

ORDINANCE NO. 20-09

AN ORDINANCE AMENDING THE LEE COUNTY LAND DEVELOPMENT CODE, CHAPTER 2, ARTICLE IV – BONUS DENSITY TO IMPLEMENT AN ENHANCED WETLANDS TRANSFER OF DEVELOPMENT RIGHTS (TDR) PROGRAM; THE SPECIFIC PROVISIONS THAT ARE AMENDED ARE: SEC. 2-143. (DEFINITIONS); SEC. 2-147. (PROCEDURE TO APPROVE BONUS DENSITY); SEC. 2-148. (ESTABLISHMENT OF TRANSFER OF DEVELOPMENT RIGHTS PROGRAM); SEC. 2-149. (COMPUTATION OF WETLAND TDUs); SEC. 2-150. (DENSITY EQUIVALENT OF WETLAND TDUs); SEC. 2-152. (DENSITY AND INTENSITY EQUIVALENTS OF GREATER PINE ISLAND TDUs); SEC. 2-153. (COMPUTATION OF SOUTHEAST LEE COUNTY TDUs); SEC. 2-154. (DENSITY AND INTENSITY EQUIVALENTS OF SOUTHEAST LEE COUNTY TDUs); PERTAINING TO MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING; PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, INCLUSION IN CODE AND SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

WHEREAS, Florida Statutes Section 125.01(1)(h) authorizes counties to establish, coordinate, and enforce zoning regulations necessary for the protection of the public; and,

WHEREAS, the Board of County Commissioners adopted the Lee County Land Development Code which contains regulations applicable to the development of land in Lee County; and,

WHEREAS, the Board of County Commissioners of Lee County, Florida, has adopted a comprehensive Land Development Code (LDC); and,

WHEREAS, Goal 4 of the Lee County Comprehensive Land Use Plan (Lee Plan) states: Pursue or maintain land development regulations which protect the public health, safety and welfare, encourage creative site designs and balance development with service availability and protection of natural resources; and,

WHEREAS, on December 18, 2019, the Lee County Board of County Commissioners adopted Ordinance 19-26 to implement an enhanced Wetlands TDR program; and

WHEREAS, the Land Development Code Advisory Committee (LDCAC) was created by the Board of County Commissioners to explore amendments to the LDC; and,

WHEREAS, the LDCAC has reviewed the proposed amendments to the LDC on January 10, 2020 and recommended approval of the proposed amendments as modified; and,

WHEREAS, the Executive Regulatory Oversight Committee reviewed the proposed amendments to the Code on January 8, 2020 recommended their adoption; and,

WHEREAS, the Local Planning Agency reviewed the proposed amendments on February 17, 2020 and found them consistent with the Lee Plan, as indicated.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA:

**SECTION ONE: AMENDMENT TO LDC CHAPTER 2**

Lee County Land Development Code Chapter 2 is amended as follows with strike through identifying deleted text and underline identifying new text.

**CHAPTER 2 – ADMINISTRATION**

**ARTICLE IV. - BONUS DENSITY**

**DIVISION 1. GENERALLY**

**Sec. 2-143. - Definitions.**

(a) The following words, terms and phrases, when used in this article, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Greater Pine Island TDU* means a transfer of development unit generated from sending lands within the Greater Pine Island ~~Planning~~ Community Plan area, and which may include wetlands, unimproved uplands, and/or improved uplands in accordance with these provisions.

*Southeast Lee County TDU* means a transfer of development unit generated from sending lands within the Southeast Lee County Community Plan area, and which may include preserved or restored wetlands, unimproved uplands, and/or improved uplands in accordance with these provisions.

*Wetland TDU* means a transferable development unit generated from sending lands designated as wetlands, outside of the Greater Pine Island or Southeast Lee County Community Plan areas ~~Planning~~ Community, which are preserved or restored in accordance with this article.

DIVISION 2. - BONUS DENSITY PROGRAM

**Sec. 2-147. - Procedure to approve bonus density.**

- (a) *Remains unchanged.*
- (b) *Bonus density approval types.*
  - (1) – (4) *Remain unchanged.*
  - (5) *Greater Pine Island and Wetland TDUs.* The Director may administratively approve the use of Greater Pine Island and Wetland TDUs to increase the density and intensity of existing planned developments in accordance with the following:

*Remainder of section is unchanged.*

DIVISION 3. - CREATION OF TRANSFERABLE DEVELOPMENT UNITS

**Sec. 2-148. - Establishment of transfer of development rights program.**

- (a) – (b) *Remain unchanged.*
- (c) The sending parcel may only be used consistent with its conservation easement or written governing instrument. The governing instrument must expressly identify the following:
  - (1) The restriction of property use, including the maximum number of residential units and the non-residential uses permitted under subsection (d) that can be developed on the subject property upon severance of the TDUs; and
  - (2) The . The governing instrument must identify the non-residential uses permitted under subsection (d) and property maintenance and management activities, including removal and control of invasive exotic plants as identified in section 10-420, that will be conducted after the severance of the TDUs. transfer of development rights. Wetland impacts, including impacts associated with permitted non-residential uses, property maintenance, and management activities, are prohibited in perpetuity.
- (d) TDUs may be created from upland areas with assurances of continued agricultural uses through agricultural easements or other recorded instrument. The uses that may occur upon severance of the TDUs, if specifically listed in the governing instrument and proper approvals are obtained, are provided in Table 2-148(d). The governing instrument must indicate that all non-agricultural development rights have been permanently severed by the land owner for transfer to other land and specifically list any activities from Table 2-148(d) that may occur on property if proper approvals are obtained:

*TABLE 2-148(d) remains unchanged.*

(e) Wetland impacts on the sending parcel, including impacts associated with permitted non-residential uses, property maintenance, and management activities, are prohibited in perpetuity.

**Sec. 2-149. - Computation of Wetland TDUs.**

(a) Units of measure of Wetland TDUs, which are generated from wetlands outside of the Greater Pine Island or Southeast Lee County Community Plan areas Planning Communities are hereby established at one TDU per five acres of wetlands. The County will not recognize TDUs smaller than one-tenth unit. The following table sets forth equivalent TDUs for various acreages or portions of an acre:

**TABLE 1. FRACTIONAL TRANSFER OF WETLAND TDUs**

Land Area (Acres)	0 to 0.4	0.5 to 0.9	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
TDU	0	0.1	0.2	0.4	0.6	0.8	1.0	1.2	1.4	1.6	1.8	2.0

(b) A single-family lot or parcel designated as wetlands that holds an affirmative determination of the single-family residence provision pursuant to chapter XIII of the Lee Plan, may be permitted to sever two TDUs in lieu of development.

(c) TDUs created pursuant to (a) or (b) above, may be doubled if the wetlands are within the Coastal High Hazard Area (CHHA) (Lee Plan Map 5).

(d) Under no circumstances will natural bodies of water be included in the calculation for TDUs.

**Sec. 2-150. - Density and intensity equivalents of Wetland TDUs.**

~~One Wetland TDU is equal to one residential dwelling unit when transferred to eligible receiving lands.~~

(a) The residential ratio for Wetland TDUs is one Wetland TDU will be equal to two dwelling units when transferred to upland areas within the Intensive Development, Central Urban, Urban Community, or General Interchange future land use categories.

(b) The non-residential ratios for Wetland TDUs are as follows:

(1) One Wetland TDU equals 10,000 square feet of non-residential intensity which may be used to administratively increase allowable non-residential intensity on an existing planned development consistent with section 34-380.

(2) The use of Wetland TDUs to increase commercial intensity is permitted within future urban areas as defined by the Lee Plan.

(c) Wetland TDUs may be utilized to reduce open space and onsite native preservation requirements set forth in chapter 10 in accordance with the following ratios. Applications for the use of TDUs to decrease open space must meet the applicable approval requirements identified in Administrative Code 13-5.

(1) One Wetland TDU equals a 5,000 square foot reduction to the minimum open space and onsite native preservation requirements for residential, commercial, industrial and mixed-use projects. TDUs may not be used to reduce required landscape buffers, building perimeter plantings, stormwater management, or any other design requirement set forth in chapter 10.

a. A maximum reduction of 50 percent is permitted for development within the Mixed Use Overlay.

b. A maximum reduction of 35 percent is permitted for development within future urban areas, as defined in the Lee Plan, and which are not located within the Mixed Use Overlay.

c. A maximum reduction of 20 percent is permitted for development within future suburban and non-urban areas, as defined in the Lee Plan.

**Sec. 2-152. - Density and intensity equivalents of Greater Pine Island TDUs.**

*(a) Remains unchanged.*

(b) The non-residential ratios for Greater Pine Island TDUs are as follows:

*(1) – (2) remain unchanged.*

~~(3) Wetland TDUs may not be used to increase commercial intensity.~~

(c) Greater Pine Island TDUs may be utilized to reduce open space and onsite native preservation requirements set forth in chapter 10 in accordance with the following ratios. Applications for the use of TDUs to decrease open space must meet the applicable approval requirements identified in Administrative Code 13-5.

(1) One Greater Pine Island TDU equals a 5,000 square foot reduction to the minimum open space and onsite native preservation requirements for residential, commercial, industrial and mixed-use projects. TDUs may not be used to reduce required landscape buffers, building perimeter plantings, stormwater management, or any other design requirement set forth in chapter 10.

*a. remains unchanged.*

- b. A maximum reduction of 35 percent is permitted for development within future urban areas, as defined in the Lee Plan future land use categories, and which are not located within the Mixed Use Overlay.
- c. A maximum reduction of 20 percent is permitted for development within future suburban and non-urban areas, as defined in the Lee Plan. land use categories.

~~(2) Wetland TDUs may not be used to reduce open space and onsite native preservation requirements.~~

**Sec. 2-153. - Computation of Southeast Lee County TDUs.**

- ~~(a) One TDU may be established per 520 acres of wetlands encumbered by a conservation easement restrictive covenant, or other instrument that severs the development rights from the parcel(s).~~
- ~~(b) Density reduction/groundwater resource (DR/GR): TDU credits may be established from land designated in the Density Reduction/Groundwater Resource future land use category for DR/GR lands as follows:~~

*Remainder of section is unchanged.*

**Sec. 2-154. - Density and intensity equivalents of Southeast Lee County TDUs.**

- ~~(a) – (c) remain unchanged.~~
- ~~(d) Wetland TDUs may not be used to increase commercial intensity.~~

**SECTION TWO: CONFLICTS OF LAW**

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

**SECTION THREE: SEVERABILITY**

It is the Board of County Commissioner’s intent that if any section, subsection, clause or provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, such portion will become a separate provision and will not affect the remaining provisions of this ordinance. The Board of County Commissioners further declares its intent that this ordinance would have been adopted if such unconstitutional provision was not included.

**SECTION FOUR: CODIFICATION AND SCRIVENER’S ERRORS**

The Board of County Commissioners intend that this ordinance will be made part of the Lee County Code. Sections of this ordinance can be renumbered or relettered and the word “ordinance” can be changed to “section”, “article,” or other appropriate word or

phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the County Administrator, County Manager or his designee, without the need for a public hearing.

**SECTION FIVE: MODIFICATION**

It is the intent of the Board of County Commissioners that the provisions of this Ordinance may be modified as a result of consideration that may arise during Public Hearing(s). Such modifications shall be incorporated into the final version.

**SECTION SIX: EFFECTIVE DATE**

This ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State. The provisions of this ordinance will apply to all projects or applications subject to the LDC unless the development order application for such project is complete or the zoning request is found sufficient before the effective date.

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Commissioner Manning made a motion to adopt the foregoing ordinance, seconded by Commissioner Sandelli. The vote was as follows:

John Manning	Aye
Cecil Pendergrass	Aye
Ray Sandelli	Aye
Brian Hamman	Aye
Frank Mann	Aye

DULY PASSED AND ADOPTED this 15th day of September 2020.

ATTEST:  
LINDA DOGGETT, CLERK

BY: *Michelle Butler*  
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

BY: *Brian Hamman*  
Brian Hamman, Chair



APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY

By: *Cherinda*  
Office of the County Attorney