# EXECUTIVE REGULATORY OVERSIGHT COMMITTEE
## Community Development/Public Works Center
## 2115 Second Street, First Floor Conference Room

## WEDNESDAY, DECEMBER 9, 2015
## 2:00 P.M.

# AGENDA

1. Call to Order/Review of Affidavit of Publication
2. Approval of Minutes – September 9, 2015
3. PINE ISLAND COMMUNITY PLAN UPDATE – STAFF
4. Adjournment – Next Meeting Date: January 13, 2016

# Draft

## MINUTES REPORT
## EXECUTIVE REGULATORY OVERSIGHT COMMITTEE
## WEDNESDAY, SEPTEMBER 9, 2015

**Committee Members Present:**

| | | |
|---|---|---|
| Randy Mercer, Chairman | Jim Ink | Buck Ward |
| Carl Barraco, Jr. | Stephanie Kolenut | |
| Tracy Hayden | Matthew Petra | |

**Committee Members Absent:**

| | | |
|---|---|---|
| Hal Arkin | Bob Knight | Mike Roeder |
| Bill DeDeugd | Darin Larson | |
| Bill Ennen | Michael Reitmann | |

**Lee County Government & Representatives Present:**

| | |
|---|---|
| Dave Harner, Asst. County Manager | Nettie Richardson, Zoning Senior Planner |
| Roland Ottolini, Dir., Natural Resources | Marcus Evans, P.E., Dev. Services |
| Lee Werst, Natural Resources | Neysa Borkert, Asst. County Attorney |
| Ken Lovejoy, Insp., Natural Resources | John Fredyma, Asst. County Attorney |
| Pam Houck, Zoning Manager | Pam Hendry, DCD Admin., Recording |
| Laura Belflower, Deputy Hearing Examniner | |

**Public Participants: None**

**Introduction**

Mr. Randy Mercer called the meeting to order at 2:06 p.m. in the first floor conference room of the Community Development/Public Works Center, 1500 Monroe Street, Ft. Myers, Florida.

Ms. Neysa Borkert, Assistant County Attorney, reviewed the Affidavit of Posting of Meeting and found it legally sufficient as to form and content.

**Approve Meeting Minutes – April 15, 2015**

**Ms. Stephanie Kolenut made a motion to approve the April 15, 2015 meeting minutes. Mr. Carl Barraco, Jr. seconded. The motion carried unanimously.**

**Well Ordinance Amendment**

Mr. Roland Ottolini said the ordinance has been in place for many years serving as the well construction inspection services, delegated authority by the South Florida Water Management District. A couple of years ago the State legislature made changes in licensure and eliminated some duplication requirements, making a State licensure good for the County. Since the ordinance needed amending, they also did some house keeping to make it more user friendly, they updated some definitions and the fees were increased to reflect the actual cost of the inspection services.

Ms. Tracy Hayden asked a question about Section Five Definitions, Domestic. Mr. Lee Werst answered.

Mr. Matthew Petra asked a question about Section Seven, 1(1) Well Construction Advisory Board requirement. Mr. Werst answered.

Ms. Hayden asked a question about Section Eight New Contractor or Renewal Licensure Requirements. Mr. Werst answered.

Mr. Carl Barraco asked a question about Sec. 11.1(1) Test Wells. Mr. Werst answered.

Ms. Hayden said in Appendix B on page 10 there is a typo, Speciality should be Specialty.

**Ms. Tracy Hayden made a motion to approve with the correction of the scrivenor's error in Appendix B. Mr. Matthew Petra seconded. The motion carried unanimously.**

**Amendments to the Hearing Examiner Zoning Process**

Ms. Laura Belflower said they have Administrative Code changes and Land Development Code changes for the Hearing Examiner process. She said it's nothing radical, clarifications, cleanup and moving things around making the flow simpler. The procedural requirements and some definitions were moved from the Land Development Code to the Administrative Code.

Ms. Hayden asked about Administrative Code Section 2-2 F. Deferrals. Ms. Belflower said this was moved from the Land Development Code to the Administrative Code and the language was clarified.

**Ms. Stephanie Kolenut made a motion to approve. Ms. Hayden seconded. The motion carried unanimously.**

**ADJOURNMENT**

**Ms. Hayden moved to adjourn. Mr. Carl Barraco, Jr. seconded. The meeting was adjourned at 2:38 p.m**.

The next meeting was tentatively scheduled for November 4, 2015.

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# Pine Island Community Plan Update

Mikki Rozdolski

## EROC ORDINANCE EVALUATION GUIDELINES

**Proposed Ordinance: LDC Amendments – Pine Island Community Plan**

1. **What is the public interest that the Ordinance is designed to protect?**
   The use and regulation of land and reduction of potential liability from Bert Harris and Inverse Condemnation Claims.

2. **Can the identified public interest be protected by means other than legislation (e.g., better enforcement, education programs, administrative code in lieu of ordinance, etc.)?** No, the proposed amendments are designed to protect the rural character of Pine Island through legally defensible regulations and revisions to the Land Development Code are needed to avoid legal liabilities.
   **If so, would other means be more cost effective?** N/A

3. **Is the regulation required by State or Federal law?** No
   **If so, to what extent does the County have the authority to solve the problem in a different manner?** N/A

4. **Does the regulation duplicate State or Federal programs?** No
   **If so, why?** N/A

5. **Does the regulation contain market-based incentives?** Yes, some of the regulations offer incentives to reduce development pressures on Pine Island.
   **If not, could that be used effectively?** N/A

6. **Is the regulation narrowly drafted to avoid imposing a burden on persons or activities that are not affecting the public interest?** Yes

7. **Does the regulation impose a burden on a few property owners for the benefit of the public as a whole?** No
   **If so, does it provide any form of compensation?** N/A

8. **Does the regulation impact vested rights?** No

9. **Does the regulation provide prompt and efficient relief mechanisms for exceptional cases?** N/A

10. **Even though there is an interest to be protected, is it really worth another regulation?** Yes, this ordinance refines current regulations to protect the rural character of Pine Island and relieve County liabilities from current regulations.

11. **Has this approach been tried in other jurisdictions?** Not known
    **If so, what was the result?** N/A
    **If not, what are the reasons?** Not known

12. **If this regulation is enacted, how much will it cost on an annual basis, both public and private? If this regulation is not enacted, what will be the public and private cost?** Any increased cost will be nominal; although potential liability from current regulations could exceed $100,000,000 to $200,000,000.

# MEMORANDUM

## FROM
## THE DEPARTMENT OF
## COMMMUNITY DEVELOPMENT

**TO: LDCAC and EROC Members** **DATE: November 30, 2015**

**FROM: Mikki Rozdolski, Planning Manager**

**RE: Greater Pine Island Community Plan Update**
**Land Development Code (LDC) Amendments**

On November 3, 2015 the Board of County Commissioners authorized Staff to proceed with Lee Plan and LDC amendments in a manner that limits potential liability from current and anticipated land use and property rights cases brought by Pine Island landowners; and preserves the unique coastal rural character of the Pine Island community.

**Background**

The Greater Pine Island Community Plan was adopted under Goal 14 of the Lee Plan in 1994 as a mechanism to: manage future growth on and around Greater Pine Island; maintain the island's unique natural resources, character and its viable and productive agricultural community; and insure that island residents and visitors have a reasonable opportunity to evacuate when a hurricane strike is imminent. Between 1994 and 2010, additional Lee Plan and LDC amendments were adopted to implement these goals.

In 2003, an amendment reclassified land on Greater Pine Island from the Rural Future Land Use Category to the new Coastal Rural Future Land Use Category with a reduced allowable density of one dwelling unit per ten acres. In 2007, the allowable density was further limited to one unit per seventeen acres. Higher densities (1du/acre in 2003 and 1du/2.7 acres in 2007) could be achieved under both amendments if property owners conveyed certain property rights, restore native habitat, preservation, or agree to continue agricultural uses on their property.

In 2009, Lee County was sued by eight property owners under the Bert Harris Act. The plaintiffs claimed, among other things, that the County's adoption of Coastal Rural regulations inordinately burdened their property. The first case to go to trial was *Cammilot Partners, LLC, vs. Lee County.* On July 15, 2014, the Court ruled against Lee County finding the County liable for the damages resulting from the Coastal Rural regulations under the Bert Harris Act. Prior to the trial on damages, the County reached a settlement with the Plaintiff.

As a result of the Cammilot decision, the Board directed Staff to research a number of potential legal and planning issues including traffic, roadway capacity, hurricane evacuation, financing mechanisms for purchase of development rights, transfer of development rights, and development planning. Lee Plan and LDC amendments were prepared based on this research and analysis.

Preliminary drafts of the proposed amendments were shared with a small group of Pine Island residents and business leaders in both June and July 2015. A noticed public meeting on Pine Island, attended by well over 250 people, was held on October 14, 2015.

**Summary of Amendments**

The proposed Lee Plan and LDC amendments:

- Modify Coastal Rural standard maximum density from 1 du/10 acres to 1 du/2.7 acres.

- Maintain the existing provision to achieve a maximum density of 1 du/acre if 70% of the site is committed to permanently preserved native habitat, permanently restored native habitat, or maintained in agricultural usage.

- Remove the requirement for a conservation easement, and replace with a requirement for a binding MCP and/or local Development Order approval.

- Require Planned Development zoning approval for developments with 10 dwelling units or more, and provide for higher development standards to address rural character, compatibility, and environmental factors.

- Create a TDR program specific to Greater Pine Island (GPI) to incentivize the transfer of development rights to receiving areas outside of the Planning Community by allowing for:

    - Higher generation rates for GPI Transferable Development Units (TDUs) versus regular "wetland" TDUs
    - Higher densities in urban future land use categories outside of GPI, and where GPI TDUs are utilized
    - Administrative process for projects receiving GPI TDUs
    - GPI TDUs to be used in residential OR commercial projects
    - GPI TDUs to be used to off-set open space and native preservation requirements

- Create a clear and concise process for achieving bonus density and for administratively transferring TDUs to receiving parcels without requiring a conservation easement over the sending parcel.

- Replace the 810/910 Rule with standard roadway level of service standard, to be measured and applied in a manner consistent with all other roadways in Lee County.

- Require the County to maintain a hurricane evacuation clearance time of 18 hours for Pine Island residents.

- Require mitigation for new development or redevelopment that exceeds the roadway LOS and/or hurricane evacuation clearance time standards.

- Require the County to prepare a Hurricane Evacuation Plan specific to Greater Pine Island in order to maintain the 18-hour hurricane evacuation clearance time.

- Require all new development and redevelopment to mitigate for shelter and hurricane evacuation impacts.

## CHAPTER 2. ADMINISTRATION

## ARTICLE IV. ~~TRANSFER OF DEVELOPMENT RIGHTS~~ BONUS DENSITY

## DIVISION 1. GENERALLY

### Sec. 2-141. Purpose of article.

The purpose of this article is to establish a method for allowing increased densities, consistent with Lee Plan Table 1(a), in appropriate areas within Lee County through two distinct incentive programs.

~~The purpose and intent of this article is to recognize that there are environmentally sensitive lands categorized as wetlands by the County comprehensive plan that warrant protection in their undeveloped, natural state. Further it is the purpose and intent of this article to provide an alternative to development on these environmentally sensitive lands by providing an economic relief mechanism that encourages private property owners to utilize the transfer of development rights (TDR) concept. The transfer of development rights concept is designed to direct future growth in a logical. economical and efficient manner toward those areas of the county best suited to providing the public services and facilities necessary for the protection of the health, safety and welfare of the general public.~~

### Sec 2-142. Applicability of article

This article applies to all unincorporated areas of the County. Incorporated municipalities may elect to participate in the bonus density programs through the use of an approved interlocal agreement.

~~Lee County has also established a second TDR program that allows the transfer of development rights from uplands as well as wetlands and creates additional TDR receiving areas (see chapter 32).~~ The Southeast Lee County ~~two~~ TDR program~~s~~, established in chapter 32, operates independently from the TDR program described in this article except for when TDUs created from lands within Southeast Lee County are used outside of Southeast Lee County.~~; TDR units~~ TDUs created pursuant to chapter 2 may be used only on receiving parcels defined in chapter 2.

### 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:

*Affordable housing owner-occupied unit* means a dwelling unit built in excess of the standard density and sold or reserved for sale to eligible households under the provisions of the bonus density program.

*Affordable housing program* means the program created to stimulate the construction of very low - low- moderate and work force - income housing in the County, by permitting qualifying developers, by their participation in the program, to exceed the standard density limits otherwise imposed by law.

*Affordable Housing rental unit* means a dwelling unit built in excess of the standard density and occupied or reserved for occupancy by eligible households in exchange for the payment of rent to the owner of the unit under the provisions of the bonus density program.

*Bonus* ~~*D*~~*density* ~~bonus~~ means an increase in the density of development that can be carried out on a parcel of land over and above the standard density range permitted by the comprehensive plan for the land use category in which it is located.

~~Development right means any specific right to use real property which inures to an owner of real property through the common law, statutory law of real property, the United States and state constitutions and as further defined and delineated in this article.~~

*Eligible household* means a household that is comprised of one or more natural persons determined by the County to be of very low, low, moderate or work force income according to HUD's households income limits adjusted for household size. The HUD Handbook is used to determine whether an individual will qualify as a household member. Whenever the handbook indicates that an individual is a household member, the individual's full income must be included in annual income calculations.

~~*L*~~*Future land use* ~~*plan map*~~ means the map adopted by the Board of County Commissioners, which delineates land use categories of the comprehensive plan.

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

*Low income* means a person or household whose annual (gross) income does not exceed 80 percent of the area median income, as determined by HUD.

*Maximum bonus density* means the maximum number of dwelling units per acre allowed above the standard density range, as designated by the Lee Plan, within each land use category under the bonus density program.

*Moderate income* means a person or household whose annual (gross) income does not exceed 120 percent of the area median income, as determined by HUD.

*Receiving*~~*er*~~ *parcel* means a parcel of land on which a development right is used.

*Standard density range* means the possible number of dwelling units per acre permitted within a land use category designated by the Lee Plan without application of the bonus density program.

~~*TDR* means~~ ~~t~~*Transfer of development rights (TDR) program* means the program by which dwelling units or development rights can be conveyed by the owner to another property, through transfer or sale. The landowner may sell the development rights and still retain the title to the land and the right to use the surface of the land on a limited basis.

~~*TDR unit*~~ *Transferable development unit (TDU)* means one dwelling unit or its density equivalent ~~density as set forth~~ (as provided in ~~Chapter 34~~)

~~*TDR unit*~~ *Transferable development unit (TDU)* means one dwelling unit or its equivalent density, as set forth in this article, that is severed from a sending parcel and that can be transferred for use on a receiving parcel. ~~Chapter 34~~.

*Very low income* means a person or household whose annual (gross) income does not exceed 50 percent of the area median income, as determined by HUD.

~~Water, body of,~~

~~(1) Artificial body of water~~ *Water body, artificial* means a depression or concavity in the surface of the earth, other than a swimming pool, created, extended or expanded by human artifice and in which water stands or flows for more than three months of the year.

~~(2) Natural body of water~~ *Water body, natural* means a depression or concavity in the part of the surface of the earth lying landward of the line of mean sea level (NAVD) which was created by natural geophysical forces and in which water stands or flows for more than three months of the year. Also included are the bays and estuaries lying between the County mainland and the barrier islands (Gasparilla Island, Cayo Costa, North Captiva Island, Captiva Island, Sanibel Island, Estero Island, Lovers Key, Big Hickory Island, Little Hickory Island and Bonita Beach) with the outermost boundary defined by the shortest straight line that can be drawn between these islands.

*Wetlands* means a land use category as defined by the comprehensive plan. For the purpose of this article, lands which otherwise would meet this definition but for the effects of unlawful clearing of vegetation or filling or excavation will be included in this definition, and all lands which meet these criteria will be considered wetlands regardless of whether they are explicitly identified as such on the Lee Plan future land use map.

*Wetland TDU* means a transferable development unit generated from sending lands designated as wetlands, outside of the Greater Pine Island Planning Community, in accordance with this article.

*Work force income* means a person or household whose annual (gross) income does not exceed 140 percent of the area median income, as determined by HUD.

(b) Words or phrases used in this article and not defined in section 34-2 or subsection (a) of this section will be interpreted so as to give them the meanings they have in common usage and to give this article its most reasonable application.

## DIVISION 2. BONUS DENSITY PROGRAM

**Sec. 2-146. Minimum Requirements.** ~~Transfer of development rights concept; computation of units.~~

(a) Applicants must comply with the minimum requirements set forth herein to be eligible to participate in the bonus density program through use of one of the following incentive programs:

(1) Affordable Housing Program in accordance with the site-built provisions set forth in section 2-148 or the cash contribution provisions set forth in section 2-149.

(2) Transfer of Development Rights (TDR) Program in accordance with section 2-150.

(b) Minimum requirements:

(1) All requests for bonus density must:

a) Comply with and be consistent with the Lee Plan and all other applicable federal, state and regional laws and regulations; and

b) Include only property zoned for the type of dwelling units to be constructed; and

c) Limit the proposed density to the maximum total density or less, allowed by the Lee Plan.

(2) All proposed developments must be designed so that:

a) The additional traffic will not be required to travel through areas with significantly lower densities before reaching the nearest collector or arterial road as required by Lee Plan Policy 39.1.4; and

b) Existing and committed public facilities are not so overwhelmed that a density increase would be contrary to the overall public interest; and

c) Storm shelters or other appropriate mitigation is provided if the development is located within the coastal high hazard area as defined in section 2-483.

d) The resulting development will be compatible with existing and planned surrounding land uses.

(c) Assisted living facilities are eligible for bonus density through the TDR Program or through the Affordable Housing Program when annual rental rates, including all services, do not exceed the levels established for eligible households. Where the cash-contribution bonus density option is used, the cash contribution must be applied for each dwelling unit or its equivalent unit, as provided in section 34-1494, built above the standard density.

(d) The barrier and coastal islands, including but not limited to Gasparilla Island, Cayo Costa, North Captiva, Captiva Island, Buck Key, and Black Island are not eligible to receive bonus density, with the following exceptions:

(1) Only the portion of Greater Pine Island defined in the Lee Plan as Pine Island Center is eligible to receive Greater Pine Island TDUs subject to this article and the Lee Plan. Suburban designated lands within the Greater Pine Island Planning Community are not eligible receiving lands for any TDUs.

(2) Work force housing may be developed on barrier islands within the Mixed Use Overlay if transit is available and bonus density is approved through the Affordable Housing Program.

(e) TDUs may not be utilized on property located within the coastal high hazard area as defined in section 2-483 or located within the Bayshore, Buckingham, Caloosahatchee Shores, Northeast Lee County or Southeast Lee County Planning Communities.

~~(a) Legal concept. The transfer of development rights idea is based upon the property law concept that the right to develop real estate is one of the bundle of rights included in fee simple ownership of land. Fee simple ownership of real estate allows the owner to sell, lease or trade any one or more, or all of the bundle of rights to their property. This bundle includes the right to use, lease, sell, or abandon the property or any of its components of ownership when not retained by a previous owner such as mineral, oil, gas, air, or development rights. All rights of ownership are subject to the limitation and legislative powers of the local government.~~

~~(b) Development rights defined. A development right is an appurtenant right of land ownership. When lawfully established, a development right has an economic value separate from the land itself. It can be subject to reasonable regulation by local government under its police powers. The development right can be transferred by the owner to another property, through gift or sale. The landowner may sell the development rights and still retain the title to the land and the right to use the surface of the land on a limited basis.~~

~~(c) Establishment of development rights.~~

~~(1) For the purposes of this article, the owner of any vacant or undeveloped property that is designated wetlands under the comprehensive plan and that is not zoned or proposed to be zoned to a private recreational facilities planned development (PRFPD) district, may transfer the development rights allocated to the parcel of land to any person at any time, subject to the provisions of subsection (c)(2) of this section.~~

~~(2) Development rights may only be transferred to those parcels or portions of a parcels designated as receiving parcels. The maximum number of development rights that may be transferred to the receiver parcel must be determined in accordance with section 2-147(b) and 2-147(c) as well as the maximum bonus density permitted by its land use category as designated by the comprehensive plan.~~

~~(3) Rezoning to a private recreational facilities planned development (PRFPD) district extinguishes residential density rights applicable to the transfer, clustering, or assignment of density rights to another parcel of land. Development rights to residential density can be reestablished only by removing the private recreational facilities in their~~

~~entirety, and eliminating all private recreational facility uses from the zoning district in effect.~~

~~(d) Computation of transfer of development rights units (TDR units).~~

~~(1) The development rights appurtenant to land categorized as wetlands, may be severed from the underlying fee and transferred to land that qualifies as a receiving parcels that is appropriate for density bonus, pursuant to this article. Development rights that are transferable pursuant to this article will be known as "Lee County transfer of development rights (TDRs)." TDRs may not be severed from land that is:~~

~~a. owned by a public agency;~~

~~b. subject to conservation easements;~~

~~c. or subject to other legal restrictions that would (or that have) precluded the physical development of the land on or before September 1, 1986 (the effective date of the ordinance 86-18 from which this article is derived.)~~

~~(2) Units of measure of TDRs are hereby established at one TDR unit per five acres of wetland. The county will not recognize TDR units smaller than one-tenth unit. The following table sets forth equivalent TDR units for various acreages or portions of an acre:~~

~~TABLE 1. FRACTIONAL TRANSFER OF TDR UNITS~~

| ~~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~~ |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| ~~TDR units~~ | ~~0~~ | ~~0.1~~ | ~~0.2~~ | ~~0.4~~ | ~~0.6~~ | ~~0.8~~ | ~~1.0~~ | ~~1.2~~ | ~~1.4~~ | ~~1.6~~ | ~~1.8~~ | ~~2.0~~ |

~~(3) A single TDR unit is declared to be the right to place and use one dwelling unit or the density equivalent of one dwelling unit, (as defined and established in chapter 34) where applicable.~~

~~(4) A single-family lot or parcel designated as wetlands that holds an affirmative determination of the single-family residence provision, may be permitted to sever two TDR units in lieu of development.~~

~~(5) Under no circumstances will areas considered to be natural bodies of water be included in the calculation for TDR units.~~

**Sec. 2-147. Procedure to approve bonus density.** ~~Transfer of development rights~~

(a) Request.

(1) An application, presented on the official form(s) provided by the County, along with the appropriate fee.

(2) As part of the application, the applicant must:

a. Clearly demonstrate that the subject property is eligible for at least one of the incentive programs identified in section 2-146(a).

b. Provide documentation substantiating compliance with each of the review criteria set forth in section 2-146.

(3) The request may be made as part of a rezoning application or as a standalone application. In either case, a fee applicable solely to the bonus density request will be required.

~~(a) Sending parcel.~~

~~(1) The property owner of lands that are designated or can be defined as wetlands pursuant to the comprehensive plan may sever their development rights for TDR units provided the following procedures are completed:~~

~~a. The property owner must apply for an administrative determination in the designation of wetlands. As part of the administrative determination application, the property owner must submit a "certified sketch of description" of the property and a South Florida Water Management or U.S. Army Corps of Engineers wetlands jurisdictional determination. The purpose of this administrative determination is to ascertain how many TDR units the property owner is entitled to.~~

~~b. The department will make the determination as to the number of wetland acres and corresponding TDR units the subject property may support.~~

~~(2) Once the administrative determination is issued, the property owner must submit to the county a survey delineating the wetland areas in compliance with the administrative determination. The survey must be prepared by a surveyor and certified to the county. The legal description does not have to be an exact delineation of the wetlands, but must be a reasonably accurate representation of those affected lands. The county will review the survey for compliance with the administrative determination. After the county approves the survey, the property owner must submit a legal description and a legible 8½ by 11 inch accompanying sketch, sealed by the surveyor, and appropriate for attachment to documents for recording.~~

~~(3) The property owner must prepare a conservation easement agreement acceptable to the county attorney's office that expressly restricts the use of the wetland portion of the sending parcel to conservation and open space uses in perpetuity. The conservation easement document must state the total number of TDR units that are delineated wetlands and available to the property owner for transfer. The easement must be drafted and prepared in compliance with F.S. § 704.06, and granted to and expressly enforceable by the county.~~

~~(4) After the legal description and conservation easement have been accepted by the county attorney's office, it will be recorded in the Lee County public records at the property owner's expense.~~

~~(5) The sending parcel may only be used in a manner consistent with its conservation easement.~~

~~(6) After the legal description and conservation easement have been recorded, the property owner may sell, trade, barter, negotiate or transfer the TDR units. The owner of the sending parcel (grantor) must execute and record a deed of transfer before a transfer of TDR units can be completed. The deed of transfer must indicate:~~

~~a. how many TDR units are to be transferred by the property owner (grantor) to the buyer (grantee);~~

~~b. the total number of TDR units originally afforded to the sending parcel;~~

~~c. the number of TDR units that have been transferred to other buyers; and~~

~~d. how many TDR units remain attached to the sending parcel.~~

(b) ~~Receiving parcel.~~ Bonus Density Approval Types.

~~Density Increases. Except as provided in Section 2-148, the property owners of lands designated by the comprehensive plan as intensive development, central urban, or urban community, are eligible to receive TDR units: 1) by right; 2) by administrative approval if rezoning is not required; or 3) concurrent with a rezoning, pursuant to the conditions set forth below.~~

(1) ~~TDR units By Right. The transfer of TDR~~ Bonus density by right. Bonus density ~~units~~ is permitted by right~~,~~ for ~~receiving~~ parcels located in the TFC-1, TFC-2, TF, RM-2 through RM-10, CT, C-1A, C-1, C-2A, and C-2 ~~following~~ conventional zoning districts, provided that the property development regulations concerning lot size, setbacks, and height are met.~~:~~

~~TFC-1, TFC-2 and TF~~
~~RM-2 through RM-10~~
~~CT, C1-A, C1, C2-A, and C2~~

a. If the ~~receiving~~ parcel is one acre or less, ~~TDR units~~ bonus density may be used to add one dwelling unit.

b. If the ~~receiving~~ parcel is larger than one acre, ~~TDR units~~ bonus density may be used to add one dwelling unit per acre.

The resulting density may not exceed the maximum total density range for the land use category where located and the ~~receiving~~ parcel must already be zoned for the number and type of dwelling units that would result from adding the ~~TDR units~~ bonus density to the ~~receiving~~ parcel.

(2) Administrative approval of bonus density ~~increases in conventional zoning districts~~. The ~~department~~ director may administratively approve the use of ~~TDR units~~ bonus density to increase the density of a proposed development in a conventional zoning district provided:

a. The request does not exceed the maximum total density allowed by the Lee Plan for the applicable land use category; and

b. The director's written findings conclude that, in addition to the minimum requirements provided in section 2-146, the proposed development is:

~~1. in compliance with the Lee Plan;~~
~~2. zoned for the type of dwelling units to be constructed;~~
~~3~~1. designed so that the resulting development does not have substantially increased intensities of land uses along its perimeter, unless adjacent to existing or approved development of a similar intensity; and
~~4. in a location where the additional traffic will not be required to travel through areas with significantly lower densities before reaching the nearest collector or arterial road;~~

~~5. in a location outside of the Category 1 Storm Surge Zone for a land-falling storm as defined by the October 1991 Hurricane Storm Tide Atlas for Lee County prepared by the Southwest Florida Regional Planning Council.~~

~~6. not in a location where existing and committed public facilities are so overwhelmed that a density increase would be contrary to the overall public interest; and~~

~~7~~2. will not decrease required open space, buffering, landscaping and preservation areas or cause adverse impacts on surrounding land uses.

The director's written approval may contain reasonable conditions to mitigate adverse impacts that could otherwise be created by the density increase. The director's decision may be appealed according to the provisions of chapter 34 for appeals of administrative decisions.

(3) Amendments to p~~P~~lanned development zoning districts. In order to increase the approved density of an existing planned development using ~~TDR units~~ bonus density, the applicant must apply for an amendment to a planned development approval pursuant to section 34-380. The application must include, as part of the submittal documents, a revised master concept plan that clearly shows the location of the proposed additional density, and must also provide additional information as is needed to describe the changes in impact that the increased density will have over that which was contained in the application for the original approval.

(4) Rezoning. If ~~a property owner or developer applying~~ an application for a planned development or conventional rezoning ~~intends~~ proposes to use ~~TDR units~~ bonus density to increase densities above the Lee Plan standard density range, ~~both~~ the application for the rezoning ~~and the transfer of TDR~~ must specifically request the use of bonus density. ~~may be submitted at the same time for concurrent review. The maximum density may not exceed the maximum total density for the land use category in which the property is located. The application process, including the TDR transfer, will follow the same procedures applicable to any other rezoning case.~~ The rezoning may be approved with or without the bonus density at the discretion of the Board of County Commissioners. The Board's action taken on the bonus density request will be noted in the final zoning resolution.

~~(c) Development/building permit approval. After the property owner or developer has received approval to use TDR units, he may apply for final development orders or building permits, as applicable.~~

~~(1) Before a final development order is approved, the developer must provide sufficient evidence to the department director that the TDR units required for the increased density have been secured.~~

~~(2) Before the issuance of construction or building permits, the developer must provide to the department a copy of the recorded deed of transfer required in accordance with section 2-147(a)(6) encompassing the TDR units he intends to use. This deed must include a restriction on the development rights of the sending parcel in perpetuity.~~

~~(3) Upon issuance of construction or building permits for the units allowed using TDR units, the property owner or developer must provide the county an executed deed~~

~~transferring the TDR units to the receiving parcel. The department may issue an extinguishment document to the sending parcel property owner indicating the number of TDR units transferred to the receiving parcel. The extinguishment document and deed transferring the TDR units will be recorded in the public records of the county and made available to the county property appraiser. This process completes the development rights transaction.~~

(c) The County may limit the number of units that can be built using bonus density on a parcel to an intensity lower than the maximum total density allowed per Table 1(a), or impose reasonable conditions if, during the zoning process, the County determines that increased density or bonus density would be contrary to the public health, safety and welfare or increased density or bonus density would be inconsistent with the comprehensive plan.

The Board of County Commissioners or the director must include specific findings of fact to support the limitation and specify what changes, if any, would make the parcel proposed for development eligible for additional development rights.

(d) Following the appropriate determination that a property is eligible and suitable for the use of bonus density, the applicant may apply for a development order or building permit that includes the use of the approved bonus density through one of the incentive programs identified in sections 2-148, 2-149, or 2-150.

**~~Sec. 2-148. Limitations.~~**

~~(a) Development rights authorized and severed by another governmental unit may not be used in the County.~~

~~(b) The County may limit the number of TDR units that can be transferred to the receiver parcel to an intensity lower than the amount requested by the developer if, during the zoning or development review process, the County determines that the receiver parcel for development reflects unique or unusual circumstances or is surrounded by uses such that a development of the parcel at an increased density or at a density bonus would be contrary to the public health, safety and welfare, and inconsistent with the comprehensive plan. The Board of County Commissioners or the director must, as part of any development order issued limiting the use of TDR units to less than the amount requested by the property owner or developer, include specific findings of fact to support the limitation and specify what changes, if any, that would make the parcel proposed for development eligible for additional development rights.~~

~~(c) Areas defined as wetlands that are approved as part of any development order for open space or water management purposes are not eligible to sever or receive TDR units.~~

~~(d) The barrier or coastal islands, including but not limited to Gasparilla Island, Cayo Costa, North Captiva, Captiva Island, Sanibel Island, Estero Island, Lovers Key, Big Hickory Island, Little Hickory Island, Buck Key, Black Island, Bonita Beach, Pine Island, Little Pine Island and Matlacha, are not eligible to receive TDR units.~~

**Sec. 2-148. 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 set forth in this section and AC 13-12.

(b) Prior to receiving a final development order or building permit using bonus density, the developer must:

(1) Obtain bonus density approval in accordance with section 2-147; and

(2) 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

(3) 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.

**Sec. 2-149. Affordable Housing Program – Cash Contribution.**

(a) A developer may use approved bonus density at time of development order or building permit by paying the cash contribution as set forth in this section and AC 13-12.

(b) Prior to receiving a final development order or building permit using bonus density, the developer must obtain bonus density approval in accordance with section 2-147.

(c) The developer must contribute to the Affordable Housing Trust Fund as follows:

(1) 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.

(2) The standard contribution per-unit rate is set forth in AC 13-2 and may be adjusted annually.

(3) 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.

(d) All contributions received from developers pursuant to this subdivision will be placed in the Affordable Housing Trust Fund administered in accordance with Lee County Ordinance No. 08-11, as may be amended.

**Sec. 2-150. TDR Program.**

(a) A developer may use approved bonus density at time of development order or building permit by using TDUs as set forth in this section.

(b) Prior to receiving a final development order or building permit using bonus density, the developer must:

(1) Obtain bonus density approval in accordance with section 2-147; and

(2) Provide sufficient evidence that the appropriate TDUs required for the increased density, or intensity equivalents, have been secured before final development order approval; and

(3) Provide a copy of the recorded deed(s) of transfer encompassing the TDUs being used, as required by section 2-156(d), before issuance of a building permit. The deed(s) must include a restriction on the development rights of the sending parcel in perpetuity. The Department may issue an extinguishment document to the sending parcel property owner indicating the number of TDUs transferred to the receiving parcel. The extinguishment document and deed(s) transferring the TDUs will be recorded in the public records of the county and made available to the county property appraiser. This process completes the development rights transaction. 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.

## DIVISION 3. CREATION OF TRANSFERABLE DEVELOPMENT UNITS

**Sec. 2-151. Establishment of transfer of development rights program.**

(a) The transfer of development rights program provides that a TDU may be established from property that:

(1) Are designated Wetlands under the comprehensive plan;

(2) Contains jurisdictional wetlands as defined through the use of the unified state delineation methodology; or

(3) Located within the Greater Pine Island Planning Community.

(b) TDUs may not be established from land that is:

(1) Owned by a public agency; or

(2) Subject to existing conservation easement(s); or

(3) Subject to other legal restrictions that would (or that have) precluded the physical development of the land on or before September 1, 1986 (the effective date of the Lee County Ordinance 86-18 from which this article is derived); or

(4) Is currently developed with uses not identified in 33-1201; or

(5) Defined as wetlands that are approved as part of any development order or planned development for open space or water management purposes; or

(6) Zoned private recreational facilities planned development (PRFPD).

**Sec. 2-152. Computation of Wetland TDUs.**

(a) Units of measure of Wetland TDUs, which are generated from wetlands outside of the Greater Pine Island Planning Community, are hereby established at one (1) TDU per five (5) 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) Under no circumstances will natural bodies of water be included in the calculation for TDUs.

**Sec. 2-153 Density Equivalent of Wetland TDUs.**

One (1) Wetland TDU is equal to one (1) residential dwelling unit when transferred to eligible receiving lands.

**Sec. 2-154. Computation of Greater Pine Island TDUs.**

(a) One (1) TDU is hereby established per five (5) acres of wetlands.

(b) One (1) TDU is hereby established per one (1) acre of uplands located in non-urban future land use categories.

(c) Three (3) TDUs are hereby established per one (1) acre of uplands located in the Outlying Suburban future land use categories.

(d) 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.

(e) Man-made water bodies, natural water bodies, and right-of-ways may not be included within the acreage calculation for the creation of TDUs.

(f) Greater Pine Island TDUs smaller than one-quarter unit will not be recognized.

**Sec. 2-155. Density and Intensity Equivalents of Greater Pine Island TDUs.**

(a) The residential ratios for Greater Pine Island TDUs are as follows:

(1) One (1) Greater Pine Island TDU will be equal to two (2) dwelling units when transferred to receiving lands outside of the Greater Pine Island Planning Community;

(2) One (1) Greater Pine Island TDU will be equal to one (1) dwelling unit when transferred to receiving lands in Pine Island Center, in accordance with section 2-146(d)(1).

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

(1) One (1) Greater Pine Island TDU equals 10,000 square feet of commercial retail and office space, which may be used to administratively increase allowable commercial intensity on an existing planned development consistent with section 34-380.

(2) The use of Greater Pine Island TDUs to increase commercial intensity is permitted within the Intensive Development, Central Urban and Urban Community future land use categories that are not located within the Greater Pine Island Planning Community.

(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 section 2-150.

(1) One (1) 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. A maximum reduction of 50% is permitted for development within the Mixed Use Overlay.

b. A maximum reduction of 35% is permitted for development within urban future land use categories, and which are not located within the Mixed Use Overlay.

c. A maximum reduction of 20% is permitted for development within non-urban land use categories.

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

**Sec. 2-156. Process to Create TDUs.**

(a) Each TDU may be transferred by the owner of the TDU to another property owner by a recorded, written instrument in accordance with this section. The TDU owner may sell and/or transfer the TDUs at market value, and retain the title to the land and the right to use the surface of the land subject to the limitations herein. The transfer and/or sale of TDUs are further regulated as follows:

(1) TDUs may only be used on those parcels or portions of a parcels designated as eligible receiving parcels.

(2) The maximum number of TDUs that may be used on a receiving parcel must comply with the maximum density permitted by the underlying future land use category pursuant to the Lee Plan, and all other provisions of this article.

(b) To create a TDU, the sending parcel owner must sever the development rights from the sending parcel(s) in accordance with the following provisions and procedures.

(1) The sending parcel owner must submit an application to the Department for administrative determination of the number of TDUs generated by the sending parcel, as follows:

a. The sending parcel owner must complete a department-approved application. The application must provide a legal description and sketch of the property subject to the request, prepared by a Florida Licensed Surveyor and Mapper, and 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 sending 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 sending parcel owner to secure the approval requested and to impose covenants and restrictions on the sending parcel as a result of the action approved by the Department.

b. If the property owner seeks to transfer development rights from wetland areas, the property owner must submit 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.

c. Within 30 days of submittal of a sufficient application by the sending parcel owner, 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 2-152(a)(2).

d. Any appeal of the determination made within the TDU Determination Letter must be filed with the Hearing Examiner's Office within 14 days from issuance of the letter, and appealed in accordance with those procedures set forth in Chapter 34.

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.).

(2) TDU Determination Letter is issued, the sending parcel owner may seek issuance of a TDU Certificate for all or a portion of the TDUs identified in the TDU Determination Letter as follows:

a. The sending parcel owner must prepare and submit a recorded conservation easement, restrictive covenant, or other recorded instrument that severs the development rights from the sending parcel(s), for review and approval by the Department and the County Attorney's office;

b. The sending parcel may only be used in a manner consistent with its conservation easement or written instrument. The conservation easement or other recorded instrument must expressly identify the restriction of property use, including the maximum number of residential units that can be developed on the subject property upon severance of the TDUs. Where applicable, the conservation easement or other recorded instrument must identify the non-residential uses permitted in accordance with Chapter 33 and property maintenance and management activities after the transfer of development rights. Wetland impacts, including impacts associated with permitted non-residential uses, property maintenance, and management activities, are prohibited in perpetuity.

c. Where the sending parcel owner elects to utilize a conservation easement, the easement must comply with F.S. § 704.06, be granted to, and made expressly enforceable by the County.

d. Any other recorded instrument used to implement mechanism that severs the development rights from the property must expressly provide that they are enforceable by the County.

(c) Issuance of TDU certificate. Upon issuance of the TDR Determination Letter and after the conservation easement or other mechanism has been reviewed and accepted by the Department and the Lee County Attorney's Office, it will be recorded in the Lee County public records at the sending parcel owner's expense. The Department will issue a serially numbered certificate, known as a TDU Certificate, to the sending parcel owner following the acceptance and recording of the TDU conservation easement or other implementing mechanism.

(d) 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 of transfer must indicate:

(1) how many TDUs are to be transferred by the grantor to the buyer (grantee);
(2) the total number of TDUs originally issued to the sending parcel;
(3) the number of TDUs that have been transferred to other buyers; and
(4) how many TDUs remain attached to the sending parcel.

(e) The County retains the right to terminate the TDR program. TDUs issued in accordance with this Article are subject to changes to the TDR program, including future limitations on their use. Future amendment to this article, which may restrict the use of TDUs will not be effective against TDU Certificates issued by the County before the effective date of the restriction until 12 months after the effective date of the Ordinance adopting the TDR restriction. All TDU Certificates issued after the effective date of the Ordinance adopting an amendment to the TDR program will be subject to the new regulations.

(f) TDU Determination Letters issued prior to adoption of a TDR program amendment are immediately subject to the amendments to the TDR Program and may be invalidated or modified in accordance with future TDR Program amendments. Only TDU Certificates are entitled to receive the 12-month exception.

## ARTICLE XI. HURRICANE PREPAREDNESS

### Sec. 2-483. Definitions.

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

*Coastal high hazard area* means the area below the elevation of the category 1 storm surge line as established by a Sea, Lake, and Overland Surges from Hurricanes (SLOSH) computerized storm surge model and delineated by Map 5 of the Lee Plan as required by Chapter 163.3177(6)(a)10.c.(VI) F.S. ~~that area of the hurricane vulnerability zone defined as the land falling category 1 storm surge zone as delineated by the 2010 Southwest Florida Regional Planning Council.~~

*Hurricane vulnerability zone* means the areas delineated by ~~a regional hurricane evacuation study~~ the area below the elevation of the category 3 storm surge line as established by a Sea, Lake, and Overland Surges from Hurricanes (SLOSH) computerized storm surge model ~~the 2010 Southwest Florida Regional Hurricane Evacuation Study Storm Tide Atlas for Lee County, which requires as requiring evacuation in the event of a land falling Ccategory 3 storm surge/tide hurricane event~~.

*Primary public hurricane shelter* means a structure designated by the division as a place for shelter during a hurricane event. Only those structures located outside of Evacuation Zone A~~the coastal high hazard area~~ that have been designated by the county or the American Red Cross as primary shelters meet this definition.

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## CHAPTER 10. DEVELOPMENT STANDARDS

## ARTICLE III. DESIGN STANDARDS AND REQUIREMENTS

## DIVISION 6. OPEN SPACE, BUFFERING AND LANDSCAPING

### Sec. 10-415. Open space.

(a) Open space calculations. All development must contain the minimum percentage of open space as outlined in the following table below:

| OPEN SPACE REQUIREMENT | | |
|---|---|---|
| Type of Development | Open Space as % of Development Area | |
| | Small Projects[(1)] | Large Projects[(1)] |
| Residential: Type of dwelling units as defined in chapter 34-2 located in conventional zoning districts with conventional zoning district lot coverage. | | |
| Single-family residence or Mobile Home on a single lot with a minimum lot size of 6,500 sq. ft. | None | None |
| Duplex on a single lot with a minimum lot size of 7,500 sq. ft. | None | None |
| Two-family attached each on an individual lot with a minimum lot size of 3,750 sq. ft. per unit | None | None |
| All other residential[(2)] | 35% | 40% |
| Industrial[(2)] | 10% | 20% |
| Other: All other uses including, but not limited to commercial, | 20% | 30% |

| | | |
|---|---|---|
| places of worship, recreational vehicle parks, community facilities, schools (excluding Lee County School District), etc. (2) | | |
| Note: multiple use sites with conventional zoning must comply with each corresponding use percentage in this table. | | |
| Planned Development Zoning: Planned developments must provide open space as required in chapter 34 and per the approved master concept plan and resolution. Consistency with the master concept plan is in addition to the requirements of this provision, unless deviations have been granted. | | |
| Compact Communities: Development constructed in accordance with chapter 32 of this Code will provide open spaces in accordance with the provisions of that chapter. | | |

(1) See also Chapter 33 for open space requirements applicable to the Planning Communities.
(2) Open space requirements may be reduced through the use of Greater Pine Island Transfer of Development Units (TDUs) in accordance with Chapter 2.

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## CHAPTER 33. PLANNING COMMUNITY REGULATIONS

## ARTICLE III. GREATER PINE ISLAND

### DIVISION 1. IN GENERAL

~~**Sec. 33-1001. - Purpose and intent.**~~

~~The purpose of this article is to establish standards for the Greater Pine Island Planning Community, which includes Pine Island, Matlacha, and several surrounding islands and certain unincorporated enclaves west of Cape Coral (see Appendix I, Map 5). These standards are intended to carry out Lee Plan Goal 14 and related objectives and policies in order to accomplish the vision for the future of Greater Pine Island. The purpose of these standards is to maintain an equilibrium between modest growth, a fragile ecology, and a viable and productive agricultural community. These standards reflect an effort to manage future growth based on the remaining traffic capacity available on the existing narrow road link to the mainland while retaining a reasonable opportunity for hurricane evacuation.~~

**Sec. 33-100~~2~~1. - Applicability and community boundary.**

The ~~standards in this article~~ provisions of Article III apply to all new development or redevelopment requiring zoning, local development order approval, or an agricultural notice of clearing permit, located within the Greater Pine Island Planning Community as defined in Goal 14 of the Lee County Comprehensive Plan. The boundaries of the Greater Pine Island Planning Community are depicted in the Lee County Comprehensive Plan on Future Land Use Map 1, Page 2 of 8. ~~and Planning Communities Map 16.~~ A copy of the Greater Pine Island portion of the planning communities map is reproduced in Appendix I as Map 5. A legal description of the Greater Pine Island Planning Community is set forth in Appendix I, and includes Matlacha (the Chamber of Commerce building and all lands to the west), as well as Little Pine Island, Pine Island, and small adjacent islands.~~, which encompasses all of Pine Island, Little Pine Island,~~

~~West Island, Porpoise Point Island, and other small adjacent~~ ~~islands is also set forth in Appendix I.~~

**Sec. 33-100~~3~~2. - Definitions.**

The following definitions are in addition to those set forth in other chapters of this code and are applicable to the provisions set forth in this article only. If, when construing the specific provisions contained in this article, these definitions conflict with definitions found elsewhere in this code, then the definition set forth below will control. Otherwise the definition contained elsewhere in this code will control.

*Adjusted maximum density* means a maximum density of one dwelling unit per acre (1 du/acre) permitted in the Coastal Rural future land use category, where the standard maximum density is exceeded, and where a minimum of 70% of the development is maintained or restored as native habitat, or where 70% of the site is maintained in agricultural use on those parcels identified as existing farmland on Lee Plan Map 21.

*Continued agricultural use on existing farmland* means existing farmland identified on Lee Plan Map 21 that will be committed, through a binding master concept plan and/or development order ~~recorded perpetual easement~~, to continued agricultural activity and use in exchange for County approval allowing ~~residential density above the standard maximum residential~~ the adjusted maximum density. The approved density is based on the acreage attributable to the entire property under consideration and requires that all residential units must be placed on other uplands not committed for agricultural use within the boundary of the subject property. Amendments to the binding master concept plan and/or development order may not modify the land area committed to continued agricultural use. Greater Pine Island TDUs may not be established or severed from existing farmland committed to continued agricultural activity in exchange for adjusted maximum density.

*Large residential development* means developments containing ten (10) or more dwelling units.

*Permanently preserved native habitat* means native upland habitat that the landowner guarantees, through a binding master concept plan and/or development order ~~recorded perpetual easement~~, to preserve or restore as permanent native habitat/open space in exchange for County approval allowing ~~residential density above the standard maximum residential~~ the adjusted maximum density. The approved density is based on the acreage attributable to the entire property under consideration and requires that all residential units must be placed on other uplands within the boundary of the subject property. Amendments to the binding master concept plan and/or development order may not modify the land area committed to permanent native habitat preservation. Greater Pine Island TDUs may not be established or severed from native habitat that is permanently preserved in exchange for adjusted maximum density.

*Restored native habitat* means uplands that the landowner commits, through a binding master concept plan and/or development order construction plans ~~recorded perpetual easement,~~ to restoring and permanently preserving as open space in exchange for County

approval allowing ~~residential density above the standard maximum residential~~ the adjusted maximum density. The approved density is based on the acreage attributable to the entire property under consideration and requires that all residential units must be placed on other uplands within the boundary of the subject property. Amendments to the binding master concept plan and/or development order may not modify the land area committed to permanent native habitat restoration. Greater Pine Island TDUs may not be established or severed from native habitat that is permanently restored in exchange for adjusted maximum density.

*Small residential development* means developments containing less than ten (10) dwelling units.

*Standard maximum density* means a maximum density of one dwelling unit per 2.7 acres (1 du/2.7 acres) permitted in the Coastal Rural future land use category.

**Sec. 33-10043. Community review.**

(a) Applications requiring review. The owner or agent applying for the following types of County approvals must conduct one ~~publically~~ publicly advertised informational session in accordance with section 33-10043(b) ~~within the Pine Island Community~~ prior to obtaining an approval or finding of sufficiency of the following:

(1) Planned development zoning actions.
(2) Special exception and variance requests. This includes all requests that will be decided by the hearing examiner; and
(3) Conventional rezoning actions.
(4) Development orders (excluding limited review development orders).

(b) Meeting requirements. The applicant is responsible for providing the meeting space, notice of meeting, and security measures as needed. The meeting location will be determined by the applicant, and must be held within the boundaries of the Greater Pine Island Community. Meetings may, but are not required to be conducted before non-County formed boards, committees, associations, or planning panels. During the meeting, the agenda will provide a general overview of the project for any interested citizens. ~~for projects that require review under this section must conduct one informational session within the boundaries of the Pine Island Community where the agent will provide a general overview of the project for any interested citizens. The applicant is fully responsible for providing: advertising, providing the meeting space, and security~~. Subsequent to this meeting, the applicant must provide staff with a summary that contains the following information: the date, time, and location of the meeting; a list of attendees; a summary of the concerns or issues that were raised at the meeting; and a proposal for how the applicant will respond to any issues. The applicant is not required to receive an affirmative vote or approval of citizens present at the meeting.

**Sec. 33-1004. Deviations and variances.**

Variances or deviations from this article may be requested in accordance with Chapters 10 and 34, except where expressly prohibited herein, or where these provisions require deviations to meet the County approval criteria for variances set forth in Section 34-145.

**Secs. 33-1005 - 33-1010. - Reserved.**

DIVISION 2. TRANSPORTATION ~~CONCURRENCY~~

**Sec. 33-1011. Greater Pine Island road level of service. ~~concurrency and traffic-based growth limitations~~.**

~~Concurrency compliance and traffic-based growth limitations for property located in Greater Pine Island, as identified on the future land use map and described in section 33-1002, will be determined in accordance with t~~The roadway level of service standards ~~and restrictions~~ set forth in Lee Plan ~~policies~~ Policy 14.2.1 ~~and 14.2.2~~ and a maximum hurricane evacuation clearance time of 18 hours for Pine Island residents as set forth in Lee Plan Policy 14.8.3 must be maintained for Pine Island Road. ~~to the extent the policies provide additional restrictions that supplement other provisions of this code. These policies require the following:~~

(a) The minimum acceptable peak hour, peak season, peak direction roadway level of service standard for Pine Island Road between Burnt Store Road and Stringfellow Boulevard is level of service ~~D~~ "E" calculated in accordance with Policy 37.1.1 of the Lee County Comprehensive Plan. ~~on an annual average peak-hour basis and level of service E on a peak-season peak-hour basis using methodologies from the 1985 Highway Capacity Manual Special Report 209~~. This standard will be measured at the county's permanent count station #3 on Little Pine Island at the western edge of Matlacha and will apply to all of Greater Pine Island.

(b) If the level of service standards and/or maximum hurricane evacuation clearance time is exceeded, new development approvals will be subject to the mitigation requirements set forth in Chapter 2.

~~(b) In addition, when traffic on Pine Island Road at the western edge of Matlacha reaches 810 peak-hour annual average two-way trips, rezonings in Greater Pine Island that increase traffic on Pine Island Road may not be granted. During the rezoning process only, three types of exceptions to this rule may be considered:~~

~~(1) Minor rezonings on infill properties surrounded by development at similar densities or intensities. A minor rezoning under this exception may not rezone more than five acres of land or have a net effect of allowing more than 15 additional dwelling units.~~

~~(2) Rezonings that would have insignificant or trivial effects on traffic flows at the western edge of Matlacha during peak periods in the peak (busier) direction, or would have positive effects by reducing trips during those peak flow periods.~~

~~(3) Rezonings to accommodate small enterprises that promote the natural features or cultural heritage of Greater Pine Island. Small enterprises are those that operate with five or fewer full-time employees.~~

~~(c) When traffic on Pine Island Road at the western edge of Matlacha reaches 910 peak-hour annual average two-way trips, residential development orders for properties not designated~~

~~"Coastal Rural" will be limited to one-third of the maximum density otherwise allowed on that property by the Lee Plan and this code. Density for property designated "Coastal Rural" will be in accordance with Table 33-1052.~~

~~(d) The standards in subsections (b) and (c) of this section will be interpreted and applied as follows:~~

~~(1) Traffic counts will be taken from the county's permanent count station #3 on Little Pine Island at the western edge of Matlacha.~~

~~(2) For purposes of the regulations in this section, the 810-trip and the 910-trip thresholds will be considered to be exceeded upon approval by the Board of County Commissioners of the annual concurrency management inventory of available capacity of public facilities in accordance with section 2-50.~~

~~(3) Development order applications submitted prior to March 14, 2006 will be processed as though the 910 density threshold has not been exceeded. For these applications, the 180-day period for resubmittal of supplemental or corrected application documents (see section 10-110(b)) will not be shortened by the determination in Lee County Resolution 06-03-24 that the 910 threshold has been exceeded. These residential development orders must be diligently pursued and obtained by May 31, 2008 or the application must be modified to comply with the rules that apply after the 910-trip threshold has been exceeded. Provided, however:~~

~~a. Additional development rights may not be appended to a request for a development order during this period.~~

~~b. This allowance does not extend to tracts of land in large phased projects that are proposed for future development but for which a development order has not been sought in the current application.~~

~~(e) Expiring development orders in Greater Pine Island cannot be extended or renewed unless they are modified to conform with the regulations in effect at the time of extension or renewal.~~

~~(f) The restrictions in subsections (b) and (c) will not be interpreted to affect ongoing developments whose final phases are already platted in accordance with F.S. ch. 177, provided that no new lots are added and that the number of allowable dwelling units is not increased. These restrictions also will not be interpreted to affect expansions to existing recreational vehicle parks to serve additional transient RVs if such expansions were explicitly approved by Lee County under Ordinance No. 86-36 (see section 34-3272(1)d.) and the land is properly zoned for this purpose~~.

**Secs. 33-1012—33-1030. Reserved.**

DIVISION 3. AGRICULTURAL CLEARING

**Sec. 33-1031. Agricultural notice of clearing on Greater Pine Island.**

Notices of clearing for agricultural purposes in Greater Pine Island must comply with the following additional requirements in accordance with Policy 14.1.5 of the Lee Plan:

(a) Agriculturally zoned land that is pursuing a new agricultural use through the Agricultural Notice of Clearing process that adjoins state-designated aquatic preserves and associated wetlands and natural tributaries (see section 33-100~~3~~2) must preserve or create a 50-foot-

wide native vegetated conservation buffer area between all agricultural lands and the natural waterbody and associated wetlands.

*Subsections (b) through (c) remain unchanged.*

(d) Non-native vegetation must be removed from the 50-foot buffer utilizing hand removal methods. A specific mechanical removal method may also be approved in writing by the Department.~~division of Environmental Sciences staff~~.

(e) Planting of native vegetation indigenous to Pine Island is allowed within the 50-foot buffer. If no native vegetation exists within the buffer, then ~~three-gallon~~ bare root or containerized South Florida slash pine, longleaf pine or native oaks trees must be planted on 20-foot centers within three years of the recording of the Agricultural Notice of Clearing and with a guaranteed 80 percent survivability for a period of five years.

*Subsections (f) through (h) remain unchanged.*

DIVISION 5. COASTAL RURAL DEVELOPMENT REGULATIONS

**Sec. 33-1051. ~~Purpose and intent.~~ Applicability.**

The following provisions and development standards apply to new development and redevelopment within the Coastal Rural future land use category, as designated on the Lee County Future Land Use Map, Lee Plan Map 1, Page 1 of 8. ~~Lee County has reclassified all formerly "Rural" lands in Greater Pine Island to a new "Coastal Rural" designation on the Future Land Use Map. This designation provides landowners with flexibility while accomplishing the following public purposes:~~

~~(a) To provide a clearer separation between rural and urban uses in Greater Pine Island;~~
~~(b) To discourage the unnecessary destruction of native upland habitat;~~
~~(c) To encourage continued agricultural use on existing farmland; and~~
~~(d) To avoid placing more dwelling units on Pine Island than can be served by the limited road capacity to the mainland.~~

**Sec. 33-1052. Residential density limitations.**

New residential development and redevelopment within ~~The "~~Coastal Rural~~"~~ designated lands may be developed in accordance with the standard maximum density provisions or the adjusted maximum density provisions set forth in this article and Lee Plan Policy 1.4.7 as follows: ~~will remain rural except for portions of properties where smaller residential lots are permitted in exchange for permanent commitments to preservation or restoration of native upland habitat or to continued agricultural use of existing farmland.~~

(a) The standard maximum density established by Policy 1.4.7 of the Lee Plan is one dwelling unit per ~~ten~~ 2.7 acres (1 DU/~~10~~ 2.7 acres); however, see sections 33-~~1057~~ 1058 and 34-3273 regarding nonconforming lots.

(b) The ~~M~~maximum adjusted density established by Policy 1.4.7 of the Lee Plan is one dwelling unit per acre (1 du/acre) where a threshold of 70% of the development parcel(s) is maintained or restored as native habitat, or where 70% of the site is maintained for agricultural use on those parcels identified as existing farmland on Lee Plan Map 21.~~densities may increase in accordance with Table 33-1052 as higher percentages of upland portions of a site are permanently committed in one of the following ways:~~

~~a. Land uses are restricted in native habitat that is permanently preserved on upland portions of a site.~~

~~b. Land uses are restricted in native habitat that is restored and then permanently preserved on upland portions of a site.~~

~~c. Existing farmland that is identified on Map 21 of the Lee Plan and is limited in the future to agricultural uses.~~

**~~Table 33-1052. ADJUSTED MAXIMUM DENSITIES FOR PRESERVED/ RESTORED HABITAT AND FOR CONTINUED AGRICULTURAL USE~~**

| ~~Percentage of the on-site uplands that are: -preserved or restored native habitat; -or- for continued agricultural use on existing farmland~~ | ~~Adjusted Maximum Densities*~~ | |
|---|---|---|
| | ~~If undeveloped land will be permanently preserved or restored as native habitat:~~ | ~~If undeveloped land will be continued in agricultural use on existing farmland:~~ |
| ~~0% to 4.99%~~ | ~~1 DU/ 17 acres~~ | ~~1 DU/ 17 acres~~ |
| ~~5% to 9.99%~~ | ~~1 DU/ 15 acres~~ | ~~1 DU/ 15 acres~~ |
| ~~10% to 14.99%~~ | ~~1 DU/ 13 acres~~ | ~~1 DU/ 15 acres~~ |
| ~~15% to 19.99%~~ | ~~1 DU/ 12 acres~~ | ~~1 DU/ 15 acres~~ |
| ~~20% to 29.99%~~ | ~~1 DU/ 10 acres~~ | ~~1 DU/ 13 acres~~ |
| ~~30% to 39.99%~~ | ~~1 DU/ 8 acres~~ | ~~1 DU/ 12 acres~~ |
| ~~40% to 49.99%~~ | ~~1 DU/ 7 acres~~ | ~~1 DU/ 10 acres~~ |
| ~~50% to 59.99%~~ | ~~1 DU/ 5 acres~~ | ~~1 DU/ 8 acres~~ |
| ~~60% to 69.99%~~ | ~~1 DU/ 4 acres~~ | ~~1 DU/ 5 acres~~ |
| ~~70% or more~~ | ~~1 DU/ 2.7 acres~~ | ~~1 DU/ 4 acres~~ |

~~* Lee County Resolution 06-03-24 determined that the 910 traffic counts for Pine Island Road have been exceeded. Accordingly, the density stated above is the maximum density permitted in the Coastal Rural land use category for purposes of section 33-1052.~~

~~(b) Two or more contiguous or noncontiguous "Coastal Rural" parcels may be combined into a single development application for purposes of computing the actual maximum density allowed on those properties. This provision would allow acreage on one parcel that is preserved or restored as native habitat, or existing farmland that is committed to continued agricultural use, to increase the density on another parcel that is included in the same development application.~~

(c) Rezoning is not required for a proposed residential development on land zoned AG-2 and designated "Coastal Rural" by the Lee Plan provided that the proposed development will comply with all regulations in this code, including all of this article.

(1) The determination of actual maximum densities and the compliance of the application and its supporting documentation with this section may be confirmed by issuance of a development order using the process described in chapter 10, modified as follows:

a. Additional application requirements will be established by the director. At a minimum, these requirements will include:

1. A mandatory pre-application meeting.

2. Narrative description of the process used to determine the best areas on the site to remain undeveloped (see section 33-1053(d)).

3. For applications proposing narrower streets in conformance with section 33-1053, proposed cross-sections of right-of-way and lane widths, supported by a sealed statement from a professional engineer.

4. For applications proposing permanent preservation of native habitat:

i. Map clearly delineating native habitat to be preserved, with precise acreage computations of habitat being preserved including the extent of other allowable land uses within preserved habitats (section 33-1054(a)).

ii. Description of interruptions of original water flows and intended corrections (section 33-1054(b)).

iii. Plan for removing and controlling invasive exotic plants (section 33-1054(c)).

iv. Draft of the proposed conservation easement including identification of proposed grantees; for grantees other than Lee County, include a statement from the grantee that it will consent to accept and enforce the easement's obligations in perpetuity (section 33-1054(d)).

v. Long-term management plan for the preserved habitat (section 33-1054(e)).

vi. Identification of proposed ownership of preserved habitat and the means that will be used to provide future management of the area in perpetuity.

5. For applications proposing restoration of native habitat in conformance with section 33-1055, include all the requirements for permanent preservation of native habitat, plus:

i. Analysis of the suitability of the site's hydrologic regime for the ecological community being restored (section 33-1055(a)).

ii. Plan for reintroduction of native trees (section 33-1055(b)).

iii. Plan for reintroduction of native midstory shrubs and understory plants (section 33-1055(c)).

iv. Plan for monitoring the success of restoration (section 33-1055(d)).

v. Proposed financial guarantees if the landowner wishes to begin development prior to successful completion of the restoration (section 33-1055(e)).

6. For applications proposing continued agricultural use on existing farmland in conformance with section 33-1056:

i. Plan for removing and controlling invasive exotic plants (section 33-1056(b)).

~~ii. Draft of the proposed conservation easement including identification of proposed grantees; for grantees other than Lee County, include a statement from the grantee that it will consent to accept and enforce the easement's obligations in perpetuity (section 33-1056(c)).~~

~~b. An additional application fee will be established by the director to cover review costs for these complex applications. This fee may not exceed the fee for a planned development rezoning application.~~

~~c. The normal timeframe for review of residential development orders will be extended as needed to allow thorough yet timely review of all applications submitted in accordance with this article.~~

~~(2) A proposed development that would deviate from this code, except for administrative deviations in accordance with section 10-104, must seek approval through the planned development rezoning process prior to obtaining a development order pursuant to chapter 10.~~

~~a. Deviations or variances can never be granted to increase the densities in Table 33-1052.~~

~~b. Example of deviations that can be considered during the planned development process include:~~

~~1. Permitted uses and property development regulations other than those provided in section 33-1053.~~

~~2. Reforestation methods that do not meet all of the technical requirements of this section for "permanently preserved native habitat" or "restored native habitat" but which will achieve the same ends.~~

~~3. Infrastructure more suited to country living, such as narrower streets, alternative paving materials, stormwater management systems that promote infiltration of runoff, etc.~~

~~c. The special application requirements in section 33-1052(c)(1)a. must supplement this code's requirements for planned development applications.~~

**Sec. 33-1053. Coastal Rural approval procedures.**

(a) Approval procedures for commercial developments. All commercial development or redevelopment within the Coastal Rural land use designation must be approved in the form of a planned development, except where permitted by right or special exception in accordance with section 33-1201.

(b) Approval procedures for large residential developments. Large residential developments, defined as those developments containing ten (10) or more dwelling units, must be approved in the form of a planned development and meet the design standards set forth in Section 33-1054 of this division. This requirement applies to projects developed pursuant to the standard maximum density and/or the adjusted maximum density. Where a project is developed pursuant to the adjusted maximum density, the development must provide a 30-foot wide Type “F” buffer along the side and rear project boundaries.

(c) Approval procedures for small residential developments. Small residential developments, defined as those developments containing less than ten (10) dwelling units, may be developed in accordance with the regulations for the underlying zoning district and

development order procedures set forth in Chapter 10, and where all other provisions of this Land Development Code are met. Please also refer to Section 33-1059 of this division for alternative property development regulations for small residential developments subject to the adjusted maximum density provisions.

(d) Aggregation. Two or more developments, represented by their owners or developers to be separate developments, may be aggregated and be subject to the planned development approval procedures outlined in subsection (b) above where the large residential development threshold is exceeded, and where the director determines the developments are part of a unified plan of development. For the purposes of determining whether the developments are part of a unified plan of development, the director will utilize the following criteria:

(1) Common control, ownership or a significant legal or equitable interest, or management of the developments;
(2) Physical proximity of the developments, i.e. abutting property boundaries or boundaries separated solely by rights-of-way.
(3) Reasonable closeness in time between the completion of up to 80% of one development and the submission of development order plans for the other development;
(4) A master plan or series of plans or drawings covering the developments sought to be aggregated, which have been submitted to the county for authorization to commence development;
(5) The voluntary sharing of infrastructure; and
(6) A common advertising scheme or promotional plan.

**Sec. 33-~~1053~~1054. Coastal Rural ~~D~~development standards.**

The following development standards apply to development or redevelopment within the Coastal Rural land use category that meet the thresholds for large residential developments, as defined in this article. ~~If a landowner chooses to increase the standard maximum density of "Coastal Rural" land as provided by this division, development standards will apply as follows:~~

(a) General standards. All requirements of this code remain in effect except as modified through the planned development rezoning process or as otherwise provided in this article.

(b) Property development regulations~~ and permitted uses~~.
~~(1) For individual lots that are created on "Coastal Rural" land based on increases above the standard maximum density of one dwelling unit per ten acres:~~
~~a. Lots that are 39,500 square feet or larger in area must meet all property development regulations that apply to the AG-2 zoning district including lot width and depth, setbacks, special regulations, building height, and lot coverage. Use regulations for these lots will be the same as for lots in the AG-2 zoning district.~~
~~b. Lots that are smaller than 39,500 square feet must meet all property development regulations that apply to the RS-1 zoning district including lot width and depth, setbacks, special regulations, building height, and lot coverage. Use regulations for these lots will be the same as for lots in the RS-1 zoning district.~~

(1) Development must be clustered in a manner that provides for the protection of existing, on-site native vegetation, including wetlands and uplands, natural flowways, and endangered, threatened or species of special concern.

(2) Developments must connect to public utilities, when located within the boundaries of the certificated or franchised service area of any investor- or subscriber-owned water utility, or within the Lee County Utilities future service areas as delineated on Maps 6 and 7 in the Lee Plan, and where a connection point is within ¼ mile of the parcel boundary.

(3) The minimum lot size along the planned development boundary must be one (1) acre unless the development is adjacent to a residential lot or lots that are smaller than one (1) acre, or where compatibility is addressed through an alternative design approved as part of the planned development rezoning process.

(4) 50% of the development area must be maintained as open space (exclusive of pervious areas within privately owned lots), or the development standards must limit maximum lot coverage of residential lots to 25%, including principal and accessory structures. Where a project is developed pursuant to the adjusted maximum density, the 70% habitat or agricultural offset may be utilized to meet the minimum open space requirement.

(5) All buildings and structures must be setback a minimum of 50 feet from the planned development boundaries.

(6) A 25-foot wide modified Type "D" buffer must be provided along all abutting external rights-of-way. The buffer must contain 5 native canopy trees and 66 shrubs per 100 linear feet installed according to 10-420. Canopy trees and shrubs must be clustered to mimic the natural environment.

(7) A 30-foot wide Type "F" buffer installed according to 10-420 is required where proposed residential lots are smaller than one (1) acre and abut external active agricultural uses, excluding pasturelands, or abut residential lots equal to or greater than one (1) acre.

(8) Developments must provide one tree per 2,500 square feet of development area.

(9) Developments must minimize site disturbance by stemwall construction, low impact clearing, grading, and construction measures to reduce amount of fill placed on the lots.

~~(2)~~(10) Native habitat that is being preserved or restored in order to qualify for ~~increases above the standard~~ adjusted maximum density will be governed by sections 33-1054~~5~~ and 33-1056 instead of the ~~regular~~ AG-2 regulations in Chapter 34.

~~(3)~~(11) Existing farmland that is being committed to continued agricultural uses in order to qualify for ~~increases above the standard~~ adjusted maximum density will be

governed by section 33-1056~~7~~, in addition to the ~~regular~~ AG-2 regulations in Chapter 34.

~~(c) Local street standards.~~

~~(1) Section 10-296(d) provides standards for new local streets that vary based on residential density levels. For development orders that subdivide residential lots from "Coastal Rural" land, these local street standards will be interpreted as~~

~~a. "Category C" streets must be provided for residential lots that are two and one-half acres or smallerb.~~

~~b. "Category D" streets may be provided in lieu of Category C streets for residential lots that are larger than two and one-half acres.~~

~~(2) Right-of-way and lane widths for privately maintained local streets may be narrower than the standards set forth in section 10-296 for Category C and Category D streets provided the widths are selected in accordance with the criteria in Traditional Neighborhood Development Street Design Guidelines or Neighborhood Street Design Guidelines (or successor recommended practices) published by the Institute of Transportation Engineers, or in accordance with Guidelines for Geometric Design of Very Low-Volume Local Roads (ADT<400) published by AASHTO.~~

~~(3) Privately maintained local streets defined by section 10-296 as Category C streets may have a wearing surface of porous (pervious) asphalt or concrete, in lieu of the other surface options provided in chapter 10. Porous paving can increase the infiltration of stormwater and reduce the need for separate stormwater infrastructure.~~

~~(4) Dead-end streets are generally not permitted but may be unavoidable due to adjoining wetlands, canals, or preserved areas. When the director deems a dead-end street to be unavoidable, the dead-end must be provided with a cul-de-sac or other termination that is designed in accordance with county standards as specified in section 10-296 or the alternate standards set forth in section 33-1053(c)(2).~~

~~(d) Locational standards. The following approach and guidelines must be used to determine the best areas on the site to remain undeveloped and to be developed.~~

~~(1) Begin by identifying potential areas to remain undeveloped.~~

~~a. For native habitat being preserved or restored: healthy, diverse, or unusual native vegetation (such as mature pine trees, oak hammocks, or dense saw palmetto); listed species habitat; historic/archaeological sites; unusual landforms; wet or transitional areas; etc.~~

~~b. For existing farmland being committed to continued agricultural use: existing surface water management infrastructure; availability of irrigation water; large contiguous acreage relative to potential conflicts with adjoining non-agricultural land uses; etc.~~

~~(2) Then identify potential areas for homesites: locations near existing developed areas or adjoining existing streets (or logical street extensions); areas with fewer natural resource values; areas that can be served with minimal extensions of infrastructure; areas that would provide views of preserved open spaces; etc.~~

**Sec. 33-~~1054~~1055. Permanently preserved native habitat.**

A development proposal that requests ~~an increase to the standard~~ the adjusted maximum residential density for committing to "permanently preserved native habitat," as ~~that phrase is~~

defined in section 33-~~1003~~1002, must address the following requirements at the time of planned development rezoning and/or local development order application: ~~be accompanied by plans and supporting documentation that demonstrate compliance with the following requirements.~~

(a) Land uses in preserved habitat. Native habitat that is counted as preserved or restored for the purposes of ~~Table 33-1052~~ achieving adjusted maximum densities pursuant to section 33-1052 cannot be part of any individual lots or parcels on which development is permitted.

(1) Portions of these native habitats may be used as buffer strips and wooded portions of golf courses provided those areas have a minimum dimension of 40 feet and are ~~protected by the same conservation easement~~ shown on the binding master concept plan or development order plans as ~~the remainder of the~~ native habitat.

(2) Land area that is has an impervious surface ~~subdivided by roads~~ cannot qualify as permanently preserved native habitat, unless replanted in accordance with section 33-1056 of this division~~,~~; however ~~but up to~~ the following maximum percentages of other land uses may be permitted within preserved native habitat areas:

a. Facilities for passive recreation such as hiking trails, bridle paths, boardwalks, or fishing piers, up to two percent of the preserved area.
b. Buffers, lakes, and utilities, up to ten percent of the preserved area.
c. Commercial or non-commercial agriculture, up to ten percent of the preserved area.

~~(b) Hydrologic restoration. Interruptions of original water flows must be corrected to ensure proper hydrologic conditions for the long-term survival of the permanently preserved native habitat. For instance, ditches or berms that interfere with natural surface and ground water flows must be eliminated (unless mitigation is possible, for instance by placing multiple culverts through berms to restore sheet flows). This requirement may not be construed to require hydrologic changes that would adversely affect the public health, safety or welfare or the property of others.~~

~~(c)~~(b) Removal of invasive exotic plants. Invasive exotic plants must be removed from the area being preserved. Methods to remove and control invasive exotic plants must be included on the development order plans. For purposes of this subsection, invasive exotic plants mean the same plants as described in section 10-420.

~~(d) Conservation easement. The guarantee of preservation must include a perpetual conservation easement granted to a governmental body or agency or to a qualified charitable corporation or trust whose purposes include protecting natural, scenic, or open space values of real property.~~

~~(1) This conservation easement must be a right or interest in real property that is appropriate to retaining the land in predominantly its natural forested condition as suitable habitat for native vegetation and wildlife in accordance with this section; and, which prohibits or limits the activities described in F.S. § 704.06, as such provisions now exist or as may be amended.~~

~~(2) This conservation easement must acknowledge that all residential and commercial development rights have been transferred away from the portion of the property subject to the conservation easement.~~

~~(3) The agency or entity accepting the easement must be acceptable to Lee County. Lee County will accept the conservation easement in the event no suitable entity is willing to accept the easement.~~

~~(4) This agency or entity must explicitly consent to enforce the easement's obligations in perpetuity. This requirement does not apply to a secondary or tertiary back-up grantee that is empowered, but not obligated, to enforce the terms of the easement.~~

~~(5) Unless Lee County is the entity accepting the easement and consenting to enforce its obligations in perpetuity, Lee County must be named in the easement as a back-up grantee that is empowered, but not obligated, to enforce the terms of the easement.~~

~~(6) If no entity suitable to Lee County will accept such conservation easement, Lee County will accept the easement.~~

~~(e)~~(c) Management plan. The guarantee of preservation must also include a long-term management plan that will accomplish the following goals for the area being preserved:

(1) The preserved habitat must be kept free of refuse, debris, and pests and must be maintained in perpetuity against the reestablishment of invasive exotic plants. The management plan must describe how invasive exotic plants will be prevented from being reestablished within the preserved habitat.

(2) The preserved habitat must be managed to maintain a mosaic of plant and habitat diversity typical of the ecological community being preserved. A reference source describing the native habitats found in Greater Pine Island is available in chapter 3 of the Multi-Species Recovery Plan for South Florida, published by the U.S. Fish & Wildlife Service.

(3) The management plan must describe acceptable forest management practices such as prescribed burning, selective thinning, and replanting. If the management plan does not include prescribed burning to mimic the historic fire regime, the plan must propose an alternative method for selectively thinning flammable understory plants.

(4) The management plan must specify how the preserved habitat will be demarcated through fencing or other means to clearly identify preserved habitat without unnecessary blockage of recreational usage or wildlife movement.

(5) The management plan must also comply with the standards set forth in section 10-415(b)(4).

~~(f)~~(d) Ownership of preserved habitat. The underlying ownership of these permanently preserved native habitats may be retained by the original landowner, transferred to a homeowners or condominium association or transferred to another entity acceptable to the County.

~~(1) If the ownership of this land and the management commitments are to be transferred to a homeowners or condominium association, this transfer must be accomplished through a covenant that runs with the land that is binding on the homeowners or condominium association and their members (and not changeable by them), or such other legal mechanisms as will guarantee that the permanently preserved native habitats will be managed in accordance with these regulations. The association must provide proof that they have the financial ability to carry out the long term management responsibility. Legal documents that provide for the continued management will be accepted only after they are reviewed and approved by the county attorney's office as complying with this section.~~

~~(2) Alternatively, a landowner who wishes to retain ownership of this land or convey it to a different party must present evidence of financial ability to carry out the management responsibilities. Evidence of financial ability may consist of, but is not limited to, trust funds, bonds, surety documents, dedicated bank funds or another income stream acceptable to the County that will be used to discharge the management responsibility. The landowner may also provide evidence of the transfer and acceptance of the management responsibility to a governmental entity or other appropriate management entity (e.g. tax-exempt charitable entity) approved by the County that has the requisite financial ability to carry out the management responsibility. Legal documents that provide for the continued management will be accepted only after they are reviewed and approved by the county attorney's office as complying with this section.~~

**Sec. 33-~~1055~~1056. Restored native habitat.**

A development proposal that requests ~~may request an increase to the standard~~ the adjusted maximum residential density for committing to "restored native habitat," as ~~that phrase is~~ defined in section 33-~~1003~~1002 must address the following requirements at the time of planned development rezoning and/or local development order application. ~~The restoration goal is to initiate the re-creation of native habitats that had been typical of Greater Pine Island and to establish conditions suitable to their long-term maturation, regeneration, and sustainability. Restored native habitat must meet all of the requirements of section 33-1054, plus the following requirements~~. This requirement does not include landscaping required in 33-1054(b)

~~(a) Hydrologic restoration. In addition to the correction of modified water flows and quality as described in section 33-1054(b), the site's hydrologic regime must be appropriate for the ecological community being restored. A reference source describing the native habitats found in Greater Pine Island and their natural hydrologic conditions is available in chapter 3 of the Multi-Species Recovery Plan for South Florida, published by the U.S. Fish & Wildlife Service. This requirement will not be construed to require any hydrologic changes that would adversely affect the public health, safety, or welfare or the property of others.~~

~~(b)~~(a) Reintroduction of native trees. Native trees must be planted and must be of species typical of the native habitat being restored, as set forth in the Multi-Species Recovery Plan. For example, the dominant tree species in mesic pine flatwoods, the most common native upland habitat on Pine Island, will be longleaf and South Florida slash pines; the dominant tree species in mesic temperate hammocks will be live oaks and cabbage palms.

(1) Site preparation must include removal of non-native vegetation that will compete with newly planted trees.

(2) A minimum of 100 trees per acre must be planted. Trees must be planted in clusters or random patterns rather than rows. Bare-root or containerized seedlings (seedling cone container size) may be planted using standard forestry techniques. ~~A minimum of 300 trees per acre must be planted with a minimum of 250 trees surviving at five years, and, an overall minimum of 200 trees maintained in perpetuity.~~

(3) Fertilization and ~~watering-in~~ appropriate watering are required at time of planting to ensure survival of seedlings, with spot irrigation beyond planting. Trees may be planted during the wet season to mitigate the use of water trucks or other forms of irrigation. Exotic and problematic plant monitoring and control is required for at least five years after planting.

~~(c)~~(b) Reintroduction of native midstory shrubs and understory plants. In addition to the introcution of native pine trees as mentioned in subsection ~~(b)~~ (a) above, midstory and understory species must be planted.

(1) These species must include at least five of the following:
   a. wiregrass (Aristida stricta var. beyrichiana),
   b. tarflower (Bejaria racemosa),
   c. wax myrtle (Myrica cerifera),
   d. fetterbush (Lyonia lucida),
   e. rusty lyonia (Lyonia ferruginea),
   f. gallberry (Ilex glabra),
   g. saw palmetto (Serenoa repens), or
   h. cabbage palm (Sabal palmetto).

(2) Additional native species may be substituted for the species listed above with the consent of Lee County.

(3) No single species may comprise more than ~~25~~ 50 percent of the total number of plants installed.

(4) All of the acreage being restored must be planted with acceptable midstory and understory plants.

   a. A minimum of 250 native mid- and understory plants must be planted per acre. Plants must be placed in groupings or clusters throughout the area to be restored. ~~at an average spacing of ten-foot centers for midstory plant and five-foot centers for understory plants.~~

   b. Plants to be used must consist of containerized plants or tubelings. Direct seeding may also be a viable alternative to planting with the approval of Lee County.

(5) Site preparation may be necessary to adequately prepare the site for planting. Site preparation may include such activities as re-contouring, disking, roller chopping, bush hogging, prescribed burning, herbiciding, or other recognized vegetation management activities.

~~(d)~~(c) Criteria for success of restoration. Plantings of native trees and midstory and understory plants must be monitored annually to ~~assure~~ ensure a minimum survival rate of 80%.~~density of 100 trees per acre and 80 percent survival of midstory and understory species (with no supplemental plantings for two years following the third year after the initial planting).~~

(1) Monitoring must be performed for a minimum of five years after initial planting. Monitoring must be done by a qualified biologist, ecologist, forester, or natural areas manager subject to approval by Lee County.

(2) Annual monitoring reports must be submitted to the director. After reviewing a monitoring report for the fifth or later year for methodology and accuracy, the director is authorized to issue a finding that the restoration has been successfully completed and that no further monitoring reports are required, or that restoration has been partially completed and that monitoring reports are required only for the incomplete portion of the restoration.

~~(e)~~(d) Financial guarantees. If a landowner wishes to begin development prior to successful completion of the restoration, completion must be assured in the same manner that off-site improvements or on-site subdivision improvements may be guaranteed pursuant to section 10-154 of this Code.

~~(f)~~(e) Flatwoods restoration bank. As an additional alternative to restoring native habitat on-site or on contiguous or non-contiguous parcels combined into a single development application, Lee County may adopt an administrative code that sets forth the requirements for a third party to preserve or restore degraded upland habitats on large parcels on Pine Island. Credits for this restoration work could be sold to other landowners in Greater Pine Island who wish to increase their allowable density in accordance with Table 33-1052.

(1) The restored land must meet all of the conditions for restored native habitat in this section in addition to the requirements of the administrative code.

(2) The administrative code will determine the assignment of restoration credits in a manner that is proportional to the ecological value of the restoration using a functional assessment method acceptable to Lee County. Credits can be sold once the restoration has proven successful according to criteria set forth in the code.

(3) Lee County will not be involved in any way in establishing the financial value of restoration credits.

**Sec. 33-~~1056~~1057. Continued agricultural use on existing farmland.**

A development proposal that requests ~~an increase to~~ the ~~standard~~ adjusted maximum residential density for committing to "continued agricultural use on existing farmland," as ~~that phrase is~~ defined in section 33-~~1003~~1002, must address the following requirements at the time of planned development rezoning and/or local development order application. ~~be accompanied by plans and supporting documentation that demonstrate compliance with the following requirements.~~

(a) Land uses. Existing farmland that is committed to continued agricultural uses under this section is limited to those uses allowable under the applicable agricultural zoning category assigned to the land, plus the following additional restrictions:

(1) Residential and commercial development is not permitted because those development rights have already been transferred by the landowner to other property.

(2) The ~~conservation easement~~ conditions for approval stipulated in the planned development zoning resolution or local development order approval applicable to the property may contain further restrictions on land uses.

(b) Removal of invasive exotic plants. Invasive exotic plants must be removed. Methods to remove and control invasive exotic plants must be included on the development order plans. The farmland must be maintained in perpetuity against the reestablishment of invasive exotic plants and must be kept free of refuse, debris, and pests. For purposes of this subsection, invasive exotic plants mean the same plants as described in section 10-420.

~~(c) Conservation easement. To qualify for an increase to the standard maximum residential density on the entire property, the portion of the site being committed to continued agricultural use must be placed under a perpetual conservation easement that meets the requirements of section 33-1054(d), except that instead of committing to retain the land in predominantly its natural forested condition as suitable habitat for native vegetation and wildlife, the perpetual conservation easement must commit to conserve the land as open space that is available for farming by the landowner or lessees of the landowner. The easement must also define the latitude for construction, modification, or demolition of structures necessary for farm operations without approval by the easement holder.~~

**~~Sec. 33-1057. Lots of record in "Coastal Rural."~~**

~~One single-family residence may be constructed on a lot of record in the Lee Plan's "Coastal Rural" land use category (as delineated by policies 1.4.7 and 14.1.8 of the Lee Plan), provided that the lot was lawfully created on or before the effective date of the ordinance adopting this provision.~~

**Sec. 33-1058. Lots developed to “adjusted maximum densities”.**

Lots within small residential developments subject to the adjusted maximum density provisions may be developed in accordance with the property development regulations for the RS-1 zoning district, including lot width and depth, setbacks, special regulations, and lot

coverage, without further rezoning approval. The maximum building height shall be governed by Section 33-1087 of this article.

**Secs. 33-~~1058~~1059 - 33-1080. - Reserved.**

DIVISION 6. DESIGN STANDARDS

**Sec. 33-1082. Development abutting an aquatic preserve.**

*Subsections (a) and (b) remain unchanged.*

(c) Exemptions. This section does not apply to:

(1) Existing subdivided lots created prior to the adoption of this provision (revise to include date board adopts this ordinance); or
(2) Portions of marinas that provide direct water access.
(3) Developments eligible for modified vegetated buffer requirements in accordance with Lee Plan Policy 14.1.5.

*Subsection (d) remains unchanged.*

(e) Agriculture requirements.

(1) If farmland abuts wetlands, the 50-foot buffer area must be maintained as a riparian forest buffer with an adjoining filter strip. An example of acceptable design criteria has been developed by the National Resources Conservation Service and published in the "Conservation Practice Standards", specifically Standard 391 (Riparian Forest Buffer) and Standard 393 (Filter Strip).

(2) If native vegetation does not exist on the agricultural property, then native tree cover must be established within three years of the ~~issuance~~ recording of the notice of clearing pursuant to Section 33-1031(e).

**Sec. 33-1083. Commercial building design standards**.

(a) Applicability. This section provides additional design standards and guidelines for all non-agricultural commercial buildings in Greater Pine Island. These additional standards and guidelines are applicable to all new development and to renovations and redevelopment as provided in section 10-602, except as modified by this section. Where the standards or guidelines in this section conflict with other standards of this code, this section will control.

*Subsections (b) through (e) remain unchanged.*

(f) Mature trees. The development services director may grant deviations from the technical standards as outlined in section 10-104 to accommodate the preservation of existing mature trees on a development site.

(1) To qualify for a deviation, the tree being preserved must be at least six inches in diameter at a height of four and one-half feet and must not be an invasive exotic plant as defined by section 10-420.
(2) The deviation requested must not compromise the public health, safety, or welfare as determined by the development services director.

*Subsection (g) remains unchanged.*

**Sec. 33-1084. - Maximum height of wireless communication facilities.**

The overall height of wireless communications facilities must not exceed the height limitations set forth in section 33-~~1088~~1087.

~~**Sec. 33-1085. - Density limitations.**~~

~~(a) Table 1(a) of the Lee Plan contains special density restrictions for Greater Pine Island that would affect rezonings that would allow in excess of 3 dwelling units per gross acre.~~

~~(b) Those portions of Greater Pine Island that are classified in the Lee Plan as "Coastal Rural" have special density restrictions as set forth in section 33-1051 et seq.~~

~~(c) Residential densities in Greater Pine Island may be further restricted in accordance with concurrency and traffic-based growth limitations in section 33-1011.~~

~~(d) Housing density bonuses are not permitted in Greater Pine Island (see section 34-1511).~~

~~(e) Transfers from on-site wetlands at rates above the standard density rates for wetlands are not permitted in the Greater Pine Island Planning Community.~~

~~(f) Land in Greater Pine Island may not receive TDR units in accordance with article IV of chapter 2 (see section 2-148), but density transfers within Greater Pine Island may be permitted in accordance with 33-1052(b) and through a new Greater Pine Island TDR program contemplated by the policies under Lee Plan Objective 14.6.~~

**Sec. 33-~~1086~~1085. - Residential project fences and walls.**

New residential project fences or walls are not permitted in Greater Pine Island (see section 34-1743). This restriction does not affect buffer walls that may be required by section 10-416.

**Sec. 33-~~1087~~1086. - Entrance gates.**

Entrance gates or gatehouses cannot interfere with movement of cars between neighborhoods (see also section 33-1081).

(a) Entrance gates or gatehouses can be used to control access only to a single block and may not be located on a publicly dedicated street or street right-of-way.

(1) For purposes of this subsection, a "single block" means the length of any street or accessway from its end or cul-de-sec to the first intersecting street and which provides access to five or fewer existing or potential dwelling units.

(2) An entrance gate to a single block must be designed in such a manner that at least one vehicle can pull safely off the intersecting street while waiting to enter.

(3) These regulations supersede conflicting regulations governing entrance gates and gatehouses in section 34-1748(1).

(b) Entrance gates for non-residential uses only that will remain open during normal working hours are permitted in accordance with section 34-1748(4).

(c) Fencing around individual lots and agricultural properties is governed by general county regulations and is not affected by this section.

**Sec. 33-~~1088~~1087. Maximum height of buildings and structures.**

No building or structure may be erected or altered so that the peak of the roof exceeds 38 feet above the average grade of the lot in question or 45 feet above mean sea level, whichever is lower.

(a) The provisions of section 34-2171(a)(1) that allow the substitution of "minimum required flood elevation" for "average grade of the lot in question" do not apply to Greater Pine Island.

(b) The provisions of section 34-2174(a) that allow taller buildings in exchange for increased setbacks do not apply to Greater Pine Island.

(c) Structures without roofs will be measured to the highest point on the structure.

(d) No deviations from these height restrictions may be granted through the planned development process.

(e) Any variances from these height restrictions require all of the findings in section 34-145(b)(3), with the sole exception being where the relief is required to maintain or improve the health, safety, or welfare of the general public (not just the health, safety, or welfare of the owners, customers, occupants, or residents of the property in question).

**Sec. 33-~~1089~~1088. Commercial fishing equipment storage as accessory use to residence.**

(a) Permitted use. The storage and repair of commercial fishing equipment, specifically fishing nets and crab traps, shall be permitted as an accessory use to a single-family or mobile home residence in the AG, RSC, RS, TFC and MH zoning districts when in compliance with the conditions set forth in subsection (b) of this section.

(b) Conditions.

(1) The storage and repair of commercial fishing equipment such as nets and traps must be clearly subordinate to the use of the property for residential purposes.

(2) Storage and repair of equipment is limited to equipment owned or leased by the occupant of the residence only.

(3) Storage of equipment must comply with the setback requirements for accessory buildings and structures as set forth in chapter 24, division 2; provided that, with the exception of boats, no storage will be permitted between the street right-of-way and the principal building.

(4) Fishing nets, when not being repaired, must be stored neatly and covered by canvas or other suitable material.

(5) Crab traps, when not being repaired, built or rebuilt, must be stacked neatly. Stacking of traps must not exceed six feet in height.

(6) The open storage of discarded or derelict nets, traps, boats or other fishing equipment is prohibited.

(7) The occupant of the property is responsible for maintaining the property free of rats and vermin.

**Secs. 33-~~1090~~1089 - 33-1200. - Reserved.**

DIVISION 7. USES

**Sec. 33-1201.**

The following use regulations apply to agriculturally-zoned sending parcels, where all the residential development rights have been severed pursuant to the Greater Pine Island Transfer of Density Rights (TDR) Program in accordance with Chapter 2, Article IV.

| | Special Notes or Regulations | AG-2 |
|---|---|---|
| Agricultural uses | 34-2, 34-2441 et seq. | P |
| Agricultural accessory uses and buildings | Note (1), 34-1171 et seq., 34-2441 et seq. | P |
| Agritourism activity | 34-2, 34-1711 | P |
| Animals, reptiles, marine life: | | |
| Animals (excluding exotic species) | 34-1291 et seq. | P |
| Keeping, raising or breeding of domestic tropical birds | 34-2, 34-1291 et seq. | P |

| | | |
|---|---|---|
| (df) for commercial purposes | | |
| Keeping, raising or breeding of American alligators, venomous reptiles or Class II animals (df) | 34-1291 et seq. | P |
| Keeping, raising or breeding of marine life which requires the storage of brackish or saline water in man-made ponds | 34-1291 et seq. | P |
| Caretaker's residence | Notes (2) and (3) | P |
| Communication facility, wireless | 34-1441 et seq. | Refer to 34-1441 et seq. for regulations |
| Consumption on premises | Note (4), 34-1264 et seq. | AA/SE |
| Essential services | 34-1611 et seq., 34-1741 et seq. | P |
| Essential service facilities, Group I (34-622(c)(13)) | 34-1611 et seq., 34-1741 et seq., 34-2141 et seq. | P |
| Farm labor housing | Note (5), 34-1891 et seq. | SE |
| Food and beverage service, limited | Note (4), 34-2, 34-1711 | P |
| Produce stands, Temporary and Permanent | 34-1711 et seq. | P |
| Research and development laboratories, Group I | 34-622(c)(41) | P |
| Stable, boarding or private | 34-1291 et seq. | P |
| Temporary uses | 34-3041 et seq. | TP |
| U-pick operations | 34-1711 et seq. | P |

Notes:

(1) Limited to uses and buildings customarily incidental to agricultural uses, including the processing and packaging of agricultural products primarily grown on the premises.

(2) Not permitted in Airport Noise Zones B unless required to support a noise compatible use and constructed in compliance with limitations for dwelling unit type set forth in section 34-1004 as applicable.

(3) Only in conjunction with a bona fide agricultural use.

(4) Only when accessory to an agritourism activity permitted in accordance with LDC § 34-1711.

(5) Not permitted in Airport Noise Zone B. Housing units consisting of mobile homes or park trailers are also not permitted in Airport Noise Zone B.
(6) Not permitted in Airport Noise Zone B.

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## CHAPTER 34. ZONING

## ARTICLE IV. PLANNED DEVELOPMENTS

## DIVISION 2. APPLICATION AND PROCEDURE FOR APPROVAL

**Sec. 34-380. Amendments to approved master concept plan.**

*Subsection (a) remains unchanged.*

(b) The Director may approve any change to the development that does not increase height, density or intensity (i.e., number of dwelling units or quantity of commercial or industrial floor area) except as permitted in chapter 2. The Director may not approve a change that will:

*Subsections (1) through (4) remain unchanged.*

If the County determines that an approved administrative amendment was based on inaccurate or misleading information or if the approval did not comply with this Code when the decision was rendered, then, at any time, the Director may issue a modified approval that complies with the Code or revoke the approved administrative amendment.

If the approval is revoked, the applicant may acquire the necessary approvals by filing an application for public hearing in accordance with section 34-373 of this chapter. Decisions by the Director pursuant to this section are discretionary and may not be appealed in accordance with section 34-145(a) of this chapter.

*Subsections (c) through (f) remain unchanged.*

(g) Proposed amendments to an approved planned development for the use of Greater Pine Island TDUs are subject to Sections 2-147 and 2-155.

## ARTICLE VII. SUPPLEMENTARY DISTRICT REGULATIONS
## DIVISION 12. DENSITY

**Secs. 34-1496 – 34-1517~~1~~0. Reserved.**

~~**Subdivision III. Housing Density for Provision of Very Low, Low, Moderate and Work Force Income Housing**~~
~~Sec. 34-1511. Applicability of subdivision.~~

~~This subdivision applies to the unincorporated area of the County, and to the incorporated areas of the County to the extent permitted by the interlocal agreements that may be made subsequent to the adoption of the ordinance from which this subdivision is derived and that are consistent herewith. However, it does not apply to any islands or to Greater Pine Island, as defined in this chapter.~~

~~Sec. 34-1512. - Definitions.~~

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

~~Actual bonus density means the number of additional dwelling units permitted per acre in excess of standard density pursuant to the density bonus program. The actual bonus density per acre is not necessarily the maximum bonus density for the area.~~

~~Bonus density owner-occupied unit means a dwelling unit built in excess of the standard density and sold or reserved for sale to eligible households under the provisions of the density bonus program.~~

~~Bonus density bonus program means the program created by this subdivision to stimulate the construction of very low - low- moderate and work force - income housing in the County, by permitting qualifying developers, by their participation in the program, to exceed the standard density limits otherwise imposed by law.~~

~~Bonus density rental unit means a dwelling unit built in excess of the standard density and occupied or reserved for occupancy by eligible households in exchange for the payment of rent to the owner of the unit under the provisions of the density bonus program.~~

~~Eligible household means a household that is comprised of one or more natural persons determined by the County to be of very low, low, moderate or work force income according to HUD's households income limits adjusted for household size. The HUD Handbook is used to determine whether an individual will qualify as a household member. Whenever the handbook indicates that an individual is a household member, the individual's full income must be included in annual income calculations.~~

~~Fund means the Affordable Housing Trust Fund established by section 34-1520(a).~~

~~Low income means a person or household whose annual (gross) income does not exceed 80 percent of the area median income, as determined by HUD.~~

~~Maximum bonus density means the maximum number of dwelling units per acre allowed above the standard density range within each land use category under the bonus density program.~~

~~Moderate income means a person or household whose annual (gross) income does not exceed 120 percent of the area median income, as determined by HUD.~~

~~Standard density means the number of dwelling units permitted per acre in a particular land use category pursuant to all applicable policies and objectives of the Lee Plan, without the application of the bonus density program.~~

~~Standard density range means the possible number of dwelling units per acre permitted within a land use category designated by the Lee Plan without application of the bonus density program.~~

~~Very low income means a person or household whose annual (gross) income does not exceed 50 percent of the area median income, as determined by HUD.~~

~~Work Force Income means a person or household whose annual (gross) income does not exceed 140 percent of area median income as determined by HUD.~~

(b) Words or phrases used in this subdivision and not defined in section 34-2 or subsection (a) of this section will be interpreted so as to give them the meanings they have in common usage and to give this subdivision its most reasonable application.

Sec. 34-1513. - Conflicting provisions.

Whenever the requirements or provisions of this subdivision are in conflict with the requirements or provisions of another lawfully adopted ordinance, or other division of this land development code, the provisions of this division will take precedence.

Sec. 34-1514. - Administration and enforcement of subdivision; verification of income.

(a) The Director will be responsible for maintaining public records of:
    (1) All dwelling units constructed pursuant to the bonus density program;
    (2) All such dwelling units that are occupied by eligible households;
    (3) Complaints of violations of the bonus density program that are alleged to have occurred and the disposition of all those complaints;
    (4) A list of all eligible households who have participated in the bonus density program; and
    (5) Such other records as the Director believes may be necessary or desirable to monitor the success of the program and the degree of compliance therewith.
(b) The developer or the subsequent owner of a dwelling unit obtained via the density bonus program using the site-specific density bonus option set forth in section 34-1518 must submit the following eligible household income verification reports to the Division of Planning so that they may monitor the program for compliance.
    (1) For owner-occupied units, the income verification forms must be submitted once prior to the issuance of a certificate of occupancy and each time thereafter that the unit is sold during the following seven-year period.
    (2) For a renter-occupied units the income verification forms must be submitted once prior to the issuance of the certificate of occupancy for the unit in question and annually thereafter for the next seven-year period. This provision also applies each time thereafter that the unit is leased during the following seven-year period.
(c) The Director is hereby delegated the responsibility and authority for enforcing the provisions of this subdivision in cooperation with such other agencies of the County as the Director may request.
(d) The Division of Planning will maintain a list, open to the public, of units available to eligible households under the bonus density program. Developers must inform the Division when units are occupied by eligible households so that these units may be removed from the list.

Sec. 34-1515. - Prohibited acts; notice of violation.

(a) It is a violation of this subdivision to rent or sell, or attempt to rent or sell, a bonus density rental unit or a bonus density owner-occupied unit, except as specifically permitted by the terms of this subdivision, or to knowingly give false or misleading information with respect to the information requested by the Director pursuant to the authority delegated to him by this subdivision.
(b) If the Director determines there is a violation of this subdivision, a notice of violation will be issued and sent, by both regular and certified mail, to the person committing the violation. The notice of violation issued must:
    (1) Be in writing.
    (2) Be dated and signed by the Director.
    (3) Specify the violation.

(4) State that the violation must be corrected within 90 days of the date of the notice of violation.

(5) State that the County may pursue civil and criminal proceedings if the violation is not corrected by the specified date.

Sec. 34-1516. - The bonus density program.

The bonus density program allows the Board of County Commissioners the discretion to grant bonus density to developments in accordance with the Lee Plan and the following criteria. Although approval of the use of bonus density credits is solely within the discretion of the Board, applicants must comply with the minimum requirements set forth herein to be eligible for consideration for the program.

(a) Alternative methods: A developer may be eligible to exceed the standard density range for a particular land use category if:

(1) The additional dwelling units achieved through the bonus density program will be available only to eligible households in accordance with the site-specific provisions set forth in section 34-1518; or

(2) The developer makes a cash contribution to the affordable housing trust fund in accordance with section 34-1519. NOTE: The Board of County Commissioners will not approve new applications for cash contributions to the affordable housing trust fund for a two-year period beginning January 1, 2011.

(3) The property is located in the mixed use overlay in the intensive, urban community or central urban future land use category and is zoned mixed use planned development or compact planned development. The property must be developed in accordance with Chapter 32, Compact Communities, if the bonus density was approved after February 26, 2013 or if the bonus density was approved in a mixed use planned development approved prior to February 26, 2013 that has compact community components or is consistent with elements of the mixed use overlay.

(b) Maximum bonus density. The maximum bonus density that may be granted is set forth below:

| Lee Plan - Land Use Category: | Standard Density Range: (dwelling units per acre) | Maximum Bonus Density: (additional dwelling units per acre) |
|---|---|---|
| Intensive development | 8 to 14 | 8 |
| Central urban | 4 to 10 | 5 |
| Urban community | 1 to 6 | 4 |

(c) Minimum requirements:

(1) All requests for participation in the program must:

a) Comply with and be consistent with the Lee Plan and all other applicable federal, state and regional laws and regulations; and

b) Include only property zoned for the type of dwelling units to be constructed; and

c) Limit the proposed density to the maximum total density or less, allowed by the Lee Plan category applicable to the subject property.

(2) All proposed developments must be designed so that:

a) The resulting development does not have substantially increased intensities of land uses along its perimeter, unless adjacent to existing or approved development of a similar intensity;

b) The additional traffic will not be required to travel through areas with significantly lower densities before reaching the nearest collector or arterial road as required by Lee Plan Policy 39.1.4;

c) Existing and committed public facilities are not so overwhelmed that a density increase would be contrary to the overall public interest;

d) There will be no decrease in required open space, buffering, landscaping and preservation areas or adverse impacts on surrounding land uses;

e) Storm shelters or other appropriate mitigation is provided if the development is located within the Category 1 Storm Surge Zone for a land-falling storm as defined by the October 1991 Hurricane Storm Tide Atlas for Lee County prepared by the Southwest Florida Regional Planning Council; and

f) The resulting development will be compatible with existing and planned surrounding land uses.

(d) Parcels of land of one-half acre or less. Where the total actual bonus density will consist of only one dwelling unit and the developer agrees to participate in the program, the agreement required by section 34-1518(b)(2) and the bond required by section 34-1518(b)(3) may be waived upon written request to the Lee County Division of Planning for approval.

(e) Assisted living facilities whose annual rental rates, including all services, do not exceed the levels established for eligible households will be eligible for bonus density consistent with the applicable land use category. Where the cash-contribution density bonus option is used, the cash contribution must be applied for each dwelling unit or its equivalent unit, as provided in section 34-1494, built above the standard density.

(f) Planned development zoning districts. A planned development's approved density may be increased using affordable housing bonus density units, only by amending the planned development pursuant to section 34-380. The applicant must submit, as part of the submittal documents, a revised master concept plan showing the location of the proposed additional density; and must also provide additional information as required by the Director, to identify the impacts the increased density will precipitate over and above the impacts attributable to the density currently approved for the property.

Use of affordable housing bonus density units to increase density above the Lee Plan standard density may also be considered in conjunction with the original proposed planned development application. The bonus density application may be submitted, reviewed and approved in conjunction with the planned development rezoning application as set forth in section 34-1517.

(g) Conventional zoning districts. The density applicable to a conventional zoning district may be increased using affordable housing bonus density units only through the public hearing process. The bonus density application may be submitted, reviewed and approved in conjunction with a conventional rezoning application as set forth in section 34-1517.

If a property owner or developer is not applying for rezoning, but wishes to use affordable housing bonus density units to increase densities above the Lee Plan standard density range,

the application for the use of affordable housing density units and the contract required by sections 34-1518(b)(1) and 34-1519(c) must be submitted for concurrent review. The maximum density may not exceed the maximum total density for the land use category in which the property is located.

(h) Bonus density contract. All bonus density approvals will require the applicant to enter into a contract complying with the provisions of this division and Administrative Code 13-12.

Sec. 34-1517. - Procedure to approve density increases.

(a) Application.

(1) A complete bonus density application, on a form approved by the Department of Community Development, must be submitted to the County along with the appropriate fee.

(2) As part of the application, the applicant must:

a. Clearly identify the option chosen, i.e., whether the cash contribution will be made or the bonus density units will be provided on-site; and

b. Provide documentation substantiating compliance with each of the review criteria set forth in section 34-1517(c).

(3) The application may be made in conjunction with a rezoning application or as a stand alone request. In either case, a fee applicable solely to the bonus density application will be required.

(4) If the bonus density was approved by the Board of County Commissioners as part of a mixed use planned development and the applicant is using Option 34-1516(a)(3) an administrative amendment pursuant to section 34-380 is required.

(b) Recommendation. Once the application is complete it will be reviewed by the Department of Community Development and a recommendation will be prepared for consideration by the Hearing Examiner. After a public hearing, the Hearing Examiner will prepare a recommendation for consideration by the Board of County Commissioners.

(c) Review criteria. Based upon the application and information available to the County concerning the subject property, a recommendation will be prepared by County staff for presentation to the Hearing Examiner.

(1) The recommendation must address each of the minimum requirements set forth in section 34-1516(c).

(2) The staff recommendation may contain reasonable conditions necessary to mitigate any adverse impacts that may otherwise be attributable to the density bonus approval.

(3) A draft copy of the bonus density contract, as negotiated by the parties, must be attached to the staff recommendation. If deemed appropriate by County staff, the recommendation can provide an explanation of the contract terms and provisions.

(d) Processing the application.

(1) Hearing examiner. The bonus density application and staff recommendation will be presented to the Hearing Examiner in accordance with the procedure set forth in section 34-145(d).

The Hearing Examiner's recommendation to the Board must also consider the review criteria contained in section 34-1516(c) as well as the provisions in the draft contract agreement. A copy of the draft contract must be attached to the Hearing Examiner recommendation for consideration by the Board.

(2) Board action. The Hearing Examiner's recommendation will be considered by the Board in accordance with the procedure set forth in section 34-83(b). During the hearing, the Board will consider the evidence and testimony submitted with respect to

the bonus density application along with the proposed bonus density contract and may approve or deny the application and contract based upon the criteria set forth in section 34-1517(c).

If the bonus density application is presented to the Board in conjunction with a rezoning application, the Board may take action on the zoning application and the bonus density application separately, such that one may be approved and the other denied. If the bonus density application is presented to the Board in conjunction with a rezoning application the Board's action taken on the bonus density request will be noted in the final zoning resolution.

Sec. 34-1518. - Site-specific density bonus (option 1).

(a) A developer may apply for bonus density based upon an agreement to build and make the bonus density units available for eligible households as follows:

(b) Prior to receiving a final development order or building permit using bonus density units, the developer must:

(1) Obtain Board approval in accordance with section 34-1517.

(2) Execute a contract with the Board of County Commissioners, in a form approved by the County Attorney's Office, that will bind the developer and his successor:

a. In the case of rental units, to rent the unit exclusively to eligible households for a period of seven years or more from the date when the certificate of occupancy is issued;

b. In the case of owner-occupied units, to sell the unit to an eligible household, by conveyance that must include a recorded deed restriction prohibiting the transfer, either through rental or sale of the unit, for a period of seven years, to any other person except another eligible household;

c. To adhere to the limitations on monthly payments set forth in subsection (e) of this section;

d. To acknowledge and waive objections to the remedies reserved to the County in subsection (d) of this section;

e. To agree to rent or sell only to eligible households, as defined in section 34-1512 for a period of seven years; and

f. To agree to comply with all federal, state and local fair housing laws, rules, regulations or orders applicable to the development for seven years from the date of the initial certificate of occupancy.

(3) Deliver a bond or equivalent performance guarantee acceptable to the County Attorney, in an amount equal to 100 percent of the contribution required by section 34-1519 (option 2).

The bond or equivalent performance guarantee must guarantee the developer's performance under this option, notwithstanding any subsequent events, including but not limited to bankruptcy, change of ownership or death. Such bond or equivalent performance guarantee must provide that the surety will pay to the County an amount equal to 100 percent of the contribution rate set forth in section 34-1519(b)(2) for each bonus density rental unit or owner-occupied unit rented or sold by the principal of the bond in violation of the requirements of subsection (b)(2)a. or b. or subsection (e) or (f) of this section, plus costs of litigation, including attorney's fees and interest incurred by the County, directly or indirectly, to enforce the requirements of this subdivision.

The developer of a project who has posted a equivalent performance guarantee may apply for a reduction in the surety amount by submitting documentation verifying that a

dwelling unit has been occupied by a qualifying household in accordance with section 34-1514(b). The reduction in the face amount of the surety will correspond to the bonus density unit contribution rate established in the governing County Administrative Code. The developer may apply to reduce the surety amount each time a unit has been occupied by a qualifying household by providing the evidence described herein.

(4) Record a covenant in the public records stating that there is an obligation to rent or sell only to eligible households, as defined in section 34-1512, for a period of seven years after the certificate of occupancy is issued. The covenant must be set to expire no earlier than seven years after the certificate of occupancy is issued.

(c) The Board of County Commissioners may waive any requirement of this section if the developer is a Florida not-for-profit corporation exempt from federal income taxation as a charitable organization under the provisions of section 501(c)(3) of the Internal Revenue Code of 1954, or of any corresponding section of a subsequently enacted federal revenue act, or if the development is a nonprofit housing project financed, in whole or part, by a mortgage made by or through any agency of the government of the United States of America that is subject to tenant income limitations established by that agency as a condition of the mortgage.

(d) In addition to any action to enforce payment of the secured amounts described in subsection (b)(3) of this section, 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 subsection (b)(2)a. or b. of this section.

(e) The rental rate of bonus density rental units and the selling price of bonus density owner-occupied units may be determined by the developer; provided, however, that the monthly rent (exclusive of utility charges) or mortgage payments may not exceed 35 percent of the gross monthly income of the lessees or buyers. In the case of assisted living facilities, the rental payment, including all services, may not exceed 80 percent of the household's income.

(f) Lessors and sellers may rent or sell bonus density rental units and owner-occupied units only to eligible households for seven years from the date of the initial certificate of occupancy.

Sec. 34-1519. - Cash-contribution density bonus (option 2).

(a) A developer may elect to pay the cash contribution set forth in subsection (b)(3) of this section and satisfy the other requirements of this section. NOTE: The Board of County Commissioners will not approve new applications for cash contributions to the affordable housing trust fund for a two-year period beginning January 1, 2011, The degree to which density may be increased pursuant to this option above the standard density limitations otherwise imposed by law represents a bonus to the developer of the land and is offered as a means of encouraging the developer to contribute to the County's Affordable Housing Trust Fund, thereby assisting the County in its efforts to provide adequate housing for eligible households.

Prior to receiving a final development order or building permit using bonus density units, the developer must obtain Board approval in accordance with section 34-1517.

(b) The bonus density for which a given area of land may qualify depends upon the amount the developer of the land contributes to the County's Affordable Housing Trust Fund.

(1) Contributions will be based on the number of dwelling units by which the developer desires to exceed the standard density range.

(2) The standard contribution per-unit rate will be established by administrative code. and may be adjusted annually.

(3) For every unit for which a standard contribution is paid, the developer will be entitled to exceed, by an equal number of units applied to the development as a whole, the standard density cap that otherwise may be imposed on the development in question. However, the development will not be permitted to exceed the applicable maximum bonus density set forth in section 34-1517(b).

(4) The first development order following the approval of bonus density, or building permit if a development order is not required, 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 bonus units, must pay the required contribution prior to the issuance of the first development order. Contributions will not be refunded once made, even if the development in question fails to occur for any reason. Density bonuses for which contributions are made will run with the specific development plan submitted and approved by the County concurrent with the request for bonus density units.

(c) The developer must execute a contract with the Board of County Commissioners, in a form approved by the County Attorney's Office that binds the developer to the standard contribution per-unit rate and conditions set forth in subsections (b)(2) and (b)(3) of this section.

(d) Development made in excess of the standard density that otherwise would be imposed by law but for the provisions of this subdivision must comply with all other legal requirements that may be imposed by current or future federal, state, regional or local laws and regulations.

Sec. 34-1520. Affordable Housing Trust Fund.

(a) All contributions received from developers pursuant to this subdivision will be placed in a fund entitled the "Affordable Housing Trust Fund."

(b) The fund will be used to assist the County in its efforts to provide needed housing for eligible households. The assistance may include assistance for the construction, development or rehabilitation of rental or homeowner housing. Preference will be granted to qualifying affordable housing projects that are within a ten mile radius of the project generating the contribution into the fund.

**Secs. 34-1521 – 34-1540. Reserved.**

**Subdivision IV. Reserved.**

**Secs. 34-1541 – 34-1570. Reserved.**