

1 **SECTION 1.** Article XX. Chapter 3-5, of the Code of Laws and Ordinances of Charlotte
2 County, Florida, containing Sec. 3-5-431 through Sec. 3-5-4357 of such Code, shall be
3 deleted in its entirety and replaced with the following:
4

5 **ARTICLE XX. TRANSFER OF DENSITY UNITS**

6
7 **Sec. 3-5-42531. SHORT TITLE.**

8
9 This article shall be known and may be cited as the Charlotte County "Transfer of
10 Density Units Code."
11

12 **Sec. 3-5-42632. DECLARATION OF INTENT AND PURPOSE.**

13
14 (a) It is the intent of this article to provide a mechanism by which one or more
15 of the following may be accomplished:
16

17 (1) Residential development rights associated with real property with
18 eEnvironmentally sensitive resources, hHistoric, or archeological resources, or which
19 contains a bBona fide aAgricultural uUses, or real property otherwise deemed less
20 suitable for development due to location, may be properly transferred to property better
21 suited for higher density residential development upon satisfaction of the requirements
22 of this article; and/or
23

24 (2) Future growth will be directed in a logical, economical, and efficient
25 manner away from those areas of the County less suited for such growth, and toward
26 those areas of the County best suited to provide the public services and facilities
27 necessary for such growth and for the protection of the health, safety and welfare of the
28 general public; and
29

30 ~~(3) Density may be reduced County-wide and density from~~
31 ~~Substandard lots or parcels can be reduced and/or reallocated to property better suited~~
32 ~~for such development and density; and~~
33

34 ~~(43) The County can promote creative and compact development in~~
35 ~~appropriate areas of the County, and The County can provide a record of transfers of~~
36 ~~density units and impose appropriate restrictions on the properties involved in such~~
37 ~~transfers; and~~
38

39 ~~(54) The County can provide a record of transfers of density units and~~
40 ~~impose appropriate restrictions on the properties involved in such transfers. The County~~
41 ~~can promote creative and compact development in appropriate areas of the County.~~
42

43 (b) The adoption of this article shall not affect the existing FLUM or Zoning
44 designation of any property. It shall provide a mechanism for increasing or creating
45 density on a property.
46

1 **Sec. 3-5-42733. DEFINITIONS.**
2

3 Unless specifically defined below, all words, terms or phrases used in this article
4 shall be ascribed the meaning which they have in common usage and which give this
5 article the most reasonable application. The following words, terms and phrases, when
6 used in this article, have the meanings ascribed to them in this section, except where
7 the context clearly indicates a different meaning:
8

9 *Agreement to Purchase Density Credits:* an agreement between a purchaser
10 and seller that binds the purchaser to buy a specified number of density units from the
11 seller contingent on the adoption by the Board of County Commissioners of the
12 purchaser's Use Amendment. The transfer of ownership of the density must occur
13 within 10 working days of the approval of the Use Amendment.
14

15 *Agriculture:* The business of cultivating the soil, producing crops and raising
16 horses, production of horticultural, aqua cultural, and silvicultural products; and raising
17 livestock to provide food or fiber for society.
18

19 *Barrier Island:* a broadened barrier beach entirely surrounded by water,
20 habitable in places, and providing a measure of protection for the mainland, as during
21 hurricanes and tidal waves.
22

23 *Base Density:* Density calculated utilizing the Zoning District of the parcel and
24 the method of calculation described according to Article 1, Section 3-9-2, Rules of
25 Construction; definitions, Charlotte County Code. If there is an inconsistency between
26 the Future Land Use Map designation and the Zoning District, the least intensive Zoning
27 Districts that implements the Future Land Use Map designation shall be utilized.
28

29 *Board:* The Board of County Commissioners of Charlotte County, the elected
30 governing body of unincorporated Charlotte County, Florida.
31

32 *Bona fide Agricultural Use:* Use of a property for agriculture, which property has
33 been classified as agricultural by the Charlotte County Property Appraiser pursuant to
34 Section 193.461, Florida Statutes.
35

36 *Certificate of Transferable Density Credits (Certificate):* The certificate issued by
37 the County which indicates the amount of density available to be used or sold by the
38 certificate holder, as well as any specifications for use of the density.

39 ~~*Certificate:* A certificate of transferable Density Credits calculated and issued pursuant
40 to this article.~~
41

42 *Certification of Transferable Density Units (Certification):* The process whereby
43 density is severed from real property and a certificate is issued by the County signifying
44 that the certificate holder has ownership of the indicated number of density units.
45

1 Coastal High Hazard Area: The Coastal High Hazard Area includes all areas
2 located within a landfalling Tropical Storm or Category 1 Hurricane Storm Surge zone
3 as illustrated on Map 3.26 of the Natural Resources and Coastal Planning Element of
4 the Comprehensive Plan.

5
6 Community Development Director: The chief administrative officer of the
7 Community Development Department or any successor entity performing similar
8 functions or duties.

9
10 *Comprehensive Plan:* The document, and its amendments, adopted by the
11 Board, which meets the requirements of Section 163.3177 and Section 163.3178,
12 Florida Statutes.

13
14 ~~County Administrator: The chief administrative officer of Charlotte County,~~
15 ~~Florida, or his/her designee.~~

16
17 *County Code:* The Code of Laws and Ordinances, Charlotte County, Florida, as
18 the same may be amended.

19
20 *Covenant:* A perpetual conservation easement and/or other perpetual restrictive
21 covenant that encumbers the property that constitutes an SZ, granted by the owner (s)
22 thereof to the County or to some other entity acceptable to the ~~County~~
23 ~~Administrator~~Community Development Director.

24
25 *Density:* The number of Density Units permissible within a given property.

26
27 *Density Credit:* A Density Unit that has been severed from a property through
28 the processes identified in this article and recognized by a Certificate of Transferable
29 Density Credits.

30
31 *Density Unit:* A Development Right which equals one increment of housing
32 designed and intended for residential use by one (1) family, whether a single family
33 residence, mobile home, or as part of a duplex, apartment, or condominium project .

34
35 *Development:* The construction, reconstruction, conversion, structural alteration,
36 relocation, or enlargement of any structure; any mining, excavation, landfill or land
37 disturbance including, but not limited to, clearing, cutting, burning, excavating, filling, or
38 grading of land or any other activity that alters land topography or vegetation. This
39 definition shall not include the removal of invasive, nonindigenous plant species ~~either~~
40 ~~listed as Prohibited Trees in Subsection 3-2-186(r) of the County Code, as may be~~
41 ~~amended, or as determined by the County Administrator, or any~~ activities undertaken
42 pursuant to a land management plan approved by the USDA Natural Resources
43 Conservation Service or similar agencies, or activities associated with ~~bona~~ Bona fide
44 agricultural Agricultural practicesUses.

1 *Development Permit:* Any building permit, zoning permit, [DRC final approval](#), plat
2 approval, or rezoning, certification, variance, [NOPC](#), or other action having the effect of
3 permitting development.

4
5 *Development Right:* A right that entitles an owner of real property to develop
6 said property as may be recognized by the common law, statutory law, the United
7 States or Florida constitution, the County Code, the Comprehensive Plan or other
8 applicable federal or state regulations.

9
10 *Encumbrances:* Restrictions, liens or other matters which affect the SZ.

11
12 *Environmentally sensitive resource:* Any Vegetation Community, plant
13 assemblages as defined using level 3 of the FLUCCS, or wetland, or wildlife, or plant
14 species listed by the State of Florida or the United States as endangered or threatened
15 or listed as globally imperiled by the Florida Natural Areas Inventory, or any successor
16 entity performing similar functions or duties; [this also includes that area of the County
17 considered a groundwater recharge area as identified in Map 4.17 of the Infrastructure
18 Element of the 1997-2010 Comprehensive Plan.](#)

19
20 *FLUCCS:* The Florida Land Use Cover and Forms Classification System.

21
22 *FLUM:* The Future Land Use Map contained in the Comprehensive Plan, as the
23 same may be amended.

24
25 *Historic or archeological resource:* Any prehistoric, historic, or archeological district,
26 site, building, structure, or object included in the National Register of Public Places, Florida
27 Master Site File or Local Register or which may be deemed to be a prehistoric, historic, or
28 archeological district, site, building, structure, or object by an archeologist registered with
29 the Society of Professional Archaeologists; such term includes mounds, artifacts, records,
30 and remains which are related to such a district, site, building, structure, object, or culture.

31
32 *Land Acquisition Trust Fund or LATF:* The fund established by the Board pursuant
33 to Sec. 3-5-4357 below.

34
35 ~~*Management-Ready:* The condition of the proposed SZ, as determined by the
36 County Administrator, where any initial management activities required to get the
37 proposed SZ into a condition so that only routine maintenance is required to maintain it
38 in a functional state have been completed. These initial activities may include, but are
39 not limited to, removing all debris, removing exotic vegetation and securing or removing
40 a structure.~~

41
42 ~~*Ownership and Encumbrance Report or O&E:* A title report on the proposed
43 Sending Zone issued by an attorney or a title insurance company acceptable to the
44 County Attorney.~~

1
2 *Plan Amendment:* Any change to the Comprehensive Plan including any change
3 to any map of the Future Land Use Map series of the Comprehensive Plan.
4

5 *Preliminary Plat:* A preliminary map or delineated representation of the
6 subdivision of lands, being a complete exact representation of the subdivision and other
7 information in compliance with the requirement of all applicable sections of Chapter 3-7,
8 Subdivision Regulations, and of any other local ordinances, and may include the terms
9 "replat, or revised plat," as defined in F.S. section 177.031(14), as amended.
10

11 *Receiving Zone or RZ:* The area of property into which Density Credits may be
12 transferred ~~and/or Density Units may be increased~~.
13

14 *Rezoning:* An amendment to the Zoning Atlas pursuant to the procedures and
15 requirements of the County Code for such amendments.
16

17 *Sending Zone or SZ:* The area of property from which Density Credits may be
18 severed and transferred.
19

20 *Substandard lot or parcel:* Property which does not meet the minimum
21 dimension or area requirements established pursuant to the Zoning Atlas, County
22 Zoning Regulations, ~~FLUM~~, County Land Development Regulations, County Subdivision
23 Regulations, or the Comprehensive Plan.
24

25 *TDU:* A transfer of Density Units ~~from an SZ to an RZ, or an increase in Density~~
26 ~~Units to an RZ~~, as governed by this article.
27

28 *Title Document: An Ownership and Encumbrance Report (O&E) or other*
29 *document of title issued by an attorney or a title insurance company acceptable to the*
30 *County Attorney.*
31

32 *Unacceptable Encumbrances:* Encumbrances that, in the judgment of the County
33 Attorney, would impair or otherwise adversely affect the recorded Covenant, whether in
34 whole or in part, in the event of their enforcement or foreclosure.
35

36 *Use Amendment: Any petition which involves an amendment to the allowed uses*
37 *or development potential of a parcel, such as: Plan Amendments, Rezoning, County*
38 *Code of Laws and Ordinances' text changes, Development of Regional Impact*
39 *approvals or amendments, plat vacations, street vacations, and special exceptions.*
40

41 *Urban Service Area Overlay District or USA:* Locations within a jurisdiction that
42 are planned to receive publicly funded infrastructure and services within a planning
43 timeframe, as depicted on Map #2 of the Future Land Use Map series of the
44 Comprehensive Plan, as may be amended.

1
2 *Zoning District:* An area assigned a specific classification of uses and structures
3 pursuant to Sec. 3-9 of the County Code.

4
5 *Zoning Atlas:* An atlas containing half-section maps depicting the boundaries of
6 the various Zoning Districts, as the same may be amended.

7
8 **Sec. 3-5-42834. APPLICATION OF ARTICLE.**

9
10 (a) This article shall apply within the unincorporated areas of Charlotte
11 County.

12
13 (b) This article shall not apply within the City of Punta Gorda boundaries as it
14 existed as of July 15, 2004. This article shall apply to areas annexed within the City of
15 Punta Gorda or any new municipal area created after July 15, 2004 within Charlotte
16 County.

17
18 (c) Any owner of property governed by Subsections 3-5-42834(a) and (b)
19 above may petition the Board for a Certification TDU in accordance with the provisions
20 of this article.

21
22 (d) Any owner of property governed by Subsections 3-5-428(a) and (b) above
23 who proposes a Use Amendment which acts to increase the Base Density on a
24 parcel(s) of land shall petition the Board for a TDU in accordance with the provisions of
25 this article, except as provided in Subsection 3-5-429(4). ~~Except as provided in~~
26 ~~Subsection 3-5-455(c), any petition for a Plan Amendment and/or Rezoning which~~
27 ~~proposes to increase the permitted density on a proposed RZ beyond that amount~~
28 ~~permitted by the existing FLUM designation and/or the existing Zoning Atlas, whichever~~
29 ~~is the most restrictive, shall require a TDU petition which proposes to transfer the~~
30 ~~number of Density Units that will be increased by the Plan Amendment and/or~~
31 ~~Rezoning.~~

32
33 ~~(e) — A TDU petition shall be submitted with a Plan Amendment which, through~~
34 ~~its adoption, automatically increases density on a property without need for further~~
35 ~~amendments or Rezoning. For a Large Scale Plan Amendment, the petition may be~~
36 ~~submitted subsequent to the transmittal of the petition to the Department of Community~~
37 ~~Affairs. The Resolution approving the TDU shall be adopted concurrent with the~~
38 ~~adoption of the Plan Amendment. The transfer of density is not required to be~~
39 ~~completed until prior to submittal to the County for Preliminary Plat approval, or, in the~~
40 ~~event a Preliminary Plat will not be requested by the applicant, prior to request for other~~
41 ~~Development Permits for any portion of the property. If the project will be submitted in~~
42 ~~phases, the applicant may submit individual TDU petitions to transfer density equivalent~~
43 ~~to that necessary for development of that phase. If the Plan Amendment is~~
44 ~~accompanied by a Rezoning to a Planned Development Zoning District in accordance~~
45 ~~with Sec. 3-9-49 of the County Code, both to be adopted concurrently, the applicant~~
46 ~~may proceed with the TDU petition as outlined in Subsection (f) below.~~

1
2 (f) ~~A petition which proposes to increase density in a proposed RZ by more~~
3 ~~than two (2) units must request a Rezoning to a Planned Development Zoning District in~~
4 ~~accordance with Sec. 3-9-49 of the County Code. The TDU petition may be submitted~~
5 ~~subsequent to the adoption of the Planned Development Rezoning but must be~~
6 ~~approved by the Board, and the density transferred to the SZ, prior to submittal by the~~
7 ~~applicant for Preliminary Plat Approval. A project which proposes to phase~~
8 ~~development in over time may submit individual TDU petitions to transfer density~~
9 ~~equivalent to that necessary for development of that phase. When a Rezoning petition~~
10 ~~requests an increase of density for one (1) or two (2) units total, the TDU petition must~~
11 ~~be submitted and heard concurrent with the adoption of the Rezoning petition, and the~~
12 ~~density transferred at the time of adoption of the petition.~~

13
14 **Sec. 3-5-435. DETERMINATION OF DENSITY FOR AN SZ.**

15
16 ~~Within the Urban Service Area, the Density for a lot or parcel is calculated~~
17 ~~by determining the minimum lot size for the Zoning District as influenced by the~~
18 ~~Comprehensive Plan, as may be amended, divided into the developable square footage~~
19 ~~of the property, be it one parcel, one lot, or a combination of lots containing the same~~
20 ~~development standards. Outside the Urban Service Area, the Density for each legally~~
21 ~~created and recorded lot or parcel shall be, at a minimum, one (1) Density Unit per~~
22 ~~legally created and recorded lot or parcel.~~

23
24 **Sec. 3-5-436. PROPOSED SZ WITHOUT A DESIGNATED RZ.**

25
26 (a) ~~Any owner of real property in Charlotte County may petition the~~
27 ~~Board to have his property approved as an SZ, even if there is no RZ involved. In such~~
28 ~~a case, the petitioner need not concurrently petition the County for a Plan Amendment,~~
29 ~~Rezoning, or TDU.~~

30
31 (b) ~~The property owner(s) shall petition the Board in accordance with~~
32 ~~the provisions of this article, but shall not be required to provide information pertaining~~
33 ~~to a proposed RZ. The petition shall include an affidavit from the owner(s) of the~~
34 ~~proposed SZ consenting to the County's initiation of and taking of action on the~~
35 ~~appropriate modification of the FLUM designation, and/or Zoning District, and/or~~
36 ~~vacation of plat of the proposed SZ to reflect the reduced density permitted on the~~
37 ~~proposed SZ once it is approved.~~

38
39 (c) ~~The petition shall include a request to have the Density Units for the~~
40 ~~property calculated and severed from the property by a Certificate pursuant to Sec. 3-5-~~
41 ~~456.~~

42
43 (d) ~~The Board may approve the petition if it finds that the intent and~~
44 ~~purpose of this article will be complied with, as those purposes pertain to the~~
45 ~~appropriateness of the property as an SZ, and that the property meets the criteria of an~~
46 ~~SZ set within this article.~~

1
2 (e) ~~No subsequent transfer to an RZ shall take place without an~~
3 ~~approval of a TDU pursuant to the requirements of this article.~~

4
5 ~~**Sec. 3-5-437. EFFECTIVE DATE OF PROPOSED SZ WITHOUT A**~~
6 ~~**DESIGNATED RZ.**~~

7
8 ~~An SZ created pursuant to Sec. 3-5-436 shall not be considered valid and~~
9 ~~no Certificate shall be issued until:~~

10
11 (a) ~~The proposed SZ has been approved by the Board, and~~

12
13 (b) ~~The documents required by Sec. 3-5-443 have been recorded by~~
14 ~~the County in the Public Records of Charlotte County with the Clerk of the Circuit Court~~
15 ~~of Charlotte County, and~~

16
17 (c) ~~Within 10 days after the recording of the documents required by~~
18 ~~Sec. 3-5-443, the County has received and approved an updated O&E which does not~~
19 ~~contain any Unacceptable Encumbrances or which shows that the recorded Covenant is~~
20 ~~prior in dignity to any Unacceptable Encumbrance. If the O&E indicates otherwise, the~~
21 ~~SZ approval shall be null and void. The County Attorney may waive this requirement in~~
22 ~~the event that the initial O&E did not reflect Unacceptable Encumbrance(s) and the~~
23 ~~County Attorney deems the likelihood of the development or imposition of Unacceptable~~
24 ~~Encumbrance(s) prior to the recording of the Covenant to be minute.~~

25
26 ~~**Sec. 3-5-438. PRE-PETITION MEETING.**~~

27
28 (a) ~~A petitioner for a TDU shall meet with the County Administrator~~
29 ~~prior to submitting a petition for a TDU. The meeting may include representatives from~~
30 ~~other County departments or government agencies who may attend the meeting and~~
31 ~~provide input, at the County Administrator's discretion.~~

32
33 (b) ~~The purpose of the pre-petition meeting shall be to discuss the~~
34 ~~requirements for a TDU as they apply to the petitioner's proposal, any applicable~~
35 ~~provisions of this article, and other concerns related to the proposed TDU. This meeting~~
36 ~~may occur simultaneously with a Development Review Committee, or succeeding body,~~
37 ~~pre-application meeting when such is required by the County Code.~~

38
39 ~~**Sec. 3-5-439. TDU PETITION REVIEW.**~~

40
41 ~~The TDU petition review process shall commence as outlined in Subsection 3-5-~~
42 ~~434(e) and (f).~~

43 ~~**Sec. 3-5-42940. PROCESS AND PROCEDURES CONTENTS OF TDU**~~
44 ~~**PETITION.**~~

45
46 (a) ~~Transfer of Density~~

1
2 (1) A TDU petition will serve to transfer the number of Density Units
3 that will be increased by a Use Amendment to that parcel of land upon which the
4 increase occurs. The TDU process is the Board's acknowledgement that the density
5 has been shifted from an SZ to an RZ.

6
7 (2) A petitioner who submits a Use Amendment which acts to increase
8 the Base Density on a parcel(s) of land shall simultaneous submit either:

9
10 (i) A TDU petition utilizing Certificates of Transferable Density
11 Credit; or

12
13 (ii) A TDU petition requesting the Land Acquisition Trust Fund
14 option; or

15
16 (iii) A Certification petition for density from property owned by
17 the petitioner and a TDU petition requesting transfer of that density to the proposed RZ;
18 or

19
20 (iv) An Agreement to Purchase Density Credits and TDU petition
21 requesting transfer of the credits to the proposed RZ.

22
23 (3) The TDU petition, and Certification petition as applicable, shall be
24 held in abeyance until the approval of the Use Amendment and will be submitted to the
25 Board of County Commissioners for approval at the next convenient Board hearing after
26 adoption of the Use Amendment.

27
28 **(4) Exceptions.**

29
30 (i) Any owner of property petitioning the Board for a street or
31 plat vacation which acts to increase the property's Base Density may, instead of
32 submitting a TDU petition, choose to submit a restrictive covenant with the street or plat
33 vacation that limits the Density of the property to that existing at the time of application.

34
35 (ii) Any owner of property petitioning the Board for an increase
36 in the Base Density that is proposing a project which will set aside at least fifty (50)
37 percent of the project's total number of Density Units as affordable housing for low or
38 very low income persons, as such is defined in Section 420.602, Florida Statutes, is not
39 be required submit a TDU petition. The property owner shall submit a restrictive
40 covenant stating the affordable housing units shall remain affordable in perpetuity. This
41 exception is not permitted if the property on which the increased density is requested is
42 located within the Coastal High Hazard Area.

43
44 (b) Certification of a Sending Zone
45

1 (1) Any owner of real property to which this article applies, may request
2 a determination of the Community Development Director, or his/her designee, on
3 whether their property is an appropriate SZ. If such determination is positive, the owner
4 may petition the Board to have their property approved as an SZ. The process of
5 approval shall be known as a Certification of Transferable Density Units (Certification).
6 The property owner shall petition the Board for a Certification in accordance with the
7 provisions of this article. If such determination is negative, the property owner may
8 petition the Board in accordance with Section 3-5-433, Relief from the Code.

9
10 (i) Pre-petition Meeting

11
12 A. A petitioner for a Certification shall meet with the
13 Community Development Director or his/her designee prior to submitting a petition.

14
15 B. The purpose of the pre-petition meeting shall be to
16 discuss the requirements of the TDU ordinance and determine whether a proposed SZ
17 is acceptable.

18
19 (2) Determination of density for an SZ

20
21 (i) Within the Urban Service Area, the Density will be the Base
22 Density.

23
24 (ii) Outside the Urban Service Area, the Density for platted
25 lands which existed as of February 1, 1992 which are divided into individual lots of size
26 less than that required by the Base Density shall be one (1) Density Unit per each lot or
27 parcel. In all other instances, the Density shall be Base Density.

28
29 (iii) Density Units shall only be certified and transferred in whole
30 units. A fractional unit shall not entitle the petitioner to an additional Density Unit.

31
32 (iv) A Certification of Transferable Density Units may not be
33 derived from Density which has been already sold, transferred, or limited by easements,
34 deed restrictions, equitable servitudes, restrictive covenants, special exceptions,
35 existing Development, or similar measures.

36
37 (4) No subsequent transfer to an RZ shall take place without an
38 approval of a TDU pursuant to the requirements of this article.

39
40 (5) Once a Certification is approved and effective, Density Units shall
41 not be restored to any SZ unless the area in which the SZ is located becomes
42 designated as an Infill Area of the Urban Service Area, as defined in the
43 Comprehensive Plan. In such situations, the property may become an RZ if it meets all
44 other requirements for an RZ under this article and the property has not been used for
45 mitigation purposes for other developments.

1 (6) Contents of Petition. (a) In addition to any information and
2 documents required pursuant to the accompanying petition for a A petition for
3 Certification of Transferable Density Units Plan Amendment and/or Rezoning, a petition
4 for a TDU shall include the following items:

5
6 (i1) Notarized affidavits from all owners of the proposed SZ and
7 the proposed RZ authorizing the TDU petition.

8 The affidavit from the owners of the proposed SZ shall also provide
9 consent to the modification of the FLUM and/or Zoning District of the proposed SZ to
10 conform with the revised and reduced density applicable to the proposed SZ upon the
11 approval of the TDU, and/or consent to vacate the plat if one is in existence and the
12 action is deemed necessary to accomplish the reduction in density. In the event the
13 owners of the proposed SZ and the proposed RZ are the same party, a single affidavit
14 acknowledging the unity of ownership and authorizing the TDU will satisfy this
15 requirement. A copy of the most current deed or title to the SZ property must be
16 included with the affidavit in order for the County to be able to verify that the person(s)
17 signing the affidavit is the owner of the property. The County Administrator may also
18 require evidence that the person(s) executing the affidavit(s) has the appropriate
19 authority to do so.

20 (ii) A copy of the most current deed or title to the SZ property.

21
22 (iii2) Legal descriptions (with acreages) of the proposed SZ and
23 proposed RZ.

24
25 (iv3) Signed and sealed surveys of the proposed SZ and the
26 proposed RZ that illustrate boundaries and all existing easements. The survey of the
27 proposed SZ is not required if the proposed SZ consists of is a platted lots and the lots
28 are included in their entirety proposed SZ comprises the entire lot. In such a case, Aa
29 copy of the most recent plat of the lot(s) with the proposed SZ outlined will suffice is
30 sufficient; the petitioner must also indicate whether any easements or land
31 encumbrances exist on the property.

32
33 (v4) Maps illustrating the location of the proposed SZ and the
34 proposed RZ.

35
36 (vi) Title Document: This document shall be dated no later than
37 two months prior to the petition submittal date and shall show that the signatories who
38 will execute the Covenant constitute the owners of all interests in the proposed SZ. The
39 document shall further indicate that there are no Unacceptable Encumbrances against
40 the proposed SZ. If Unacceptable Encumbrances exist, they shall be fulfilled, removed,
41 satisfied, released, subordinated or limited to the satisfaction of the County Attorney
42 such that the enforcement of the encumbrances will not impair or otherwise adversely
43 affect the Covenant, whether in whole or in part, or that the Covenant will be prior in
44 dignity to the encumbrances.

1 _____(vii5) ~~All documents necessary for the preparation and execution~~
2 ~~of theA draft~~ Covenant pursuant Sec. 3-5-43243, including ~~an O&E,~~ a management plan
3 as required in Subsection 3-5-43243(c), ~~and a narrative outlining any special~~
4 ~~considerations or requests the petitioner wishes the County to consider including in the~~
5 ~~Covenant.~~

6
7 _____(viii6) A narrative indicating the Base Density of the SZ and
8 describing how the calculation was derived, including an indication of how any
9 encumbrances as identified per Subsection 3-5-429(b)(3)(iv) affect this Base Density; a
10 statement of the number Density Units requested to be transferred from the property
11 and the number of Density Units requested to be retained.~~A narrative which describes~~
12 ~~how the proposed SZ and the proposed RZ meet the criteria of this article.~~

13
14 (ix) If the property is located in the Coastal High Hazard Area, a
15 boundary map of the property with the storm surge zones illustrated upon the map
16 along with an indication of the acreage of each associated storm surge. If there are VE
17 and AE flood zones, these shall also be illustrated on the map. Any encumbered areas
18 must be subtracted from the whole. The Community Development Director, or his/her
19 designee, may agree to delineate these areas for the petitioner; this must be agreed
20 upon at the Pre-Petition Meeting.

21
22 _____(x7) Maps and surveys of the proposed SZ and the proposed RZ
23 illustrating the existing land cover according to Level 3 of the FLUCCS, locations of
24 heritage trees, and listed flora and fauna species. This requirement may be eliminated
25 for one or both of the proposed zones by the County Community Development Director,
26 or his/her designee at the Pre-Petition Meeting under the -for the TDU. The following
27 circumstances under which this requirement may be eliminated include: property on
28 which no density shall be retained; a property that is severely disturbed or developed
29 and which clearly does not contain any Eenvironmentally ssensitive, Hhistoric and/or
30 aarcheological resources; property or which contains a bBona fide agricultural
31 Agricultural uUse; property whose only unmistakable value as an SZ is that it is a
32 Substandard lot or is located within the Tropical Storm Surge or Category 1 Hurricane
33 Storm Surge zones; property of which the County already has detailed knowledge of as
34 relates to Eenvironmentally ssensitive, HHistoric and aarcheological resources, or bona
35 fide agricultural uses; and other circumstances that will be determined on a case by
36 case basis.

37
38 ~~(8) Surveys of all listed species within the proposed SZ and the~~
39 ~~proposed RZ, and a map depicting the locations of these species. This requirement~~
40 ~~may be eliminated for one or both of the proposed zones by the County at the Pre-~~
41 ~~Petition Meeting for the TDU. The circumstances under which this requirement may be~~
42 ~~eliminated include: a property that is severely disturbed or developed and which clearly~~
43 ~~does not contain an environmentally sensitive, historic and archeological resource, or a~~
44 ~~bona fide agricultural use; property whose only unmistakable value as an SZ is that it is~~
45 ~~a Substandard lot or is located within the Tropical Storm Surge or Category 1 Hurricane~~
46 ~~Storm Surge zones; property of which the County already has detailed knowledge of as~~

1 ~~relates to environmentally sensitive, historic and archeological resources, or bona fide~~
2 ~~agricultural uses; and other circumstances that will be determined on a case by case~~
3 ~~basis.~~

4
5 (xi9) An application fee, to be established by resolution of the
6 Board.

7
8 (c) Use Amendments. In addition to the application requirements of Use
9 Amendments, a petitioner for a Use Amendment for any proposed RZ which is located
10 in the Coastal High Hazard Area shall provide a map related to storm surge and flood
11 zones for the RZ; the petitioner is required to detail the amount of Density which will be
12 increased in each associated storm surge, and flood zones if VE and AE are both
13 present.

14
15 (1) Notification. A Use Amendment which shall require transfers of
16 density shall have notice of such included in the advertisements and agenda notices for
17 the Use Amendment. Discussion and decision by the Board regarding the TDU
18 requirements shall be conducted concurrently with the discussion and decision
19 regarding the Use Amendment.

20
21 (d) A petition for a TDU that proposes to transfer density that has not yet been
22 certified shall include the information required for a Certification. Further, the
23 application shall include information related to the RZ, such as property owner
24 information and the Use Amendment number that established or is establishing the
25 requirement for the TDU.

26
27 (e) A petition for a TDU that utilizes a Certificate or the Land Acquisition Trust
28 Fund (LATF) option shall include information related to the RZ, such as property owner
29 information and the Use Amendment number that established or is establishing the
30 requirement for the TDU.

31
32 (1) If utilizing a Certificate, the original Certificate shall be submitted
33 with the application for appropriate modification or extinguishment.

34
35 (2) If the LATF option is being utilized, a Certificate shall be issued that
36 reflects the Density Units actually paid for by the petitioner to the County in accordance
37 with the process described in Resolutions 2004-248 and 2004-249.

38
39 (f) Hearing requirements. A petition for Certification or TDU will be placed on
40 Consent Agenda for approval by the Board of County Commissioners. The Use
41 Amendment will follow the hearing requirement for that amendment process.

42
43 (g) Standards for Approval

44
45 (1) The Board may not grant a Certification unless it finds that:
46

1 (i) The Certification meets the intent, purpose and provisions of
2 this article, and that the property meets the criteria of an SZ set within Subsection 3-5-
3 430(a).

4
5 (ii) The petitioner has signed and notarized the Covenant.

6
7 (iii) The petitioner has submitted a Plat Vacation, if necessary.

8
9 (2) The Board may not grant a Use Amendment that is governed by
10 this article unless it finds:

11
12 (i) That the proposed increase in density complies with the
13 intent, purpose, and provisions of this article.

14
15 (ii) That the proposed increase in density is consistent with the
16 Comprehensive Plan as it exists or is proposed to be amended; and

17
18 (iii) The proposed increase in density complies with all
19 applicable County Code, laws and ordinances.

20
21 (h) Effective Date of the Certification or TDU

22
23 (1) A Certification shall not become effective until the Covenant and
24 management plan, as applicable, has been recorded by the petitioner in the Public
25 Records of Charlotte County with the Clerk of the Circuit Court of Charlotte County.

26
27 (i) Upon the effective date of a Certification approved pursuant
28 to this article, the Community Development Director or his/her designee shall issue a
29 Certificate to the property owner(s) of the SZ. The issuance of the Certificate shall
30 establish the quantity of Density Units for the property at the time the Certificate is
31 issued and shall be considered a final determination. Once a Certificate has been
32 issued for the SZ, the property owner shall maintain the property in accordance with the
33 requirements of the Covenant.

34
35 A. Density Credits approved by the Board pursuant to
36 this article may be transferred to an eligible RZ.

37
38 B. Density Credits transferred to an eligible RZ pursuant
39 to this article, which are not used for the intended RZ development, may be re-
40 transferred to another eligible RZ. The RZ owner shall simultaneously petition to revise
41 the zoning district and/or FLUM, whichever is applicable, of the original RZ from which
42 these credits were transferred to reflect the decrease in density.

43
44 C. Upon the sale of Density Credits to another owner,
45 the seller of the Density Credits shall surrender the Certificate to the County for
46 appropriate modification or extinguishment.

1
2 D. In the event an SZ property owner has not found a
3 willing RZ to which it can transfer its Density Credits, Density Credits from the SZ may
4 be transferred to the County, in the County's sole discretion.

5
6 (2) A TDU shall not become effective and no Development Permits
7 shall be issued the RZ, until:

8
9 (i) The TDU has been approved by the Board.

10
11 (ii) The Land Acquisition Trust Fund fee required by Sec. 3-5-
12 434, if applicable, has been paid to the County, or

13
14 (iii) The Certification of the SZ has been approved and all
15 documents necessary have been recorded in the Clerk of the Circuit Courts, and

16
17 (iv) The Certificate, if applicable, has been surrendered to the
18 County for appropriate modification or extinguishment.

19 ~~(b) If the petitioner in the application for the accompanying Rezoning and/or~~
20 ~~Plan Amendment has provided the information required in Subsections (a)(1)-(9) above,~~
21 ~~the petitioner may not be required to submit the same information with the TDU petition.~~

22
23 ~~_____ (c) If the proposed TDU does not involve a proposed SZ, the petitioner shall~~
24 ~~not be required to include the information required in Subsections (a)(1)-(9) above as to~~
25 ~~a proposed SZ.~~

26
27 ~~_____ (d) If the proposed TDU involves an SZ which has already been approved by~~
28 ~~the County in accordance with Sec. 3-5-436, the petitioner shall not be required to~~
29 ~~include the information required in Subsections (a)(1)-(9) above as to the proposed SZ.~~
30 ~~However, the petitioner shall be required to submit with the petition a copy of the~~
31 ~~Certificate pertaining to the SZ.~~

32
33 ~~**Sec. 3-5-441. OWNERSHIP AND ENCUMBRANCE REPORT.**~~

34
35 ~~The O&E required by Subsection 3-5-440(a)(4) shall show that the signatories~~
36 ~~who will execute the Covenant constitute the owners of all interests in the proposed SZ.~~
37 ~~The O&E shall further indicate that there are no Unacceptable Encumbrances against~~
38 ~~the proposed SZ. If Unacceptable Encumbrances exist, they shall be fulfilled, removed,~~
39 ~~satisfied, released, subordinated or limited to the satisfaction of the County Attorney~~
40 ~~such that the enforcement of the Encumbrances will not impair or otherwise adversely~~
41 ~~affect the Covenant, whether in whole or in part, or that the Covenant will be prior in~~
42 ~~dignity to the Encumbrances.~~

43
44 ~~**Sec. 3-5-442. COUNTY MANAGEMENT OF SZ.**~~

1 ~~(a) — A petitioner may request that the County assume responsibility for~~
2 ~~management of a proposed SZ upon the approval of the proposed SZ and the fulfillment~~
3 ~~of the requirements of Sec. 3-5-437 or 3-5-447, whichever is applicable, and upon the~~
4 ~~fulfillment of the requirements of this section. The request shall be in writing and shall~~
5 ~~accompany the petition.~~

6
7 ~~(b) — The County may accept management responsibility of the proposed SZ if~~
8 ~~the County Administrator determines either:~~

9
10 ~~(1) — The proposed SZ contains environmentally sensitive resources of~~
11 ~~which the County has a current or future need for mitigation for capital projects; or~~

12
13 ~~(2) — If the proposed SZ were under County management, it would~~
14 ~~address a deficit in the County's recreational, educational, cultural, or other programs~~
15 ~~which the County is required to provide pursuant to the Comprehensive Plan, the~~
16 ~~County Parks Master Plan, the State Comprehensive Outdoor Recreation Plan or a~~
17 ~~similar mandate; or~~

18
19 ~~(3) — Having the proposed SZ under County management would better~~
20 ~~fulfill other goals and objectives of this article and the Charlotte County Comprehensive~~
21 ~~Plan pertaining to environmentally sensitive, historic or archeologically valuable~~
22 ~~resources than would be achieved by leaving the proposed SZ under private~~
23 ~~management.~~

24
25 ~~(c) — If the County agrees to assume responsibility for management:~~

26
27 ~~(1) — This fact and any details of the assumption of responsibility shall be~~
28 ~~included in the Covenant.~~

29
30 ~~(2) — The petitioner shall submit a detailed list for County approval~~
31 ~~identifying activities and deadlines for completion of those activities that shall place the~~
32 ~~property in Management-Ready condition.~~

33
34 ~~(3) — The petitioner will submit a performance bond granted to the~~
35 ~~County in an amount and in a form acceptable to the County Administrator, to ensure~~
36 ~~that the property is in Management-Ready condition upon the time the County takes~~
37 ~~over responsibility for management of the proposed SZ. This bond shall be submitted~~
38 ~~prior to the public hearing for the TDU.~~

39
40 ~~(d) — The County shall not assume management responsibilities pursuant to~~
41 ~~this Subsection (b) above until the proposed SZ is in Management-Ready condition.~~

42
43 ~~**Sec. 3-5-443. COVENANT.**~~

1 ~~(a) The Covenant shall be prepared and executed in accordance with the~~
2 ~~requirements of this article. The Covenant shall be signed by the petitioner and held in~~
3 ~~escrow pending the approval of the TDU.~~

4
5 ~~(b) The form of each Covenant shall be prescribed by the County Attorney~~
6 ~~and the Covenant shall contain such provisions that are reasonably required by the~~
7 ~~County Attorney proscribing the use of the proposed SZ following the approval of the~~
8 ~~TDU including the following:~~

9
10 ~~(1) If the property contains environmentally sensitive resources,~~
11 ~~historic or archeological resources, or bona fide agricultural uses, the Covenant shall~~
12 ~~limit or preclude uses of the proposed SZ such that the environmentally sensitive,~~
13 ~~historic or archeological resources, or agricultural use of the proposed SZ, whichever~~
14 ~~may be applicable, will be maintained in perpetuity following the completion of the TDU.~~

15
16 ~~(2) Limit or preclude activities which are determined though the~~
17 ~~processes of this article to be detrimental to the appropriate maintenance of the~~
18 ~~proposed SZ.~~

19
20 ~~(3) Indicate the property or portions thereof that is restricted from future~~
21 ~~development and/or subject to limitations on future development. If the SZ consists of~~
22 ~~only a portion of the property, the Covenant shall not contain provisions over the use of~~
23 ~~the remainder of the property unless such provisions are deemed necessary to ensure~~
24 ~~the viability of the SZ. The Covenant may provide for spreading the remaining density~~
25 ~~onto the portion of the property used as an SZ. If that portion used as an SZ contains~~
26 ~~environmentally sensitive, or historic or archeological resources, such resources shall~~
27 ~~be protected.~~

28
29 ~~(4) Bind all owners of the proposed SZ and their respective heirs,~~
30 ~~successors and assigns.~~

31
32 ~~(c) The Covenant shall be accompanied by a management plan if required~~
33 ~~herein.~~

34
35 ~~(1) A management plan shall be required if the applicant proposes to~~
36 ~~qualify the property as an SZ because it contains environmentally sensitive, historic,~~
37 ~~and/or archeological resources, and/or bona fide agricultural uses. The management~~
38 ~~plan shall describe how the proposed SZ will be maintained in perpetuity, how the~~
39 ~~resource shall be protected, and shall contain any other information reasonably~~
40 ~~requested or required by the County Administrator regarding the use, maintenance and~~
41 ~~the protection of the resources of the proposed SZ following the approval of the TDU.~~

42
43 ~~(2) Substandard lots and property located within the Tropical Storm~~
44 ~~Surge and Category 1 Hurricane Storm Surge zones shall not require a management~~
45 ~~plan.~~

1 ~~(d) Upon approval of the TDU, the Covenant, the accompanying management~~
2 ~~plan, if applicable, and any other documents indicating acceptance of the Covenant,~~
3 ~~shall be recorded by the County Administrator, at the petitioner's cost, in the Public~~
4 ~~Records of Charlotte County with the Clerk of the Circuit Court of Charlotte County.~~

5
6 ~~(e) Nothing herein shall preclude the retention of density on the SZ if such~~
7 ~~use is deemed to be consistent with the provisions of this article and the Covenant.~~

8
9 ~~**Sec. 3-5-444. LAND ACQUISITION TRUST FUND FEE.**~~

10
11 ~~(a) If a petitioner does not choose to include an SZ with a proposed TDU, the~~
12 ~~petitioner shall pay a contribution fee to be deposited in the County Land Acquisition~~
13 ~~Trust Fund. The amount of the fee shall be equal to the number of Density Units~~
14 ~~approved for the proposed RZ multiplied by the unit price equivalent for a Density Unit~~
15 ~~to be established by resolution of the Board. The petitioner shall be issued a Certificate~~
16 ~~in accordance with Sec. 3-5-456.~~

17
18 ~~(b) The payment of the fee required by Subsection (a) above will be required prior~~
19 ~~to Preliminary Plat approval, or, in the event a Preliminary Plat will not be requested by~~
20 ~~the applicant, prior to request for other Development Permits for any portion of the~~
21 ~~property. The amount of the fee required upon payment shall be the unit price~~
22 ~~equivalent for a Density Unit at the time of payment, which may not be the same price~~
23 ~~as would have been paid by the petitioner at the time of approval of the TDU by the~~
24 ~~Board. The timing of the payments shall be included as part of the Resolution adopting~~
25 ~~the TDU.~~

26
27 ~~(c) A petitioner who is proposing to transfer density onto property located in a~~
28 ~~Tropical Storm Surge or Category 1 Hurricane Storm Surge zone can not utilize the~~
29 ~~Land Acquisition Trust Fund option. In such a situation, the petitioner shall be required~~
30 ~~to acquire density from an SZ in keeping with the stipulations of Subsection 3-5-455(a).~~

31
32 ~~(d) A petitioner who is proposing to increase density on property within the West~~
33 ~~County Planning District, which constitutes all property west of the Myakka River, can~~
34 ~~not utilize the Land Acquisition Trust Fund option. In such a situation, the petitioner~~
35 ~~shall be required to acquire density from an SZ in keeping with the stipulations of Sec.~~
36 ~~3-5-452.~~

37
38 ~~**Sec. 3-5-445. NOTICE AND PUBLIC HEARING.**~~

39
40 ~~A Plan Amendment and/or a Rezoning which shall require a TDU petition shall~~
41 ~~have notice of such included in the notices for the Plan Amendment and/or Rezoning~~
42 ~~required under the applicable provisions of the County Code. Discussion and decision~~
43 ~~by the Board regarding the TDU requirements shall be conducted concurrently with the~~
44 ~~discussion and decision regarding the petition for Plan Amendment and/or Rezoning.~~

45
46 ~~**Sec. 3-5-446. STANDARDS FOR APPROVAL.**~~

1
2 ~~_____ (a) The Board may not grant a TDU unless it finds all of the following:~~

3
4 ~~(1) The TDU complies with the intent and purpose of this article;~~

5
6 ~~(2) The proposed increase in density in the proposed RZ is consistent~~
7 ~~with the Comprehensive Plan as it exists or is proposed to be amended; and~~

8
9 ~~(3) The proposed increase in density in the proposed RZ complies with~~
10 ~~the County Code.~~

11
12 ~~(4) If an SZ is involved in the TDU, the intent and purpose of this article~~
13 ~~will be complied with, as those purposes pertain to the appropriateness of the property~~
14 ~~as an SZ, and that the property meets the criteria of an SZ set within this article. Also,~~
15 ~~the entity responsible for managing the proposed SZ will perpetually maintain the~~
16 ~~viability of the proposed SZ, as required in accordance with Subsection 3-5-443(c), or~~
17 ~~other management action(s) as required by the Covenant.~~

18
19 ~~_____ (5) The petitioner has signed and notarized the Covenant.~~

20
21 ~~(6) If the County shall assume management responsibilities over the~~
22 ~~proposed SZ in accordance with Sec. 3-5-442, the petitioner shall have complied with~~
23 ~~the requirements of Subsection 3-5-442(c).~~

24
25 ~~(b) In granting the TDU, the Board may impose such other conditions and~~
26 ~~restrictions upon either the proposed SZ or the proposed RZ as may be necessary to~~
27 ~~allow the positive finding to be made on any of the foregoing factors or to minimize the~~
28 ~~impacts of the TDU.~~

29
30 **Sec. 3-5-447. EFFECTIVE DATE OF TDU.**

31
32 ~~_____ A TDU shall not become effective and neither Preliminary Plat nor other~~
33 ~~Development Permits shall be issued for development within the proposed RZ, until:~~

34
35 ~~_____ (a) The TDU has been approved by the Board.~~

36
37 ~~(b) The Land Acquisition Trust Fund fee required by Sec. 3-5-444, if~~
38 ~~applicable, has been paid to the County, or~~

39
40 ~~_____ (c) The documents required by Subsection 3-5-443(d) have been recorded by~~
41 ~~the County in the Public Records of Charlotte County with the Clerk of the Circuit Court~~
42 ~~of Charlotte County, and~~

43
44 ~~_____ (d) Within 10 days after the recording of the documents required by~~
45 ~~Subsection 3-5-443(d), the County has received and has approved an updated O&E~~
46 ~~which does not contain any Unacceptable Encumbrances or which shows that the~~

1 recorded Covenant is prior in dignity to any Unacceptable Encumbrance. If the O&E
2 indicates otherwise, the TDU approval shall be null and void. The County Attorney may
3 waive this requirement in the event that the initial O&E did not reflect Unacceptable
4 Encumbrance(s) and the County Attorney deems the likelihood of the development or
5 imposition of Unacceptable Encumbrance(s) prior to the recording of the Covenant to be
6 minute, or

7
8 (e) The Certificate, if applicable, has been surrendered to the County for
9 appropriate modification or extinguishment.

10
11 **Sec. 3-5-448. RECORD KEEPING.**

12
13 Upon the TDU becoming effective pursuant to Sec. 3-5-447, the County
14 Administrator shall cause the FLUM and Zoning Atlas to be annotated to reflect the
15 TDU.

16
17 **Sec. 3-5-449. LIMITATIONS**

18
19 (a) Once a TDU is approved and effective and Density Credits have been
20 transferred out of an SZ, Density Units shall not be restored to any SZ unless the area
21 in which the SZ is located becomes designated as an Infill Area, as defined in the
22 Comprehensive Plan, of the USA. In such situations, the property may become an RZ if
23 it meets all other requirements for an RZ under this article and the property has not
24 been used for mitigation purposes for other developments.

25
26 (b) Density Units for any TDU shall only be transferred in whole units. A
27 fractional unit shall not entitle the petitioner to an additional Density Unit.

28
29 (c) A TDU may not be derived from Density Units which have been already
30 sold, transferred, or limited by easements, deed restrictions, equitable servitudes,
31 restrictive covenants or similar measures.

32
33 **Sec. 3-5-450. ADMINISTRATIVE RELIEF.**

34
35 (a) The petitioner may request of the County Administrator that procedural
36 requirements contained in this article be waived as to the petition. This section shall not
37 apply to any substantive requirements of this article.

38
39 (b) The request shall be in writing and shall contain, at a minimum, the
40 following information:

41
42 (1) The County Code section from which relief is sought;

43
44 (2) The nature of the relief; and

45
46 (3) The reasons why the relief should be granted.

1
2 ~~(c) Upon receipt of the written request for relief, the County Administrator~~
3 ~~shall conduct an investigation to determine if the request is in compliance with the intent~~
4 ~~and purpose of this article and/or is adverse to the public interest.~~

5
6 ~~**Sec. 3-5-451. APPEAL.**~~

7
8 ~~(a) Upon determination that a petition does not meet the substantive requirements~~
9 ~~of this article, the petitioner may appeal the provisions of this article to the Board.~~

10
11 ~~(b) The request shall be in writing and shall contain, at a minimum, the following~~
12 ~~information:~~

13
14 ~~(1) The County Code section from which relief is sought;~~

15
16 ~~(2) The nature of the relief; and~~

17
18 ~~(3) The reasons why the relief should be granted.~~

19
20 ~~(c) Upon receipt of the written appeal, the County Administrator shall place the~~
21 ~~item, which constitutes the written appeal and an evaluation report of the appeal, on the~~
22 ~~nearest available agenda date of the Board that is within 30 days of the receipt of the~~
23 ~~appeal.~~

24
25 ~~(d) The Board may provide relief to the substantive requirements of this article~~
26 ~~based on the following findings:~~

27
28 ~~(1) The proposed TDU petition furthers the intent and purpose of this~~
29 ~~article;~~

30
31 ~~(2) The proposed TDU petition furthers the Goals, Objectives, and Policies~~
32 ~~of the Comprehensive Plan;~~

33
34 ~~(3) The proposed TDU petition directs future growth in a logical, efficient,~~
35 ~~and economical manner away from those areas of the County less suited to such~~
36 ~~growth, and toward those areas of the County better suited to provide the public~~
37 ~~services and facilities necessary for such growth.~~

38
39 ~~(4) The proposed TDU petition will further the protection of environmentally~~
40 ~~sensitive, historic and archeological resources, or bona fide agricultural uses;~~

41
42 ~~(5) The proposed TDU petition will shift density from one area to another~~
43 ~~area, where such shift is found to be in the best interest of the County; and~~

44
45 ~~(6) The proposed TDU will further the health, safety and welfare of the~~
46 ~~general public.~~

1
2
3 **Sec. 3-5-452. WEST COUNTY PLANNING DISTRICT**
4

5 ~~There shall be no transfer of Density Credits into the West County Planning~~
6 ~~District, which constitutes all property west of the Myakka River, from other areas of the~~
7 ~~County. Density on property within the West County Planning District may only be~~
8 ~~increased by a transfer of density from other property located within the West County~~
9 ~~Planning District. This transfer of Density Credits between properties within the West~~
10 ~~County Planning District shall comply with the provisions of this article. In order to~~
11 ~~ensure that density is not inadvertently increased in West County, a petitioner can not~~
12 ~~purchase density from the County's Land Acquisition Trust Fund.~~

13 **Sec. 3-5-43053. REQUIREMENTS FOR SENDING ZONE.**
14

15 (a) Sending Zone.
16

17 (1a) In order for property to qualify as an SZ, the proposed SZ must
18 contain at least one (1) Density Unit and it must comply with *one* of the following criteria:
19

20 (i1) The proposed SZ ~~must contains~~ one or more an
21 Environmentally sensitive resource ~~or be identified as being within a High Groundwater~~
22 Recharge Areas; or
23

24 (ii2) The proposed SZ ~~must contains~~ one or more a Hhistoric or
25 archeological resources; or
26

27 (iii3) The proposed SZ ~~must be is~~ located within the Tropical
28 Storm Surge or Category 1 Hurricane Storm Surge Zones Coastal High Hazard Area as
29 identified on the map, as may be amended, adopted as part of the Comprehensive Plan
30 entitled "Hurricane Vulnerability Zones Based on Surge of Land Falling Storms"; or
31

32 (iv4) The proposed SZ ~~must be is~~ a Substandard lot or parcel; or
33

34 (v5) The proposed SZ ~~must be is~~ located outside the USA and
35 ~~must contains be used for~~ a Bona fide Agricultural use, and it must be the intention of
36 the property owner/petitioner to continue agricultural use of the subject property, which
37 shall be written into the Covenant per Subsection 3-5-432(b)(2). This may be
38 accomplished in conjunction with farmland conservation efforts of agencies such as, but
39 not limited to, the Natural Resource Conservation Service, the water management
40 districts, or the American Farmlands Trust; or
41

42 (vi6) The proposed SZ ~~must be is~~ located within the Suburban
43 area of the Urban Service Area Overlay District and ~~must be platted and~~ not currently
44 served by water or sewer or within any utility's 5 year Capital Improvements Program for
45 extension of water and sewer; or
46

1 (vii) The proposed SZ is located in the Infill area of the Urban
2 Service Area Overlay District and the property owner has obtained a building permit to
3 develop a residential use at a density must be vacant and have an approved residential
4 development plan below the Base Density that creates surplus density on the property.

5
6 (2b) Density on those portions of a proposed SZ that are
7 considered contain an environmentally Environmentally sensitive resource, or which
8 contain an historic Historic or archeological resource, shall not be retained must be
9 totally removed. Density can be on all other SZ property may be retained on other
10 areas of the SZ if such retention is deemed consistent with the provisions of this article
11 and the Covenant.

12
13 (3) Density from SZ property located in the Infill Area of the Urban
14 Service Area Overlay District can only be sent to RZ property also in the Infill area of the
15 Urban Service Area Overlay District.

16
17 (3e) Nothing in this article shall be construed to preclude the use of a
18 SZ for may be used for mitigation or to limit for relocation of a protected plant or animal
19 species to an SZ, as such use or relocation may be allowed by federal and state
20 regulations, provided the terms of the Covenant are satisfied.

21 **Sec. 3-5-454. REQUIREMENTS FOR RECEIVING ZONE.**

22
23 (b) Receiving Zone

24
25 (1) Except as provided in Subsections 3-5-455(a) and (b), i
26 property to qualify as an RZ, the proposed RZ must comply with all of the following
27 criteria:

28
29 (ia) The proposed RZ It must be located within the Urban Service
30 Area Overlay District or, if Outside the Urban Service Area, be developed as within a
31 New Community or Rural Community (as those terms are defined and described in the
32 Comprehensive Plan and Chapter 163, Florida Statutes).

33
34 (iib) The proposed RZ It must be either currently designated on
35 the FLUM or proposed to be designated in the accompanying Plan Amendment petition
36 as Low Density Residential, Medium Density Residential, High Density Residential,
37 Mixed Use, Rural Estate Residential, Neighborhood Business Residential, Commercial
38 Tourist, New Community, or Rural Community; In the event that a petitioner is
39 requesting an extension of the Urban Service Area without an accompanying Future
40 Land Use Map amendment to the FLUM designation, the existing FLUM designation will
41 be accepted as an RZ and the FLUM designation of the property is Agriculture, the
42 property may retain the Agricultural FLUM designation until such time as a Plan
43 Amendment is approved to change the designation.

44
45 (iiie) The proposed RZ It must not contain environmentally
46 sensitive, hHistoric or archeological resources, unless such areas can be designated as

1 a preserve through a Planned Development conservation easement. Mitigation of
2 environmentally sensitive resources may be permitted by appropriate state and/or
3 federal permitting agencies.

4
5 _____(ivd) The proposed RZ must not be located within the Coastal
6 High Hazard Area Tropical Storm Surge or Category 1 Hurricane Storm Surge Zone as
7 identified on the map, as may be amended, adopted as part of the Comprehensive Plan
8 entitled "Hurricane Vulnerability Zones Based on Surge of Land Falling Storms".

9
10 ~~_____~~ **Sec. 3-5-455. EXCEPTIONS.**

11
12 A.(a) Property that Property which does not fall within the criteria
13 of an RZ in Sec. 3-5-454 because it is located within a Tropical Storm Surge or
14 Category 1 Hurricane Storm Surge Zone the Coastal High Hazard Area may be eligible
15 as an RZ to become an RZ. In order to make use of this exception, if it is proposed to
16 receive the petitioner must transfer Coastal High Hazard Area Density Credits from an
17 SZ also located in a Tropical Storm Surge or Category 1 Hurricane Storm Surge Zone to
18 the property. Density Credits from Category 1 Hurricane Storm Surge zone cannot be
19 transferred into a Tropical Storm Surge zone of an RZ nor can Density Credits from an
20 AE flood zone be transferred to an RZ containing a VE Flood Zone. Notwithstanding
21 this exception, in no case shall an increase of density be allowed on property located on
22 a barrier island. In this event, however, the proposed RZ must not contain
23 environmentally sensitive, historic or archeological resources (unless such areas can be
24 protected through a Planned Development or mitigation is permitted through appropriate
25 state and/or federal permitting) or be located on a barrier island and, notwithstanding
26 this Subsection (a), no Density Credits may be transferred within these zones from a
27 less restrictive flood zone to a more restrictive flood zone or from a Category 1
28 Hurricane Storm Surge zone to a Tropical Storm Surge zone.

29
30 B.(b) As a further exception to subsection (iv) above,
31 Notwithstanding Subsection (a) above, any property located within the Charlotte Harbor
32 Community Redevelopment Area (CHCRA), other than thatose is not zoned CR-3.5,
33 shall qualify as an RZ. Such properties shall are be permitted to receive density from
34 any property located within the CHCRA or from any property located in the Tropical
35 Storm Surge and Category 1 Storm Surge zones any Coastal High Hazard Area
36 throughout the county with no restrictions limitations based on based on storm surge or
37 flood zone designation transfers. Nothing in this article shall prevent the CHCRA from
38 codifying a specific process for properties within the CHCRA.

39
40 (c) Density on property within the West County Planning District, which
41 constitutes all property west of the Myakka River, may only be increased by a transfer of
42 density from other property located within the West County Planning District. There
43 shall be no transfer of Density Credits into the West County Planning District from other
44 areas of the County. This transfer of Density Credits between properties within the
45 West County Planning District shall comply with the provisions of this article. In order to

1 ensure that density is not inadvertently increased in West County, a petitioner can not
2 purchase density from the County's Land Acquisition Trust Fund.

3
4 ~~(c) — A project that proposes to increase Density Units on a property through a~~
5 ~~Plan Amendment and/or Rezoning where at least fifty (50) percent of the total number~~
6 ~~of Density Units built will be available as affordable housing for low or very low income~~
7 ~~persons, as such is defined in Section 420.602, Florida Statutes, will not be required to~~
8 ~~petition the Board for a TDU. However, the proposed increase of density may only be~~
9 ~~placed on a property which has been determined by the County Administrator to meet~~
10 ~~the qualifications of an RZ in accordance with Sec. 3-5-454. The County Administrator~~
11 ~~is authorized to certify that an application qualifies as an affordable housing~~
12 ~~development under this exemption.~~

13 **Sec. 3-5-431. COUNTY OWNERSHIP OF SZ.**

14
15 (a) A petitioner may request that the County purchase or assume ownership,
16 through donation, of a proposed SZ. The request must be expressed during the pre-
17 application meeting. The request will be reviewed, as deemed applicable, by the Real
18 Estate Services Department, the Parks, Recreation and Cultural Services Department,
19 the Community Development Department, and other committees or departments which
20 are necessary to the review. The review will consider the costs and benefits associated
21 with the acquisition.

22
23 (b) If the County agrees to assume ownership the petitioner is not required to
24 supply a Covenant or Surveys.

25
26 **Sec. 3-5-432. COVENANT.**

27
28 (a) The Covenant shall be prepared by the petitioner and executed in
29 accordance with the requirements of this article. Once the draft is approved, the
30 Covenant shall be signed by the petitioner and held in escrow pending the approval of
31 the Certification.

32
33 (b) The form of each Covenant shall be reviewed by the County Attorney. The
34 Covenant shall contain such provisions that are reasonably required by the County
35 Attorney proscribing the use of the proposed SZ following the approval of the
36 Certification, including the following:

37
38 (1) If the property contains Environmentally sensitive resources or
39 Historic or archeological resources, the Covenant shall limit or preclude uses of the
40 proposed SZ such that the resources, whichever may be applicable, will be maintained
41 in perpetuity following the completion of the Certification.

42
43 (2) If the property is submitted as a Bona fide agricultural Use, the
44 Covenant shall restrict the uses of the property to Bona fide agricultural uses and the
45 use of any retained density to family members of the property owner or employees, and
46 their families, engaged in the agricultural operation.

1
2 (3) Limit or preclude activities which are determined through the
3 processes of this article to be detrimental to the appropriate maintenance of the
4 proposed SZ.

5
6 (4) Indicate the property or portions thereof that is restricted from future
7 development and/or subject to limitations on future development. If the SZ consists of
8 only a portion of the property, the Covenant shall not contain provisions over the use of
9 the remainder of the property unless such provisions are deemed necessary to ensure
10 the viability of the SZ. The Covenant may provide for spreading the remaining density
11 onto the portion of the property used as an SZ. Environmentally sensitive resources or
12 Historic or archeological resources shall be protected.

13
14 (5) Bind all owners of the proposed SZ and their respective heirs,
15 successors and assigns.

16
17 (c) The Covenant shall be accompanied by a management plan if required
18 herein.

19
20 (1) A management plan shall be required if the applicant proposes to
21 qualify the property as an SZ because it contains an Environmentally sensitive
22 resource, or Historic or archeological resource, or a Bona fide Agricultural use. The
23 management plan shall describe how the proposed SZ will be maintained in perpetuity,
24 how the resource shall be protected, and shall contain any other information reasonably
25 requested or required by the Community Development Director regarding the use,
26 maintenance and the protection of the resources of the proposed SZ following the
27 approval of the Certification.

28
29 (2) Substandard lots and property located within the Coastal High
30 Hazard Area shall not require a management plan.

31
32 **Sec. 3-5-433. RELIEF FROM THE CODE.**

33
34 (1) Upon determination that a petition does not meet the substantive
35 requirements of this article, the petitioner may appeal the provisions of this article to the
36 Board.

37
38 (2) The request shall be in writing and shall contain, at a minimum, the
39 following information:

40
41 (i) The County Code section from which relief is sought;

42
43 (ii) The nature of the relief; and

44
45 (iii) The reasons why the relief should be granted.

1 (3) Upon receipt of the written appeal, the Community Development
2 Director shall place the item, which constitutes the written appeal and an evaluation
3 report of the appeal, on the nearest available agenda date of the Board that is within 60
4 days of the receipt of the appeal.

5
6 (4) The Board shall provide relief to the substantive requirements of
7 this article based on all of the following findings:

8
9 (i) The proposed Certification/Use Amendment/TDU petition
10 furtheres the Intents and Purpose, Subsection 3-5-426(a)(1)(2)&(3), of this article;

11
12 (ii) The proposed Certification/Use Amendment/TDU petition is
13 consistent with the Comprehensive Plan and, furthermore, it is not inconsistent with any
14 portion of the Comprehensive Plan;

15
16 (iii) The proposed Certification/Use Amendment/TDU will not
17 endanger the health, safety and welfare of the general public.

18
19 (5) All Appeals will require a quasi-judicial public hearing before the
20 Board of County Commissioners.

21
22 **Sec. 3-5-434. Waiver Restriction**

23 There shall be no waiver from the requirement of complying with this ordinance
24 except through the adoption of a comprehensive plan text amendment.

25 **Sec. 3-5-456. CERTIFICATE OF TRANSFERABLE DENSITY CREDITS.**

26
27 ~~(a) Upon the effective date of a TDU approved pursuant to this article, the~~
28 ~~County Administrator shall issue a Certificate (or Certificates) to the property owner(s)~~
29 ~~of the eligible RZ in accordance with the provisions of this article.~~

30
31 ~~(b) Upon the date an SZ without a designated RZ, approved pursuant to this~~
32 ~~article becomes valid, the County Administrator shall issue a Certificate (or Certificates)~~
33 ~~in accordance with the provisions of this article to the property owner(s) of the eligible~~
34 ~~SZ.~~

35
36 ~~(c) The issuance of the Certificate shall establish the quantity of Density Units~~
37 ~~for the property at the time the Certificate is issued and shall be considered a final~~
38 ~~determination. Once a Certificate has been issued for the SZ, the property owner shall~~
39 ~~maintain the property in accordance with the requirements of the Covenant.~~

40
41 ~~(d) If the SZ consists of only a portion of the entire property, the Certificate~~
42 ~~shall reflect only that portion of the property.~~

43
44 ~~(e) If the SZ property owner is not removing all of the density units from the~~
45 ~~SZ, the Certificate shall reflect only that amount that is to be transferred.~~

1 ~~_____ (f) If the TDU does not involve an SZ, the Certificate shall reflect only the~~
2 ~~Density Units actually paid for by the petitioner to the County in accordance with Sec. 3-~~
3 ~~5-444.~~

4
5 ~~_____ (g) In the event an SZ property owner has not found a willing RZ to which it~~
6 ~~can transfer its Density Credits, Density Credits from the SZ may be transferred to the~~
7 ~~County, in the County's sole discretion.~~

8
9 ~~_____ (h) Density Credits transferred to an eligible RZ pursuant to this article, which~~
10 ~~are not used for the intended RZ development, may be re-transferred to another eligible~~
11 ~~RZ, as set forth herein. This transfer shall be considered to be from the original SZ and~~
12 ~~shall comply with the requirements of this article relating to an approval of an RZ. The~~
13 ~~TDU petitioner shall simultaneously petition to have revised the zoning district and/or~~
14 ~~FLUM, whichever is applicable, of the proposed RZ from which these credits are~~
15 ~~transferred to reflect the decrease in density.~~

16
17 ~~_____ (i) Density Credits from an SZ approved by the Board pursuant to this article~~
18 ~~without a designated RZ may subsequently be transferred to an eligible RZ. This~~
19 ~~transfer shall comply with the requirements of this article relating to the approval of a~~
20 ~~TDU.~~

21
22 ~~_____ (j) Subsequent to the issuance of a Certificate to the owner of an RZ upon~~
23 ~~approval of a TDU, and upon the future transfer or use of such Density Credits, the~~
24 ~~owner of the RZ shall surrender the Certificate to the County for appropriate~~
25 ~~modification or extinguishment.~~

26
27 ~~_____ (k) Subsequent to the issuance of a Certificate to the owner of an SZ upon~~
28 ~~approval of an SZ without a designated RZ, and upon the future transfer of such Density~~
29 ~~Credits, the owner of the SZ shall surrender the Certificate to the County for~~
30 ~~modification of the Certificate in the name of the RZ. Upon the future transfer or use of~~
31 ~~such Density Credits by the RZ, the owner of the RZ shall surrender the Certificate to~~
32 ~~the County for appropriate modification or extinguishment.~~

33
34 **Sec. 3-5-43557. LAND ACQUISITION TRUST FUND.**

35
36 ~~(a) The Board has shall established the LATF and any procedures governing~~
37 ~~the LATF by resolution in accordance with this section. The purpose of the LATF is to~~
38 ~~create a mechanism by which a petitioner for a proposed eligible RZs may increase~~
39 ~~density on the property without having a designated SZ from which to transfer the~~
40 ~~Density Units purchase density from the County. Funds contributed to the LATF~~
41 ~~pursuant to Sec. 3-5-444 and any other source shall be used to acquire and manage~~
42 ~~properties that qualify as SZs pursuant to Sec. 3-5-453.~~

43
44 ~~(a) If a petitioner does not choose to include a proposed SZ or an approved~~
45 ~~Certificate with a proposed TDU, the petitioner shall pay a contribution fee to be~~
46 ~~deposited in the County's Land Acquisition Trust Fund.~~

1
2 (b) Once a petitioner submits a TDU application indicating their desire to use
3 the LATF option, the Community Development Department in conjunction with the Real
4 Estate Services Department will provide the petitioner with the current unit price
5 equivalent for a unit of density within seven days. The unit price equivalent will be
6 current to market conditions, directly related to the county's current acquisition costs of
7 acquiring lands under the LATF, and reflective of land values within the general area of
8 the proposed RZ.

9
10 (c) The unit price equivalent shall be formally established by the resolution at
11 the time of approval of the TDU petition. In the event that the petitioner chooses to not
12 contribute to the LATF at the time of adoption of the TDU, or chooses to submit the
13 development in phases, a process for payment shall be established in the resolution
14 with the understanding that the amount of the fee required upon payment shall be the
15 unit price equivalent for a Density Unit at the time of payment, which may not be the
16 same price as would have been paid by the petitioner at the time of approval of the TDU
17 by the Board.

18
19 (d) The payment of the contribution fee is required prior to Preliminary Plat
20 approval, or, in the event a Preliminary Plat will not be requested by the applicant, prior
21 to request for other Development Permits. The petitioner shall not be issued any
22 permits for development on the RZ, or the applicable phase of the RZ, until such time as
23 the payment of the fee has been received by the County.

24
25 (e) The amount of the fee shall be equal to the number of Density Units
26 approved for the RZ multiplied by the unit price equivalent for a Density Unit, included
27 as part of the Resolution adopting the TDU.

28
29 (f) A petitioner who is proposing to transfer density onto property located in a
30 Tropical Storm Surge or Category 1 Hurricane Storm Surge zone can not utilize the
31 Land Acquisition Trust Fund option.

32
33 (g) A petitioner who is proposing to increase density on property within the
34 West County Planning District, which constitutes all property west of the Myakka River,
35 can not utilize the Land Acquisition Trust Fund option.

36
37
38 **SECTION 2. SEVERABILITY.** In the event this ordinance conflicts with any other
39 provision of the Charlotte County Code or other applicable law, the more restrictive shall
40 apply. If any subsection, sentence, clause, phrase, or portion of this ordinance is for
41 any reason held invalid or unconstitutional by any court of competent jurisdiction, such
42 portion shall be deemed a separate, distinct, and independent provision, and such
43 holding shall not affect the validity of the remainder of the ordinance.

44
45 **SECTION 3. EFFECTIVE DATE.** This ordinance shall take effect upon filing in the
46 Office of the Secretary of State, State of Florida.