



**NONCONFORMING PROPERTIES:  
CONFORMING NONCONFORMING DENSITY AND  
OTHER CONSIDERATIONS**

**PLANNING & ZONING BOARD  
WORKSHOP  
MARCH 31, 2015**

**TOWN OF LONGBOAT KEY  
AND  
UNIVERSITY OF FLORIDA  
RESILIENT COMMUNITIES INITIATIVE (FRCI)**

# NONCONFORMITIES

## Four (4) Primary Categories:

1. Nonconforming Uses
2. Nonconforming Sites
3. Nonconforming Structures
4. Nonconforming Lots or Parcels

## **NONCONFORMITIES:**

**BECAUSE OF PRIOR LEGISLATIVE DECISIONS, LBK CURRENTLY HAS PROPERTIES THAT FALL WITHIN ALL FOUR (4) CATEGORIES: NONCONFORMING USES, SITES, STRUCTURES, AND LOTS.**

**THE MOST PROBLEMATIC OF WHICH, FROM A POLICY STANDPOINT, ARE NONCONFORMING USES AND SITES.**

**NONCONFORMING SITES ARE PARTICULARLY PROBLEMATIC BECAUSE CERTAIN EXISTING DENSITIES,**

**I.E., THE EXISTING NUMBER OF UNITS PER ACRE, ARE INCONSISTENT WITH THE LIMITATIONS OF THE COMPREHENSIVE PLAN AND THE LAND DEVELOPMENT CODE.**

## **POLICY CONSIDERATIONS:** **DENSITY**

### **2008 Referendum (Ord 2007-48) – Asked:**

For the properties that **have more dwelling or tourism units** than currently allowed, but which were legal at the time they were created, may the Town consider and grant approval to **allow those properties to rebuild to their current dwelling or tourism unit levels** in the event of **involuntary or voluntary** destruction?

**Answered:** in the affirmative by the electors.

**WHAT WE HAVE ACCOMPLISHED:**

**ORDINANCE 2015-02:**

**NEW POLICY (SINGLE POLICY):**

**Policy 1.1.5**

The Land Development Code will specify standards for redeveloping lawfully existing property that does not currently conform to the future land use density and building volume limits provided elsewhere in this Plan—and may establish standards to conform certain property with lawfully existing nonconforming density.

## ORDINANCE 2015-02

- Town Commission has unanimously approved on first reading.
- State Department of Economic Opportunity (formally Community Affairs—DCA) has confirmed (no objections)
- State Department of Transportation (DOT) has commended “arduous” effort
- Pending approval on Town Commission second reading.

# DENSITY – Town Charter

The Charter does not define “**density.**”

Article II, Section 22., entitled, **Comprehensive Plan**, provides:

- (a) The town commission shall cause **plans** to be developed on a continuing basis for the future development and maintenance of the town, considering the health, safety, morals, environmental protection, aesthetics, convenience and general welfare of the town and its residents.

# DENSITY – Town Charter, continued

AND

- (b) The present **density** limitations provided in the existing **comprehensive plan** as adopted March 12, 1984 shall not be increased without referendum.

# DENSITY – Comprehensive Plan

“**Density**” is used extensively in the Future Land Use Element.

Policy 1.1.10 and Table 1 generally reference “**density**” in **units per acre**.

**BUT**

The Comprehensive Plan does not define “**density.**”

# DENSITY – Land Development Code

“Density” is defined in the LDC.

## **Section 158.006 Definitions.**

*“Density, maximum gross.”* The maximum allowable number of dwelling or tourism units per acre of gross land area, as determined by this Zoning Code. (See “Gross land area.”)

*“Gross land area.”* Those contiguous land areas under common ownership with the following provisions and exceptions:

# DENSITY – Land Development Code

“*Gross land area*”—provisions and exceptions:

- (1) In cases where land abuts the tidal waters of the Gulf of Mexico, Sarasota Bay, and all bayous, estuaries, tributaries and manmade canals thereof, the boundary of land shall be delineated as established by F.S. ch. 177, pt. II, Coastal Mapping, or as may be amended.

# DENSITY – Land Development Code

“*Gross land area*”—provisions and exceptions:

(2) No submerged land or aquatic areas waterward of the boundary above-described, shall be included as land under this definition. Submerged land or aquatic areas shall include both tidal waters as well as nontidal rivers, streams, lakes, and lands beneath same. The upper limit of these waterbodies is the mean high tide line in tidal areas and the ordinary high water line in nontidal areas.

# DENSITY – Land Development Code

“*Gross land area*”—provisions and exceptions:

- (3) No land areas proposed to be allocated to nonresidential uses shall be included as residential land under this definition. Such nonresidential land shall not be calculated in density calculations, **excepting contiguous areas under unity of title which are stipulated for use as:**
  - (a) **Infrastructure required** to support the proposed residential development; or
  - (b) **Recreational lands** for the primary use of **on-site residents**.

# DENSITY – Land Development Code

## Section 158.006 Definitions –continued.

*“Density, overall.”* The maximum allowable number of tourism and dwelling units divided by the acreage of all property included respectively in the MUC-1, MUC-2, and MUC-3 zoning districts, including associated recreational areas, open space areas, road rights-of-way, wetland areas, and other nonresidential lands in each respective district.

- **Thus, two separate definitions for density:**  
One for “ARVIDA,” probably more generous. . . .

# DENSITY – Land Development Code

**“Density, maximum gross.”** The maximum allowable number of dwelling or tourism units per acre of gross land area, as determined by this Zoning Code. (See “Gross land area.”)

**“Density, overall.”** The maximum allowable number of tourism and dwelling units divided by the acreage of all property included respectively in the MUC-1, MUC-2, and MUC-3 zoning districts, including associated recreational areas, open space areas, road rights-of-way, wetland areas, and other nonresidential lands in each respective district.

# DENSITY – Land Development Code

- Given the complexity of the MUC districts, it may continue to be necessary to continue with two definitions
- Given the developed nature of the town, a simplified definition of density that doesn't trigger understanding more than eight (8) additional definitions might be better.

# DENSITY – Land Development Code

## Section 158.006 Definitions—*continued.*

**“Dwelling units (DU).”** A dwelling, room, or group of rooms including a kitchen and sanitary facilities designed and used exclusively for residential use as separate living quarters by not more than one family.

**“Tourism unit (TU).”** A building, or portion thereof, including a room or rooms, designed or used for tourism use. Any room or rooms capable of being separated as a self-contained entity by permanent or moveable walls or doors with individual access to a public corridor, public access area, or exterior, shall each be counted as one “tourism unit.”

# DENSITY – Land Development Code

## Section 158.006 Definitions—*continued*.

**“Dwelling.”** A **building** or portion thereof designed or used exclusively for **residential occupancy**. [5 types: **mobile home, multiple or multifamily, single-family, two-family, and townhouse** (which provides: “see multiple or multifamily dwelling.”)].

**“Residential use” or “residential occupancy.”** The use of a **building**, or portion thereof, designed for and used for occupancy periods of not less than 30 days as provided in **subsection (4) herein**. “Residential use” may allow for occupancy periods of less than 30 days by one **family**, and only that same **family**, and shall not preclude visitation by guests, provided that such property is not used as a **tourism use** for remuneration.

# DENSITY – Land Development Code

## Section 158.006 Definitions—*continued.*

**“Building.”** See “**structure.**” Any structure having a roof including a screened pool cage, supported by columns or walls and intended for the shelter, housing or enclosure of any individual, animal, process, equipment, goods or materials of any kind or nature. Any other structural appendage to a building, including a deck which protrudes more than six inches above finished grade shall be considered a building, except that permanent planters shall not be considered a building.

**“Structure.”** A combination of materials to for a construction for use, occupancy, or ornamentation whether installed on, above, or below the surface of land or water. Includes “building”. See “Building”.

# DENSITY – Land Development Code

## Section 158.006 Definitions—*continued.*

**“Family.”** An individual, or two or more persons related by legal adoption, blood, or a licit marriage, or a group of not more than four persons who need not be related by blood or marriage, any of whom are living together in a single housekeeping unit in a **dwelling**, or a group of not more than 14 unrelated residents plus staff who operate as the functional equivalent of a family in a **community residential home**.

**“Tourism use.”** Use, or occupancy, or the design for use or occupancy, by any person, of any property for transient lodging purposes where the term of occupancy, possession or tenancy of the property by the person entitled to such occupancy is less than 30 consecutive calendar days or one entire calendar month, whichever is less.

# NONCONFORMITIES

Four (4) Primary Categories:

1. Nonconforming Uses

2. Nonconforming Sites

3. Nonconforming Structures

4. Nonconforming Lots or Parcels

## **NONCONFORMITIES:**

**THE REVISIONS TO THE COMPREHENSIVE PLAN THAT ARE IN PROCESS ARE THE FIRST STEP TOWARD CONFORMING EXISTING PROPERTIES THAT ARE NONCONFORMING FOR THE TOWN'S CURRENT COMPREHENSIVE PLAN AND LAND DEVELOPMENT CODE LIMITATIONS ON DENSITY AND USE.**

**SUBSEQUENT REVISIONS TO THE LAND DEVELOPMENT CODE ARE REQUIRED TO ULTIMATELY ESTABLISH COMPLETE CONFORMATION OF NONCONFORMING SITES AND USES. THESE CHANGES WILL FOLLOW FROM THE AMENDMENT OF THE FUTURE LAND USE MAP (FLUM).**

**THERE WILL REMAIN, HOWEVER, PROPERTIES THAT ARE NONCONFORMING WITH OTHER REQUIREMENTS OF THE LAND DEVELOPMENT CODE, I.E., DEVELOPMENT STANDARDS.**

## **NONCONFORMING PARCELS AND STRUCTURES:**

**SOME NONCONFORMING PARCELS MAY BE CONFORMED THROUGH CHANGES TO THE STANDARDS IN THE LAND DEVELOPMENT CODE, E.G., 9,500 SQ. FT. LOTS IN ZONING DISTRICTS THAT REQUIRE A MINIMUM OF 10,000 SQ. FT.; 50 FEET WIDE LOTS IN ZONING DISTRICT THAT REQUIRE A MINIMUM OF 60 FEET OF LOT WIDTH.**

**THERE WILL REMAIN, HOWEVER, INDIVIDUAL, UNIQUE PROPERTIES THAT ARE NONCONFORMING WITH THE LAND DEVELOPMENT CODE DEVELOPMENT STANDARDS.**

**THESE PROPERTIES WILL HAVE TO BE ADDRESSED ON A CASE BY CASE BASIS TO PROVIDE PROPERTY OWNERS WITH DOCUMENTATION THAT THE NONCONFORMITY IS LEGAL.**

**NEXT STEPS**

**ORDINANCE 2015-11:**

**Establishing a new Chapter in the LDC to  
Address Remaining Nonconformities**

**OPTIONS:**

- 1. CERTIFICATION**
- 2. AMORTIZATION / TERMINATION**
- 3. CONDITIONAL USE PERMIT (CUP) FOR  
EXPANSION**

**OPTIONS**  
**CERTIFICATION**

- 1. ALLOWS PROPERTY OWNERS TO RECEIVE THE BENEFIT OF A WRITTEN DETERMINATION AS TO THE LEGALITY OF THEIR NONCONFORMING REAL PROPERTY PROVIDING CERTAINTY AS TO FUTURE INVESTMENTS**
- 2. IN ABSENCE OF AN AMORTIZATION POLICY, NONCONFORMITIES RARELY CONFORM BUT INSTEAD TEND TO WORSEN DUE TO THEIR INABILITY TO OBTAIN FINANCING.**

## **OPTIONS**

### **AMORTIZATION / TERMINATION**

- 1. PROVIDE THAT ABANDONMENT FOR A PERIOD OF TIME FORFEITS THE VESTED RIGHT TO CONTINUE THE NONCONFORMITY.**
- 2. A DISFAVORED NONCONFORMITY MAY BE REQUIRED TO BE CONFORMED OR REMOVED AFTER A PERIOD OF YEARS.**

## **OPTIONS**

### **CONDITIONAL USE PERMIT (CUP)**

- 1. A NONCONFORMITY MAY EXPAND IF A CONDITIONAL USE PERMIT (CUP) IS GRANTED.**
- 2. LBK DOES NOT CURRENTLY HAVE A CUP PROCESS.**
- 3. STANDARD PUBLIC HEARING PROCESS AS FOR VARIANCES.**
- 4. APPROPRIATE BOARD MUST BE DETERMINED AND WHETHER FINAL DECISION-MAKING AUTHORITY OR RECOMMENDATION TO TOWN COMMISSION.**



# **POTENTIAL FUTURE LAND USE MAP MODIFICATIONS**

**PLANNING & ZONING BOARD  
WORKSHOP  
MARCH 31, 2015**

**TOWN OF LONGBOAT KEY  
AND  
UNIVERSITY OF FLORIDA  
RESILIENT COMMUNITIES INITIATIVE (FRCI)**

**WHAT WE HAVE ACCOMPLISHED:**  
**ORDINANCE 2015-10:**  
**PZB Recommended Revised Policy;**  
**Revised Table**

**Policy 1.1.10 AND Table 1**

- Revision of the Comprehensive Plan Future Land Use Element to provide for Stability Areas and Opportunity Areas.
- Revision of the Comprehensive Plan Future Land Use Element to establish six (6) new Future Land Use classifications as opportunity areas to provide the policy underpinnings to empower the Land Development Code to establish new zoning districts to conform properties currently non-conforming for existing site and use limitations.

## **ORDINANCE 2015-10**

### **Six (6) new Future Land Use Categories— OPPORTUNITY AREAS**

**OSO: Open Space**

**SFRO: Single-Family Residential**

**MFRO: Multiple-Family Residential**

**CTDO: Commercial Tourist Destination**

**CRMO: Commercial/Residential Mixed-Use**

**COMO: Commercial**

To empower the Land Development Code to establish zoning districts to conform existing properties nonconforming with existing site and use limitations.

**NEXT STEPS**

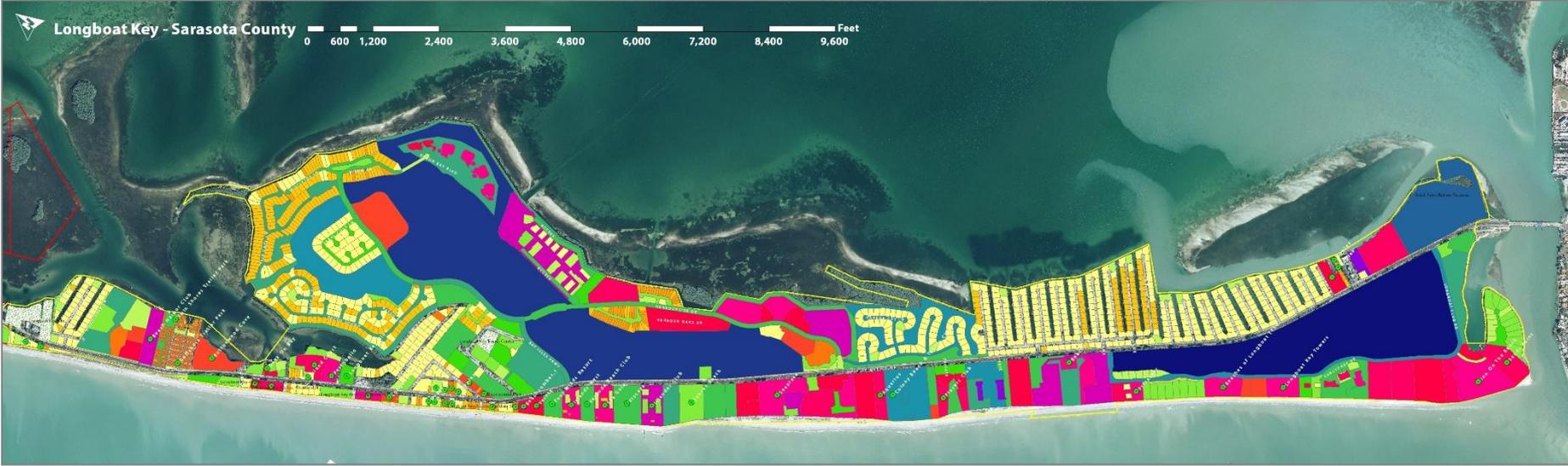
**AMENDING THE FUTURE LAND USE MAP**

- 1. COMPREHENSIVE IDENTIFICATION OF NONCONFORMING PROPERTIES FOR DENSITY AND USE.**
- 2. DETERMINATION OF OPPORTUNITY AREAS AND STABILITY AREAS.**
- 3. REVISE THE LAND DEVELOPMENT CODE PLANNED DEVELOPMENT AND ZONING PROVISIONS**
- 4. PROPERTY OWNER VERIFICATION AND OPTION IN OR OPTION OUT.**

**NEXT STEPS**

**AMENDING THE FUTURE LAND USE MAP**

- 1. COMPREHENSIVE IDENTIFICATION OF NONCONFORMING PROPERTIES FOR DENSITY AND USE.**



### Legend

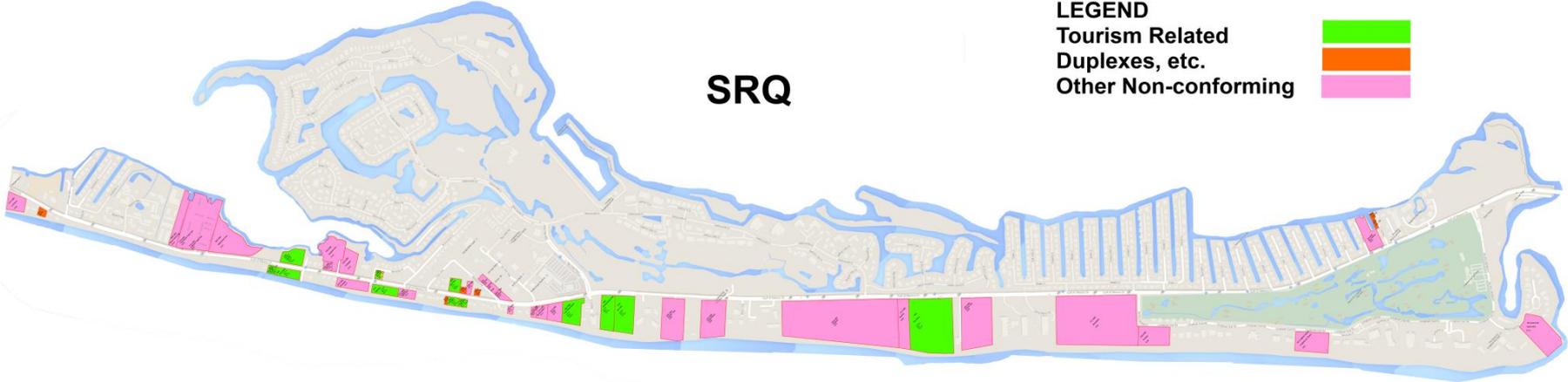
Longboat Key - Manatee Side	Conformity (Units Under Allowance) -684.7	-26.8 - -13.0	Conformity (Units Over Allowance) 26.2 - 43.3
Longboat Key - Sarasota Side	-684.6 - -324.9	-12.9 - -6.0	43.4 - 66.8
City Roads	-324.8 - -188.0	-5.9 - -2.5	66.9 - 113.0
Parks	-187.9 - -66.9	-2.4 - -0.8	113.1 - 198.8
NonConformity Pins (Per LBK)	-66.8 - -26.9	-0.7 - 0.0	198.9 - 296.9
		0.0 - 0.3	
		0.4 - 0.7	
		0.8 - 3.3	
		3.4 - 12.4	
		12.5 - 26.1	

**NEXT STEPS**

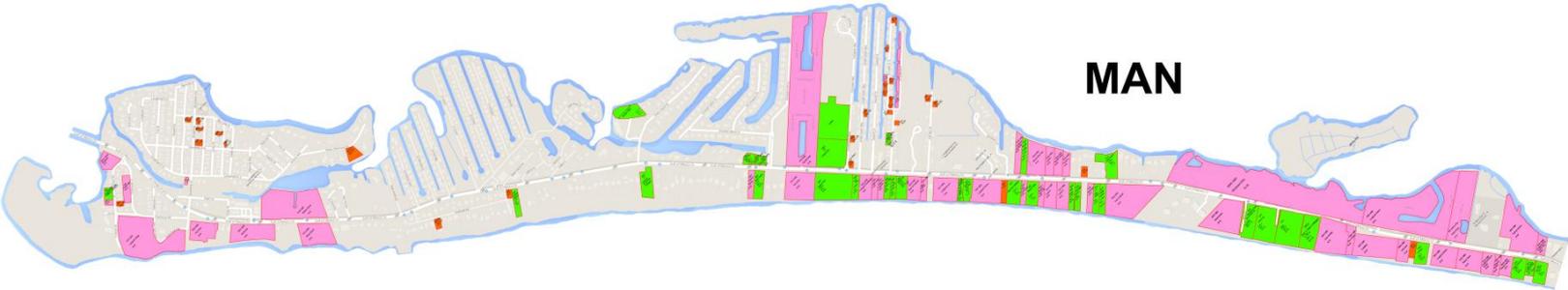
**AMENDING THE FUTURE LAND USE MAP**

- 2. DETERMINATION OF OPPORTUNITY AREAS AND STABILITY AREAS.**

# NON-CONFORMING PROPERTIES - SARASOTA COUNTY



# NON-CONFORMING PROPERTIES - MANATEE COUNTY



**LEGEND**  
Tourism Related  
Duplexes, etc.  
Other Non-conforming





# **POSSIBLE NEW ZONING DISTRICTS**

## **PLANNING & ZONING BOARD WORKSHOP MARCH 31, 2015**

**TOWN OF LONGBOAT KEY  
AND  
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# Density Option 1

## Land Development Code Revisions

### *Eliminate tourism density*

**Remove** any references to tourism density and “units”;

Tourism commercial intensity measured by area and height;

**Replace** with new (potentially form-based) code for commercial tourism.

# Option 1: Conforming Considerations

- **Refine** future role of Nonconforming properties
- Conform/provide modest opportunities for “**expansion**” of non-conforming tourism densities and development standards;
- Codify potential **redevelopment opportunities; incentives;**
- **Town-initiated** amendment(s); potential single referendum;
- Preliminary voter **education** to reach potential success;
- **Revise** upward (or potentially downward) limits on tourism density and “units”.

## Density Option 2

### Land Development Code Revisions

***Establish new zoning districts with higher tourism (and residential) densities***

Density increases would still require public hearing/privately-initiated referenda, but Plan empowers and LDRs establish standards/criteria for density range(s); e.g., Inn (3-15 units) Hotel/Motel (16-50 units), Resort (51-100 units), Destination Resort (101-200 units), Commercial Tourism Planned Development (201 to 400 units)

# Option 2: Conforming Considerations

- **Case-by-case public hearing/ referendum;**
- **No assurance redevelopment requests will be approved;**
- **Island-wide redevelopment requires multiple referenda;**
- **Existing density limits remain unless/until rezoned.**

## Density Option 3

### Land Development Code Revisions

***Establish new zoning districts with higher tourism (and residential) densities***

Adopt a new Future Land Use Map re-categorizing properties;

Adopt a new Zoning Districts with higher densities;

Adopt a new Zoning Map zoning identified and willing property-owners' properties into the new districts.

# Option 3: Conforming Considerations

- **Legislative rezoning public hearing/ referendum;**
- **Opportunity to opt-in or remain status quo;**
- **Island-wide redevelopment requires one referendum;**
- **Existing density limits remain unless/until rezoned.**