

MEMORANDUM
FROM
THE DEPARTMENT OF
COMMUNITY DEVELOPMENT

TO: Local Planning Agency Members **DATE:** February 6, 2020
FROM: Audra Ennis  Zoning Manager

RE: WETLANDS TRANSFER OF DEVELOPMENT RIGHTS (TDR) PROGRAM LAND DEVELOPMENT CODE AMENDMENTS

The attached amendments to Land Development Code, Chapter 2, Article IV – Bonus Density are in response to Board direction to amend the Land Development Code to implement an enhanced Wetlands TDR Program. These amendments include new and amended definitions, computation of Wetland Transferable Development Units (TDUs), density equivalents of Wetland TDUs, and clarifications and revisions for internal consistency.

On December 18, 2019 the BoCC adopted an enhanced Wetlands TDR program and directed staff to prepare amendments to the Land Development Code to implement the amendments to the Lee Plan.

The updated Wetlands TDR program incentivizes property owners to transfer their density (TDUs) off wetlands by adding a residential multiplier when transferring to eligible receiving lands and a separate multiplier for TDUs created from lands within the Coastal High Hazard Area. In addition to the residential incentives, non-residential incentives similar to those provided in the Greater Pine Island TDR program are proposed. The following incentives are proposed for the Wetland TDR program:

- Up to one (1) Wetland TDU may be created for every 5 acres of wetlands – this is 4 times the density of the Wetlands future land use category.
- The number of Wetland TDUs will be doubled if the sending area is within the Coastal High Hazard Area.
- Each TDU can be used, with administrative approval, on an eligible receiving parcel for:
 - Two additional dwelling units;
 - 10,000 square feet of non-residential floor area; or

- A 5,000-square-foot reduction in open space and on-site native preservation requirements.

Lee County has recently updated and simplified the process to create and use TDUs in the Bonus Density Program. In certain cases, Bonus Density can be approved by right or through an administrative process, which can expedite approval time and provide certainty for developers proposing to use Bonus Density.

The proposed amendments were reviewed by the Executive Regulatory Oversight Committee (EROC) and the Land Development Code Advisory Committee (LDCAC) on January 8, 2020 and January 10, 2020. EROC and LDCAC recommended minor edits for clarification, recommended revisions to definitions for consistency, and recommended that Wetland TDUs applied to increases in intensity be made available for a broader range of non-residential uses. The proposed LDC amendments have been revised to incorporate EROC and LDCAC recommendations as noted.

The proposed LDC amendments are necessary to implement the amendments to the Lee Plan adopted by CPA2019-00001 and to assure that the LDC remains consistent with the Lee Plan.

Staff requests that the LPA find the proposed amendments to the LDC consistent with the Lee Plan and recommend approval of the proposed amendments to the BoCC.

CHAPTER 2 – ADMINISTRATION

ARTICLE IV. - BONUS DENSITY

DIVISION 1. GENERALLY

Sec. 2-143. - Definitions.

Staff note: Definitions updated to reflect current Lee Plan terminology addressing Community Plan areas. Added definition for Southeast Lee County TDU. Amended definition of Wetland TDU to add preservation and restoration language and to include creation of Wetland TDUs in Southeast Lee County Community Plan area. Revised definitions for consistency to address LDCAC comment.

- (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.

Staff note: Allow use of Wetland TDUs to increase density/intensity within PDs by administrative approval.

- (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.

Staff note: Revised to add appropriate cross-references and clarify types of uses and activities permitted on sending parcels. Differentiate between upland and Wetlands TDR areas for permitted activities on sending parcels.

(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.

Staff note: Update terminology to be consistent with Lee Plan. Add provisions to increase incentives for wetlands preservation in Coastal High Hazard Area.

- (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.

Staff note: Increased value of Wetland TDU from one to two dwelling units. Establish criteria for use of Wetland TDUs to increase commercial intensity or reduce open space requirement. Establish non-residential square footage value for Wetland TDU used to increase commercial intensity. Establish value for Wetland TDU used for open space reduction. Revised Wetland TDU ratio for development intensity to permit use of Wetland TDUs for any non-residential use to address LDCAC comment

~~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.

Staff note: Eliminate restriction on use of Wetland TDUs for commercial intensity increases and open space reductions. Revise for consistency in terminology.

- (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.

Staff note: Reduce acreage required to create Wetland TDU in SE Lee County. This is consistent with TDUs created from wetlands in the Wetlands and Greater Pine Island TDR Programs.

(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.

Staff note: Remove cross reference to Wetland TDUs in LDC section that is specific to Southeast Lee County TDUs.

(a) – (c) *remain unchanged.*

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