



**LAND DEVELOPMENT CODE ADVISORY COMMITTEE
COMMUNITY DEVELOPMENT/PUBLIC WORKS BUILDING
1500 MONROE STREET, FORT MYERS**

First Floor Conference Room 1B

**FRIDAY, JANUARY 10, 2020
8:30 A.M.**

AGENDA

1. Call to Order/Review of Affidavit of Publication
2. Approval of Minutes – December 13, 2019
3. Election of Officers
4. LDC Amendment – Implement Enhanced Wetlands TDR Program
5. Adjournment
Next Meeting date: February 14, 2020

To view a copy of the agenda, go to www.leegov.com/dcd/calendar.

For more information, contact Debbie Carpenter, (239) 533-8345 or DCarpenter@leegov.com.

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**MINUTES REPORT
LAND DEVELOPMENT CODE ADVISORY COMMITTEE
(LDCAC)**

**Friday, December 13, 2019
8:30 a.m.**

Committee Members Present:

Paula McMichael, Chair
Amy Thibaut
Al Quattrone

Richard Ibach
Randy Krise

Excused / Absent:

Linda Stewart
Daryl (Max) Forgey
Bill Prysi, Vice Chair
Jim Ink
Patrick Vanasse

Tom Lehnert
Jay Johnson
Veronica Martin
Bill Morris
Jennifer Sapen

Lee County Government Staff Present:

Amanda Swindle, Assistant County Attorney
Debbie Carpenter, DCD Admin., Recorder
David Loveland, Director, DCD
Dirk Danley, Jr., DCD Zoning

Outside Consultants/Members of the Public Present:

None

CALL TO ORDER AND AFFIDAVIT:

Ms. Paula McMichael called the meeting to order at 8:30 a.m. in the first floor conference room of the Community Development/Public Works Building, 1500 Monroe Street, Fort Myers, Florida.

Ms. Amanda Swindle, Assistant County Attorney, reviewed the Affidavit of Publication and found it legally sufficient as to form and content.

APPROVAL OF MINUTES – November 08, 2019

Mr. Randy Krise made a motion to approve the November 8, 2019 minutes. Mr. Richard Ibach seconded. The motion was called and carried.

LDC AMENDMENT

Mr. Dirk Danley Jr. introduced an amendment to Chapter 30-153 to allow electronic message centers (EMCs) on College Parkway. EMCs are currently allowed along the full length of College Parkway between McGregor Blvd. and US41 except for a segment of 0.4 miles on the south side between Winkler Rd and Florida Southwestern State College due to the underlying Future Land Use in that section, and just on the south side. The amendment will provide for the equitable treatment of properties along the entire corridor as it relates to signs.

Mr. Krise asked about the types of signs this pertained to and Mr. Danley said this was not related to billboards, only electronic messaging signs and that there are still specific requirements as to size and type of signs allowed. Mr. David Loveland, DCD Director, pointed out the specific area on the map and reiterated that the purpose of the amendment was to allow electronic messaging signs for all properties along College Parkway.

Mr. Richard Ibach made a motion to approve the amendment as presented. Mr. Al Quattrone seconded. The motion was called and carried.

There was no further discussion and the meeting was adjourned at 8:37 a.m.

The next meeting was tentatively scheduled for January 10, 2020.

DRAFT

MEMORANDUM

FROM
THE DEPARTMENT OF
COMMUNITY DEVELOPMENT

TO: Land Development Code Advisory **DATE:** December 27, 2019
Committee Members

FROM: Audra Ennis 
Zoning Manager

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

Staff has prepared amendments to Land Development Code, Chapter 2, Article IV – Bonus Density in response to Board direction to amend the Land Development Code to implement an enhanced Wetlands TDR Program, consistent with the text amendments adopted by Comprehensive Plan Amendment CPA2019-00001 (Impacted Wetlands). These amendments include new and amended definitions; computation of Wetlands Transferable Development Units (TDUs); density equivalents of Wetlands TDUs; and, clarifications and revisions for internal consistency.

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

Staff requests that the LDCAC recommend approval of the proposed LDC Amendments.

Attachments:

LDC Amendment Package

CPA2019-00001

CHAPTER 2 – ADMINISTRATION

ARTICLE IV. - BONUS DENSITY

DIVISION 1. GENERALLY

Sec. 2-143. - Definitions.

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

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

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

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

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

DIVISION 2. - BONUS DENSITY PROGRAM

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

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

- (a) *Remains unchanged.*
- (b) *Bonus density approval types.*
- (1) – (4) *Remain unchanged.*
- (5) *Greater Pine Island and Wetlands TDU.* The Director may administratively approve the use of Greater Pine Island and Wetland TDUs to increase the

density and intensity of existing planned developments in accordance with the following:

Remainder of section is unchanged.

DIVISION 3. - CREATION OF TRANSFERABLE DEVELOPMENT UNITS

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

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

(a) – (b) *Remain unchanged.*

(c) The sending parcel may only be used consistent with its conservation easement or written governing instrument. The governing instrument must expressly identify the following:

(1) The restriction of property use, including the maximum number of residential units and the non-residential uses permitted under subsection (d) that can be developed on the subject property upon severance of the TDUs; and

(2) ~~The . The governing instrument must identify the non-residential uses permitted under subsection (d) and property maintenance and management activities, including removal and control of invasive exotic plants as identified in section 10-420, that will be conducted after the severance of the TDUs. transfer of development rights. Wetland impacts, including impacts associated with permitted non-residential uses, property maintenance, and management activities, are prohibited in perpetuity.~~

(d) TDUs may be created from upland areas with assurances of continued agricultural uses through agricultural easements or other recorded instrument. The uses that may occur upon severance of the TDUs, if specifically listed in the governing instrument and proper approvals are obtained, are provided in Table 2-148(d). ~~The governing instrument must indicate that all non-agricultural development rights have been permanently severed by the land owner for transfer to other land and specifically list any activities from Table 2-148(d) that may occur on property if proper approvals are obtained:~~

TABLE 2-148(d) remains unchanged.

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

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

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

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

TABLE 1. FRACTIONAL TRANSFER OF WETLAND TDUs

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

- (b) A single-family lot or parcel designated as wetlands that holds an affirmative determination of the single-family residence provision pursuant to chapter XIII of the Lee Plan, may be permitted to sever two TDUs in lieu of development.
- (c) TDUs created pursuant to (a) or (b) above, may be doubled if the wetlands are within the Coastal High Hazard Area (CHHA) (Lee Plan Map 5).
- (d) Under no circumstances will natural bodies of water be included in the calculation for TDUs.

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

Staff note: Increased value of wetlands TDU from one to two dwelling units. Establish criteria for use of wetland TDUs to increase commercial intensity or reduce open space requirement. Establish non-residential square footage value for wetland TDU used to increase commercial intensity. Establish value for wetland TDU used for open space reduction.

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

- (a) The residential ratio for Wetlands TDUs is one Wetlands TDU will be equal to two dwelling units when transferred to upland areas within the Intensive Development, Central Urban, Urban Community, or General Interchange future land use categories.
- (b) The non-residential ratios for Wetland TDUs are as follows:
 - (1) One Wetland TDU equals 10,000 square feet of 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 Wetland TDUs to increase commercial intensity is permitted within future urban areas as defined by the Lee Plan.
- (c) Wetland TDUs may be utilized to reduce open space and onsite native preservation requirements set forth in chapter 10 in accordance with the following ratios. Applications for the use of TDUs to decrease open space must meet the applicable approval requirements identified in Administrative Code 13-5.
- (1) One Wetland TDU equals a 5,000 square foot reduction to the minimum open space and onsite native preservation requirements for residential, commercial, industrial and mixed-use projects. TDUs may not be used to reduce required landscape buffers, building perimeter plantings, stormwater management, or any other design requirement set forth in chapter 10.
- a. A maximum reduction of 50 percent is permitted for development within the Mixed Use Overlay.
- b. A maximum reduction of 35 percent is permitted for development within future urban areas, as defined in the Lee Plan, and which are not located within the Mixed Use Overlay.
- c. A maximum reduction of 20 percent is permitted for development within future suburban and non-urban areas, as defined in the Lee Plan.

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

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

- (a) *Remains unchanged.*
- (b) The non-residential ratios for Greater Pine Island TDUs are as follows:
- (1) – (2) *remain unchanged.*
- ~~(3) —Wetland TDUs may not be used to increase commercial intensity.~~
- (c) Greater Pine Island TDUs may be utilized to reduce open space and onsite native preservation requirements set forth in chapter 10 in accordance with the following ratios. Applications for the use of TDUs to decrease open space must meet the applicable approval requirements identified in Administrative Code 13-5.
- (1) One Greater Pine Island TDU equals a 5,000 square foot reduction to the minimum open space and onsite native preservation requirements for residential, commercial, industrial and mixed-use projects. TDUs may not be used to reduce required landscape buffers, building perimeter plantings,

stormwater management, or any other design requirement set forth in chapter 10.

a. *remains unchanged.*

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

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

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

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

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

(a) One TDU may be established per ~~520~~ acres of wetlands ~~encumbered by a conservation easement restrictive covenant, or other instrument that severs the development rights from the parcel(s).~~

(b) ~~Density reduction/groundwater resource (DR/GR):~~ TDU credits may be established from land designated in the Density Reduction/Groundwater Resource future land use category for DR/GR lands as follows:

Remainder of section is unchanged.

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

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

(a) – (c) *remain unchanged.*

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

**STAFF REPORT FOR
CPA2019-00001: Impacted Wetlands**

County Initiated Text Amendments to the Lee Plan



BoCC Direction:

- 11/17/15

Amended Elements:

- Conservation and Coastal Management
- Chapter XIII

Attachments:

- 1 - Text Amendments
- 2 – Incentive Amendments

Hearing Dates:

LPA: 2/25/2019

BoCC:

3/20/2019 – Deferral

4/17/2019 – Deferral

5/22/2019 – Transmittal

12/18/2019 – Adoption

REQUEST

Amend the Lee Plan to clarify uses allowed in the Wetlands future land use category on property where impacts are authorized by a State agency.

SUMMARY

The purpose of these amendments is to recognize uses allowed in the Wetlands future land use category when an authorized State agency (South Florida Water Management District or Florida Department of Environmental Protection) permits impacts to wetlands on properties with adjacent upland approved for non-residential development. State agencies have the authority to permit impacts to wetlands. These areas are recognized by the state as “impacted wetlands.” State permitting laws are intended to ensure that all permitted impacts to wetlands are adequately offset through mitigation.

Lee County has the authority to determine the most appropriate use of land, including impacted wetlands. The Lee Plan acknowledges impacted wetlands for residential uses, allowing density to be calculated at a standard density of one dwelling unit per 20 acres; however, there are no provisions regarding non-residential uses. Lee County has traditionally issued Development Permits for non-residential uses on impacted wetlands when those uses are permitted on adjacent uplands. The proposed amendments, as summarized below, will legitimize this practice:

- Goal 124 will be amended to recognize the non-residential uses allowed on impacted wetlands.
- Chapter XIII will be amended to clarify the future land use category designation of upland property found to be improperly designated as Wetlands through an administrative interpretation and confirmed by a wetlands jurisdictional determination.

RECOMMENDATION

Staff recommends that the Board of County Commissioners **adopt** the proposed text amendments provided in Attachment 1 based on the analysis and findings in this staff report and **direct** staff to amend the Land Development Code, as provided in Attachment 2, to implement the proposed wetlands preservation incentives.

PART 1
BACKGROUND INFORMATION

On November 17, 2015, the Board of County Commissioners (BoCC) provided direction for staff to identify amendments to the Lee Plan to align with the BoCC's strategic planning initiatives, streamline, eliminate potential liabilities, reduce redundancy/conflict within and between Lee Plan goals, and relocate regulatory provisions to the Land Development Code. Based on this direction, staff identified the proposed amendments as being necessary for providing clear, concise, and meaningful provisions that can be consistently applied and interpreted.

PART 2
STAFF DISCUSSION AND ANALYSIS

All wetlands, as determined by the state, are assigned to the Wetlands future land use category even if not identified on the Future Land Use Map (FLUM). Wetlands are defined in the Glossary of the Lee Plan as:

WETLANDS - Areas that are inundated or saturated by surface water or ground water at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil. ~~Wetland boundaries will be determined by using the methodology in FAC Chapter 17-340 as ratified and amended in F.S. 373.4211.~~

The proposed amendment identified above will not change how Wetlands are defined. The sentence that is proposed to be deleted identifies a process, which is not appropriate for a definition. This sentence will remain within Lee Plan Objective 1.5 and is proposed to be added for administrative interpretations in Chapter XIII.

Wetlands Boundaries

The boundary of the Wetlands future land use category is delineated based on wetlands jurisdictional determinations issued by an appropriate state agency. In instances where property is designated Wetlands on the FLUM and is found to be upland through a state determination, an administrative interpretation may be sought to change the property's future land use category. The availability of an administrative interpretation is provided in Chapter XIII of the Lee Plan:

An applicant of a development permit whose property rights are directly affected by the Lee Plan have the right to an administrative interpretation of the Plan as to its application to their property. Administrative interpretations are intended to expedite and reduce disputes over interpretations of the Lee Plan, resolve map or boundary disputes, avoid unnecessary litigation, ensure consistency in Plan interpretation, and provide predictability in interpreting the Plan.

Applicants seeking an administrative interpretation must submit an application demonstrating compliance with the standards below. Procedures for obtaining an administrative interpretation are provided in Lee County Administrative Code 13-2.

A jurisdictional determination approved by South Florida Water Management District or Florida Department of Environmental Protection must be submitted prior to issuance of an interpretation of a Wetlands future land use designation. If it is determined a property is not wetlands, the Wetlands future land use category is no longer the appropriate designation; the Lee Plan, however, does not specify which future land use category to re-designate the property. In past practice, by issuance of an administrative interpretation, the FLUM of the property is changed to the most appropriate, contiguous upland category. To recognize and codify this on-going practice, the following amendments to Chapter XIII, b. are proposed:

1. Subject Matter of Administrative Interpretations

- b. Whether a parcel has been properly designated as within the Wetlands future land use category. Wetlands future land use boundaries will be determined by using the methodology in FAC Chapter 17-340 as ratified and amended in F.S. 373.4211. A Jurisdictional Determination approved by SFWMD or Florida DEP must be submitted prior to the issuance of such an interpretation.

2. Standards for Administrative Interpretations

- f. Interpretations that find a property improperly designated in the Wetlands future land use category, will assign the property to the most appropriate, contiguous upland future land use category.

Impacted Wetlands

Chapter 373, F.S. gives the Florida Department of Environmental Protection and the water management districts the responsibility of regulating the state's wetlands through the environmental resource permit (ERP) program. Through the ERP program, impacts to wetlands may be permitted subject to mitigation. Upon issuance of an ERP, a property owner may impact the wetlands by filling it, ultimately removing its ecological function as a wetland, making it an "impacted wetland."

Permitted Uses in Wetlands

Permitted land uses in the Wetlands future land use category are limited to very low density residential (one dwelling unit per twenty acres) and recreational uses that will not adversely affect the ecological function of wetlands (Lee Plan Policy 1.5.1).

Dwelling units may be relocated to developable contiguous uplands designated Intensive Development, General Interchange, Central Urban, Urban Community, Suburban, Outlying Suburban, Sub-Outlying Suburban, and New Community from preserved freshwater wetlands at the same underlying density as permitted for those uplands (Lee Plan Policy 124.1.1 and Table 1(a)). Impacted wetlands are calculated at the standard Wetlands density.

Impacted wetlands are addressed in the Lee Plan for purposes of calculating residential density, but not for purposes of non-residential uses. However, when issuing development permits, impacted wetlands (permitted through the ERP program) have been allowed the same uses as the adjacent uplands. The proposed amendments recognize this historic practice:

POLICY 124.1.2: The county's wetlands protection regulations will be consistent with the following:

2. ~~No development in wetlands regulated by the State of Florida will be permitted by Lee County without the appropriate state agency permit or authorization. No development in wetlands regulated by the State of Florida may be commenced without the appropriate state agency permit or authorization. Development Orders and Development Permits authorizing development within wetlands or lands located within the Wetlands future land use category may be issued subject to a condition that construction may not commence until issuance of the required state permits.~~
7. ~~The density on wetlands that have been impacted, or will be impacted, in accordance with a state agency permit will be calculated at a density of 1 dwelling unit per 20 acres. Non-residential uses on wetlands that have been impacted, or will be impacted, in accordance with a state agency permit must be consistent with the non-residential uses permitted in the immediately adjacent upland future land use category. Wetland density will be determined by the jurisdictional wetland line. Impacted wetlands may not be calculated at the underlying upland density rate. Density calculations for impacted wetlands must be at 1 dwelling unit per 20 acres.~~

PART 3 CONCLUSIONS

Amending Policies 124.1.2 (2) and (7) of the Lee Plan will provide clear direction on the uses which are permissible in impacted wetlands. Amending Chapter XIII to include a statement recognizing the improperly designated wetlands as the most appropriate, contiguous upland category will better define the process for Land Use Map Boundary Adjustment applications. Applicants will still be required to obtain a permit from the State of Florida for any wetlands impacts. The clarifying language results in consistent application of the Lee Plan and continues to acknowledge the State as the permitting authority of impacted wetlands.

Staff recommends that the Board of County Commissioners *transmit* the proposed amendments as provided in Attachment 1.

**PART 4
LOCAL PLANNING AGENCY
REVIEW AND RECOMMENDATION**

DATE OF PUBLIC HEARING: February 25, 2019

A. LOCAL PLANNING AGENCY REVIEW:

Staff provided a brief overview of the proposed text amendments providing for additional uses within the Wetlands future land use category when impacts are permitted and mitigated through an appropriate state agency such as the South Florida Water Management District or the Florida Department of Environmental Protection. Three members of the public addressed the LPA concerning this case. One member of the public believed that the amendments should be further reviewed to identify any potential conflicts, and two members recognized the issue the amendments will fix and expressed support for transmittal.

Members of the LPA asked questions about the process to permit impacts to wetlands. Staff responded that wetland impacts are permitted through state agencies, but uses are determined by the county.

B. LOCAL PLANNING AGENCY RECOMMENDATION:

A motion was made to find the request consistent with the Lee Plan; encourage staff to further review the Lee Plan to identify any potential conflicts; and, to recommend that the Board of County Commissioners transmit CPA2019-00001. The motion passed 7 to 0.

VOTE:

RAYMOND BLACKSMITH	<u>AYE</u>
RHONDA BREWER	<u>AYE</u>
JAMES INK	<u>AYE</u>
DON SCHROTENBOER	<u>AYE</u>
KRISTINE SMALE	<u>AYE</u>
STAN STOUDE	<u>AYE</u>
HENRY ZUBA	<u>AYE</u>

C. STAFF RESPONSE TO LOCAL PLANNING AGENCY MOTION:

Staff reviewed the Lee Plan to identify any potential conflicts, as recommended by the LPA. Staff notes that a cross reference is already included in Policy 1.5.1 that directs the reader to Goal 124 for development within Wetlands. Therefore, no additional revisions are required. Policy 1.5.1 is provided below for reference:

POLICY 1.5.1: Permitted land uses in Wetlands consist of very low density residential uses and recreational uses that will not adversely affect the ecological functions of wetlands. All development in Wetlands must be consistent with Goal 124 of this plan. The maximum density is one dwelling unit per twenty acres (1 du/20 acre) except as otherwise provided in Table 1(a) and Chapter XIII of this plan. (Ordinance No. 94-30)

PART 5
BOARD OF COUNTY COMMISSIONERS
TRANSMITTAL HEARING FOR PROPOSED AMENDMENT

DATE OF PUBLIC HEARING: May 22, 2019

A. BOARD REVIEW:

Staff provided a brief presentation for the proposed amendments which covered the purpose of the amendments, the wetland permitting process in Florida including what Lee County does versus what state agencies do, consistency with the Lee Plan, and the LPA and staff recommendations.

Twenty-six members of the public addressed the Board of County Commissioners concerning the proposed amendments. Thirteen members from the public spoke in favor of transmitting the amendments and thirteen members spoke against transmitting the amendments. Many members of the public encouraged the Board of County Commissioners to direct staff to identify potential incentives that would encourage the preservation of wetlands to be considered at time of adoption.

B. BOARD ACTION:

A motion was made to transmit CPA2019-00001 as recommended by staff and to direct staff to identify amendments that would encourage the preservation of wetlands. The motion was passed 3 to 0.

VOTE:

BRIAN HAMMAN	<u>AYE</u>
FRANK MANN	<u>ABSENT</u>
JOHN MANNING	<u>AYE</u>
CECIL L. PENDERGRASS	<u>AYE</u>
VACANT	<u>N/A</u>

**PART 6
STATE REVIEWING AGENCIES'
OBJECTIONS, RECOMMENDATIONS, AND COMMENTS**

Comments from the State Reviewing Agencies were due to Lee County by July 3, 2019.

A. OBJECTIONS, RECOMMENDATIONS AND COMMENTS:

Lee County received responses from the following review agencies addressing the transmitted amendment:

- Florida Department of Economic Opportunity (DEO)
- Florida Fish and Wildlife Conservation Commission (FWC)
- Florida Department of Environmental Protection (DEP)
- Florida Department of Agriculture & Consumer Services
- South Florida Water Management District (SFWMD)

There were no objections concerning the proposed amendments.

B. RECOMMENDED CHANGES BASED ON BOCC DIRECTION AT TRANSMITTAL:

At the transmittal hearing, the Board provided direction for staff to identify incentives that would encourage the preservation of wetlands and to bring the incentives to the Board for consideration at the adoption hearing.

To help brainstorm possible incentives, staff sought input from a group of stakeholders with various interests related to these amendments and preservation of wetlands. The stakeholders, which included land owners, land use planners, civil engineers, environmental educators, environmental advocates, environmental consultants, land use attorneys, and commercial realtors were convened for a roundtable to discuss and potentially identify implementable incentives that encourage the preservation of wetlands by developers. During the roundtable conversation, possible incentives were identified and the intricacies of implementing them were discussed.

Approximately fifteen potential ideas were discussed at this meeting. Most of these ideas can be grouped into: (1) providing design flexibility in order to potentially lessen impacts to wetlands; (2) adding development and design requirements to potentially discourage impacts to wetlands; (3) purchasing wetlands through the Conservation 20/20 program; or (4) creating transferable value from preserved wetlands areas to be used for increasing density and intensity on eligible upland properties.

- (1) **Design Flexibility:** An incentive would be to allow design flexibility in order to accommodate the preservation of wetlands within the development. Design flexibility ideas that were discussed included increased height, reduced setbacks, buffers, parking

and open space, steeper lake slopes, deeper ponds, and variable intersections/driveway connections. Included with this incentive would be an expedited review process and an assigned ombudsman.

Implementation of this incentive would require negotiations on a case-by-case basis between a property owner and staff to agree upon the type and amount of design flexibility appropriate for the amount of wetlands being preserved. Although an expedited review would be preferred, it would be impractical; the property-specific nature of this type of review would make it impossible to establish a single set of standards necessary to implement an expedited program.

- (2) **Additional Design Requirements:** Although not incentives, additional development and design requirements to discourage or off-set wetlands impacts were discussed. Ideas included requiring designs that would mitigate loss of wetland function, enhance water quality, incorporate green roofs, or reduce carbon footprints. Another idea was to create a water quality bank.

The Board specifically directed staff to identify incentives for preservation of wetlands, whereas, the ideas discussed are disincentives. The additional requirements would hinder development in wetlands, but would not prevent or compensate its impacts. Additionally, implementation of some of these ideas would be duplicative of the wetland permitting functions carried out by the Florida Department of Environmental Protection and the South Florida Water Management District.

- (3) **Purchase of Wetlands:** Monetary incentives discussed involved using Lee County's Conservation 20/20 program to purchase wetlands or to share in the cost of preserving wetlands on private property. Lee County's Conservation 20/20 program is currently used to purchase strategic wetlands, which will continue. Using the program to pay for the preservation of wetlands on private property, which could off-set the property owner's required mitigation or restoration costs, would be contrary to the purpose of Conservation 20/20 program funds.
- (4) **Enhancing the Wetlands Transfer of Development Rights (TDR) program:** Lee County currently has three TDR programs with existing implementation processes established. These include the *Greater Pine Island, Southeast Lee County, and Wetlands TDR programs*. Wetlands TDUs currently receive the least incentive for receiving parcels and are therefore less valuable for the owner of sending parcels. Enhancing Lee County's Wetland TDR program is the most viable option to incentivize the preservation of wetlands.

From the options identified and feasibility of implementation, Staff recommends utilizing the Wetlands TDR program and increasing the value of Wetlands Transferable Development Units (TDUs) to incentivize preservation of wetlands. Amendments to the current TDR program are proposed in Attachment 1, and discussed below.

The updated Wetlands TDR program will incentivize property owners to transfer their density (TDUs) off wetlands to developments located in future urban areas of the County. As proposed in Attachment 1, the following incentives are proposed for the Wetland TDR program:

- Up to 1 TDU may be created for every 5 acres of wetlands – this is 4 times the density of the Wetlands future land use category.
- The number of TDUs would be doubled if the sending area is within the Coastal High Hazard Area.
- Each TDU could be used on an eligible receiving parcel for:
 - Two additional dwelling units,
 - To administratively add up to 10,000 square feet (per TDU) of commercial retail and office space on an existing planned development, or
 - To reduce open space and onsite native preservation requirements by 5,000 square feet.

The updated TDR program will add a residential multiplier when transferring to eligible receiving lands and a separate multiplier for TDRs created from lands within the Coastal High Hazard Area. In addition to the residential incentives, staff is proposing to add non-residential incentives similar to those provided in the Greater Pine Island TDR program.

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

C. STAFF RECOMMENDATION:

Staff recommends that the Board of County Commissioners **adopt** the amendments provided in Attachment 1 and **direct staff to amend the Land Development Code** in order to implement the updated Wetlands TDR program.

II. Future Land Use

POLICY 33.4.2: The Southeast Lee County TDR program will have the following characteristics:

- 1. Creation of Transferable Development Units (TDUs).
 - a. Up to one (1) TDU may be created per five ~~twenty~~ (520) acres of preserved or indigenous wetlands.
- 2. Receiving area density and intensity equivalents of Southeast Lee County TDUs.
 - f. ~~Wetland TDUs may not be used to increase commercial intensity.~~
 (Ordinance 17-13)

VII. Conservation and Coastal Management

POLICY 124.1.2: The county's wetlands protection regulations will be consistent with the following:

- 2. ~~No development in wetlands regulated by the State of Florida will be permitted by Lee County without the appropriate state agency permit or authorization. No development in wetlands regulated by the State of Florida may be commenced without the appropriate state agency permit or authorization. Development Orders and Development Permits authorizing development within wetlands or lands located within the Wetlands future land use category may be issued subject to a condition that construction may not commence until issuance of the required state permits.~~
- 7. The density on wetlands that have been impacted, or will be impacted, in accordance with a state agency permit will be calculated at a density of 1 dwelling unit per 20 acres. Non-residential uses on wetlands that have been impacted, or will be impacted, in accordance with a state agency permit must be consistent with the non-residential uses permitted in the immediately adjacent, least intense, upland future land use category. Wetland density will be determined by the jurisdictional wetland line. Impacted wetlands may not be calculated at the underlying upland density rate. Density calculations for impacted wetlands must be at 1 dwelling unit per 20 acres.
(Ordinance No. 94-30, 00-22, 07-12, 10-20, 10-39, 18-28)

OBJECTIVE 124.2: WETLANDS TRANSFER OF DEVELOPMENT RIGHTS (TDR) PROGRAM. To incorporate purchase and transfer of development rights programs for the protection and preservation of wetlands into the Land Development Code.

POLICY 124.2.1: The programs may create incentives for property owners of wetlands to transfer development rights associated with the Wetlands future land use category to eligible upland receiving lands or Lee County.

POLICY 124.2.2: The Wetlands TDR program will have the following characteristics:

1. Creation of Wetlands Transferable Development Units (TDUs).
 - a. Up to one (1) TDU may be created per five (5) acres of wetlands.
 - b. Up to two (2) TDUs may be created from a single-family lot or parcel designated as wetlands that holds an affirmative Minimum Use Determination pursuant to Chapter XIII.
 - c. TDUs allowed by 1.a. or 1.b. above, and created from wetlands located within the Coastal High Hazard Area (CHHA) may be doubled.
2. Receiving area density and intensity equivalents of Wetlands TDUs.
 - a. In the Intensive Development, Central Urban, Urban Community, or General Interchange future land use categories, one (1) Wetlands TDU may be redeemed for up to two (2) dwelling units.
 - b. Lee County may establish non-residential incentives for the use of Wetlands TDUs within Future Urban Areas of the unincorporated Lee County.
3. The Land Development Code may include regulations that permit the county to evaluate the effectiveness of the Wetlands TDR program and make changes that may further condition or restrict the use of Wetlands TDUs.

POLICY 124.2.3 The county will administer the TDR program and develop a forum to disseminate program information and records. The forum may include a TDR program website that provides general program information, rules and guidelines; TDU administrative determination application; county-approved form of conservation easement; certified TDU database with ownership information; and, TDU clearinghouse for individuals that request to be included within the TDU clearinghouse program.

XII. Glossary

WETLANDS - Areas that are inundated or saturated by surface water or ground water at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil. ~~Wetland boundaries will be~~

determined by using the methodology in FAC Chapter 17-340 as ratified and amended in F.S. 373.4211. (Ordinance No. 94-30, 00-22)

XIII. Administration

1. Subject Matter of Administrative Interpretations

Administrative interpretations are limited to:

- b. Whether a parcel has been properly designated as within the Wetlands future land use category. Wetlands future land use boundaries will be determined by using the methodology in FAC Chapter 17-340 as ratified and amended in F.S. 373.4211. A Jurisdictional Determination approved by SFWMD or Florida DEP must be submitted prior to the issuance of such an interpretation.

2. Standards for Administrative Interpretations

- f. Interpretations that find a property improperly designated in the Wetlands future land use category, will assign the property to the most appropriate, least intense, contiguous upland future land use category.

 LAND DEVELOPMENT CODE AMENDMENTS

CHAPTER 2 – ADMINISTRATION

ARTICLE IV. - BONUS DENSITY

DIVISION 1. GENERALLY

Sec. 2-143. - Definitions.

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

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

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

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

DIVISION 2. - BONUS DENSITY PROGRAM

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

(a) *Remains unchanged.*

(b) *Bonus density approval types.*

(1) – (4) *Remain unchanged.*

(5) *Greater Pine Island and Wetlands TDU.* The Director may administratively approve the use of Greater Pine Island and Wetland TDUs to increase the density and intensity of existing planned developments in accordance with the following:

Remainder of section is unchanged.

DIVISION 3. - CREATION OF TRANSFERABLE DEVELOPMENT UNITS

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

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

TABLE 2-148(d) remains unchanged.

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

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

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

TABLE 1. FRACTIONAL TRANSFER OF WETLAND TDUs

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

- (b) A single-family lot or parcel designated as wetlands that holds an affirmative determination of the single-family residence provision pursuant to chapter XIII of the Lee Plan, may be permitted to sever two TDUs in lieu of development.
- (c) TDUs created pursuant to (a) or (b) above, may be doubled if the wetlands are within the Coastal High Hazard Area (CHHA) (Lee Plan Map 5).
- (d) Under no circumstances will natural bodies of water be included in the calculation for TDUs.

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

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

- (a) The residential ratio for Wetlands TDUs is one Wetlands TDU will be equal to two dwelling units when transferred to upland areas within the Intensive Development, Central Urban, Urban Community, or General Interchange future land use categories.
- (b) The non-residential ratios for Wetland TDUs are as follows:
 - (1) One Wetland TDU equals 10,000 square feet of 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 Wetland TDUs to increase commercial intensity is permitted within future urban areas as defined by the Lee Plan.
- (c) Wetland TDUs may be utilized to reduce open space and onsite native preservation requirements set forth in chapter 10 in accordance with the following ratios. Applications for the use of TDUs to decrease open space must meet the applicable approval requirements identified in Administrative Code 13-5.
 - (1) One Wetland TDU equals a 5,000 square foot reduction to the minimum open space and onsite native preservation requirements for residential, commercial, industrial and mixed-use projects. TDUs may not be used to reduce required landscape buffers, building perimeter plantings, stormwater management, or any other design requirement set forth in chapter 10.
 - a. A maximum reduction of 50 percent is permitted for development within the Mixed Use Overlay.
 - b. A maximum reduction of 35 percent is permitted for development within future urban areas, as defined in the Lee Plan, and which are not located within the Mixed Use Overlay.

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

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

- (a) *Remains unchanged.*
- (b) The non-residential ratios for Greater Pine Island TDUs are as follows:
- (1) – (2) *remain unchanged.*
- (3) ~~Wetland TDUs may not be used to increase commercial intensity.~~
- (c) Greater Pine Island TDUs may be utilized to reduce open space and onsite native preservation requirements set forth in chapter 10 in accordance with the following ratios. Applications for the use of TDUs to decrease open space must meet the applicable approval requirements identified in Administrative Code 13-5.
- (1) One Greater Pine Island TDU equals a 5,000 square foot reduction to the minimum open space and onsite native preservation requirements for residential, commercial, industrial and mixed-use projects. TDUs may not be used to reduce required landscape buffers, building perimeter plantings, stormwater management, or any other design requirement set forth in chapter 10.
- a. *remains unchanged.*
- b. A maximum reduction of 35 percent is permitted for development within future urban areas, as defined in the Lee Plan ~~future land use categories~~, and which are not located within the Mixed Use Overlay.
- c. A maximum reduction of 20 percent is permitted for development within future suburban and non-urban areas, as defined in the Lee Plan. ~~land use categories.~~
- (2) ~~Wetland TDUs may not be used to reduce open space and onsite native preservation requirements.~~

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

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

Remainder of section is unchanged.

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

(a) – (c) remain unchanged.

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