

ADMINISTRATIVE CODE
BOARD OF COUNTY COMMISSIONERS

CATEGORY:

CODE NUMBER:

Development/Planning/Zoning

AC-13-5

TITLE:

General Administrative Guidelines for the Implementation of the Transfer of Development Rights (TDR) Program as Authorized by the Land Development Code Chapter 2, Article IV

ADOPTED:

7/20/88

AMENDED:

1/4/95

ORIGINATING DEPARTMENT:

Community Development

PURPOSE/SCOPE:

I. PURPOSE

The following procedures are intended to provide guidance in the administration of the Transfer of Development Rights (TDR) Program and in determining the adequacy of legal descriptions, conservation easements, and extinguishment documents in order to insure land records are written and accepted in a consistent manner in accordance with the purpose and intent of the TDR Program.

POLICY/PROCEDURE:

II. APPLICABILITY

The property owner of lands which are designated or can be defined as Resource Protection Area or Transition Zone by the Lee Plan has the option to sell his or her development rights. The procedures contained herein are intended to provide guidance in determining the adequacy of required documents and records.

III. REQUIREMENTS FOR ESTABLISHING T.D.R.'S

A. Administrative Determination

In accordance with LDC §2-149, the property owner of the sending parcel may not apply for an Administrative Determination in the Designation of Resource Protection Area and/or Transition Zone.

B. Application Requirements

Upon receipt of said Administrative Determination, the owner must submit to the Department of Community Development (hereinafter referred to as "Department") the following documents:

1. A copy of the Administrative Determination; and
2. A legal description, certified by a professional surveyor or engineer, of the subject parcel; and
3. Separate legal description(s), certified by a professional surveyor or engineer, of the area or areas of the subject parcel which are to be designated as the sending parcels; and
4. A sketch plan, drawn at a suitable scale, delineating the subject parcel as well as delineating the "sending parcels", all as covered by the legal descriptions; and
5. Computations of the total land area of the sending parcels and the allocation of development rights for each sending parcel.

6. An affirmative Single Family Residence Provision issued by Lee County for TDR units created by LDC §2-148(d)(4). Sections III.B.(3) and (4) of this Administrative Code are not applicable to persons applying for a TDR pursuant to the Single Family Resident Application.

C. Conservation Easement Document

"Conservation easement document" means a document establishing a Conservation Easement for the environmentally sensitive areas (sending parcels) which expressly restricts in perpetuity, the use of said sending parcel(s) to conservation and open space used as set forth in this code.

1. The document must state the total number of the development rights that are allocated to the sending parcel and which are available to the owner for transfer.

2. The document must be drafted and prepared in compliance with Section 704.06, Florida Statutes, and be granted to and expressly enforceable by Lee County.

3. Uses Prohibited

All conservation easements that are drafted and prepared as a result of the TDR Program must, at a minimum, include the following use prohibitions, unless specifically changed or eliminated by the Board of Commissioners.

- a) Construction or placing of buildings, roads, signs, billboards or other structures on or above the ground.
- b) Dumping or placing of soil or other substance or material such as landfill, or dumping or placing of trash, waste or unsightly other offensive materials.
- c) Removal or destruction of trees, shrubs, or other vegetation, except for those which are dead or diseased or which are intrusive exotic species. This may not be interpreted to prohibit activities necessary for fire control or pest control.
- d) Excavation, dredging or removal of loam, peat, gravel, soil, rock or other material substance in such a manner as to affect the surface.
- e) Any surface use except those which permit the land or water conservation, erosion control, soil conservation or fish and wildlife habitat preservation.
- f) Acts or uses detrimental to such retention of land or water areas.

4. Review of the Submittal Documents

- a) The Department will review the documents submitted for compliance with the provisions of the TDR Program.
- b) Upon review of compliance, the department will forward the documents to the Lee County Attorney's Office for legal sufficiency.

5. Acceptance and Recording of the Conservation Easement

- a) Once legal sufficiency has been determined, the easement must be reviewed by the Lee County Board of County Commissioners for approval and acceptance.

- b) Upon acceptance by the Board of County Commissioners, the submittal documents must be recorded by the owner in the Public Records of Lee County, Florida.

IV. USE OF TRANSFERRED DEVELOPMENT RIGHTS

A. Receiver Parcel Requirements

The property owner of lands designated as Intensive Development, Central Urban, Urban Community, Suburban, Fringe or Rural by the Lee Plan are eligible to receive development rights, provided that the property has received Mobile Home Planned Development (MHPD) or Residential Planned Development (RPD) district zoning. The property owner wishing to utilize the TDR Program must have or be in the process of receiving MHPD or RPD district zoning. The procedures contained under this section are intended to provide guidance for reviewing planned developments which propose to utilize the TDR Program to increase their density.

B. Procedure for Using TDR's

1. Request for Approval

The applicant must request approval for use of TDR units in accordance with LDC §2-149(a).

2. Written Response

The Administrative Director or Board of County Commissioners (as applicable, see subsections VI and VII) will provide a written response approving or denying the request.

3. Application of Final Development Order and Construction Permits

The applicant must submit evidence that the TDR's have been secured in accordance with LDC §2-149(b)(6) and (7).

V. EXTINGUISHMENT DOCUMENT

A. Issuance of:

Pursuant to LDC §2-149(b)(9), upon receipt of the deed of transfer for development rights, the Department will issue the property owner or developer an extinguishment document for those development rights that have been transferred onto the receiving parcel. The extinguishment document must, at a minimum, indicate:

1. The name of the seller of the development right(s) (grantor);
2. The legal description of the property in which the development right was severed (sending parcel) and the recorded document number of the sending parcel;
3. The number of development rights that are being transferred from the sending parcel to the receiver parcel;
4. The legal description of the property which received the development right(s).

B. Recording:

The extinguishment document must be recorded by the Department in the Public Records of Lee County, Florida, within fifteen (15) days after the issuance of construction permits for the density bonus.

C. Zoning Map Notation:

A notation must be made on the Official Zoning Map indicating that the receiving parcel has been approved for increased density through the TDR Program, and the document number of the Extinguishment Document.

VI. ADMINISTRATIVE REVIEW PROCEDURES

A. Authority

In accordance with LDC §2-149(b)(2), the Department Director may permit a development or project a density increase of up to 50 percent over its approved development density or up to the highest permitted standard density as listed by the Lee Plan, whichever is most restrictive.

B. Guidelines for Review

1. Requests which are administratively reviewed by the Department Director will be considered to be an amendment to the development's adopted Master Concept Plan and must be procedurally reviewed as a Minor Planned Development (LDC §34-373(b)(1) and (2)) with application information and materials as specified in LDC Ch. 34, Art. IV, Div. 2.

2. When reviewing a request for a density increase the Department Director may base his determination upon the guidelines set forth in LDC §34-115 and §34-376.

C. Directors Decision

In the event the Department Director denies or modifies a request for a density increase the Director must, in accordance with LDC § 2-149(c)(2), provide specific findings of fact on which the limitation is based. The property owner or developer may appeal the Director's decision in accordance with the procedures set forth in LDC Ch. 34 for appeals to administrative decisions.

D. Appeals

1. All requests for an appeal of the Director's determination must state in detail any new evidence or facts which the property owner or developer (hereinafter referred to as the "affected party") argues the Director has overlooked or misunderstood. The appeal must include all documentation offered to support the request for an appeal.

2. All requests for an appeal of the Director's determination must be made in writing by the affected party, within fifteen (15) calendar days after the decision is rendered by the Director.

VII. TDR'S IN CONJUNCTION WITH PLANNED DEVELOPMENT DISTRICT ZONING

A. Application

1. A property owner or developer may request a density increase or bonus density in conjunction with a request for MHPD or RPD district zoning. The property owner or developer must abide by all requirements set forth in LDC Ch. 34, Art. IV.

2. The property owner or developer must clearly indicate the intention to participate in the TDR Program in all appropriate development documents, site plans and applications throughout the planned development district application process, as set forth in LDC Ch. 34, Art. IV. The property owner or developer must also:

- a) State the desired density of the planned development;
- b) State the number of TDR's which will be needed to achieve the desired density; and

- c) Indicate whether the needed TDR's have been purchased or are under an option to purchase.

B. Review

1. When reviewing a request for a density increase in conjunction with a request for planned development district zoning, the Hearing Examiner must base the recommendation upon the guidelines set forth in LDC §34-115 and §34-376.

2. The Board of County Commissioners will review the request and make a determination based upon the guidelines set forth in LDC §34-83 and §34-377(b).

3. As of January 1, 1989, all review, recommendations and decisions must be made in accordance with the procedures set forth in LDC Ch 34. Art. II and in the appropriate forum.

C. Decision

Any denial or modification by the Board of County Commissioners of a request for a density increase or density bonus must, in accordance with LDC §2-149(c), be accompanied by specific findings of fact establishing the basis for the decision.

VIII. RELATIONSHIP TO OTHER COUNTY REGULATIONS

The development of additional residential units granted through the use of the TDR Program must be consistent with the Lee Plan and all applicable County regulations and ordinances including those associated with impact fees for new development.