and Criteria 1 of this analysis. The intent of the proposed ordinance is to protect certain areas of the village from development and increase the amount of available park and conservation land. The proposed ordinance steers development towards areas that have available infrastructure capable of handling additional development. All of these objectives are believed to add value to the lands involved and will have a positive effect on the general welfare.

Finding: Consistent.

Criteria (5) Whether the proposal would result in an orderly and compatible land use pattern. Any positive and negative effects on such pattern shall be identified.

Analysis: See Background section and Criteria 1, 3, and 4.

Finding: Consistent.

Criteria (6) Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and interest of the Comprehensive Plan.

Analysis: See the Background Section, and Criteria 1, 3, 4, and 5.

Finding: Consistent.

Criteria (7) Whether the proposed amendment meets the requirements of Section 163.3161, Florida Statutes, entitled "The Local Government Comprehensive Planning and Land Development Regulation Act."

Analysis: See this entire Analysis. The Comprehensive Plan serves as a blueprint for future commercial and residential land uses, housing, and conservation, as well as cultural and recreational amenities. An important component of the comprehensive plan is to identify and enable opportunities to achieve the

many goals, objectives, and policy stated therein. The proposed amendment supports that effort.

Finding: Consistent.

Criteria (8) Other matters which the Local Planning Agency or the Village Council, in its legislative discretion, may deem appropriate.

Finding: Decision for the Village Council.

FISCAL/BUDGETARY IMPACT:

It is not anticipated that the implementation of the TDR program will have a direct budgetary impact as the program will be accompanied by a required cost recovery application fee. Measurement of changes to ad valorem revenue remains an unknown as the program would involve some properties adding value and others, such as park and conservations areas, being removed from the real estate tax rolls. However, it is not an unreasonable expectation that the program could have a positive impact on the assessed value of lands within the Village as certain amenities are added, such as park and conservation lands, and other properties enjoyed enhanced development rights.

RECOMMENDATION:

Staff recommends approval.

Darby DelSalle, Planning and Zoning Director

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO THE COMPREHENSIVE PLAN; CREATING POLICY 1.1.14 OF THE LAND USE ELEMENT OF THE COMPREHENSIVE PLAN RELATING TRANSFER OF DEVELOPMENT RIGHTS; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, in 2005, the Village of Palmetto Bay Village Council adopted its Comprehensive Plan which provided for among other things, goals, objectives, and policies relating to the preservation of environmentally sensitive lands, increasing available park land, facilitating appropriate redevelopment and revitalization along Franjo Road and South Dixie Highway, and to providing affordable housing; and

WHEREAS, one commonly accepted method of achieving those aims is through a program that allows the transfer of development rights away from areas to be protected and/or preserved, to higher intensity zoning districts where development is desired; and

WHEREAS, the village desires to encourage development away from its lower intensity zoning districts to its higher intensity districts in order to achieve the stated goals, objectives and policies of the Comprehensive Plan; and

WHEREAS, in so doing additional land may become available to provide for parks and conservation; and

WHEREAS, the Village Council reviewed the criteria of 30-30.8(b) and find the ordinance in compliance with the applicable standards and the Comprehensive Plan; and

WHEREAS, the Mayor and Village Council now desires to create Policy 1.1.14 within the Land Use Element of the Village's Comprehensive Plan authorizing a transfer of development rights program.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, ACTING IN ITS CAPACITY AS THE LOCAL PLANNING AGENCY OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and incorporated herein by this reference.

Section 2. Compliance with Criteria. In evaluating an application for a Comprehensive Plan amendment, the Palmetto Bay Village Council is applies the standard under 30-30.8(b), of the Village's Code.

Additions shown by underlining and deletions shown by ~~overstriking~~.
"***" indicates portions of code excluded.

Section 3. The Land Use Element of the Village's Comprehensive Plan is amended to read as follows:

1.0 FUTURE LAND USE ELEMENT

GOAL 1 TO GUIDE THE VILLAGE OF PALMETTO BAY FROM BIRTH TO EARLY MATURITY AS AN OUTSTANDING AND TRULY LIVABLE COMMUNITY IN SOUTHEAST FLORIDA BY BUILDING ON, AND IMPROVING, THE EXISTING LAND USE BLUEPRINT THROUGH VISIONARY PLANNING AND PLACE-MAKING, COST EFFICIENT PROVISION OF HIGH QUALITY FACILITIES AND SERVICES, QUALITY NEIGHBORHOOD PROTECTION, AND ENHANCEMENT OF ITS UNIQUE AND BEAUTIFUL COASTAL ENVIRONMENTAL RESOURCES.

Objective 1.1 Future Land Use Map
Adoption and implementation of the Future Land Use Map (FLUM), including the land use amendments to individual parcels as referenced in the supporting Data, Inventory, and Analysis, and presented in Exhibit 1 and the element goals, objectives, and policies herein as the official and primary standard governing land use density and intensity in the Village of Palmetto Bay.

* * *

Policy 1.1.14: The Village shall adopt land development regulations that allow for the transfer of development rights (TDRs) with the intent to preserve environmentally sensitive lands, to increase available park land, to achieve a stated goal, objective or policy within the Village's Comprehensive Plan, to facilitate appropriate redevelopment and revitalization, to facilitate economic development, and/or to provide for affordable housing. Land eligible to receive TDRs shall be permitted to exceed its maximum permitted land use density by no more than 25%.

Section 4. Transmittal. The Village Council, acting in its capacity as the Local Planning Agency, approves the above amendment, as further modified herein, to the Comprehensive Plan. The Village Council, acting in its capacity as the Local Planning Agency, further recommends to the Village Council that it authorizes the Village Clerk to transmit the attached amendments the State of Florida Department of Economic Opportunity (DEO) and all other governmental bodies, agencies, or private individuals as required by State law.

Section 5. Severability. The provisions of this ordinance are declared to be severable, and if any sentence, section, clause or phrase of this ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sentences, sections, clauses or phrases of the ordinance, but they shall remain in effect it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any part.

Additions shown by underlining and deletions shown by ~~overstriking~~.
"***" indicates portions of code excluded.

Section 6. Conflicts. The provisions of the Comprehensive Plan of the Village of Palmetto Bay, Florida and all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 7. Codification. It is the intention of the Village Council and it is hereby ordained the provisions of this Ordinance shall become and be made part of the Comprehensive Plan of the Village of Palmetto Bay, Florida.

Section 8. Effective Date. This ordinance shall take effect 31 days after enactment.

PASSED and ENACTED this ____ day of _____, 2015.

First Reading: _____

Second Reading: _____

Attest: _____ _____

Meighan Alexander — Eugene Flinn

Village Clerk — Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE VILLAGE OF PALMETTO BAY ONLY:

_____

Dexter W. Lehtinen
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Karyn Cunningham _____

Council Member Tim Schaffer _____

Council Member Larissa Siegel Lara _____

Vice-Mayor John DuBois _____

Mayor Eugene Flinn _____

Additions shown by underlining and deletions shown by ~~overstriking~~.
"***" indicates portions of code excluded.

To: Mayor and Village Council

From: Edward Silva, Village Manager

Date: December 7, 2015

Re: Zoning TDR's for 2nd Reading

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; CREATING SECTION 30-30.15 OF THE LAND DEVELOPMENT CODE RELATING TO TRANSFER OF DEVELOPMENT RIGHTS; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

UPDATE SINCE FIRST READING:

On November 2, 2015, this item was heard on first reading. The item was approved with one modification at **page 4, line 9**, which corrected a scriveners error regarding the words "sender" and "receiver." That attached proposed ordinance is reflective of that amendment.

During the first reading presentation, staff agreed to sit down with a representative that spoke of particular concerns regarding specific language within the proposed ordinance. Staff met directly with the interested individual to discuss possible modifications to the proposed ordinance. Any modifications the council chooses to accept must be made by motion to amend the proposed ordinance prior to final adoption. Language added will be denoted by a double under-bar; deletions are reflected as a cross-thru. The items below are reflective of the speaker's requests.

Page 2, lines 22-25 – Eligibility

This provision defines which properties may be sender sites and which ones maybe receiver sites. The requested modification involved permitting properties within the future Downtown Urban Village (DUV) district to be receiver sites. The proposed ordinance limits the transfer rights to be deposited into a DUV reserve pool.

Staff prefers to maintain the reserve pool contribution concept because it provides the council greater control in directing development within the DUV district. However, this point may be moot considering the proposed code requires council consent to complete a TDR either way. If the council desires to allow properties within the DUV to be receiver sites, the following change of language is suggested.

(c) **Eligibility.** All lands within the Village, other than those zoned Downtown Urban Village (DUV), are eligible to be a sender site. Receiver

sites shall be limited to those lands zoned VMU, DUV, B-1, and B-2. ~~In addition, transfer of development rights from sender sites may be deposited into an established village reserve.~~

If the above change is made the following changes should also be implemented to maintain consistency throughout the proposed ordinance.

Page 2, lines 36-44

Sender site means the designated lot that transfers residential units and/or commercial floor area to a lot designated as a receiver site ~~or to an established village reserve for residential units or commercial floor area.~~

Transfer of development rights means the process by which development rights may be transferred from one lot within the village to another lot within the village~~, or into an established village reserve.~~

~~**Village reserve** means a reserve established by the village to capture transferred residential units and/or commercial floor area development rights that may be redistributed later within areas that are eligible to participate in a village reserve program.~~

Page 3, lines 2-6 – Public Hearing Required

It was requested that TDR be reviewed and approved administratively. Staff objects to this provision as it is believed such decisions belong to the village council. The net effect of a TDR is to confer development rights to one property, while taking them away from another. If it is the desire to accept this change, the council needs strike the 5 lines and renumber the paragraphs that follow. For consistency, the following changes would also be required.

Page 3, lines 28-30

(f) **Review Criteria.** In order to authorize any transfer of development rights as provided in Section 30-30.15, the ~~Village Council~~ staff must determine whether the following criteria have been met:

Page 4, lines 7-8

(g). All bonds, assessments, back village taxes, fees and liens (other than mortgages) affecting the parcels shall be paid in full prior to consideration by the Village ~~Council~~.

Page 3, lines 42-43 – Review Criteria, condition #4

Condition number 4 of the review criteria requires that a TDR "request [be] incorporated into and accompanied by an approved site plan pursuant to 30-30.5 or as otherwise approved by the Village Council." The requestor asked that a TDR approval not be tied to a site plan. The argument rests upon the idea that a site plan may take too long to complete in the context of what amounts to a real estate transaction. Further, the requirement may not similarly obstruct reaching a goal of the village when seeking to preserve park or conservation lands. Staff still prefers such requests be tied to a site plan and believes the current language allows for flexibility to not require one. However, the

language may be confusing. If the council desires to remove the criteria, then only those lines need to be struck and the paragraphs that follow to be renumbered.

Page 4, lines 10-12 – Expiration of Approval
This section ties the expiration of a TDR to a site plan approval. The desire was to properly identify how a transferred right would be utilized. However practical application is more difficult, particularly in the rubric that the TDR may also be a private financial transaction. It is recommended this section be deleted in its entirety.

Bonus Floor
This request was about allowing an additional floor(s) to accompany a TDR. A closer examination of the code revealed that an additional floor(s) might be needed to accommodate additional density or intensity. A compromise was reached that would grant an additional floor according to the schedule below.

A TDR of less than 10%	=	0 floors
A TDR increase of 10%	=	1 floor
A TDR increase of 20%	=	2 floors

The suggested language to the proposed ordinance would read as follows:

(h) For TDR's that grant an increase of less than 10%, no additional floor shall be granted. For TDR's that grant an increase over 10%, only one additional floor shall be permitted. For TDR's which grant over 20%, only two additional floors shall be permitted.

Public Notice
The last request involves public notice of a TDR request. The suggestion here is to permit public notice of fourteen days prior to hearing. Staff has no objection to this request. The suggested language to the proposed ordinance would read as follows:

(g) **Public notice.** Public notice in the form of mailers and posting shall be provided fourteen (14) days in advance of a hearing that considers a receiving property's request for a TDR. Procedures for posting and mailing notices shall be as provided for at section 30-30.11.

The remainder of this report is as it was submitted on November 2, 2015. Any portion of the remainder of this report that is contrary to this update section shall be deemed changed by this section. All portions of the Analysis section shall incorporate this update section.

BACKGROUND:
One of the principal purposes of the Comprehensive Plan is to provide direction to the Village in its pursuit of maintaining and enhancing those conditions which contribute to an environment where people want to live, work, learn, and play. These directives are contained within the goals, objectives, and policies of the Comprehensive Plan. Among them include the acquisition of park lands, the preservation of natural areas, the protection of residential neighborhoods, provisions for affordable housing, and the (re)development of

the commercial areas. The Comprehensive Plan calls for the continual effort to identify and implement tools which achieves those aims. One common tool used by some governments involves the Transfer of Development Rights or TDRs.

TDR programs allow for the unused development rights provided by the zoning of one property to be transferred and used on another property. These programs are implemented under the rubric that certain areas are more suitable for development than others. Such suitability parameters may be driven by many of the same desires identified in the paragraph above. The essence of the TDR is to move the unused development right from a property identified for limited development or protection to another where appropriate infrastructure is available to handle the increased intensity.

PROPOSED AMENDMENT:

To understand how a TDR program functions, one must first understand its underlying principles. This section describes (1) the intended objective under which a TDR request is to be utilized, (2) which lands within the village that are eligible to participate in the TDR program, (3) which rights may be transferred and how much may be transferred, and (4) the process to transfer a development right.

Objective. As stated in the Background Section of this report, TDR's are typically utilized to achieve a specific objective. As proposed, an eligible TDR application within the Village must seek to satisfy at least one of the following objectives:

1. preserve environmentally sensitive lands;
2. increase the amount of available park land;
3. achieve a stated goal, objective or policy of the Village Comprehensive Plan;
4. facilitate appropriate redevelopment; and
5. provide for affordable housing.

Identification of the above objectives is provided in greater detail at Criteria 1 in the Analysis section of this report.

Eligibility. Fulfillment of the above objectives is achieved by transferring rights from a sender site to a receiver site or to an established village reserve program. Eligible sender sites are all lands within the village with exception those zoned Downtown Urban Village (DUV). Eligible receiver sites are those zoned B-1, B-2, and VMU. An established reserve refers to a residential unit and commercial floor area reserve program within the DUV zoning regulations.

Transferable Rigths. The proposed program allows for the transfer of residential units and/or commercial floor area from one property to another or for the development right to be deposited into an established village reserve. For property to property transfers, the receiving property is permitted to increase the number of residential units and/or commercial floor area by 25% above the maximum permitted for that property.

Process. All requests for TDRs shall be subject to a public hearing before the Village Council. For property to property TDR requests, all property owners must be a party to the application and must be accompanied by a site plan application for the receiving property.

Allocation of rights shall expire if not utilized within two years of approval or as so identified in the phasing plan of the approved site plan. All properties involved in the TDR shall be required to record in the public record appropriate documentation to reflect the transferred rights.

ANALYSIS:
The following is a review of the request pursuant to the zoning amendment criteria found at Section 30-30.7(b) of the Land Development Code. The Background section and the proposed amendment section of this report are hereby incorporated by reference into this analysis.

Criteria (1) Whether the proposal is consistent with the Comprehensive Plan, including the adopted infrastructure minimum levels of service standards and the Village's concurrency management program.

Analysis: In reviewing the Village's Comprehensive Plan, the following Goals, Objectives, and Policies (GOP) below were identified as relating to the proposed amendment. Each GOP is provided with a brief analysis. The finding of those analysis' is provided at the end of this criterion.

GOAL 1: To guide the Village of Palmetto Bay from birth to early maturity as an outstanding and truly livable community in southeast Florida by building on, and improving, the existing land use blueprint through visionary planning and place-making, cost efficient provision of high quality facilities and services, quality neighborhood protection, and enhancement of its unique and beautiful coastal environmental resources.

Analysis: The proposed TDR provision is reflective of the multiple goals, objectives and policies which aim to steer development towards higher intensity areas that have available infrastructure, protect the integrity of the village's residential neighborhoods, create the opportunity to acquire park lands, preserve conservation areas, provide opportunities for affordable housing, and facilitate development along the Franjo Road and South Dixie Highway areas. A listing of those goals, objectives and policies are as provided below.

Policy 1.1.8 Discourage land use patterns indicative of urban sprawl in the FLUM and any amendment applications by dictating compact development, mixed use where appropriate, and efficient use of public facility capacity and resources, while protecting single-family neighborhoods.

Analysis: The TDR provision steers development away from lower density areas to higher density areas where access to public facility capacity exists.

Policy 1.1.12 Encourage balanced future land use patterns along the US 1 commercial corridor that would ensure a natural buffer or transition area between the commercial uses and the single family residential areas, thus ensuring the

concentration of future development in areas with adequate infrastructure and facilities.

Analysis: See Policy 1.1.8 above.

Objective 1.2 Land Development Code
Maintain, and revise as necessary, an effective Land Development Code (LDC), which clearly implements the goal, objectives and policies of this Element, and the adopted Comprehensive Plan as a whole, and regulates development quality and impacts.

Analysis: Evaluation of this objective must be viewed through the entire analysis of Criteria 1 as related to the GOPs within the Land Use Element of the Comprehensive Plan. As such, all GOPs which start with the number "1" are hereby incorporated into this analysis and found to be consistent with the objective.

Policy 1.2.1 Continue to update the Village's Land Development Code so that it is consistent with this Future Land Use Element and other applicable elements of the adopted Comprehensive Plan, and provides Village businesses, residents and developers with a clear and concise set of zoning and other regulations for implementing Palmetto Bay's future vision.

Analysis: See Objective 1.2.

Policy 1.2.2 Utilize creative, yet proven, land development techniques in the new Land Development Code that will allow developers to generate the unique mixed-use character expressed in the community charrettes and the future land use designs for the Franjo Road/U.S. 1 Commercial Area and Palmetto Bay Village Center focus areas.

Analysis: See the Background section of this report. TDR provisions are a common tool used to redirect development away from lower intensity areas to higher intensity areas that have access to public infrastructure. The tool is used not only to encourage development in desired areas, but also to protect other areas from development. The TDR as propose has the same effect.

Policy 1.5.4 Protect and enhance the lush flora and fauna of the Village through strong community landscape guidelines, land development regulations, and code enforcement.

Analysis: See Background Section of this report. The TDR provision provides an opportunity for those lands that are undeveloped and in a natural state to transfer their development right to lands more suitable for urban

development. The net effect is the preservation of the existing fauna of the sender site.

Policy 3.1.1 Increase and improve affordable housing supply and minimize potential blight of existing residential neighborhoods through the use of good land use planning, urban design, landscaping in development review, and proactive code enforcement.

Analysis: See Background Section of this report. One of the stated intents of the proposed TDR provision is to encourage affordable housing. One the caveats under which a TDR may be granted is that the TDR units are used to satisfy an affordable housing need.

Policy 3.1.4 Support the provision of affordable housing in close proximity to regional transit corridors and nearby shopping opportunities.

Analysis: See Background Section of this report. The majority of the areas eligible to receive transferred residential development rights reside adjacent to and nearby the South Dade Busway. Further, the program allows to TDR residential units into the DUV residential reserve. One of the purposes of the DUV is to provide a concentrated residential and retail area within the Village.

Policy 3.1.6 By January 2016, consider density bonuses for the provision of affordable housing.

Analysis: Residential TDRs allocated on the bases of affordable housing may be applied to the receiving property at a rate of 20% above the maximum permitted density of that property.

Policy 3.3.1 Create development regulations and policies to promote and encourage private development of affordable housing in the Village of Palmetto Bay.

Analysis: See the Background Section of the report and Policy 3.1.1. Application of a TDR could result in a density bonus to the receiving property of 25% above the maximum number of residential units permitted.

Policy 3.3.3 By January 2016, Council should review the provision of providing density bonuses for the establishment of affordable housing on infill sites, particularly for small renter households.

Analysis: See the Background Section of the report and Policies 3.1.1 and 3.3.1.

Policy 5.1.1 The Village will limit the specific and cumulative impacts of development and redevelopment upon identified wetlands, water quality, water

quantity, wildlife habitat, and living marine resources through the development review process.

Analysis: See Background Section of this report. The proposed TDR provision provides a tool during the land development review process that allows for properties with the qualities described in this policy, to transfer its development rights to a receiver site or reserve pool where development is more appropriate.

Goal 6 Protect and enhance the environmental resources of Palmetto Bay to ensure continued resource availability and environmental quality through prudent management, public education, appropriate regulations and enforcement and active partnerships with governmental and environmental entities.

Analysis: See Background Section of this report and Policies 1.5.4 and 5.1.1 above.

Policy 6.5.1 Manage environmentally sensitive natural systems in the Village, including, but not limited to, water resources, wetlands, and native habitats of flora and fauna through prudent land use planning and land development regulations.

Analysis: See Background Section of this report and Policies 1.5.4 and 5.1.1 above.

Objective 6.7 Protection of Plants and Wildlife. Continue to ensure that wildlife and plant species listed as endangered threatened or of special concern that inhabit the environments in Palmetto Bay are protected and enhanced where possible.

Analysis: See Background section of this report. The proposed TDR provision provides a tool to transfer the development rights of lands that may have wildlife or plant species listed as endangered threatened or of special concern, to other areas of the Village where development is more appropriate.

Objective 6.11 Conservation Expansion. Continually seek public acquisition of additional areas for nature preserves and passive open spaces to expand the opportunities for conservation and increase public appreciation of natural habitats within the community.

Analysis: See Background section of this report and Policies 1.5.4 and 5.1.1, and Objective 6.7 above.

Policy 7.1.3 Maintain a balance of active parks, passive parks, and natural areas to meet the needs and expectations of Village residents, and seek future opportunities to increase the number of pocket parks and other urban open spaces distributed throughout the Village.

Analysis: See Background section of this report and Policies 1.5.4 and 5.1.1, and Objective 6.7 above.

Objective 7.4 Park Land Acquisition
Continue to explore opportunities to acquire land necessary for maintaining and enhancing the parks and recreation level-of-service (LOS) standards, strategically located in order to maximize accessibility to residents served.

Analysis: See Background section of this report and Policies 1.5.4 and 5.1.1, and Objective 6.7 above.

Finding: Consistent.

Criteria (2) Whether the proposal is in conformance with all applicable requirements of Chapter 30.

Analysis: This item is accompanied by a companion ordinance to the Comprehensive Plan which requires the establishment of the TDR program within the Village's Land Development Code. It further authorizes that a receiver site be permitted to exceed maximum permitted density by 25%. State law requires municipal zoning codes to be consistent with its Comprehensive Plan. The proposed amendment provides for the 25% rule thus making the request conforming to the Village's Comprehensive Plan and Chapter 30 of the Village's Code of Ordinances.

Finding: Consistent.

Criteria (3) Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations, and whether the changes support or work against the proposed change in land use policy.

Analysis: See the Background section and Criteria 1 of this analysis. The proposed ordinance is a reflection of goals, objectives, and policies within the Village's Comprehensive Plan. Those policies identified the desired changes the Village wish to pursue to achieve its aim of becoming a first rate jurisdiction.

Finding: Consistent.

Criteria (4) Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved, the impact on adjacent or neighboring properties, consistency with existing development, as well as compatibility with existing and proposed land uses.

Analysis: See Background Section and Criteria 1 and 2 of this Analysis. The proposed ordinance attempts to seek a balance between neighborhood protection and

growing the Village's economic base. The proposed ordinance steers development away from lower intensity areas to higher intensity areas with the stated aim of fulfilling one or more of the goals, objectives and policies of the Village's Comprehensive Plan.

Findings: Consistent.

Criteria (5) Whether, and the extent to which, the proposal would result in demands on transportation systems, public facilities and services; would exceed the capacity of the facilities and services, existing or programmed, including: transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services.

Analysis: See Background section and Criteria 1 of this Analysis. The program seeks to increase the amount of park land and conservation areas among other stated goals, objectives, and policies of the Village's Comprehensive Plan. Any property which receives development rights must continue to comply with concurrency requirements as so required by the Village's Comprehensive Plan.

Finding: Consistent.

Criteria (6) Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetland protection, preservation of groundwater aquifer, wildlife habitats, and vegetative communities.

Analysis: See Background section and Criteria 1 and 5 above.

Finding: Consistent.

Criteria (7) Whether, and the extent to which, the proposal would adversely affect the property values in the affected area, or adversely affect the general welfare.

Analysis: See Background section and Criteria 1 of this analysis. The intent of the proposed ordinance is to protect certain areas of the village from development and increase the amount of available park and conservation land. The proposed ordinance steers development towards areas that have available infrastructure capable of handling additional development. All of these objectives are believed to add value to the lands involved and will have positive effect on the general welfare.

Finding: Consistent.

Criteria (8) Whether the proposal would result in an orderly and compatible land use pattern. Any positive and negative effects on land use pattern shall be identified.

Analysis: See Background section and Criteria 1, 2, 4, 5, and 7.

Finding: Consistent.

Criteria (9) Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and intent of Chapter 30.

Analysis: See Criteria 1, 2, 4, 5, 7, and 8. Based on the above reviews and the attached Studies, the request is in harmony with Chapter 30.

Finding: Consistent.

Criteria (10) Other matters which the Local Planning Agency or the Village Council in its legislative discretion may deem appropriate.

Finding: Decision for the Village Council.

FISCAL/BUDGETARY IMPACT:

It is not anticipated that the implementation of the TDR program will have a direct budgetary impact as the program will be accompanied by a required cost recovery application fee. Measurement of changes to ad valorem revenue remains an unknown as the program would involve some properties adding value and others, such as park and conservations areas, being removed from the real estate tax rolls. However, it is not an unreasonable expectation that the program could have a positive impact on the assessed value of lands within the Village as certain amenities are added such as park and conservation lands, and other properties enjoyed enhanced development rights.

RECOMMENDATION:

Staff recommends approval.

Darby DelSalle, Planning & Zoning Director

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; CREATING SECTION 30-30.15 OF THE LAND DEVELOPMENT CODE RELATING TO TRANSFER OF DEVELOPMENT RIGHTS; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, in 2005, the Village of Palmetto Bay Village Council adopted its Comprehensive Plan which provided for among other things, goals, objectives, and policies relating to the preservation of environmentally sensitive lands, increasing available park land, facilitating appropriate redevelopment and revitalization along Franjo Road and South Dixie Highway, and to providing affordable housing;

WHEREAS, one commonly accepted method of achieving those aims is through a program that allows the transfer of development rights away from areas to be protected and/or preserved, to higher intensity zoning districts where development is desired;

WHEREAS, the village desires to encourage development away from its lower intensity zoning districts to its higher intensity districts in order to achieve the stated goals, objectives and policies of the Comprehensive Plan;

WHEREAS, in so doing additional land may become available to provide for parks and conservation;

WHEREAS, the Village Council reviewed the criteria of 30-30.7(b) and find the ordinance in compliance with the applicable standards and the Comprehensive Plan; and

WHEREAS, the Mayor and Village Council now desire create section 30-30.15 establishing a transfer of development rights program.

NOW, THEREFORE, BE IT ENACTED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:

Section 1. Pursuant to the requirements of 30-30.7(b) of the Village's Code of Ordinances, the following text change is in compliance with the review criteria and the Comprehensive Plan.

Section 2. Section 30-30.15 of the Village's Code of Ordinances entitled "Transfer of Development Rights" shall be created as follows:

DIVISION 30-30. Development Approval Procedures

* * *

Additions shown by underlining and deletions shown by ~~overstriking~~.
"***" indicates portions of code excluded.

30-30.15 Transfer of Development Rights

(a) **Intent and purpose.** The intent of this section is to permit and regulate the transfer of development rights within the Village in a manner that is consistent with and complimentary to the goals, objectives and policies of the Village's Comprehensive Plan. Transfer of development rights may be used to preserve environmentally sensitive lands, to increase available park land, to achieve a stated goal, objective or policy of the Village's Comprehensive Plan, to facilitate appropriate redevelopment and revitalization, to facilitate economic development, or to provide for affordable housing.

(b) **General.** Except as provided below in section 30-30.15(c), the provisions provided within section 30-30.15 do not replace and shall not be applied in lieu of the transfer of development rights program that is exclusive to the Downtown Urban Village zoning district as provided within section 30-50.23. Approval of a transfer a development right pursuant to 30-30.15 shall permit the transferal of residential units and/or commercial floor area not to exceed 25% of the maximum permitted on the receiving property. Any property owner(s) seeking to apply for a transfer of development right must first submit a written request to the village for a "determination of development right" verifying maximum residential units and/or commercial floor area development potential of the sender site and the receiver site.

(c) **Eligibility.** All lands within the Village, other than those zoned Downtown Urban Village (DUV), are eligible to be a sender site. Receiver sites shall be limited to those lands zoned VMU, B-1, and B-2. In addition, transfer of development rights from sender sites may be deposited into an established village reserve.

(d) **Specific definitions.** For the purpose of section 30-30.15, the following words and phrases shall have the meanings as defined below:

Determination of development right means an official zoning letter issued by the village which verifies the maximum residential and/or commercial development potential of a particular property. The letter does not guarantee such potential development right can be fully achieved on any given property.

Receiver site means the designated lot which receives residential units and/or commercial floor area that is transferred from a lot designated as a sender site.

Sender site means the designated lot that transfers residential units and/or commercial floor area to a lot designated as a receiver site or to an established village reserve for residential units or commercial floor area.

Transfer of development rights means the process by which development rights may be transferred from one lot within the village to another lot within the village, or into an established village reserve.

Village reserve means a reserve established by the village to capture transferred residential units and/or commercial floor area development rights that may be redistributed later within areas that are eligible to participate in a village reserve program.

(e) **Transfer Process.**

Additions shown by underlining and deletions shown by ~~overstriking~~.
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(1) Public hearing required. All requests for transfer of development rights shall require a public hearing. Those requests which involve the transfer of development rights from one property to another shall require a quasi-judicial public hearing and be reviewed in conjunction with a site plan application request pursuant to section 30-30.5.

(2) The owner(s) of the sender and receiver sites are encouraged to meet with village staff prior to submission of an application for transfer. The purpose of the meeting is to discuss the development and/or redevelopment of the sender and receiver sites and to understand any limitations that may be imposed upon the sender and receiver sites.

(3) The owner(s) of the sender and receiver sites shall submit an application for the request of the transfer of the development right(s) on a form provided by the Village, and provide such information requested by the Village to approve the transfer. At a minimum, the information shall include the following:

a. A survey of the sender and receiver sites;

b. Proof of ownership of the receiver site and the sender site;

c. A "determination of development right" letter issued by the village for both the sender site and the receiver site;

d. For a request which transfers development rights from one property to another, a complete site plan application of the receiver site must be submitted and reviewed pursuant to section 30-30.5.

(4) *Deed of Transfer:* Upon approval by the Council, the sender site and the receiver site shall record within 30 days a copy of the approving resolution in the chain of title in the public record of Miami-Dade County, and provide a copy thereof to the Village.

(f) **Review Criteria.** In order to authorize any transfer of development rights as provided in Section 30-30.15, the Village Council must determine whether the following criteria have been met:

1. That the property(s) subject to the transfer of development right is eligible pursuant to section 30-30.15(c).

2. That the transfer of development right is consistent with the goals, objectives and policies of the Village's Comprehensive Plan.

3. That the transfer of development rights preserves environmentally sensitive lands, increases available park land, facilitates appropriate redevelopment and revitalization, facilitates economic development, or results in providing for affordable housing.

4. That for transfers of development rights from one property to another property, the request is incorporated into and accompanied by an approved site plan pursuant to 30-30.5 or as otherwise approved by the Village Council.

5. That for transfers of development rights from one property to another property, the number of residential units, commercial lot coverage and/or commercial floor area does not exceed 25% of the maximum permitted at the receiving site.

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6. That there are no active code violations on the sender or receiver site.

(g). All bonds, assessments, back village taxes, fees and liens (other than mortgages) affecting the parcels shall be paid in full prior to consideration by the Council.

(h) **Expiration of approval.** Expiration of any approval of transfer of development right shall be pursuant to section 30-30.2(k). Upon such expiration, the transferred development rights revert back to the ~~receiver~~ sender site and no longer inure to the ~~sender~~ receiver site.

Section 3. Conflicting Provisions. The provisions of the Code of Ordinances of the Village of Palmetto Bay, Florida and all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 4. Severability. The provisions of this Ordinance are declared to be severable, and if any sentence, section, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sentences, sections, clauses or phrases of the Ordinance, but they shall remain in effect it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Codification. It is the intention of the Village Council and it is hereby ordained the provisions of this Ordinance shall become and be made part of the Code of Ordinances of the Village of Palmetto Bay, Florida, that sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. Effective Date. This ordinance shall take effect immediately upon enactment.

PASSED and ENACTED this ____ day of _____, 2015.

First Reading: _____
Second Reading: _____

Attest: _____ _____
Meighan Alexander Eugene Flinn
Village Clerk Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE
USE AND RELIANCE OF THE VILLAGE OF PALMETTO BAY ONLY:

_____
Dexter W. Lehtinen
Village Attorney

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FINAL VOTE AT ADOPTION:

Council Member Karyn Cunningham _____

Council Member Tim Schaffer _____

Council Member Larissa Siegel Lara _____

Vice-Mayor John DuBois _____

Mayor Eugene Flinn _____

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