



To: Jennifer Garcia, City Planner

From: Gustavo J. Ceballos, Assistant City Attorney

Approved By: Miriam Soler Ramos, City Attorney *MSR*

CC: Suramy Cabrera, Development Services Director  
 Devin Cejas, Deputy Development Services Director  
 Ramon Trias, Assistant Development Services Director

RE: Legal Opinion Regarding Scrivener's Error in Zoning Code TDR Sending Site MF3

Date: July 6, 2021

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In 2017, a text amendment was made to the then current zoning code (the "Old Code") to allow for additional Transfer of Development Right ("TDR") sending sites in the North Ponce area. The Old Code language allowed historically designated multi-family buildings in the North Ponce area to be a sending site if they were designated MF2 or Commercial. During the normal course of business, it was determined that this existing text in the Old Code did not properly transfer over to the updated Zoning Code (the "Code").

The updated Code created a new zoning designation, MF3, that was not previously in the Old Code. A few properties in the North Ponce area were rezoned MF3 as part of the zoning code update and the updated Code did not account for this additional designation within the TDR section of the Code, specifically 14-204.4(B)(2).

In discussion with the Planning and Zoning department to determine if this was intentional, it was discovered by City staff that it was a scrivener's error, please see email exchange below, and the MF3 designation should have been included in Code section 14-204.4(B)(2) and therefore needs to be corrected. The City Attorney has been granted express authority to take such action under Section 2-252(e)(9) of the City Code. Accordingly, please make the following administrative correction :

**Section 14-204.4 Transfer/sending of TDRs and issuance of a Certificate of TDRs**

**B. Transfer/sending of TDRs from a sending site. The Historic Preservation Officer shall have the authority to grant approval to transfer send TDRs if all of the following are satisfied:**

Deletions are indicated by strikethrough and insertions indicated by underlines

2. The sending site is (i) located within the boundaries of the CBD and designated commercial zoning or (ii) located north of Navarre Avenue, east of LeJeune Road, west of Douglas Road, and south of SW 8th Street, is zoned Commercial, MF2, or MF3. or MF2.

**From:** Garcia, Jennifer <jgarcia4@coralgables.com>

**Sent:** Friday, June 4, 2021 3:52 PM

**To:** Tejera, Erick <etejera@coralgables.com>; Cejas, Devin <dcejjas@coralgables.com>

**Subject:** RE: TDR Potential Sending Sites

Erick,

As discussed, this property is 1 of 4 in the North Ponce TDR-sending area that changed from MF2 to MF3 in the Zoning Code Update, due to its current land use being Multi-Family Low Density. All other MF2 properties remained MF2 due to their current land use being Medium Density.

The intent from a 2017 Zoning Code text amendment was to allow sending of TDRs from any designated multi-family building in this North Ponce area. Devin may want to discuss clarifying this as a scrivener's error with Miriam to correct this to include "MF3" to Sec 14-204.4(B)(2).

Please let me know how else I can help.

*Jennifer Garcia, AICP, CNU-A*

City Planner

(305) 460-5214

Planning & Zoning Division, Development Services

City of Coral Gables

[www.coralgables.com](http://www.coralgables.com)

**From:** Tejera, Erick <etejera@coralgables.com>

**Sent:** Friday, June 4, 2021 3:32 PM

**To:** Garcia, Jennifer <jgarcia4@coralgables.com>; Cejas, Devin <dcejjas@coralgables.com>

**Subject:** FW: TDR Potential Sending Sites

Good Afternoon Jenifer,

Here is the email I sent Devin. The parcel is 1901 S Le Jeune Rd.

**From:** Tejera, Erick

**Sent:** Friday, June 4, 2021 2:30 PM

**To:** Cejas, Devin <dcejjas@coralgables.com>

**Subject:** FW: TDR Potential Sending Sites

Here is the section for TDR's. It does apply to Commercial and MF2 districts in the CBD and in that area

located north of Navarre Avenue, east of LeJeune Road, west of Douglas Road, and south of SW 8th Street. Please note that one site is zoned M.F.3 (1901 S Le Jeune Rd).

**Section 14-204.4. Transfer/sending of TDRs and issuance of a Certificate of TDRs.**

- A. Transfer/sending of TDRs. The TDRs rights eligible to be transferred from the property calculated as follows: the difference between the existing gross floor area on the property and the maximum floor area permitted on the property by the applicable zoning district, including any available development bonuses.
- B. Transfer/sending of TDRs from a sending site. The Historic Preservation Officer shall have the authority to grant approval to transfer/send TDRs if all of the following are satisfied:
  1. The sending site has been designated as a local historic landmark or a contributing property within a local historic district pursuant to [Article 8](#).
  2. The sending site is (i) located within the boundaries of the CBD and designated commercial zoning or (ii) located north of Navarre Avenue, east of LeJeune Road, west of Douglas Road, and south of SW 8th Street, is zoned Commercial or MF2.
  3. The Development Services Department has calculated the unused development rights or TDRs eligible to be transferred from the property per Section [14-204.4.A](#).
  4. The property owner(s) have provided a maintenance/preservation plan prepared by a certified architect or engineer of the State of Florida, which sets forth a maintenance schedule and/or rehabilitation treatment if applicable for those architectural elements that contribute the historic integrity of the property or restoration of original features. Those features are identified by the "Review Guide," a section of the local designation report produced by the Historical Resources Department.
  5. Inspection of the property may be completed by the Historic Resources Department to determine compliance with the above criteria.
  6. Historic Preservation Board review and approval of the maintenance/preservation plan to determine compliance with [Article 8](#).
  7. A property must not be subject to any Code Enforcement violations, City-imposed liens, unpaid fines, or overdue assessments or fees. The City Attorney, in consultation with City staff, may waive this requirement through a stipulation providing for correction of the Code Enforcement violation under appropriate conditions and settlement of the amounts due.

The approval to transfer/send shall be via the issuance of a Certificate of TDRs. The Historic Preservation Officer may recommend conditions of approval that are necessary to ensure compliance with the standards set out herein.

C. Transfer/sending of TDRs to create a city park.

The Parks and Recreation Advisory Board shall review all requests to transfer/send TDRs if all of the following are satisfied:

1. The sending site is identified as a future city park as part of the acquisition of the subject property.
2. The Development Services Department has calculated the TDRs eligible to be transferred per Section [14-204.4.A](#).
3. The public benefit is demonstrated for the sending site and the potential impacts of the receiver site(s) are studied.
4. Ownership of the sending site is transferred to the City of Coral Gables as part of the application to transfer development rights to the receiver site.

The City Commission shall consider to transfer/send TDRs via Resolution upon the positive recommendation from the Parks and Recreation Advisory Board. The Resolution may include conditions of approval that are necessary to ensure compliance with the standards set out herein.

**From:** Adams, Warren <[wadams@coralgables.com](mailto:wadams@coralgables.com)>

**Sent:** Friday, June 4, 2021 12:30 PM

**To:** Cejas, Devin <[dcejas@coralgables.com](mailto:dcejas@coralgables.com)>

**Cc:** Tejera, Erick <[etejera@coralgables.com](mailto:etejera@coralgables.com)>

**Subject:** TDR Potential Sending Sites

Devin/Erick,

Attached are the lists I have for Potential Sending Sites

The Word document appears to be City and privately owned historic sites.

The pdf document appears to be designated and non-designated multi-family structures.

Please let me know if you require any additional information.

Regards,

Warren

## **Warren Adams**

Historical Resources & Cultural Arts Director

City of Coral Gables  
Historical Resources and Cultural Arts Department  
2327 Salzedo St  
Coral Gables, FL 33134  
305.460-5095  
[wadams@coralgables.com](mailto:wadams@coralgables.com)  
[www.coralgables.com](http://www.coralgables.com)

