

ADMINISTRATIVE CODE BOARD OF COUNTY COMMISSIONERS	
CATEGORY: Development/Planning/Zoning	CODE NUMBER: AC 13-5
TITLE: Procedures for Creating Transferable Development Units and Utilizing Approved Bonus Density	ADOPTED: 7/20/88
	AMENDED: 1/4/95; 4/5/16; 9/5/17
	ORIGINATING DEPARTMENT: Community Development

PURPOSE/SCOPE:

This administrative code establishes the procedures for creating transferable development units and utilizing approved bonus density through the following programs:

- (1) Affordable Housing Program.
 - a. Site-built
 - b. Cash contribution
- (2) Transfer of Development Rights (TDR) Programs.
 - a. Wetlands
 - b. Greater Pine Island
 - c. Southeast Lee County

This administrative code supplements LDC Chapter 2, Article IV. If there is a conflict between this code and the LDC, the LDC will prevail. Terms used in this code have the meanings specified in the LDC.

PROCEDURE:

A. Process to Create Transferable Development Units (TDUs). To create a TDU, the landowner, or authorized representative, must sever the development rights from the parcel(s) in accordance with the following procedure:

(1) Determination Letter Request.

The landowner, or authorized representative, must submit a written Determination Letter Request. The request is to determine the number of TDUs that can be created from a parcel. A separate request is required for each parcel. The following items must be attached to the request:

- a. *Certification of title and encumbrances.* A certification of title and encumbrances in accordance with 34-202(a)(3). At the request of the Director or the County Attorney's Office, an updated certification of title may be required prior to the issuance of the TDU certificate. If the parcel is subject to a mortgage, lien, or any other security interest; the mortgagee, lien holder, or holder of the security interest must provide an affidavit authorizing the landowner to secure the approval requested and to impose covenants and restrictions on the parcel as a result of the action approved by the Department.
- b. *Legal description and sketch of the legal description.*
 - i. *Platted lots.* For parcels that consist of one or more lots within a subdivision platted in accordance with Chapter 177, F.S., a complete legal description (i.e. lot, block, subdivision name, public records recording information) is required. A sketch is not required. However, if the dimensions of the parcel differ from those in the original plat or if the parcel contains wetland areas, then a metes and bounds legal description and sketch are required.
 - ii. *Unplatted lots or combination of unplatted lots and platted lots.* A metes and bounds legal description along with a sketch of the legal description, prepared by a Florida Licensed Surveyor and Mapper.
 - iii. *Sketch of the legal description.* The sketch must be tied to the state plane coordinate system for the Florida West Zone (the most current adjustment is required) with two coordinates, one coordinate being the point of beginning (POB) and the other an opposing corner.
 - iv. *Wetlands.* If development rights are proposed to be transferred from property containing wetland areas, a legal description and sketch of the property, prepared by a Florida Licensed Surveyor and Mapper, that features a delineation of onsite wetland areas based upon a jurisdictional wetland determination in accordance with F.S. 373.019(17) through the use of the unified state delineation methodology described in FAC Chapter 17-340, as ratified and amended in F.S. 373.4211, is required.
- c. *Minimum Use Determination.* If an affirmative determination of the single-family residence provision pursuant to Chapter XIII of the Lee Plan exists for the parcel, a copy of the determination must be provided.

(2) Determination Letter Request Submittal and Filing Fee.

- a. *Request.* The request and required materials must be submitted to the Department of Community Development, Planning Section. Upon receipt of the request, the Department will assign a case number and date-stamp it received.

- b. *Filing fee.* All requests must be submitted in conjunction with the required filing fee, as set forth in the Lee County External Fees and Charges Manual, as amended.

(3) County Review and Issuance of TDU Determination Letter.

- a. If additional information is needed to properly determine the number of TDUs that may be created from a parcel of land, a written request for additional information will be sent to the applicant within 30 working days of receipt of the Determination Letter Request.
- b. If the applicant does not provide the additional information within 90 calendar days the request will be deemed withdrawn unless an extension is requested by the applicant and granted in writing by the county.
- c. The Department will issue a TDU Determination Letter that specifies the maximum number of TDUs available to the subject property upon severance of the development rights in accordance with LDC Chapter 2, Article IV, Division 3 within 30 working days of receipt of all required information.
- d. Any appeal of the determination made within the TDU Determination Letter must be made to the Hearing Examiner in accordance with those procedures set forth in LDC Section 34-145 and Administrative Code 2-6.
- e. A TDU Determination Letter remains valid unless development of the property occurs or the facts supporting the issuance of the TDU Determination Letter have changed and those changes are inconsistent with the previous determination (i.e. wetlands acreages are impacted, land is subdivided, agricultural activity has ceased, residential development has occurred, etc.).

(4) TDU Certificate.

Once the TDU Determination Letter is issued, the landowner, or authorized representative, may seek issuance of a TDU Certificate for all or a portion of the TDUs identified in the TDU Determination Letter in accordance with the following procedure:

- a. The landowner must prepare a conservation easement, restrictive covenant, or other instrument that severs the development rights from the parcel(s) and submit it for review and approval by the Department and the County Attorney's Office. Where a conservation easement is utilized, the easement must comply with F.S. 704.06, be granted to, and made expressly enforceable by the County. Any other instrument must expressly provide that they are enforceable by the County.
- b. Once the conservation easement, restrictive covenant, or other instrument has been reviewed and accepted by the Department and the County Attorney's Office

the landowner must record it in the Lee County public records at the landowner's expense.

- c. Upon proof of recording, the Department will issue a TDU Certificate.

(5) TDU Tracking.

Upon receipt of the TDU Certificate, the owner may sell, trade, barter, negotiate or transfer the TDUs. The grantor must execute and record a deed of transfer before a transfer of TDUs can be completed. The deed(s) must include a restriction on the development rights of the sending parcel in perpetuity. The recorded deed of transfer must also indicate:

- a. how many TDUs are to be transferred by the grantor to the buyer (grantee);
- b. the total number of TDUs originally issued to the sending parcel;
- c. the number of TDUs that have been transferred to other buyers; and
- d. how many TDUs remain attached to the sending parcel.

B. Procedure to utilize approved bonus density at time of development order or building permit.

(1) Affordable Housing Program – Site Built.

- a. A developer may use approved bonus density at time of development order or building permit upon execution of an agreement to build and make the units available for eligible households as defined in LDC Section 2-143.
- b. Prior to receiving a final development order or building permit using bonus density, the developer must:
 - i. Obtain bonus density approval in accordance with LDC Section 2-147; and
 - ii. Execute an agreement with the Board of County Commissioners, in a form approved by the County Attorney's Office, which binds the developer, and successors, to rent or sell the units only to eligible households for a period of seven years from the date the initial certificate of occupancy is issued; and
 - iii. Record a covenant in the public records stating that there is an obligation to rent or sell the units only to eligible households for a period of seven years from the date the initial certificate of occupancy is issued. The covenant must be in a form approved by the County Attorney's Office and be set to expire no earlier than seven years after the initial certificate of occupancy is issued.
- c. The County may bring any action for legal and equitable relief necessary to invalidate attempted transfers of legal or equitable real property ownership or possessory rights that would violate the restrictions of this section.

(2) Affordable Housing Program – Cash Contribution.

- a. A developer may use approved bonus density at time of development order or building permit (if a development order is not required) by paying the cash contribution as set forth herein.
- b. Prior to receiving a final development order or building permit, if a development order is not required, using bonus density, the developer must obtain bonus density approval in accordance with LDC Section 2-147.
- c. The developer must contribute to the Affordable Housing Trust Fund as follows:
 - i. Contributions will be based on the number of dwelling units by which the developer desires to exceed the standard density range at the time of the development order. For every unit for which the standard contribution is paid, the developer will be entitled to exceed the standard density range by an equal number of units.
 - ii. The contribution per-unit rate is \$20,000. The contribution must be made payable to: The Lee County Board of County Commissioners. The funds will be deposited into the County’s Affordable Housing Trust Fund.
 - iii. The first development order or building permit, if a development order is not required, following the approval of bonus density will not be issued until the required contribution is paid in full. Developments that will be completed under multiple development orders, regardless of whether or not the first development order includes the use of bonus density, must pay the required contribution prior to the issuance of the first development order. Contributions will run with the land and will not be refunded once made.

(3) TDR Program.

- a. A developer may use TDUs to achieve approved bonus density at time of development order or building permit (if a development order is not required) as set forth herein.
- b. Prior to receiving a final development order or building permit using TDUs, the developer must:
 - i. Obtain bonus density approval in accordance with LDC Section 2-147; and
 - ii. Provide sufficient evidence that the TDUs required for the increased density, or intensity equivalents, have been secured and provide a draft document that will extinguish the TDUs upon approval of the building permit; and

- iii. Provide a copy of the recorded deed(s) of transfer encompassing the TDUs being used, as required by LDC Section 2-148(c) and section (A)(4) of this administrative code, before issuance of a building permit.
 - iv. Once the building permit has been issued, the Department will record the extinguishment document and deed(s) transferring the TDUs in the public records of the County and make the extinguishment document and deed(s) available to the County Property Appraiser. The TDUs transferred remain with the receiver parcel in perpetuity.
- c. Development rights authorized and severed by another governmental unit may not be used in the County.