

## **Conservation Collier**

### **Summary of Issues:**

#### **Transfer of Development Rights Bonus Credits Provisions identified in Ordinance 2005-49 May 9, 2007**

##### **Purpose:**

The purpose of this summary is to identify the issues involved with certain provisions for conveyance of lands to Conservation Collier under the Transfer of Development Rights (TDR) bonus credits created by ordinance 2005-49 so that policy options can be explored and a recommendation to the Board of County Commissioners can be formulated for such conveyances.

##### **Problem Statement:**

The Conservation Collier Program has identified broad Target Protection Areas that generally satisfy the initial screening criteria and meet the goals of Conservation Collier. One of these Target Protection Areas is land designated as "Sending Lands" in the Rural Fringe Mixed use District (RFMUD). At the same time Conservation Collier's Target Protection Areas were being developed, The TDR program was being implemented in the RFMUD. Under this program, lands designated as "Sending Lands" were assigned development rights credits that could be separated from the bundle of property rights associated with a property and sold, creating in essence a permanent conservation easement. In 2005, additional bonus credits were created by Ordinance 2005-49 due to concerns that in the original TDR program, there was no provision for long-term environmentally focused land management. The concern was that even though a property would be preserved under the original TDR program, and no longer vulnerable to development, it may be vulnerable to other types of degradation factors. For example, the habitat value of that land may deteriorate via infestation of exotic plants or animals, altered drainage patterns, inhibition of fire regime, human uses with negative impacts (ORV trails).

Ordinance 2005-49 created two approved TDR bonus provisions, called the third and fourth TDR's; the third for development of a management plan and the fourth for conveyance of the land to a public agency. The third provides 1 TDR bonus credit for each TDR credit severed for developing a Restoration and Management Plan (RMP). The ordinance currently requires that a bond guarantee that the management plan remains in place and be performed until it achieves its stated goals **or** the property is conveyed to a public agency. This is being changed in the current LDC amendment cycle to be a "letter of credit" instead of a bond. Under this provision, conveyance to an entity such as Conservation Collier would shift the responsibility for long term management to that entity. The ordinance requires that the RMP provide for the exotic vegetation removal and maintenance to be performed by a contractor acceptable to the County, but in event of a conveyance, the actual performance of the initial exotic vegetation removals is not a requirement but rather a negotiated event between the owner and agency receiving the conveyance. Without a conveyance, an owner could elect just to put the management plan in place and do the exotic removals themselves, in which case the owner would pay for the work. The fourth TDR bonus credit provision is for the actual conveyance of land in fee simple to a federal, state, or local government agency as a gift. All that is required by the ordinance to achieve this credit is that a RMP has been accepted.

The Conservation Collier Ordinance, Policy and Rules (OPR) Subcommittee met on 4/3/07 to discuss this issue. Several property owners of a property now going through the TDR severance process and proposed for conveyance under the provisions of 2005-49 were in attendance. This proposal is for the Benfield road properties, approximately 20 contiguous acres, and 17 properties, owned by 8 owners. The discussions ended with the subcommittee members preparing recommendations in the form of bullet points for consideration by the main Conservation Collier Committee at the 4-9-07 Conservation Collier Land Acquisition Advisory Committee (CCLAAC) meeting. The bullet points developed were as follows:

- All potential conveyances are to go through the regular evaluation process. *This is required by the Conservation Collier ordinance in Section 9.3.*
- The CCLAAC will consider acceptance of a conveyance provided it meets Conservation Collier criteria as identified in the Conservation Collier ordinance (2002-63).
- The CCLAAC will consider lands proposed for conveyance under the TDR program even if those lands have a resulting conservation easement placed over them pursuant to requirements of the TDR severance process. *An administrative change initiated by the County Attorney's Office is under review that would change the requirement for a conservation easement to that of a "Limitation of Development Rights Agreement." This instrument will fulfill the TDR severance requirements and yet not be a conservation easement.*
- Owners proposing conveyance must provide funds to do an initial exotic removal, by agreement with the County, or remove the exotics themselves (using a contractor acceptable to the County) prior to acceptance of a conveyed parcel.
- A long term endowment should accompany conveyed lands. Management Plans must meet both Conservation Collier and LDC/TDR severance requirements. *Conservation Collier staff will assist landowners by developing a template for a management plan that is acceptable to meet severance requirements.*

This information was provided to the CCLAAC at the 4/9/07 meetings; however, staff questioned at that time whether a policy that required a long term management funding endowment would reduce incentive for such conveyances. The CCLAAC remanded the issue to the OPR subcommittee for further discussion. Members of the Lands Evaluation and Management Subcommittee asked to be included and a joint subcommittee meeting to discuss the issue was set for 5/17/07.

After additional review of the ordinance and the issue, staff would like to offer the following for consideration:

- Because lands proposed for conveyance may not be representative of those with the highest natural resource values, which Conservation Collier is seeking to acquire, the provision of funding for long term management may be something the County would want to require or the owner would want to offer as incentive for Conservation Collier to accept the conveyance. What do other agencies require?
  - State – Florida Department of Environmental Protection – Information has been requested from the agency.
  - State - South Florida Water Management District (SFWMD) – In the process of confirming SFWMD charges approx. \$3,000 to perform an initial assessment of lands offered and \$722 per acre management costs.

- Federal - the federal parks do not typically accept donated parcels that are not within established national park boundaries. If they do, it requires a boundary adjustment and there is no fee charged to the donating entity, rather the park must demonstrate to congress that it has the management funds in place.
- Solid waste dumping is often an issue on rural properties. Acceptance of conveyances should be subject to receiving the property free of dumped solid waste.
- There may be potential for contamination of the land what would trigger Federal Environmental Protection Agency cleanup. A blanket requirement to perform a Phase I Environmental Survey (cost approx \$3,000) could reduce incentive to convey, however, an evaluation could be made on a case by case basis, and if warranted by observations on the property, might be required at the owner's expense, to provide assurances that that the land is not contaminated. Should a Phase I ES indicate the need for further testing, this also should be done by the owner and the results provided to the Board of County Commissioners prior to making a decision on accepting the conveyance.
- Listed species management is a requirement for the RMP to be acceptable under 2005-49. If specific management actions require funding, those could be considered as part of a required minimum funding endowment.

**Recommended Course of Action:**

Staff recommends that the subcommittees make a recommendation for a minimum requirement for conveyance management needs funding, including initial exotic removals and solid waste removal, and negotiate on a case-by-case basis costs for special or expensive listed species management needs and a Phase I Environmental Survey. Additionally, the subcommittees may make a recommendation regarding whether a long term management endowment will be required or will be a subject for negotiation, considering the acceptance standards of state and federal agencies.