

Hilton Marco Island Beach Resort Comprehensive Plan Consistency Memorandum

I. Introduction and Historical Prospective

The Hilton Marco Island Beach Resort, located at 560 S. Collier Boulevard, (the "Property") is currently designated in the future land use category "Resort Residential" according to the current 2040 Comprehensive Plan City of Marco Island adopted October 4, 2021 (the "Comprehensive Plan"). The proposal would be to rezone the Property into a PUD (the "Project"). As explained herein, this is consistent not only with the Comprehensive Plan, but with the historical development plans for this Property since at least 1970, before the current owner purchased the Property from a Deltona entity.

In addition to being designated "Resort Residential" under prior comprehensive plans, the Property has been designated in a similar category to its current Future Land Use Designation since the original development plans of the Deltona Corporation of Marco Island. Included as *Figure 1* below is a picture of the 1970 master plan for Marco Island as prepared by the Deltona Corporation. As shown, the area in which the Property is located is found in the Hotel & Apartment category. Accordingly, the Project is consistent with not only the current Comprehensive Plan, but also consistent with Marco Island's historic and public development planning documents since 1970. The Property can be seen in the 2040 Future Land Use Map, attached as *Figure 2*, in the area now called "Resort Residential" and that area fits within the designation of Hotel & Apartment from the 1970 Plan. As such, it should be recognized that this portion of the island has been set aside for hotel and resort development.

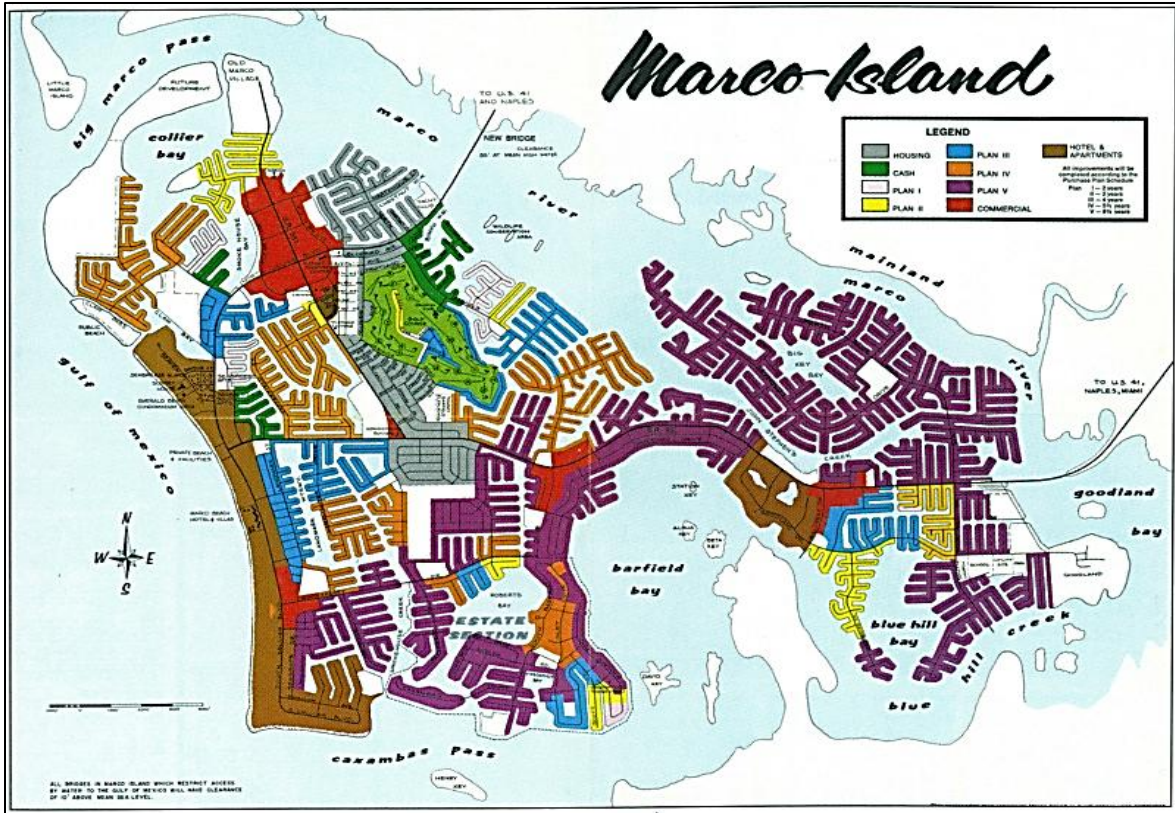


Figure 2 - 1970 Marco Island Master Plan

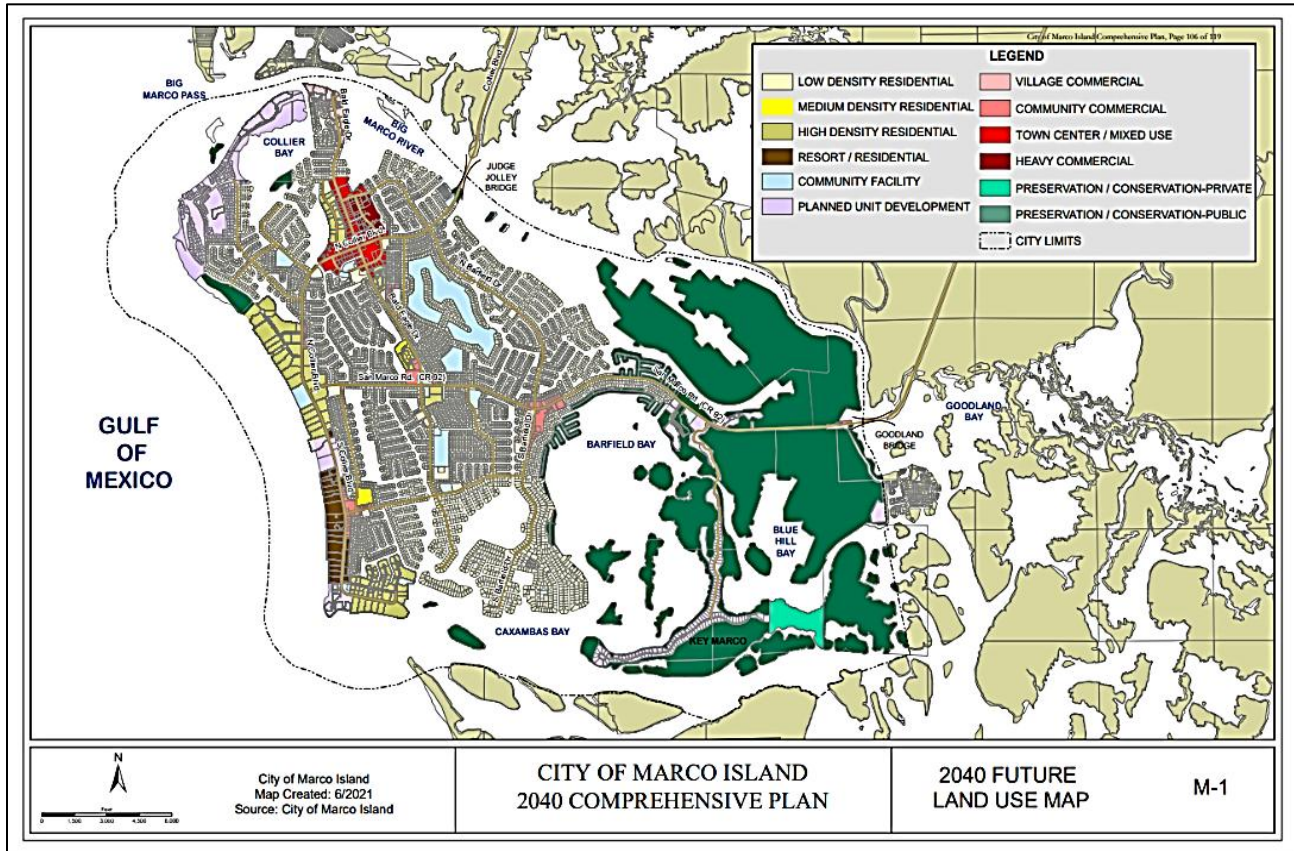


Figure 1 - 2040 Comprehensive Plan Future Land Use Map

II. Hotel Rooms per Acre and the Comprehensive Plan

The law in the state of Florida is: when comprehensive plans do not include a density cap for hotel rooms, there is no density cap for hotel rooms. *Bay County v. Harrison*, 13 So. 3d 115, 119 (Fla. 1st DCA 2009).

Under the City of Marco Island Comprehensive Plan, as far as allowable amount of hotel rooms per acre, the density cap, the current Comprehensive Plan distinguishes between "standard densities" for "Dwelling or Dwelling Unit[s]" and "Hotel Units", which are allowed at a higher per acre rate throughout the Comprehensive Plan, and in the Resort Residential policy, have no cap.

The Comprehensive Plan defines a "Dwelling or Dwelling Unit" as "[a] structure in which occupants live and eat separately from anyone else and have direct access to the outside (e.g. to a hallway or street) of the unit." The Property's rooms are hotel rooms. Hotel rooms are not Dwelling Units and other than being allowed at a higher per acre density, are not defined in the Comprehensive Plan.¹

As stated, Florida law on this issue is clear. Section 509.242, Florida Statutes, defines a hotel as a public lodging establishment that provides "sleeping room accommodations." This is exactly what the Project does. The hotel rooms within the Project are solely sleeping room accommodations. There is no place to eat separately from anyone else in the hotel rooms for the Project. Conversely, the only places to eat in the Project are shared spaces with the inclusion of other guests and visitors. In Attorney General Opinion 2018-06, the Attorney General opines that "[a] 'sleeping facility' is not a 'house or dwelling unit[.]'" In coming to this conclusion, Attorney General Opinion 2018-06 states the following: "a dwelling is a place where people could live semi-permanently, rather than a room that people stay in temporarily. A 'house or dwelling unit' is complete unto itself as a habitation." As support for the above argument, the opinion includes footnote 18:

[18] *See also Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1214-15 (11th Cir. 2008) (concluding that ... "the more occupants treat a building like their home – e.g., cook their own meals, clean their own rooms and maintain the premises, do their own laundry, and spend free time together in common areas – the more likely it is a 'dwelling.'");

¹ There is a definition in the LDC, but, it is the LDC that must be consistent with the Comprehensive Plan, not the other way around. § 163.3202, Fla. Stat. (2025)

Cochran v. Bentley, 251 S.W.3d 253, 260-61 (Ark. 2007) (concluding that a two-story building, which was heated and cooled and contained an office with a telephone line, two restrooms, and a hot-water heater, was not a “dwelling,” which is “a place to live in.” The structure did not contain “a kitchen, shower, or living area of some sort,” and thus could not “serve as a place in which to live.” Instead, the owner lived in a home on the adjacent lot. The structure was therefore barred by the subdivision’s restrictive covenant that allowed one dwelling per lot plus a garage and outbuildings that are “incidental to residential use of the lot.”).

This analysis of hotel rooms versus dwelling units for comprehensive planning purposes was completed by the First District Court of Appeal. In a case with facts indistinguishable to those surrounding the Project, the Court held a comprehensive plan policy that had an explicit cap on dwelling units but was silent as to a cap for hotel or resort units legally **did not** have a cap on hotel or resort units. Specifically: “resort condominiums, like hotels, are not residences or dwellings.” *Bay County v. Harrison*, 13 So. 3d 115, 119 (Fla. 1st DCA 2009). In *Bay County*, the court held the development at issue was not inconsistent with the applicable comprehensive plan on the basis of a density cap because the density cap in the plan did not apply to hotel and resort rooms, it applied to dwelling units. *Id.* at 120. That is exactly this situation. The Comprehensive Plan does not cap hotel and resort rooms in the Resort Residential Land Use Category.

As such, the Project is consistent with the City of Marco Island’s 2040 Comprehensive Plan.

This is clear in the Comprehensive Plan itself in policies 3.2.3 (Village Commercial), 3.2.4 (Community Commercial), and 3.2.5 (Town Center/Mixed Use). In each of the aforementioned future land use designations, hotel rooms are capped at a per acre rate higher than “standard densities”. The only other primarily commercial future land use designation is “Heavy Commercial” and in its policy, 3.2.6, it states that it is not intended for resort development. Thus, in the primarily commercial future land use categories, resorts are either not allowed (Heavy Commercial) or capped at 26 hotel rooms per acre (Village Commercial, Community Commercial, and Town Center/Mixed Use).

The Property is in none of the above future land use designations, however. It is in the Resort Residential future land use designation. Policy 3.1.5 (Resort Residential) of the

current City of Marco Island Comprehensive Plan does not have a capped hotel/motel density. This is because this designation does not have a set cap on hotel units/acre. Instead, other consistency features must be met. This is clear because objective 3.1 (where the policy is located) is to ensure the projected population growth of Marco Island is adequately accommodated through 2040. Hotel rooms are not population growth. Policy 3.1.5 states the following:

The Resort/Residential future land use category is intended for areas generally along the City's beachfront, which provides residential dwellings and hospitality uses including resorts, hotels, and timeshare uses. This category is intended to accommodate those resort needs associated with an island community. The maximum density permitted is 16 dwelling units per acre (16 du/acre).

As is clear, there is no maximum density stated for hotel/motel, or any other lodging establishment. Instead, the category is intended "to accommodate those resort needs associated with an island community". This is distinct from all of the above-mentioned categories that allow for hotels, copied here:

Policy 3.2.3

The Village Commercial future land use category is intended to provide neighborhood-scale commercial and mixed-use development, including commercial retail, office, personal services, and live-work dwelling types. This category is intended to provide for the day to day needs of residents and may also accommodate resort-oriented uses, including hotels and timeshares. Standard densities are limited to 8 du/acre. Hotel/motel densities are limited to 26 du/acre.

(Emphasis added.)

Policy 3.2.4

The Community Commercial future land use category is intended to provide a range of commercial uses at arterial and collector intersections and nodes within the City outside of the Town Center/Mixed Use future land use category. These areas will be comprised of retail, office and mixed use land uses. Standard densities are limited to

12 du/acre. Hotel/motel densities are limited to 26 du/acre.

(Emphasis added.)

Policy 3.2.5

The Town Center/Mixed Use future land use category is intended for an intensive and well-integrated mix of commercial and residential uses concentrated at the intersection of Collier Boulevard and Bald Eagle Drive at the gateway to the City. The maximum building height for new projects within the Town Center/ Mixed Use designation area will not exceed 75 feet. Standard densities are limited to 12 du/acre. Hotel/motel densities are limited to 26 du/acre.

(Emphasis added.)

Analogous to what the court held in *Bay County*, Marco Island’s choice not to impose a density cap for lodging establishments in the Resort Residential designation, reflects the City’s intent not to limit the density of lodging establishments. 13 So. 3d 115, 120. “That planners, when they wish, may indeed impose different density limitations for residential and non-residential property, supports this conclusion.” *Id.* See also City of Cocoa Beach 2025 Comprehensive plan (imposing different density limitations for “residential dwelling units” and “transient lodging rooms.” Similar to the Comprehensive Plan which does this in other future land use designations).

INDUSTRY DATA LICENSED RENTAL UNITS				
October 2024 Licensed Transient Rental Units ¹				
	Hotel	Motel	Vacation Rental	Total
Naples	5,315	1,368	2,676	9,359
Marco Island	1,299	97	1,999	3,395
Immokalee	0	70	104	174
Golden Gate	0	116	0	116
Everglades City	38	36	21	95
Chokoloskee	0	13	1	14
Goodland	0	5	8	13
Ave Maria	0	0	6	6
Ochopee	0	0	1	1
Total	6,652	1,705	4,816	13,173

¹SOURCE: Florida Department of Business & Professional Regulation.

Figure 3 - Chart of Licensed Rental Units

As can be seen in Figure 3, above, an analysis of hotel rooms on the Island as compared to the surrounding area, Marco Island has less hotel rooms than vacation rentals and less hotel rooms per capita than Naples, a similarly sized jurisdiction. Thus,

Collier County Tax Collector - Tourist BOCC - Rental Type Report (Detailed Distribution Data) - Run 07/10/2025 08:53AM					
Tourist Rental Type	Allocation Date (Month)	Allocated	Distributed Amt	Distribution Category	Allocation Date
-- Any --	-- Any of June --			-- Tourist Tax --	-- 06/01/2025-06/30/202 5 --
02 - CONDOMINIUM	June	117,651.65	117,651.65	Tourist Tax	
05 - HOTEL	June	2,320,757.17	2,320,757.17	Tourist Tax	
06 - INTERVAL OWNER	June	20,081.68	20,081.68	Tourist Tax	
07 - MOBILE HM PARK	June	1,822.60	1,822.60	Tourist Tax	
09 - PROPERTY MANAGEMENT COMPANY	June	85,891.62	85,891.62	Tourist Tax	
12 - RV PARK /CAMPGD	June	7,995.83	7,995.83	Tourist Tax	
13 - SINGLE FAMILY	June	731,285.31	731,285.31	Tourist Tax	
02 - CONDOMINIUM, 05 - HOTEL, 06 - INTERVAL OWNER, 07 - MOBILE HM PARK, 09 - PROPERTY MANAGEMENT COMPANY, 12 - RV PARK /CAMPGD, 13 - SINGLE FAMILY	June	3,285,485.86	3,285,485.86	Tourist Tax	Grand Total

Figure 4 - Tourist Tax Revenue by Rental Type

adding more hotel rooms in the Resort Residential future land use category is specifically for the purpose of accommodating those resort needs associated with an island community and is thus consistent with the stated policy in the Comprehensive Plan. As it stands, the Island is not capturing the tourist development taxes and real estate taxes that it otherwise would if it had sufficient hotel rooms. Figure 4, below, shows the tourist tax revenues collected in Collier County for the month of June alone by rental type. As shown, the tax revenue generated by hotels, when compared to other forms of short-term rentals, is staggeringly higher.