"PARKLAND" DEVELOPMENT OF REGIONAL IMPACT SECTION 380.032 AGREEMENT RELATED TO APPLICATION PROCESSING

THIS AGREEMENT (hereinafter the "**Agreement**") is made and entered into by and among the State of Florida, Department of Economic Opportunity (hereinafter referred to as "DEO"), the South Florida Regional Planning Council (hereinafter referred to as "SFRPC"), and Parkland West, LLC, the Krome Groves Land Trust, Edward W. Easton, Trustee, and Guherqui International, S.A. (hereinafter referred to collectively as the "Developer"). The parties that enter into this Agreement may be referred to collectively as the ("Parties").

RECITALS:

A. Whereas, the Parkland site (the "Property") consists of approximately 961 acres located west of SW 162 Avenue and east of SW 177 Avenue, between SW 136 Street and theoretical SW 152 Street in unincorporated Miami-Dade County, and is legally described on the attached Exhibit "A";

B. Whereas, the predecessors in interest to the Developer submitted an Application for Development Approval ("ADA"), ADA-1107-005, as contemplated by Florida Administrative Code ("FAC") section 9J-2.022 for the "Parkland 2014" Development of Regional Impact ("DRI") to the SFRPC, Miami-Dade County (the "local government"), and DEO's predecessor agency, the Department of Community Affairs, in 2005;

C. Whereas, the predecessors in interest to the Developer also filed Miami-Dade County comprehensive plan amendment and zoning applications concurrently with the ADA in order to implement the overall development plan for the Property;

D. Whereas, following the SFRPC's determination that the ADA was "sufficient" under the terms of Florida law, the Developer deferred the ADA and concurrent local government comprehensive plan amendment and zoning applications indefinitely;

E. Whereas, subsequent statutory amendments have removed the need to seek DRI approvals for development in Florida;

F. Whereas, as provided in section 380.06(12)(b)(2), Florida Statutes (2021), the DRI process was retained for: (1) amendments to existing DRIs; and (2) DRI applications that were filed concurrently with a local government comprehensive plan amendment and pending as of May 14, 2015;

G. Whereas, in order to retain the ability to pursue a pending DRI application, an applicant was required to provide notice of an intent to continue with the application to the state, regional planning council, and local government by December 31, 2018;

H. Whereas, pursuant to section 380.06(12)(b)(2), Florida Statutes (2021), any such pending DRI application would be reviewed under the statutory framework that existed as of May 14, 2015.

I. Whereas, the Developer's representatives provided the required notice of its intent to pursue the ADA (see Exhibit "B") under the rules existing as of May 14, 2015, to DEO, the SFRPC, and the local government on July 11, 2018;

J. Whereas, the Developer subsequently sent notice to the SFRPC on September 20, 2021, requesting to set a pre-application meeting to begin the review of an amended ADA; and

K. Whereas, the DEO is the state land planning agency having the power and duty to exercise general supervision of the administration and enforcement of Chapter 380, Florida Statutes, which includes provisions relating to DRIs; and

L. Whereas, pursuant to section 380.032(3), Florida Statutes (2021), the DEO is authorized to enter into agreements with and among any landowner, developer, or governmental agency as may be necessary to effectuate the provisions and purposes of Chapter 380, Florida Statutes; and

M. Whereas, in order to ensure the transparent and orderly review of an amended ADA, the Parties to this Agreement seek to memorialize the rules and procedures that will be applied to the review of the proposed amended ADA.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, DEO, SFRPC, and the Developer agree as follows:

1. The foregoing recitals are true and correct and are incorporated herein by reference. All exhibits to this Agreement are hereby made a part hereof.

2. The scope of this Agreement is limited to outlining the processes that will be applied to the amended ADA in order to ensure consistency with section 380.06(12)(b)(2), Florida Statutes, (2015).

3. The amended ADA and DRI shall be governed by section 380.06 and 163.3180, Florida Statutes, and by Florida Administrative Code Chapters 29-J, 73C-40, and 28-24, as such provisions were in effect as of May 14, 2015. The relevant statutory section and rules are attached to this Agreement for reference as Exhibit "C." Unless otherwise stated, a statute or rule not mentioned above or attached in Exhibit "C" will be such provisions in effect at the time of DEO's execution of this Agreement.

4. The Parties hereby agree to the following process, which is consistent with the statewide DRI process that was in place as of May 14, 2015:

a. **Pre-Application Request.** The process will commence with the Developer contacting the SFRPC to arrange a pre-application conference. Reviewing agencies, including local government(s) and state agencies, federal agencies, and interested parties, shall make reasonable efforts to attend or otherwise participate in the pre-application conference.

b. **Pre-Application Form.** At least 10 working days before the scheduled pre-application conference, the Developer will provide the conference participants with information from Form DEO-BCP-PREAPP INFO-1, as attached as Exhibit "D". This information will include, but is not limited to the following:

i. Identification of the project location relative to any existing urban service area and regional activity centers;
ii. A survey and preliminary phasing information (if relevant);
iii. Whether a comprehensive plan amendment will be required;
iv. Type and magnitude of proposed land uses;
v. List of permits applied for and/or received;
vi. Preliminary site and environmental information;
vii. Preliminary phasing and build out dates of the project;
viii. Specific methodology proposals;
ix. List of ADA questions proposed to be deleted and/or added.

c. **<u>SFRPC Provision of DRI Information.</u>** Before or during the pre-application conference for the amended ADA, the SFRPC shall provide the Developer with information about the DRI process including but not limited to the following:

i. Copies of the Strategic Regional Policy Plans and other appropriate material indicating issues of regional significance in the region.

ii. Material describing planning, permitting, or review requirements of state, regional, or local agencies that has been obtained by the SFRPC.

d. **<u>Conduct of Pre-Application Conference(s).</u>** At least one (1), but no more than three (3), unless the Developer consents in writing, pre-application conferences may be held in order to reach an agreement on the questions and methodologies to be addressed by the ADA. During the pre-application conference(s), the following will occur:

i. The Developer and SFRPC, with input from attendees, will identify questions to be addressed by the ADA;

ii. Reviewing agencies will clarify initial concerns and the applicable types of permits they would require, the level of information required, and the permit issuance procedures as applied to the proposed development;

iii. The Developer and SFRPC, with input from attendees, will formulate the assumptions, methodologies, data, and analysis to be used in the ADA;

iv. The SFRPC will distinguish between DRI application and state or regional permit reviews;

v. The Developer will provide information regarding the anticipated scope of local government applications to be filed and/or processed concurrently with the ADA, based on input by Miami-Dade County;

vi. The SFRPC will provide opportunities for the Developer and affected reviewing agencies to obtain and comment on information of significance to the project;

vii. DEO will provide information about state land planning agency rules and the State Comprehensive Plan;

viii. The SFRPC will provide information about the Strategic Regional Policy Plan;

ix. The Parties will work to promote the expeditious and well-coordinated processing of the ADA; and

x. The SFRPC will establish the number of copies of the ADA, including format, that will be provided to the DEO, SFRPC, the local government, reviewing agencies, and interested parties.

e. **Pre-Application Conference Findings.** Within 35 calendar days after the final pre-application conference, the SFRPC will memorialize the findings and agreements made during the conference(s) in a summary and share the summary with the conference participants, including the regional and state agencies involved in the DRI review, the local government, and the Developer. The summary will include all assumptions, methodologies, data, and analysis agreed upon at the conference(s).

After receipt of the SFRPC findings, conference participants, and reviewing agencies will have at least 14 calendar days to comment, agree, or disagree with the summary, in writing. The regional planning agency may specify a time period for these comments and responses so long as the time period is not less than 14 calendar days.

The SFRPC will distribute its final version of the Pre-Applicaion Findings within 14 calendar days of the end of the comment period. The final version will include: (1) all assumptions, methodolgies, and data sources and analysis to be used to develop the ADA; (2) summary of agencies' input about the applicable types of permits they would require, the level of information required, and the permit issuance procedures as applied to the proposed development; (3) the number copies of the ADA (including format) needed to be provided to listed parties; and (4) an agreement with the Developer regarding the questions to be addressed by the ADA.

f. **Filing the ADA and Concurrent Local Government Applications.** The Developer shall use Form DEO-BCP-ADA-1, as attached as Exhibit "E", in preparing the ADA. Copies of the ADA must be simultaneously filed with the SFRPC, DEO, the local government, and any other entity agreed upon at the pre-application conference. If the ADA is not submitted within one (1) year of the final pre-application conference, then the regional planning agency, the local government with jurisdiction, or the Developer may request that another pre-application conference be held.

The ADA will be considered concurrently with a proposed amendment to the local government's comprehensive plan and a zoning application. To the maximum extent possible, data and analysis will be consolidated.

g. **Determination of Sufficiency.** The SFRPC will review the amended ADA and determine whether the information provided is sufficient. Sufficiency is determined when there is enough information in the amended ADA to allow the reviewing agencies to assess the impacts of the proposed development. During the sufficiency review process, reviewing agencies will submit their comments on the application to the SFRPC as well as to the Developer so that the Developer can begin to prepare responses to the comments.

If the SFRPC determines that the application is insufficient, then the following steps are to be followed:

i. Within 30 calendar days of receiving the insufficient application, the SFRPC must provide written notice to the local government and Developer stating the application contains insufficient information and request additional information from the Developer.

ii. The Developer will have five (5) working days after receiving the SFRPC's written notice to then provide a written notice to SFRPC and the local government as to whether the requested information will be supplied.

iii. The Developer will have 120 calendar days after receiving the written notice to submit the requested information to the SFRPC. If the Developer does not supply the requested information within 120 days, the application will be considered withdrawn.

iv. Once the SFRPC receives the requested information from the applicant, the SFRPC will have 30 calendar days to review the information and may only request any additional information needed to clarify the new information received.

v. The SFRPC may only request additional information up to two (2) times, unless otherwise agreed upon by the Developer and SFRPC.

vi. After a second request for additional information, the Developer may request a conference with the SFRPC to resolve any reviewing agency's informational needs.

h. **Finding of Sufficiency.** If the SFRPC determines that the ADA is sufficient, the SFRPC will provide written notice to the Developer and the local government in accordance with section 380.06(10) (c), Florida Statutes (2015), stating that the amended ADA contains sufficient information for the regional planning agency to begin review.

i. **Local Government Processing.** The Developer will work with the local government to ensure that all local government applications shall be processed in compliance with the following provisions of section 380.06(6), Florida Statutes (2015):

i. The local government public hearing on the transmittal shall occure within 30 days after the filing of the ADA or the proposed change and the local government must make a determination on the transmittal within 60 days after the initial filing unless that time is extended by the Developer. The Developer agrees to extend the timeline to advertise a public hearing on the transmittal to coincide with receipt of sufficiency notification from the SFRPC.

ii. If the local government approves the transmittal, procedures set forth for the review of proposed and adopted amendments pursuant to sections 163.3184(2)(c), and 163.3184(4), Florida Statutes, as they exist at the time of amendment transmittal must be followed.

iii. Notwithstanding the provisions of section 380.06 (11) Florida Statutes (2015), the the local government may not hold a public hearing on the ADA or the proposed CDMP change sooner than 30 days after reviewing agency comments are due to the local government pursuant to section 163.3184, Florida Statutes.

iv. The local government will provide the SFRPC notice of the proposed public hearing review of the DRI application in accordance with section 380.06(11), Florida Statutes (2015). The public hearing notice shall be published at least 60 days in advance and shall be held no later than 90 days after SFRPC notifies the local government that a public hearing may be scheduled, unless an extension is requested by the Developer.

j. **<u>Process for Comprehensive Plan or Plan Amendment Review</u>**

i. The review of proposed and adopted amendments shall be pursuant to sections 163.3184(2)(c), and 163.3184(4), Florida Statutes, as the statutes exist at the time of state agency review.

ii. DEO shall issue its Objections, Recommendation, and Comments report pursuant to section 163.3184, Florida Statutes, as the statutes exist at the time of state agency review

k. **<u>SFRPC Regional Report and Recommendation.</u>** No later than 50 calendar days after the receipt of the local government notice of public hearing for local developer order consideration, the SFRPC staff will prepare a regional assessment report and recommendations on the state and regional impacts of the proposed development, and all applicable mitigation, and draft Development Order. The SFRPC will submit copies to DEO, reviewing agencies including the local government, interested parties, and the Developer, all in accordance with section 380.06(12), Florida Statutes (2015). The SFRPC shall schedule and hold a public hearing on the project and the regional assessment report within 60 calendar days of the issuance of Staff's regional assessment report and recommendations, unless an extension is requested by the Developer.

5. Nothing in this Agreement shall constitute a waiver by any party of the right to appeal and final Development Order pursuant to section 380.07, Florida Statutes.

6. Nothing in this Agreement shall constitute a waiver by DEO of the right to administratively challenge a plan amendment pursuant to section 163.3184, Florida Statutes.

7. The Developer shall not claim vested rights, or assert equitable estoppel, arising from this Agreement or any expenditures or actions taken in reliance on this Agreement to any development on the Property. This Agreement shall not entitle the Developer to a final Development Order approving the total proposed development nor to particular conditions in a final Development Order.

8. This Agreement shall not entitle the Developer to favorable consideration of any proposed and adopted plan amendments related to the ADA.

9. In the event of either a breach of this Agreement or failure to comply with any material condition of this Agreement, or if this Agreement is based upon materially inaccurate information, DEO may either terminate this Agreement or file suit to enforce this Agreement as provided in section 380.11, Florida Statutes.

10. This Agreement and the rights and obligations of the Parties hereto shall be governed by, construed under, and enforced in accordance with the laws of the State of Florida. Venue for any litigation pertaining to this Agreement shall be exclusively in Leon County, Florida. If any provision of this Agreement, or the application of this Agreement to any person or circumstances, shall to any extent be held invalid or unenforceable by a court of comeptent jurisdiction, then the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

11. This Agreement does not authorize any development. This Agreement is further not intended to determine or influence the authority or decisions of any state, regional, or local government or agency in the review of the modified ADA or any other concurrent application filed by the Developer. This Agreement shall not prohibit the DEO and SFRPC from reviewing or commenting on any state or regional issue.

12. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of the Developer. The Developer shall ensure and provide that any successor in interest in and to any lands or parcels affected by this Agreement is bound by the terms of this Agreement.

13. Without further action by the Parties, this Agreement shall terminate upon approval of the final Development Order that results from the ADA, or three (3) years following the effective date of this Agreement, whichever comes first.

14. This Agreement constitutes the entire and exclusive understanding of the Parties and may be modified only by an instrument in writing signed by all Parties.

15. The effective date and date of execution of this Agreement shall be the date that the last party signs and acknowledges this Agreement.

16. A notice of this Agreement consistent with that attached as Exhibit "F" attached hereto shall be recorded by the Developer in the Public Records of Miami-Dade County at the cost of the Developer within 30 calendar days of the effective date of this Agreement. Developer shall provide the DEO with a copy of the recorded Agreement including Book and Page promptly upon receipt of a copy of the recorded Agreement from the Clerk's Office.

[EXECUTION PAGES ATTACHED]

WITNESSES:

DocuSigned by:
Andreina Espina
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Signature

Andreina Espina

Printed Name

DocuSigned by:
Yeidy Montesino
32C418AA25C64C0...

Signature

Yeidy Montesino

Printed Name

PARKLAND WEST, LLC a Florida Limited Liability Company.

DocuSigned by:
By: Edward W. Easton
A16C5EEF44FD467...

Name: Edward W. Easton

Title: Trustee of the Krome Groves Land Trust, which is the Managing Member of Parkland West, LLC

STATE OF FLORIDA)
) SS
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me by Edward W. Easton, as Trustee of the Krome Grove Land Trust, which is the Managing Member of **PARKLAND WEST, LLC**, a Florida Limited Liability Company, and for the purposes stated herein on behalf of said corporation. He/She is personally known to me or has produced ______________________________ as identification.

Witness my signature and official seal this 10th day of May, 2022, in the County and State aforesaid.

2FDF727C60AC
Signed on 2022/05/10 13:06:36 -8:00

Notary Signature

Diana Ramos
Commission # GG 308355
Notary Public - State of Florida
My Commission Expires Apr 10, 2023

Notary Stamp 2022/05/10 13:06:36 PST 2FDF727C60AC

Diana Ramos

Print Name

GG308355

Commission Number

My Commission Expires:

WITNESSES:

DocuSigned by:
Andreina Espina
B31BB946942C4AA...

Signature
Andreina Espina

Printed Name

DocuSigned by:
Yeidy Montesino
32C418AA25C84C0...

Signature
Yeidy Montesino

Printed Name

KROME GROVES LAND TRUST, EDWARD W. EASTON, TRUSTEE

DocuSigned by:
By: Edward W. Easton
A18C5EEF44FD467...

Name: Edward W. Easton

Title: Trustee

STATE OF FLORIDA)
) SS
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me by Edward W. Easton, as Trustee of the **KROME GROVE LAND TRUST**. He is personally known to me or has produced ______________________________ as identification.

Witness my signature and official seal this 10th day of May, 2022, in the County and State aforesaid.

Diana Ramos
Commission # GG 308355
Notary Public - State of Florida
My Commission Expires Apr 10, 2023
Notary Stamp 2022/05/10 13:06:36 PST 2FDF727C60AC

2FDF727C60AC
Signed on 2022/05/10 13:06:36 -8:00

Notary Signature

Diana Ramos

Print Name

GG308355

Commission Number

My Commission Expires:

WITNESSES:

DocuSigned by:
Andreina Espina
B31BB946942C4AA...

Signature

Andreina Espina

Printed Name

DocuSigned by:
Yeidy Montesino
32C418AA25C64C0...

Signature

Yeidy Montesino

Printed Name

GUHERQUI INTERNATIONAL, SA.

DocuSigned by:
0280584A26D9408...

By:________________________

Name: John C. Cheng

Title: President

STATE OF FLORIDA)
) SS
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me by John C. Cheng, as President of **GUHERQUI INTERNATIONAL SA**, and for the purposes stated herein on behalf of said corporation. He/She is personally known to me or has produced ____________________________ as identification.

Witness my signature and official seal this 10th day of May, 2022, in the County and State aforesaid.

2FDF727C60AC
Signed on 2022/05/10 13:06:36 -8:00

Notary Signature

Diana Ramos
Commission # GG 308355
Notary Public - State of Florida
My Commission Expires Apr 10, 2023

Notary Stamp 2022/05/10 13:06:36 PST 2FDF727C60AC

Diana Ramos

Print Name

GG308355

Commission Number

My Commission Expires:

SFRPC:

SOUTH FLORIDA REGIONAL PLANNING COUNCIL

DocuSigned by:

By: Isabel Cosio Carballo

CA1EA75A91444A1...

Name: Isabel Cosio Carballo, MPA

Title: Executive Director

1st day of May, 2022

Approved as to form and legality

DocuSigned by:

Samuel S. Goren

37608F002001425...

Samuel S. Goren, Esq.
Legal Counsel

DEO:

STATE OF FLORIDA, DEPARTMENT OF ECONOMIC OPPORTUNITY.

DocuSigned by:

By: Benjamin M. Melnick

49F5AA36237D4A9...

Name: Benjamin Melnick

Title: Deputy Secretary
Division of Community Development

4th day of May, 2022

Approved as to form and legality

DocuSigned by:

Ashanti Breeden

34E00C91AA3F4A2...

Ashanti Breeden, Esq.
Assistant General Counsel, Office of the General Counsel

EXHIBIT A

PROPERTY

PARCEL "A"

The West 1/2, of the East 1/2, of the West 1/2 of Section 20, Township 55 South, Range 39 East, Miami-Dade County, Florida. LESS a 100.00 feet Right-of-Way for the Seaboard Airline Railroad, as-built and in place lying 50.00 feet on either side of the existing railroad tracks.

PARCEL "B"

The West 1/2, of the East 1/2, of the East 1/2, of the S.W. 1/4 of Section 20, Township 55 South, Range 39 East, Miami-Dade County, Florida.
Subject to any dedications, easements, restrictions, reservation and limitations of records.

PARCEL "C"

The East 1/2, of the East 1/2, of the East 1/2, of the S.W. 1/4 of Section 20, Township 55 South, Range 39 East, Miami-Dade County, Florida. Less and except that parcel taken on the East side as per case # 86-40255 recorded in Official Records Book 15074 at Page 1044 of the Public Records of Miami-Dade County, Florida, said Parcel described as follows:

That portion of the East 1/2, of the East 1/2, of the East 1/2, of the S.W. 1/4 of said Section 20, lying East of that certain boundary agreement line in case # 86-40255 recorded in Official Records Book 15074, at Page 1044 of the Public Records of Miami-Dade County, Florida.

Subject to any dedications, easements, restrictions, reservation and limitations of records.

PARCEL "D"

The East 1/2, of the East 1/2, of the N.W. 1/4 of Section 20, Township 55 South, Range 39 East, Miami-Dade County, Florida, lying South of the Centerline of a 100.00 feet Wide Easement for the Seaboard Coast Line Railroad Company, as recorded in Official Records Book 4331, at Page 282, and Official Records Book

4371, at Page 323, all of the Public Records of Miami-Dade County, Florida. Less and except that Parcel taken on the East side as per case # 86-40255 recorded in Official Records Book 15074, at Page 1044 of the Public Records of Miami-Dade County, Florida, said Parcel described as follows:

That portion of the East 1/2, of the East 1/2, of the N.W. 1/4 of said Section 20, lying South of the Centerline of the said 100.00 feet Wide Easement for the Seaboard Coast Line Railroad Company and lying East of that certain boundary agreement line in case # 86-40255 recorded in said or Book 15074, at Page 1044 of the Public Records of Miami-Dade County, Florida.
Subject to any dedications, easements, restrictions, reservation and limitations of records.

PARCEL "E"

The East 1/2, of the East 1/2, of the N.W. 1/4 of Section 20, Township 55 South, Range 39 East, Miami-Dade County, Florida, lying North of the Centerline of a 100.00 feet Wide Easement for the Seaboard Coast Line Railroad Company, as recorded in Official Records Book 4331, at Page 282, and Official Records Book 4371, at Page 323, all of the Public Records of Miami-Dade County, Florida. Less and except that Parcel taken on the East side as per case # 86-40255 recorded in Official Records Book 15074, at Page 1044 of the Public Records of Miami-Dade County, Florida, said Parcel described as follows:

That portion of the East 1/2, of the East 1/2, of the N.W. 1/4 of said Section 20, lying North of the Centerline of the said 100.00 feet Wide Easement for the Seaboard Coast Line Railroad Company and lying East of that certain boundary agreement line in case # 86-40255 recorded in said or Book 15074, at Page 1044 of the Public Records of Miami-Dade County, Florida.
Subject to any dedications, easements, restrictions, reservation and limitations of records.

PARCEL I

Section 19, Township 55 South, Range 39 East, less the Northwest Quarter (NW 1/4) of the Northwest Quarter (NW 1/4) thereof and road right(s) of way(s). Miami-Dade County, Florida.

PARCEL II

The North Half (N 1/2) of the Northwest Quarter (NW 1/4) of the Northwest Quarter (NW 1/4) of Section 19, Township 55 South, Range 39 East, located in Miami-Dade County, Florida.

PARCEL III

The South Half (S 1/2) of the Northwest Quarter (NW 1/4) of the Northwest Quarter (NW 1/4) of Section 19, Township 55 South, Range 39 East. Miami-Dade County.

LESS FROM ABOVE DESCRIBED PARCELS I, II AND III:

That portion of S.W. 177th AVENUE (Krome Avenue/State Road No. 997), lying West of the East Line of that certain Right-of-way dedication described in Official Records Book 29646, Page 3592, of the Public Records of Miami-Dade County, Florida;

Commence at the South 1/4 corner of Section 18 (The same being North 1/4 Corner of Section 19), Township 55 South, Range 39 East, Miami-Dade County, Florida, being a 1 1/2" diameter iron pipe, thence S85°54'31'W, along the South line of the Southwest 1/4 of said Section 18 for a distance of 2,472.81 feet to the Point of Beginning of the hereinafter described line; Thence S02°05'46"E for 7.32 feet; thence S02°03'00"E for 479.04 feet; thence S04°19'23"W for 179.96 feet; thence S02°03'27"E for 229.96 feet to the Point of Curvature of a circular curve to the right having a radius of 12,427.24 feet and a central angle of 04°34'54", thence Southerly along the Arc of said curve for an Arc distance of 993.76 feet to a Point of reverse curvature of a circular curve to the left having a radius of 22,917.00 feet and a central angle of 04°29'44", thence Southerly along the Arc of said curve for an Arc distance of 1,798.08 feet; thence S01°58'17"E for 1,635.46 feet to a point on the South line of the Southwest 1/4 of the aforesaid Section 19, said point lying 66.05 feet East of the Southwest Corner of said Section 19.

PARCEL IV

The West (W 1/2) of the West (W 1/2) of Section 20, Township 55 South, Range 39 East, Dade County, Florida.

LESS AND EXCEPT:

The Northeast Quarter (NE 1/4) of the Northwest Quarter (NW 1/4) of the Northwest Quarter (NW 1/4) of Section 20, Township 55 South, Range 39 East, lying and being in Miami-Dade County, Florida.

PARCEL V

The Northeast Quarter (NE 1/4) of the Northwest Quarter (NW 1/4) of the Northwest Quarter (NW 1/4 of Section 20, Township 55 South, Range 39 East, lying and being in Miami-Dade County, Florida.

EXHIBIT B – Developer Notice Regarding Continued Processing of DRI Application.

BERCOW RADELL FERNANDEZ & LARKIN
ZONING, LAND USE AND ENVIRONMENTAL LAW

Direct: 305-377-6220
E-Mail: JBercow@brzoninglaw.com

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

July 11, 2018

Jack Osterholt, AICP
Director
Department of Regulatory and Economic Resources
Miami-Dade County
111 NW 1st Street, 11th Floor
Miami, Florida 33128

Re: Parkland Development of Regional Impact (PH 2006-243) and 2007 Special Application to Amend the Miami-Dade County Comprehensive Development Master Plan (CDMP)

Dear Mr. Osterholt:

This law firm represents Krome Groves Land Trust, Edward Easton, Trustee, the applicant for the concurrent Development of Regional Impact and CDMP amendment application referenced above.

Pursuant to Section 380.06(12)(b)(2), F.S. (2018), the Krome Groves Land Trust hereby elects to have the captioned application reviewed pursuant to the provisions of Section 380.06(6), Florida Statutes, as it existed as of May 14, 2015. As required by Section 380.06(12)(b)(2), F.S. (2018), we are filing this written election with Miami-Dade County, the South Florida Regional Planning Council, and the Department of Economic Opportunity.

Please do not hesitate to call me should you have any questions regarding this matter.

Sincerely,

Jeffrey Bercow

cc: Nathan Kogon, AICP
Jerry Bell, AICP
Isabel Cossio Carballo, SFRPC
James Stansbury, DEO

EXHIBIT C – Applicable Statutes and Rules

West's Florida Statutes Annotated
Title XXVIII. Natural Resources; Conservation, Reclamation, and Use (Chapters 369-380)
Chapter 380. Land and Water Management (Refs & Annos)
Part I. Environmental Land and Water Management

This section has been updated. Click here for the updated version.

West's F.S.A. § 380.06

380.06. Developments of regional impact

Effective: May 14, 2015 to June 29, 2015

(1) Definition.--The term “development of regional impact,” as used in this section, means any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county.

(2) Statewide guidelines and standards.--

(a) The state land planning agency shall recommend to the Administration Commission specific statewide guidelines and standards for adoption pursuant to this subsection. The Administration Commission shall by rule adopt statewide guidelines and standards to be used in determining whether particular developments shall undergo development-of-regional-impact review. The statewide guidelines and standards previously adopted by the Administration Commission and approved by the Legislature shall remain in effect unless revised pursuant to this section or superseded by other provisions of law.

(b) In adopting its guidelines and standards, the Administration Commission shall consider and shall be guided by:

1. The extent to which the development would create or alleviate environmental problems such as air or water pollution or noise.

2. The amount of pedestrian or vehicular traffic likely to be generated.

3. The number of persons likely to be residents, employees, or otherwise present.

4. The size of the site to be occupied.

5. The likelihood that additional or subsidiary development will be generated.

6. The extent to which the development would create an additional demand for, or additional use of, energy, including the energy requirements of subsidiary developments.

7. The unique qualities of particular areas of the state.

(c) With regard to the changes in the guidelines and standards authorized pursuant to this act, in determining whether a proposed development must comply with the review requirements of this section, the state land planning agency shall apply the guidelines and standards which were in effect when the developer received authorization to commence development from the local government. If a developer has not received authorization to commence development from the local government prior to the effective date of new or amended guidelines and standards, the new or amended guidelines and standards shall apply.

(d) The guidelines and standards shall be applied as follows:

1. *Fixed thresholds.*--

a. A development that is below 100 percent of all numerical thresholds in the guidelines and standards is not required to undergo development-of-regional-impact review.

b. A development that is at or above 120 percent of any numerical threshold shall be required to undergo development-of-regional-impact review.

c. Projects certified under s. 403.973 which create at least 100 jobs and meet the criteria of the Department of Economic Opportunity as to their impact on an area's economy, employment, and prevailing wage and skill levels that are at or below 100 percent of the numerical thresholds for industrial plants, industrial parks, distribution, warehousing or wholesaling facilities, office development or multiuse projects other than residential, as described in s. 380.0651(3)(c) and (f) are not required to undergo development-of-regional-impact review.

2. *Rebuttable presumption.*--It shall be presumed that a development that is at 100 percent or between 100 and 120 percent of a numerical threshold shall be required to undergo development-of-regional-impact review.

(e) With respect to residential, hotel, motel, office, and retail developments, the applicable guidelines and standards shall be increased by 50 percent in urban central business districts and regional activity centers of jurisdictions whose local comprehensive plans are in compliance with part II of chapter 163. With respect to multiuse developments, the applicable individual use guidelines and standards for residential, hotel, motel, office, and retail developments and multiuse guidelines and standards shall be increased by 100 percent in urban central business districts and regional activity centers of jurisdictions whose local comprehensive plans are in compliance with part II of chapter 163, if one land use of the multiuse development is residential and amounts to not less than 35 percent of the jurisdiction's applicable residential threshold. With respect to resort or convention hotel developments, the applicable guidelines and standards shall be increased by 150 percent in urban central business districts and regional activity centers of jurisdictions whose local comprehensive plans are in compliance with part II of chapter 163 and where the increase is specifically for a proposed resort or convention hotel located in a county with a population greater than 500,000 and the local government specifically designates that the proposed resort or convention hotel development will serve an existing convention center of more than 250,000 gross square feet built before July 1, 1992. The applicable guidelines and standards shall be increased by 150 percent for development in any area designated by the Governor as a rural area of opportunity pursuant to s. 288.0656 during the effectiveness of the designation.

(3) Variation of thresholds in statewide guidelines and standards.--The state land planning agency, a regional planning agency, or a local government may petition the Administration Commission to increase or decrease the numerical thresholds of any statewide guideline and standard. The state land planning agency or the regional planning agency may petition for an increase or decrease for a particular local government's jurisdiction or a part of a particular jurisdiction. A local government may petition for an increase or decrease within its jurisdiction or a part of its jurisdiction. A number of requests may be combined in a single petition.

(a) When a petition is filed, the state land planning agency shall have no more than 180 days to prepare and submit to the Administration Commission a report and recommendations on the proposed variation. The report shall evaluate, and the Administration Commission shall consider, the following criteria:

1. Whether the local government has adopted and effectively implemented a comprehensive plan that reflects and implements the goals and objectives of an adopted state comprehensive plan.

2. Any applicable policies in an adopted strategic regional policy plan.

3. Whether the local government has adopted and effectively implemented both a comprehensive set of land development regulations, which regulations shall include a planned unit development ordinance, and a capital improvements plan that are consistent with the local government comprehensive plan.

4. Whether the local government has adopted and effectively implemented the authority and the fiscal mechanisms for requiring developers to meet development order conditions.

5. Whether the local government has adopted and effectively implemented and enforced satisfactory development review procedures.

(b) The affected regional planning agency, adjoining local governments, and the local government shall be given a reasonable opportunity to submit recommendations to the Administration Commission regarding any such proposed variations.

(c) The Administration Commission shall have authority to increase or decrease a threshold in the statewide guidelines and standards up to 50 percent above or below the statewide presumptive threshold. The commission may from time to time reconsider changed thresholds and make additional variations as it deems necessary.

(d) The Administration Commission shall adopt rules setting forth the procedures for submission and review of petitions filed pursuant to this subsection.

(e) Variations to guidelines and standards adopted by the Administration Commission under this subsection shall be transmitted on or before March 1 to the President of the Senate and the Speaker of the House of Representatives for presentation at the next regular session of the Legislature. Unless approved as submitted by general law, the revisions shall not become effective.

(4) Binding letter.--

(a) If any developer is in doubt whether his or her proposed development must undergo development-of-regional-impact review under the guidelines and standards, whether his or her rights have vested pursuant to subsection (20), or whether a proposed substantial change to a development of regional impact concerning which rights had previously vested pursuant to subsection (20) would divest such rights, the developer may request a determination from the state land planning agency. The developer or the appropriate local government having jurisdiction may request that the state land planning agency determine whether the amount of development that remains to be built in an approved development of regional impact meets the criteria of subparagraph (15)(g)3.

(b) Unless a developer waives the requirements of this paragraph by agreeing to undergo development-of-regional-impact review pursuant to this section, the state land planning agency or local government with jurisdiction over the land on which a development is proposed may require a developer to obtain a binding letter if the development is at a presumptive numerical threshold or up to 20 percent above a numerical threshold in the guidelines and standards.

(c) Any local government may petition the state land planning agency to require a developer of a development located in an adjacent jurisdiction to obtain a binding letter of interpretation. The petition shall contain facts to support a finding that the development as proposed is a development of regional impact. This paragraph shall not be construed to grant standing to the petitioning local government to initiate an administrative or judicial proceeding pursuant to this chapter.

(d) A request for a binding letter of interpretation shall be in writing and in such form and content as prescribed by the state land planning agency. Within 15 days of receiving an application for a binding letter of interpretation or a supplement to a pending application, the state land planning agency shall determine and notify the applicant whether the information in the application is sufficient to enable the agency to issue a binding letter or shall request any additional information needed. The applicant shall either provide the additional information requested or shall notify the state land planning agency in writing that the information will not be supplied and the reasons therefor. If the applicant does not respond to the request for additional information within 120 days, the application for a binding letter of interpretation shall be deemed to be withdrawn. Within 35 days after acknowledging receipt of a sufficient application, or of receiving notification that the information will not be supplied, the state land planning agency shall issue a binding letter of interpretation with respect to the proposed development. A binding letter of interpretation issued by the state land planning agency shall bind all state, regional, and local agencies, as well as the developer.

(e) In determining whether a proposed substantial change to a development of regional impact concerning which rights had previously vested pursuant to subsection (20) would divest such rights, the state land planning agency shall review the proposed change within the context of:

1. Criteria specified in paragraph (19)(b);

2. Its conformance with any adopted state comprehensive plan and any rules of the state land planning agency;

3. All rights and obligations arising out of the vested status of such development;

4. Permit conditions or requirements imposed by the Department of Environmental Protection or any water management district created by s. 373.069 or any of their successor agencies or by any appropriate federal regulatory agency; and

5. Any regional impacts arising from the proposed change.

(f) If a proposed substantial change to a development of regional impact concerning which rights had previously vested pursuant to subsection (20) would result in reduced regional impacts, the change shall not divest rights to complete the development pursuant to subsection (20). Furthermore, where all or a portion of the development of regional impact for which rights had previously vested pursuant to subsection (20) is demolished and reconstructed within the same approximate footprint of buildings and parking lots, so that any change in the size of the development does not exceed the criteria of paragraph (19)(b), such demolition and reconstruction shall not divest the rights which had vested.

(g) Every binding letter determining that a proposed development is not a development of regional impact, but not including binding letters of vested rights or of modification of vested rights, shall expire and become void unless the plan of development has been substantially commenced within:

1. Three years from October 1, 1985, for binding letters issued prior to the effective date of this act; or

2. Three years from the date of issuance of binding letters issued on or after October 1, 1985.

(h) The expiration date of a binding letter, established pursuant to paragraph (g), shall begin to run after final disposition of all administrative and judicial appeals of the binding letter and may be extended by mutual agreement of the state land planning agency, the local government of jurisdiction, and the developer.

(i) In response to an inquiry from a developer or the appropriate local government having jurisdiction, the state land planning agency may issue an informal determination in the form of a clearance letter as to whether a development is required to undergo development-of-regional-impact review or whether the amount of development that remains to be built in an approved development of regional impact meets the criteria of subparagraph (15)(g)3. A clearance letter may be based solely on the information provided by the developer, and the state land planning agency is not required to conduct an investigation of that information. If any material information provided by the developer is incomplete or inaccurate, the clearance letter is not binding upon the state land planning agency. A clearance letter does not constitute final agency action.

(5) Authorization to develop.--

(a) 1. A developer who is required to undergo development-of-regional-impact review may undertake a development of regional impact if the development has been approved under the requirements of this section.

2. If the land on which the development is proposed is within an area of critical state concern, the development must also be approved under the requirements of s. 380.05.

(b) State or regional agencies may inquire whether a proposed project is undergoing or will be required to undergo development-of-regional-impact review. If a project is undergoing or will be required to undergo development-of-regional-impact review, any state or regional permit necessary for the construction or operation of the project that is valid for 5 years or less shall take effect, and the period of time for which the permit is valid shall begin to run, upon expiration of the time allowed for an administrative appeal of the development or upon final action following an administrative appeal or judicial review, whichever is later. However, if the application for development approval is not filed within 18 months after the issuance of the permit, the time of validity of the permit shall be considered to be from the date of issuance of the permit. If a project is required to obtain a binding letter under subsection (4), any state or regional agency permit necessary for the construction or operation of the project that is valid for 5 years or less shall take effect, and the period of time for which the permit is valid shall begin to run, only after the developer obtains a binding letter stating that the project is not required to undergo development-of-regional-impact review or after the developer obtains a development order pursuant to this section.

(c) Prior to the issuance of a final development order, the developer may elect to be bound by the rules adopted pursuant to chapters 373 and 403 in effect when such development order is issued. The rules adopted pursuant to chapters 373 and 403 in effect at the time such development order is issued shall be applicable to all applications for permits pursuant to those chapters and which are necessary for and consistent with the development authorized in such development order, except that a later adopted rule shall be applicable to an application if:

1. The later adopted rule is determined by the rule-adopting agency to be essential to the public health, safety, or welfare;

2. The later adopted rule is adopted pursuant to s. 403.061(27);

3. The later adopted rule is being adopted pursuant to a subsequently enacted statutorily mandated program;

4. The later adopted rule is mandated in order for the state to maintain delegation of a federal program; or

5. The later adopted rule is required by state or federal law.

(d) The provision of day care service facilities in developments approved pursuant to this section is permissible but is not required.

Further, in order for any developer to apply for permits pursuant to this provision, the application must be filed within 5 years from the issuance of the final development order and the permit shall not be effective for more than 8 years from the issuance of the final development order. Nothing in this paragraph shall be construed to alter or change any permitting agency's authority to approve permits or to determine applicable criteria for longer periods of time.

(6) Application for approval of development; concurrent plan amendments.--

(a) Prior to undertaking any development, a developer that is required to undergo development-of-regional-impact review shall file an application for development approval with the appropriate local government having jurisdiction. The application shall contain, in addition to such other matters as may be required, a statement that the developer proposes to undertake a development of regional impact as required under this section.

(b) Any local government comprehensive plan amendments related to a proposed development of regional impact, including any changes proposed under subsection (19), may be initiated by a local planning agency or the developer and must be considered by the local governing body at the same time as the application for development approval using the procedures provided for local plan amendment in s. 163.3184 and applicable local ordinances, without regard to local limits on the frequency of consideration of amendments to the local comprehensive plan. This paragraph does not require favorable consideration of a plan amendment solely because it is related to a development of regional impact. The procedure for processing such comprehensive plan amendments is as follows:

1. If a developer seeks a comprehensive plan amendment related to a development of regional impact, the developer must so notify in writing the regional planning agency, the applicable local government, and the state land planning agency no later than the date of preapplication conference or the submission of the proposed change under subsection (19).

2. When filing the application for development approval or the proposed change, the developer must include a written request for comprehensive plan amendments that would be necessitated by the development-of-regional-impact approvals sought. That request must include data and analysis upon which the applicable local government can determine whether to transmit the comprehensive plan amendment pursuant to s. 163.3184.

3. The local government must advertise a public hearing on the transmittal within 30 days after filing the application for development approval or the proposed change and must make a determination on the transmittal within 60 days after the initial filing unless that time is extended by the developer.

4. If the local government approves the transmittal, procedures set forth in s. 163.3184[1] must be followed.

<Text of subsec. (6)(b)5. amended by Laws 2012, c. 2012-96, § 60. >

5. Notwithstanding subsection (11) or subsection (19), the local government may not hold a public hearing on the application for development approval or the proposed change or on the comprehensive plan amendments sooner than 30 days after receipt of the response from the state land planning agency pursuant to s. 163.3184(3)(c) 1.

<Text of subsec. (6)(b)5. amended by Laws 2012, c. 2012-99, § 17. >

5. Notwithstanding subsection (11) or subsection (19), the local government may not hold a public hearing on the application for development approval or the proposed change or on the comprehensive plan amendments sooner than 30 days after reviewing agency comments are due to the local government pursuant to s. 163.3184.

6. The local government must hear both the application for development approval or the proposed change and the comprehensive plan amendments at the same hearing. However, the local government must take action separately on the application for development approval or the proposed change and on the comprehensive plan amendments.

7. Thereafter, the appeal process for the local government development order must follow the provisions of s. 380.07, and the compliance process for the comprehensive plan amendments must follow the provisions of s. 163.3184.

(7) Preapplication procedures.--

(a) Before filing an application for development approval, the developer shall contact the regional planning agency having jurisdiction over the proposed development to arrange a preapplication conference. Upon the request of the developer or the regional planning agency, other affected state and regional agencies shall participate in this conference and shall identify the types of permits issued by the agencies, the level of information required, and the permit issuance procedures as applied to the proposed development. The levels of service required in the transportation methodology shall be the same levels of service used to evaluate concurrency in accordance with s. 163.3180. The regional planning agency shall provide the developer information about the development-of-regional-impact process and the use of preapplication conferences to identify issues, coordinate appropriate state and local agency requirements, and otherwise promote a proper and efficient review of the proposed development. If an agreement is reached regarding assumptions and methodology to be used in the application for development approval, the reviewing agencies may not subsequently object to those assumptions and methodologies unless subsequent changes to the project or information obtained during the review make those assumptions and methodologies inappropriate. The reviewing agencies may make only recommendations or comments regarding a proposed development which are consistent with the statutes, rules, or adopted local government ordinances that are applicable to developments in the jurisdiction where the proposed development is located.

(b) The regional planning agency shall establish by rule a procedure by which a developer may enter into binding written agreements with the regional planning agency to eliminate questions from the application for development approval when those questions are found to be unnecessary for development-of-regional-impact review. It is the legislative intent of this subsection to encourage reduction of paperwork, to discourage unnecessary gathering of data, and to encourage the coordination of the development-of-regional-impact review process with federal, state, and local environmental reviews when such reviews are required by law.

(c) If the application for development approval is not submitted within 1 year after the date of the preapplication conference, the regional planning agency, the local government having jurisdiction, or the applicant may request that another preapplication conference be held.

(8) Preliminary development agreements.--

(a) A developer may enter into a written preliminary development agreement with the state land planning agency to allow a developer to proceed with a limited amount of the total proposed development, subject to all other governmental approvals and solely at the developer's own risk, prior to issuance of a final development order. All owners of the land in the total proposed development shall join the developer as parties to the agreement. Each agreement shall include and be subject to the following conditions:

1. The developer shall comply with the preapplication conference requirements pursuant to subsection (7) within 45 days after the execution of the agreement.

2. The developer shall file an application for development approval for the total proposed development within 3 months after execution of the agreement, unless the state land planning agency agrees to a different time for good cause shown. Failure to timely file an application and to otherwise diligently proceed in good faith to obtain a final development order shall constitute a breach of the preliminary development agreement.

3. The agreement shall include maps and legal descriptions of both the preliminary development area and the total proposed development area and shall specifically describe the preliminary development in terms of magnitude and location. The area approved for preliminary development must be included in the application for development approval and shall be subject to the terms and conditions of the final development order.

4. The preliminary development shall be limited to lands that the state land planning agency agrees are suitable for development and shall only be allowed in areas where adequate public infrastructure exists to accommodate the preliminary development, when such development will utilize public infrastructure. The developer must also demonstrate that the preliminary development will not result in material adverse impacts to existing resources or existing or planned facilities.

5. The preliminary development agreement may allow development which is:

a. Less than 100 percent[2] of any applicable threshold if the developer demonstrates that such development is consistent with subparagraph 4.; or

b. Less than 120 percent of any applicable threshold if the developer demonstrates that such development is part of a proposed downtown development of regional impact specified in subsection (22) or part of any areawide development of regional impact specified in subsection (25) and that the development is consistent with subparagraph 4.

6. The developer and owners of the land may not claim vested rights, or assert equitable estoppel, arising from the agreement or any expenditures or actions taken in reliance on the agreement to continue with the total proposed development beyond the preliminary development. The agreement shall not entitle the developer to a final development order approving the total proposed development or to particular conditions in a final development order.

7. The agreement shall not prohibit the regional planning agency from reviewing or commenting on any regional issue that the regional agency determines should be included in the regional agency's report on the application for development approval.

8. The agreement shall include a disclosure by the developer and all the owners of the land in the total proposed development of all land or development within 5 miles of the total proposed development in which they have an interest and shall describe such interest.

9. In the event of a breach of the agreement or failure to comply with any condition of the agreement, or if the agreement was based on materially inaccurate information, the state land planning agency may terminate the agreement or file suit to enforce the agreement as provided in this section and s. 380.11, including a suit to enjoin all development.

10. A notice of the preliminary development agreement shall be recorded by the developer in accordance with s. 28.222 with the clerk of the circuit court for each county in which land covered by the terms of the agreement is located. The notice shall include a legal description of the land covered by the agreement and shall state the parties to the agreement, the date of adoption of the agreement and any subsequent amendments, the location where the agreement may be examined, and that the agreement constitutes a land development regulation applicable to portions of the land covered by the agreement. The provisions of the agreement shall inure to the benefit of and be binding upon successors and assigns of the parties in the agreement.

11. Except for those agreements which authorize preliminary development for substantial deviations pursuant to subsection (19), a developer who no longer wishes to pursue a development of regional impact may propose to abandon any preliminary development agreement executed after January 1, 1985, including those pursuant to s. 380.032(3), provided at the time of abandonment:

a. A final development order under this section has been rendered that approves all of the development actually constructed; or

b. The amount of development is less than 100 percent of all numerical thresholds of the guidelines and standards, and the state land planning agency determines in writing that the development to date is in compliance with all applicable local regulations and the terms and conditions of the preliminary development agreement and otherwise adequately mitigates for the impacts of the development to date.

In either event, when a developer proposes to abandon said agreement, the developer shall give written notice and state that he or she is no longer proposing a development of regional impact and provide adequate documentation that he or she has met the criteria for abandonment of the agreement to the state land planning agency. Within 30 days of receipt of adequate documentation of such notice, the state land planning agency shall make its determination as to whether or not the developer meets the criteria for abandonment. Once the state land planning agency determines that the developer meets the criteria for abandonment, the state land planning agency shall issue a notice of abandonment which shall be recorded by the developer in accordance with s. 28.222 with the clerk of the circuit court for each county in which land covered by the terms of the agreement is located.

(b) The state land planning agency may enter into other types of agreements to effectuate the provisions of this act as provided in s. 380.032.

(c) The provisions of this subsection shall also be available to a developer who chooses to seek development approval of a Florida Quality Development pursuant to s. 380.061.

(9) Conceptual agency review.--

(a) 1. In order to facilitate the planning and preparation of permit applications for projects that undergo development-of-regional-impact review, and in order to coordinate the information required to issue such permits, a developer may elect to request conceptual agency review under this subsection either concurrently with development-of-regional-impact review and comprehensive plan amendments, if applicable, or subsequent to a preapplication conference held pursuant to subsection (7).

2. "Conceptual agency review" means general review of the proposed location, densities, intensity of use, character, and major design features of a proposed development required to undergo review under this section for the purpose of considering whether these aspects of the proposed development comply with the issuing agency's statutes and rules.

3. Conceptual agency review is a licensing action subject to chapter 120, and approval or denial constitutes final agency action, except that the 90-day time period specified in s. 120.60(1) shall be tolled for the agency when the affected regional planning agency requests information from the developer pursuant to paragraph (10)(b). If proposed agency action on the conceptual approval is the subject of a proceeding under ss. 120.569 and 120.57, final agency action shall be conclusive as to any issues actually raised and adjudicated in the proceeding, and such issues may not be raised in any subsequent proceeding under ss. 120.569 and 120.57 on the proposed development by any parties to the prior proceeding.

4. A conceptual agency review approval shall be valid for up to 10 years, unless otherwise provided in a state or regional agency rule, and may be reviewed and reissued for additional periods of time under procedures established by the agency.

(b) The Department of Environmental Protection, each water management district, and each other state or regional agency that requires construction or operation permits shall establish by rule a set of procedures necessary for conceptual agency review for the following permitting activities within their respective regulatory jurisdictions:

1. The construction and operation of potential sources of water pollution, including industrial wastewater, domestic wastewater, and stormwater.

2. Dredging and filling activities.

3. The management and storage of surface waters.

4. The construction and operation of works of the district, only if a conceptual agency review approval is requested under subparagraph 3.

Any state or regional agency may establish rules for conceptual agency review for any other permitting activities within its respective regulatory jurisdiction.

(c) 1. Each agency participating in conceptual agency reviews shall determine and establish by rule its information and application requirements and furnish these requirements to the state land planning agency and to any developer seeking conceptual agency review under this subsection.

2. Each agency shall cooperate with the state land planning agency to standardize, to the extent possible, review procedures, data requirements, and data collection methodologies among all participating agencies, consistent with the requirements of the statutes that establish the permitting programs for each agency.

(d) At the conclusion of the conceptual agency review, the agency shall give notice of its proposed agency action as required by s. 120.60(3) and shall forward a copy of the notice to the appropriate regional planning council with a report setting out the agency's conclusions on potential development impacts and stating whether the agency intends to grant conceptual approval, with or without conditions, or to deny conceptual approval. If the agency intends to deny conceptual approval, the report shall state the reasons therefor. The agency may require the developer to publish notice of proposed agency action in accordance with s. 403.815.

(e) An agency's decision to grant conceptual approval shall not relieve the developer of the requirement to obtain a permit and to meet the standards for issuance of a construction or operation permit or to meet the agency's information requirements for such a permit. Nevertheless, there shall be a rebuttable presumption that the developer is entitled to receive a construction or operation permit for an activity for which the agency granted conceptual review approval, to the extent that the project for which the applicant seeks a permit is in accordance with the conceptual approval and with the agency's standards and criteria for issuing a construction or operation permit. The agency may revoke or appropriately modify a valid conceptual approval if the agency shows:

1. That an applicant or his or her agent has submitted materially false or inaccurate information in the application for conceptual approval;

2. That the developer has violated a condition of the conceptual approval; or

3. That the development will cause a violation of the agency's applicable laws or rules.

(f) Nothing contained in this subsection shall modify or abridge the law of vested rights or estoppel.

(g) Nothing contained in this subsection shall be construed to preclude an agency from adopting rules for conceptual review for developments which are not developments of regional impact.

(10) Application; sufficiency.--

(a) When an application for development approval is filed with a local government, the developer shall also send copies of the application to the appropriate regional planning agency and the state land planning agency.

(b) If a regional planning agency determines that the application for development approval is insufficient for the agency to discharge its responsibilities under subsection (12), it shall provide in writing to the appropriate local government and the applicant a statement of any additional information desired within 30 days of the receipt of the application by the regional planning agency. The applicant may supply the information requested by the regional planning agency and shall communicate its intention to do so in writing to the appropriate local government and the regional planning agency within 5 working days of the receipt of the statement requesting such information, or the applicant shall notify the appropriate local government and the regional planning agency in writing that the requested information will not be supplied. Within 30 days after receipt of such additional information, the regional planning agency shall review it and may request only that information needed to clarify the additional information or to answer new questions raised by, or directly related to, the additional information. The regional planning agency may request additional information no more than twice, unless the developer waives this limitation. If an applicant does not provide the information requested by a regional planning agency within 120 days of its request, or within a time agreed upon by the applicant and the regional planning agency, the application shall be considered withdrawn.

(c) The regional planning agency shall notify the local government that a public hearing date may be set when the regional planning agency determines that the application is sufficient or when it receives notification from the developer that the additional requested information will not be supplied, as provided for in paragraph (b).

(11) Local notice.--Upon receipt of the sufficiency notification from the regional planning agency required by paragraph (10)(c), the appropriate local government shall give notice and hold a public hearing on the application in the same manner as for a rezoning as provided under the appropriate special or local law or ordinance, except that such hearing proceedings shall be recorded by tape or a certified court reporter and made available for transcription at the expense of any interested party. When a development of regional impact is proposed within the jurisdiction of more than one local government, the local governments, at the request of the developer, may hold a joint public hearing. The local government shall comply with the following additional requirements:

(a) The notice of public hearing shall state that the proposed development is undergoing a development-of-regional-impact review.

(b) The notice shall be published at least 60 days in advance of the hearing and shall specify where the information and reports on the development-of-regional-impact application may be reviewed.

(c) The notice shall be given to the state land planning agency, to the applicable regional planning agency, to any state or regional permitting agency participating in a conceptual agency review process under subsection (9), and to such other persons as may have been designated by the state land planning agency as entitled to receive such notices.

(d) A public hearing date shall be set by the appropriate local government at the next scheduled meeting. The public hearing shall be held no later than 90 days after issuance of notice by the regional planning agency that a public hearing may be set, unless an extension is requested by the applicant.

(12) Regional reports.--

(a) Within 50 days after receipt of the notice of public hearing required in paragraph (11)(c), the regional planning agency, if one has been designated for the area including the local government, shall prepare and submit to the local government a report and recommendations on the regional impact of the proposed development. In preparing its report and recommendations, the regional planning agency shall identify regional issues based upon the following review criteria and make recommendations to the local government on these regional issues, specifically considering whether, and the extent to which:

1. The development will have a favorable or unfavorable impact on state or regional resources or facilities identified in the applicable state or regional plans. As used in this subsection, the term “applicable state plan” means the state comprehensive plan. As used in this subsection, the term “applicable regional plan” means an adopted strategic regional policy plan.

2. The development will significantly impact adjacent jurisdictions. At the request of the appropriate local government, regional planning agencies may also review and comment upon issues that affect only the requesting local government.

3. As one of the issues considered in the review in subparagraphs 1. and 2., the development will favorably or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment if the regional planning agency has adopted an affordable housing policy as part of its strategic regional policy plan. The determination should take into account information on factors that are relevant to the availability of reasonably accessible adequate housing. Adequate housing means housing that is available for occupancy and that is not substandard.

(b) The regional planning agency report must contain recommendations that are consistent with the standards required by the applicable state permitting agencies or the water management district.

(c) At the request of the regional planning agency, other appropriate agencies shall review the proposed development and shall prepare reports and recommendations on issues that are clearly within the jurisdiction of those agencies. Such agency reports shall become part of the regional planning agency report; however, the regional planning agency may attach dissenting views. When water management district and Department of Environmental Protection permits have been issued pursuant to chapter 373 or chapter 403, the regional planning council may comment on the regional implications of the permits but may not offer conflicting recommendations.

(d) The regional planning agency shall afford the developer or any substantially affected party reasonable opportunity to present evidence to the regional planning agency head relating to the proposed regional agency report and recommendations.

(e) If the location of a proposed development involves land within the boundaries of multiple regional planning councils, the state land planning agency shall designate a lead regional planning council. The lead regional planning council shall prepare the regional report.

(13) Criteria in areas of critical state concern.--If the development is in an area of critical state concern, the local government shall approve it only if it complies with the land development regulations therefor under s. 380.05 and the provisions of this section. The provisions of this section shall not apply to developments in areas of critical state concern which had pending applications and had been noticed or agendaed by local government after September 1, 1985, and before October 1, 1985, for development order approval. In all such cases, the state land planning agency may consider and address applicable regional issues contained in subsection (12) as part of its area-of-critical-state-concern review pursuant to ss. 380.05, 380.07, and 380.11.

(14) Criteria outside areas of critical state concern.--If the development is not located in an area of critical state concern, in considering whether the development shall be approved, denied, or approved subject to conditions, restrictions, or limitations, the local government shall consider whether, and the extent to which:

(a) The development is consistent with the local comprehensive plan and local land development regulations;

(b) The development is consistent with the report and recommendations of the regional planning agency submitted pursuant to subsection (12); and

(c) The development is consistent with the State Comprehensive Plan. In consistency determinations the plan shall be construed and applied in accordance with s. 187.101(3).

(15) Local government development order.--

(a) The appropriate local government shall render a decision on the application within 30 days after the hearing unless an extension is requested by the developer.

(b) When possible, local governments shall issue development orders concurrently with any other local permits or development approvals that may be applicable to the proposed development.

(c) The development order shall include findings of fact and conclusions of law consistent with subsections (13) and (14). The development order:

1. Shall specify the monitoring procedures and the local official responsible for assuring compliance by the developer with the development order.

2. Shall establish compliance dates for the development order, including a deadline for commencing physical development and for compliance with conditions of approval or phasing requirements, and shall include a buildout date that reasonably reflects the time anticipated to complete the development.

3. Shall establish a date until which the local government agrees that the approved development of regional impact shall not be subject to downzoning, unit density reduction, or intensity reduction, unless the local government can demonstrate that substantial changes in the conditions underlying the approval of the development order have occurred or the development order was based on substantially inaccurate information provided by the developer or that the change is clearly established by local government to be essential to the public health, safety, or welfare. The date established pursuant to this subparagraph shall be no sooner than the buildout date of the project.

4. Shall specify the requirements for the biennial report designated under subsection (18), including the date of submission, parties to whom the report is submitted, and contents of the report, based upon the rules adopted by the state land planning agency. Such rules shall specify the scope of any additional local requirements that may be necessary for the report.

5. May specify the types of changes to the development which shall require submission for a substantial deviation determination or a notice of proposed change under subsection (19).

6. Shall include a legal description of the property.

(d) Conditions of a development order that require a developer to contribute land for a public facility or construct, expand, or pay for land acquisition or construction or expansion of a public facility, or portion thereof, shall meet the following criteria:

1. The need to construct new facilities or add to the present system of public facilities must be reasonably attributable to the proposed development.

2. Any contribution of funds, land, or public facilities required from the developer shall be comparable to the amount of funds, land, or public facilities that the state or the local government would reasonably expect to expend or provide, based on projected costs of comparable projects, to mitigate the impacts reasonably attributable to the proposed development.

3. Any funds or lands contributed must be expressly designated and used to mitigate impacts reasonably attributable to the proposed development.

4. Construction or expansion of a public facility by a nongovernmental developer as a condition of a development order to mitigate the impacts reasonably attributable to the proposed development is not subject to competitive bidding or competitive negotiation for selection of a contractor or design professional for any part of the construction or design.

(e) 1. A local government shall not include, as a development order condition for a development of regional impact, any requirement that a developer contribute or pay for land acquisition or construction or expansion of public facilities or portions thereof unless the local government has enacted a local ordinance which requires other development not subject to this section to contribute its proportionate share of the funds, land, or public facilities necessary to accommodate any impacts having a rational nexus to the proposed development, and the need to construct new facilities or add to the present system of public facilities must be reasonably attributable to the proposed development.

2. A local government shall not approve a development of regional impact that does not make adequate provision for the public facilities needed to accommodate the impacts of the proposed development unless the local government includes in the development order a commitment by the local government to provide these facilities consistently with the development schedule approved in the development order; however, a local government's failure to meet the requirements of subparagraph 1. and this subparagraph shall not preclude the issuance of a development order where adequate provision is made by the developer for the public facilities needed to accommodate the impacts of the proposed development. Any funds or lands contributed by a developer must be expressly designated and used to accommodate impacts reasonably attributable to the proposed development.

3. The Department of Economic Opportunity and other state and regional agencies involved in the administration and implementation of this act shall cooperate and work with units of local government in preparing and adopting local impact fee and other contribution ordinances.

(f) Notice of the adoption of a development order or the subsequent amendments to an adopted development order shall be recorded by the developer, in accordance with s. 28.222, with the clerk of the circuit court for each county in which the development is located. The notice shall include a legal description of the property covered by the order and shall state which unit of local government adopted the development order, the date of adoption, the date of adoption of any amendments to the development order, the location where the adopted order with any amendments may be examined, and that the development order constitutes a land development regulation applicable to the property. The recording of this notice shall not constitute a lien, cloud, or encumbrance on real property, or actual or constructive notice of any such lien, cloud, or encumbrance. This paragraph applies only to developments initially approved under this section after July 1, 1980.

(g) A local government shall not issue permits for development subsequent to the buildout date contained in the development order unless:

1. The proposed development has been evaluated cumulatively with existing development under the substantial deviation provisions of subsection (19) subsequent to the termination or expiration date;

2. The proposed development is consistent with an abandonment of development order that has been issued in accordance with the provisions of subsection (26);

3. The development of regional impact is essentially built out, in that all the mitigation requirements in the development order have been satisfied, all developers are in compliance with all applicable terms and conditions of the development order except

the buildout date, and the amount of proposed development that remains to be built is less than 40 percent of any applicable development-of-regional-impact threshold; or

4. The project has been determined to be an essentially built-out development of regional impact through an agreement executed by the developer, the state land planning agency, and the local government, in accordance with s. 380.032, which will establish the terms and conditions under which the development may be continued. If the project is determined to be essentially built out, development may proceed pursuant to the s. 380.032 agreement after the termination or expiration date contained in the development order without further development-of-regional-impact review subject to the local government comprehensive plan and land development regulations or subject to a modified development-of-regional-impact analysis. As used in this paragraph, an "essentially built-out" development of regional impact means:

a. The developers are in compliance with all applicable terms and conditions of the development order except the buildout date; and

b. (I) The amount of development that remains to be built is less than the substantial deviation threshold specified in paragraph (19)(b) for each individual land use category, or, for a multiuse development, the sum total of all unbuilt land uses as a percentage of the applicable substantial deviation threshold is equal to or less than 100 percent; or

(II) The state land planning agency and the local government have agreed in writing that the amount of development to be built does not create the likelihood of any additional regional impact not previously reviewed.

The single-family residential portions of a development may be considered "essentially built out" if all of the workforce housing obligations and all of the infrastructure and horizontal development have been completed, at least 50 percent of the dwelling units have been completed, and more than 80 percent of the lots have been conveyed to third-party individual lot owners or to individual builders who own no more than 40 lots at the time of the determination. The mobile home park portions of a development may be considered "essentially built out" if all the infrastructure and horizontal development has been completed, and at least 50 percent of the lots are leased to individual mobile home owners.

(h) If the property is annexed by another local jurisdiction, the annexing jurisdiction shall adopt a new development order that incorporates all previous rights and obligations specified in the prior development order.

(16) Credits against local impact fees.--

(a) If the development order requires the developer to contribute land or a public facility or construct, expand, or pay for land acquisition or construction or expansion of a public facility, or portion thereof, and the developer is also subject by local ordinance to impact fees or exactions to meet the same needs, the local government shall establish and implement a procedure that credits a development order exaction or fee toward an impact fee or exaction imposed by local ordinance for the same need; however, if the Florida Land and Water Adjudicatory Commission imposes any additional requirement, the local government shall not be required to grant a credit toward the local exaction or impact fee unless the local government determines that such required contribution, payment, or construction meets the same need that the local exaction or impact fee would address. The nongovernmental developer need not be required, by virtue of this credit, to competitively bid or negotiate any part of the construction or design of the facility, unless otherwise requested by the local government.

(b) If the local government imposes or increases an impact fee or exaction by local ordinance after a development order has been issued, the developer may petition the local government, and the local government shall modify the affected provisions of the development order to give the developer credit for any contribution of land for a public facility, or construction, expansion, or contribution of funds for land acquisition or construction or expansion of a public facility, or a portion thereof, required by the development order toward an impact fee or exaction for the same need.

(c) The local government and the developer may enter into capital contribution front-ending agreements as part of a development-of-regional-impact development order to reimburse the developer, or the developer's successor, for voluntary contributions paid in excess of his or her fair share.

(d) This subsection does not apply to internal, onsite facilities required by local regulations or to any offsite facilities to the extent such facilities are necessary to provide safe and adequate services to the development.

(17) Local monitoring.--The local government issuing the development order is primarily responsible for monitoring the development and enforcing the provisions of the development order. Local governments shall not issue any permits or approvals or provide any extensions of services if the developer fails to act in substantial compliance with the development order.

(18) Biennial reports.--The developer shall submit a biennial report on the development of regional impact to the local government, the regional planning agency, the state land planning agency, and all affected permit agencies in alternate years on the date specified in the development order, unless the development order by its terms requires more frequent monitoring. If the report is not received, the state land planning agency shall notify the local government. If the local government does not receive the report or receives notification that the state land planning agency has not received the report, the local government shall request in writing that the developer submit the report within 30 days. The failure to submit the report after 30 days shall result in the temporary suspension of the development order by the local government. If no additional development pursuant to the development order has occurred since the submission of the previous report, then a letter from the developer stating that no development has occurred shall satisfy the requirement for a report. Development orders that require annual reports may be amended to require biennial reports at the option of the local government.

(19) Substantial deviations.--

(a) Any proposed change to a previously approved development which creates a reasonable likelihood of additional regional impact, or any type of regional impact created by the change not previously reviewed by the regional planning agency, shall constitute a substantial deviation and shall cause the proposed change to be subject to further development-of-regional-impact review. There are a variety of reasons why a developer may wish to propose changes to an approved development of regional impact, including changed market conditions. The procedures set forth in this subsection are for that purpose.

(b) Any proposed change to a previously approved development of regional impact or development order condition which, either individually or cumulatively with other changes, exceeds any of the following criteria shall constitute a substantial deviation and shall cause the development to be subject to further development-of-regional-impact review without the necessity for a finding of same by the local government:

1. An increase in the number of parking spaces at an attraction or recreational facility by 15 percent or 500 spaces, whichever is greater, or an increase in the number of spectators that may be accommodated at such a facility by 15 percent or 1,500 spectators, whichever is greater.

2. A new runway, a new terminal facility, a 25 percent lengthening of an existing runway, or a 25 percent increase in the number of gates of an existing terminal, but only if the increase adds at least three additional gates.

3. An increase in land area for office development by 15 percent or an increase of gross floor area of office development by 15 percent or 100,000 gross square feet, whichever is greater.

4. An increase in the number of dwelling units by 10 percent or 55 dwelling units, whichever is greater.

5. An increase in the number of dwelling units by 50 percent or 200 units, whichever is greater, provided that 15 percent of the proposed additional dwelling units are dedicated to affordable workforce housing, subject to a recorded land use restriction that shall be for a period of not less than 20 years and that includes resale provisions to ensure long-term affordability for income-eligible homeowners and renters and provisions for the workforce housing to be commenced prior to the completion of 50 percent of the market rate dwelling. For purposes of this subparagraph, the term “affordable workforce housing” means housing that is affordable to a person who earns less than 120 percent of the area median income, or less than 140 percent of the area median income if located in a county in which the median purchase price for a single-family existing home exceeds the statewide median purchase price of a single-family existing home. For purposes of this subparagraph, the term “statewide median purchase price of a single-family existing home” means the statewide purchase price as determined in the Florida Sales Report, Single-Family Existing Homes, released each January by the Florida Association of Realtors and the University of Florida Real Estate Research Center.

6. An increase in commercial development by 60,000 square feet of gross floor area or of parking spaces provided for customers for 425 cars or a 10 percent increase, whichever is greater.

7. An increase in a recreational vehicle park area by 10 percent or 110 vehicle spaces, whichever is less.

8. A decrease in the area set aside for open space of 5 percent or 20 acres, whichever is less.

9. A proposed increase to an approved multiuse development of regional impact where the sum of the increases of each land use as a percentage of the applicable substantial deviation criteria is equal to or exceeds 110 percent. The percentage of any decrease in the amount of open space shall be treated as an increase for purposes of determining when 110 percent has been reached or exceeded.

10. A 15 percent increase in the number of external vehicle trips generated by the development above that which was projected during the original development-of-regional-impact review.

11. Any change that would result in development of any area which was specifically set aside in the application for development approval or in the development order for preservation or special protection of endangered or threatened plants or animals

designated as endangered, threatened, or species of special concern and their habitat, any species protected by 16 U.S.C. ss. 668a-668d, primary dunes, or archaeological and historical sites designated as significant by the Division of Historical Resources of the Department of State. The refinement of the boundaries and configuration of such areas shall be considered under sub-subparagraph (e)2.j.

The substantial deviation numerical standards in subparagraphs 3., 6., and 9., excluding residential uses, and in subparagraph 10., are increased by 100 percent for a project certified under s. 403.973 which creates jobs and meets criteria established by the Department of Economic Opportunity as to its impact on an area's economy, employment, and prevailing wage and skill levels. The substantial deviation numerical standards in subparagraphs 3., 4., 5., 6., 9., and 10. are increased by 50 percent for a project located wholly within an urban infill and redevelopment area designated on the applicable adopted local comprehensive plan future land use map and not located within the coastal high hazard area.

(c) An extension of the date of buildout of a development, or any phase thereof, by more than 7 years is presumed to create a substantial deviation subject to further development-of-regional-impact review.

1. An extension of the date of buildout, or any phase thereof, of more than 5 years but not more than 7 years is presumed not to create a substantial deviation. The extension of the date of buildout of an areawide development of regional impact by more than 5 years but less than 10 years is presumed not to create a substantial deviation. These presumptions may be rebutted by clear and convincing evidence at the public hearing held by the local government. An extension of 5 years or less is not a substantial deviation.

2. In recognition of the 2011 real estate market conditions, at the option of the developer, all commencement, phase, buildout, and expiration dates for projects that are currently valid developments of regional impact are extended for 4 years regardless of any previous extension. Associated mitigation requirements are extended for the same period unless, before December 1, 2011, a governmental entity notifies a developer that has commenced any construction within the phase for which the mitigation is required that the local government has entered into a contract for construction of a facility with funds to be provided from the development's mitigation funds for that phase as specified in the development order or written agreement with the developer. The 4-year extension is not a substantial deviation, is not subject to further development-of-regional-impact review, and may not be considered when determining whether a subsequent extension is a substantial deviation under this subsection. The developer must notify the local government in writing by December 31, 2011, in order to receive the 4-year extension.

For the purpose of calculating when a buildout or phase date has been exceeded, the time shall be tolled during the pendency of administrative or judicial proceedings relating to development permits. Any extension of the buildout date of a project or a phase thereof shall automatically extend the commencement date of the project, the termination date of the development order, the expiration date of the development of regional impact, and the phases thereof if applicable by a like period of time.

(d) A change in the plan of development of an approved development of regional impact resulting from requirements imposed by the Department of Environmental Protection or any water management district created by s. 373.069 or any of their successor agencies or by any appropriate federal regulatory agency shall be submitted to the local government pursuant to this subsection. The change shall be presumed not to create a substantial deviation subject to further development-of-regional-impact review. The presumption may be rebutted by clear and convincing evidence at the public hearing held by the local government.

(e) 1. Except for a development order rendered pursuant to subsection (22) or subsection (25), a proposed change to a development order which individually or cumulatively with any previous change is less than any numerical criterion contained in subparagraphs (b)1.-10. and does not exceed any other criterion, or which involves an extension of the buildout date of a development, or any phase thereof, of less than 5 years is not subject to the public hearing requirements of subparagraph (f)3., and is not subject to a determination pursuant to subparagraph (f)5. Notice of the proposed change shall be made to the regional planning council and the state land planning agency. Such notice must include a description of previous individual changes made to the development, including changes previously approved by the local government, and must include appropriate amendments to the development order.

2. The following changes, individually or cumulatively with any previous changes, are not substantial deviations:

a. Changes in the name of the project, developer, owner, or monitoring official.

b. Changes to a setback which do not affect noise buffers, environmental protection or mitigation areas, or archaeological or historical resources.

c. Changes to minimum lot sizes.

d. Changes in the configuration of internal roads which do not affect external access points.

e. Changes to the building design or orientation which stay approximately within the approved area designated for such building and parking lot, and which do not affect historical buildings designated as significant by the Division of Historical Resources of the Department of State.

f. Changes to increase the acreage in the development, if no development is proposed on the acreage to be added.

g. Changes to eliminate an approved land use, if there are no additional regional impacts.

h. Changes required to conform to permits approved by any federal, state, or regional permitting agency, if these changes do not create additional regional impacts.

i. Any renovation or redevelopment of development within a previously approved development of regional impact which does not change land use or increase density or intensity of use.

j. Changes that modify boundaries and configuration of areas described in subparagraph (b)11. due to science-based refinement of such areas by survey, by habitat evaluation, by other recognized assessment methodology, or by an environmental assessment. In order for changes to qualify under this sub-subparagraph, the survey, habitat evaluation, or assessment must occur before the time that a conservation easement protecting such lands is recorded and must not result in any net decrease in the total acreage of the lands specifically set aside for permanent preservation in the final development order.

k. Changes that do not increase the number of external peak hour trips and do not reduce open space and conserved areas within the project except as otherwise permitted by sub-subparagraph j.

l. Any other change that the state land planning agency, in consultation with the regional planning council, agrees in writing is similar in nature, impact, or character to the changes enumerated in sub-subparagraphs a.-k. and that does not create the likelihood of any additional regional impact.

This subsection does not require the filing of a notice of proposed change but requires an application to the local government to amend the development order in accordance with the local government's procedures for amendment of a development order. In accordance with the local government's procedures, including requirements for notice to the applicant and the public, the local government shall either deny the application for amendment or adopt an amendment to the development order which approves the application with or without conditions. Following adoption, the local government shall render to the state land planning agency the amendment to the development order. The state land planning agency may appeal, pursuant to s. 380.07(3), the amendment to the development order if the amendment involves sub-subparagraph g., sub-subparagraph h., sub-subparagraph j., sub-subparagraph k., or sub-subparagraph l. and if the agency believes that the change creates a reasonable likelihood of new or additional regional impacts.

3. Except for the change authorized by sub-subparagraph 2.f., any addition of land not previously reviewed or any change not specified in paragraph (b) or paragraph (c) shall be presumed to create a substantial deviation. This presumption may be rebutted by clear and convincing evidence.

4. Any submittal of a proposed change to a previously approved development must include a description of individual changes previously made to the development, including changes previously approved by the local government. The local government shall consider the previous and current proposed changes in deciding whether such changes cumulatively constitute a substantial deviation requiring further development-of-regional-impact review.

5. The following changes to an approved development of regional impact shall be presumed to create a substantial deviation. Such presumption may be rebutted by clear and convincing evidence.

a. A change proposed for 15 percent or more of the acreage to a land use not previously approved in the development order. Changes of less than 15 percent shall be presumed not to create a substantial deviation.

b. Notwithstanding any provision of paragraph (b) to the contrary, a proposed change consisting of simultaneous increases and decreases of at least two of the uses within an authorized multiuse development of regional impact which was originally approved with three or more uses specified in s. 380.0651(3)(c) and (d) and residential use.

6. If a local government agrees to a proposed change, a change in the transportation proportionate share calculation and mitigation plan in an adopted development order as a result of recalculation of the proportionate share contribution meeting the requirements of s. 163.3180(5)(h) in effect as of the date of such change shall be presumed not to create a substantial deviation. For purposes of this subsection, the proposed change in the proportionate share calculation or mitigation plan may not be considered an additional regional transportation impact.

(f) 1. The state land planning agency shall establish by rule standard forms for submittal of proposed changes to a previously approved development of regional impact which may require further development-of-regional-impact review. At a minimum, the standard form shall require the developer to provide the precise language that the developer proposes to delete or add as an amendment to the development order.

2. The developer shall submit, simultaneously, to the local government, the regional planning agency, and the state land planning agency the request for approval of a proposed change.

3. No sooner than 30 days but no later than 45 days after submittal by the developer to the local government, the state land planning agency, and the appropriate regional planning agency, the local government shall give 15 days' notice and schedule a public hearing to consider the change that the developer asserts does not create a substantial deviation. This public hearing shall be held within 60 days after submittal of the proposed changes, unless that time is extended by the developer.

4. The appropriate regional planning agency or the state land planning agency shall review the proposed change and, no later than 45 days after submittal by the developer of the proposed change, unless that time is extended by the developer, and prior to the public hearing at which the proposed change is to be considered, shall advise the local government in writing whether it objects to the proposed change, shall specify the reasons for its objection, if any, and shall provide a copy to the developer.

5. At the public hearing, the local government shall determine whether the proposed change requires further development-of-regional-impact review. The provisions of paragraphs (a) and (e), the thresholds set forth in paragraph (b), and the presumptions set forth in paragraphs (c) and (d) and subparagraph (e)3. shall be applicable in determining whether further development-of-regional-impact review is required. The local government may also deny the proposed change based on matters relating to local issues, such as if the land on which the change is sought is plat restricted in a way that would be incompatible with the proposed change, and the local government does not wish to change the plat restriction as part of the proposed change.

6. If the local government determines that the proposed change does not require further development-of-regional-impact review and is otherwise approved, or if the proposed change is not subject to a hearing and determination pursuant to subparagraphs 3. and 5. and is otherwise approved, the local government shall issue an amendment to the development order incorporating the approved change and conditions of approval relating to the change. The requirement that a change be otherwise approved shall not be construed to require additional local review or approval if the change is allowed by applicable local ordinances without further local review or approval. The decision of the local government to approve, with or without conditions, or to deny the proposed change that the developer asserts does not require further review shall be subject to the appeal provisions of s. 380.07. However, the state land planning agency may not appeal the local government decision if it did not comply with subparagraph 4. The state land planning agency may not appeal a change to a development order made pursuant to subparagraph (e)1. or subparagraph (e)2. for developments of regional impact approved after January 1, 1980, unless the change would result in a significant impact to a regionally significant archaeological, historical, or natural resource not previously identified in the original development-of-regional-impact review.

(g) If a proposed change requires further development-of-regional-impact review pursuant to this section, the review shall be conducted subject to the following additional conditions:

1. The development-of-regional-impact review conducted by the appropriate regional planning agency shall address only those issues raised by the proposed change except as provided in subparagraph 2.

2. The regional planning agency shall consider, and the local government shall determine whether to approve, approve with conditions, or deny the proposed change as it relates to the entire development. If the local government determines that the proposed change, as it relates to the entire development, is unacceptable, the local government shall deny the change.

3. If the local government determines that the proposed change should be approved, any new conditions in the amendment to the development order issued by the local government shall address only those issues raised by the proposed change and require mitigation only for the individual and cumulative impacts of the proposed change.

4. Development within the previously approved development of regional impact may continue, as approved, during the development-of-regional-impact review in those portions of the development which are not directly affected by the proposed change.

(h) When further development-of-regional-impact review is required because a substantial deviation has been determined or admitted by the developer, the amendment to the development order issued by the local government shall be consistent with the requirements of subsection (15) and shall be subject to the hearing and appeal provisions of s. 380.07. The state land planning agency or the appropriate regional planning agency need not participate at the local hearing in order to appeal a local government development order issued pursuant to this paragraph.

(i) An increase in the number of residential dwelling units shall not constitute a substantial deviation and shall not be subject to development-of-regional-impact review for additional impacts, provided that all the residential dwelling units are dedicated to affordable workforce housing and the total number of new residential units does not exceed 200 percent of the substantial deviation threshold. The affordable workforce housing shall be subject to a recorded land use restriction that shall be for a period of not less than 20 years and that includes resale provisions to ensure long-term affordability for income-eligible homeowners and renters. For purposes of this paragraph, the term “affordable workforce housing” means housing that is affordable to a person who earns less than 120 percent of the area median income, or less than 140 percent of the area median income if located in a county in which the median purchase price for a single-family existing home exceeds the statewide median purchase price of a single-family existing home. For purposes of this paragraph, the term “statewide median purchase price of a single-family existing home” means the statewide purchase price as determined in the Florida Sales Report, Single-Family Existing Homes, released each January by the Florida Association of Realtors and the University of Florida Real Estate Research Center.

(20) Vested rights.--Nothing in this section shall limit or modify the rights of any person to complete any development that was authorized by registration of a subdivision pursuant to former chapter 498, by recordation pursuant to local subdivision plat law, or by a building permit or other authorization to commence development on which there has been reliance and a change of position and which registration or recordation was accomplished, or which permit or authorization was issued, prior to July 1, 1973. If a developer has, by his or her actions in reliance on prior regulations, obtained vested or other legal rights that in law would have prevented a local government from changing those regulations in a way adverse to the developer's interests, nothing in this chapter authorizes any governmental agency to abridge those rights.

(a) For the purpose of determining the vesting of rights under this subsection, approval pursuant to local subdivision plat law, ordinances, or regulations of a subdivision plat by formal vote of a county or municipal governmental body having jurisdiction after August 1, 1967, and prior to July 1, 1973, is sufficient to vest all property rights for the purposes of this subsection; and no action in reliance on, or change of position concerning, such local governmental approval is required for vesting to take place. Anyone claiming vested rights under this paragraph must notify the department in writing by January 1, 1986. Such notification shall include information adequate to document the rights established by this subsection. When such notification requirements are met, in order for the vested rights authorized pursuant to this paragraph to remain valid after June 30, 1990, development of the vested plan must be commenced prior to that date upon the property that the state land planning agency has determined to have acquired vested rights following the notification or in a binding letter of interpretation. When the notification requirements have not been met, the vested rights authorized by this paragraph shall expire June 30, 1986, unless development commenced prior to that date.

(b) For the purpose of this act, the conveyance of, or the agreement to convey, property to the county, state, or local government as a prerequisite to zoning change approval shall be construed as an act of reliance to vest rights as determined under this subsection, provided such zoning change is actually granted by such government.

(21) Comprehensive application; master plan development order.--

(a) If a development project includes two or more developments of regional impact, a developer may file a comprehensive development-of-regional-impact application.

(b) If a proposed development is planned for development over an extended period of time, the developer may file an application for master development approval of the project and agree to present subsequent increments of the development for preconstruction review. This agreement shall be entered into by the developer, the regional planning agency, and the appropriate local government having jurisdiction. The provisions of subsection (9) do not apply to this subsection, except that a developer may elect to utilize the review process established in subsection (9) for review of the increments of a master plan.

1. Prior to adoption of the master plan development order, the developer, the landowner, the appropriate regional planning agency, and the local government having jurisdiction shall review the draft of the development order to ensure that anticipated regional impacts have been adequately addressed and that information requirements for subsequent incremental application review are clearly defined. The development order for a master application shall specify the information which must be submitted with an incremental application and shall identify those issues which can result in the denial of an incremental application.

2. The review of subsequent incremental applications shall be limited to that information specifically required and those issues specifically raised by the master development order, unless substantial changes in the conditions underlying the approval of the master plan development order are demonstrated or the master development order is shown to have been based on substantially inaccurate information.

(c) The state land planning agency, by rule, shall establish uniform procedures to implement this subsection.

(22) Downtown development authorities.--

(a) A downtown development authority may submit a development-of-regional-impact application for development approval pursuant to this section. The area described in the application may consist of any or all of the land over which a downtown development authority has the power described in s. 380.031(5). For the purposes of this subsection, a downtown development authority shall be considered the developer whether or not the development will be undertaken by the downtown development authority.

(b) In addition to information required by the development-of-regional-impact application, the application for development approval submitted by a downtown development authority shall specify the total amount of development planned for each land use category. In addition to the requirements of subsection (15), the development order shall specify the amount of development approved within each land use category. Development undertaken in conformance with a development order issued under this section does not require further review.

(c) If a development is proposed within the area of a downtown development plan approved pursuant to this section which would result in development in excess of the amount specified in the development order for that type of activity, changes shall be subject to the provisions of subsection (19), except that the percentages and numerical criteria shall be double those listed in paragraph (19)(b).

(d) The provisions of subsection (9) do not apply to this subsection.

(23) Adoption of rules by state land planning agency.--

(a) The state land planning agency shall adopt rules to ensure uniform review of developments of regional impact by the state land planning agency and regional planning agencies under this section. These rules shall be adopted pursuant to chapter 120 and shall include all forms, application content, and review guidelines necessary to implement development-of-regional-impact reviews. The state land planning agency, in consultation with the regional planning agencies, may also designate types of development or areas suitable for development in which reduced information requirements for development-of-regional-impact review shall apply.

(b) Regional planning agencies shall be subject to rules adopted by the state land planning agency. At the request of a regional planning council, the state land planning agency may adopt by rule different standards for a specific comprehensive planning district upon a finding that the statewide standard is inadequate to protect or promote the regional interest at issue. If such a regional standard is adopted by the state land planning agency, the regional standard shall be applied to all pertinent development-of-regional-impact reviews conducted in that region until rescinded.

(c) Within 6 months of the effective date of this section, the state land planning agency shall adopt rules which:

1. Establish uniform statewide standards for development-of-regional-impact review.

2. Establish a short application for development approval form which eliminates issues and questions for any project in a jurisdiction with an adopted local comprehensive plan that is in compliance.

(d) Regional planning agencies that perform development-of-regional-impact and Florida Quality Development review are authorized to assess and collect fees to fund the costs, direct and indirect, of conducting the review process. The state land planning agency shall adopt rules to provide uniform criteria for the assessment and collection of such fees. The rules providing uniform criteria shall not be subject to rule challenge under s. 120.56(2) or to drawout proceedings under s. 120.54(3)(c) 2., but, once adopted, shall be subject to an invalidity challenge under s. 120.56(3) by substantially affected persons. Until the state land planning agency adopts a rule implementing this paragraph, rules of the regional planning councils currently in effect regarding fees shall remain in effect. Fees may vary in relation to the type and size of a proposed project, but shall not exceed $75,000, unless the state land planning agency, after reviewing any disputed expenses charged by the regional planning agency, determines that said expenses were reasonable and necessary for an adequate regional review of the impacts of a project.

(24) Statutory exemptions.--

(a) Any proposed hospital is exempt from this section.

(b) Any proposed electrical transmission line or electrical power plant is exempt from this section.

(c) Any proposed addition to an existing sports facility complex is exempt from this section if the addition meets the following characteristics:

1. It would not operate concurrently with the scheduled hours of operation of the existing facility.

2. Its seating capacity would be no more than 75 percent of the capacity of the existing facility.

3. The sports facility complex property is owned by a public body before July 1, 1983.

This exemption does not apply to any pari-mutuel facility.

(d) Any proposed addition or cumulative additions subsequent to July 1, 1988, to an existing sports facility complex owned by a state university is exempt if the increased seating capacity of the complex is no more than 30 percent of the capacity of the existing facility.

(e) Any addition of permanent seats or parking spaces for an existing sports facility located on property owned by a public body before July 1, 1973, is exempt from this section if future additions do not expand existing permanent seating or parking capacity more than 15 percent annually in excess of the prior year's capacity.

(f) Any increase in the seating capacity of an existing sports facility having a permanent seating capacity of at least 50,000 spectators is exempt from this section, provided that such an increase does not increase permanent seating capacity by more than 5 percent per year and not to exceed a total of 10 percent in any 5-year period, and provided that the sports facility notifies the appropriate local government within which the facility is located of the increase at least 6 months before the initial use of the increased seating, in order to permit the appropriate local government to develop a traffic management plan for the traffic generated by the increase. Any traffic management plan shall be consistent with the local comprehensive plan, the regional policy plan, and the state comprehensive plan.

(g) Any expansion in the permanent seating capacity or additional improved parking facilities of an existing sports facility is exempt from this section, if the following conditions exist:

1. a. The sports facility had a permanent seating capacity on January 1, 1991, of at least 41,000 spectator seats;

b. The sum of such expansions in permanent seating capacity does not exceed a total of 10 percent in any 5-year period and does not exceed a cumulative total of 20 percent for any such expansions; or

c. The increase in additional improved parking facilities is a one-time addition and does not exceed 3,500 parking spaces serving the sports facility; and

2. The local government having jurisdiction of the sports facility includes in the development order or development permit approving such expansion under this paragraph a finding of fact that the proposed expansion is consistent with the transportation, water, sewer and stormwater drainage provisions of the approved local comprehensive plan and local land development regulations relating to those provisions.

Any owner or developer who intends to rely on this statutory exemption shall provide to the department a copy of the local government application for a development permit. Within 45 days after receipt of the application, the department shall render to the local government an advisory and nonbinding opinion, in writing, stating whether, in the department's opinion, the prescribed conditions exist for an exemption under this paragraph. The local government shall render the development order approving each such expansion to the department. The owner, developer, or department may appeal the local government development order pursuant to s. 380.07, within 45 days after the order is rendered. The scope of review shall be limited to the determination of whether the conditions prescribed in this paragraph exist. If any sports facility expansion undergoes development-of-regional-impact review, all previous expansions which were exempt under this paragraph shall be included in the development-of-regional-impact review.

(h) Expansion to port harbors, spoil disposal sites, navigation channels, turning basins, harbor berths, and other related inwater harbor facilities of ports listed in s. 403.021(9)(b), port transportation facilities and projects listed in s. 311.07(3)(b), and intermodal transportation facilities identified pursuant to s. 311.09(3) are exempt from this section when such expansions, projects, or facilities are consistent with comprehensive master plans that are in compliance with s. 163.3178.

(i) Any proposed facility for the storage of any petroleum product or any expansion of an existing facility is exempt from this section.

(j) Any renovation or redevelopment within the same land parcel which does not change land use or increase density or intensity of use.

(k) Waterport and marina development, including dry storage facilities, are exempt from this section.

(*l*) Any proposed development within an urban service boundary established under s. 163.3177(14), Florida Statutes (2010), which is not otherwise exempt pursuant to subsection (29), is exempt from this section if the local government having jurisdiction over the area where the development is proposed has adopted the urban service boundary and has entered into a binding agreement with jurisdictions that would be impacted and with the Department of Transportation regarding the mitigation of impacts on state and regional transportation facilities.

(m) Any proposed development within a rural land stewardship area created under s. 163.3248.

(n) The establishment, relocation, or expansion of any military installation as defined in s. 163.3175, is exempt from this section.

(*o*) Any self-storage warehousing that does not allow retail or other services is exempt from this section.

(p) Any proposed nursing home or assisted living facility is exempt from this section.

(q) Any development identified in an airport master plan and adopted into the comprehensive plan pursuant to s. 163.3177(6)(b) 4.[3] is exempt from this section.

(r) Any development identified in a campus master plan and adopted pursuant to s. 1013.30 is exempt from this section.

(s) Any development in a detailed specific area plan which is prepared and adopted pursuant to s. 163.3245 is exempt from this section.

(t) Any proposed solid mineral mine and any proposed addition to, expansion of, or change to an existing solid mineral mine is exempt from this section. A mine owner will enter into a binding agreement with the Department of Transportation to mitigate impacts to strategic intermodal system facilities pursuant to the transportation thresholds in subsection (19) or rule 9J-2.045(6), Florida Administrative Code. Proposed changes to any previously approved solid mineral mine development-of-regional-impact development orders having vested rights are not subject to further review or approval as a development-of-regional-impact or notice-of-proposed-change review or approval pursuant to subsection (19), except for those applications pending as of July 1, 2011, which shall be governed by s. 380.115(2). Notwithstanding the foregoing, however, pursuant to s. 380.115(1), previously approved solid mineral mine development-of-regional-impact development orders shall continue to enjoy vested rights and continue to be effective unless rescinded by the developer. All local government regulations of proposed solid mineral mines shall be applicable to any new solid mineral mine or to any proposed addition to, expansion of, or change to an existing solid mineral mine.

(u) Notwithstanding any provisions in an agreement with or among a local government, regional agency, or the state land planning agency or in a local government's comprehensive plan to the contrary, a project no longer subject to development-of-regional-impact review under revised thresholds is not required to undergo such review.

(v) Any development within a county with a research and education authority created by special act and that is also within a research and development park that is operated or managed by a research and development authority pursuant to part V of chapter 159 is exempt from this section.

(w) Any development in an energy economic zone designated pursuant to s. 377.809 is exempt from this section upon approval by its local governing body.

(x) Any proposed development that is located in a local government jurisdiction that does not qualify for an exemption based on the population and density criteria in paragraph (29)(a), that is approved as a comprehensive plan amendment adopted pursuant to s. 163.3184(4), and that is the subject of an agreement pursuant to s. 288.106(5) is exempt from this section. This exemption shall only be effective upon a written agreement executed by the applicant, the local government, and the state land planning agency. The state land planning agency shall only be a party to the agreement upon a determination that the development is the subject of an agreement pursuant to s. 288.106(5) and that the local government has the capacity to adequately assess the impacts of the proposed development. The local government shall only be a party to the agreement upon approval by the governing body of the local government and upon providing at least 21 days' notice to adjacent local governments that includes, at a minimum, information regarding the location, density and intensity of use, and timing of the proposed development. This exemption does not apply to areas within the boundary of any area of critical state concern designated pursuant to s. 380.05, within the boundary of the Wekiva Study Area as described in s. 369.316, or within 2 miles of the boundary of the Everglades Protection Area as defined in s. 373.4592(2).

If a use is exempt from review as a development of regional impact under paragraphs (a)-(u), but will be part of a larger project that is subject to review as a development of regional impact, the impact of the exempt use must be included in the review of the larger project, unless such exempt use involves a development of regional impact that includes a landowner, tenant, or user that has entered into a funding agreement with the Department of Economic Opportunity under the Innovation Incentive Program and the agreement contemplates a state award of at least $50 million.

(25) Areawide development of regional impact.--

(a) An authorized developer may submit an areawide development of regional impact to be reviewed pursuant to the procedures and standards set forth in this section. The areawide development-of-regional-impact review shall include an areawide development plan in addition to any other information required under this section. After review and approval of an areawide development of regional impact under this section, all development within the defined planning area shall conform to the approved areawide development plan and development order. Individual developments that conform to the approved areawide development plan shall not be required to undergo further development-of-regional-impact review, unless otherwise provided in the development order. As used in this subsection, the term:

1. “Areawide development plan” means a plan of development that, at a minimum:

a. Encompasses a defined planning area approved pursuant to this subsection that will include at least two or more developments;

b. Maps and defines the land uses proposed, including the amount of development by use and development phasing;

c. Integrates a capital improvements program for transportation and other public facilities to ensure development staging contingent on availability of facilities and services;

d. Incorporates land development regulation, covenants, and other restrictions adequate to protect resources and facilities of regional and state significance; and

e. Specifies responsibilities and identifies the mechanisms for carrying out all commitments in the areawide development plan and for compliance with all conditions of any areawide development order.

2. “Developer” means any person or association of persons, including a governmental agency as defined in s. 380.031(6), that petitions for authorization to file an application for development approval for an areawide development plan.

(b) A developer may petition for authorization to submit a proposed areawide development of regional impact for a defined planning area in accordance with the following requirements:

1. A petition shall be submitted to the local government, the regional planning agency, and the state land planning agency.

2. A public hearing or joint public hearing shall be held if required by paragraph (e), with appropriate notice, before the affected local government.

3. The state land planning agency shall apply the following criteria for evaluating a petition:

a. Whether the developer is financially capable of processing the application for development approval through final approval pursuant to this section.

b. Whether the defined planning area and anticipated development therein appear to be of a character, magnitude, and location that a proposed areawide development plan would be in the public interest. Any public interest determination under this criterion is preliminary and not binding on the state land planning agency, regional planning agency, or local government.

4. The state land planning agency shall develop and make available standard forms for petitions and applications for development approval for use under this subsection.

(c) Any person may submit a petition to a local government having jurisdiction over an area to be developed, requesting that government to approve that person as a developer, whether or not any or all development will be undertaken by that person, and to approve the area as appropriate for an areawide development of regional impact.

(d) A general purpose local government with jurisdiction over an area to be considered in an areawide development of regional impact shall not have to petition itself for authorization to prepare and consider an application for development approval for an areawide development plan. However, such a local government shall initiate the preparation of an application only:

1. After scheduling and conducting a public hearing as specified in paragraph (e); and

2. After conducting such hearing, finding that the planning area meets the standards and criteria pursuant to subparagraph (b)3. for determining that an areawide development plan will be in the public interest.

(e) The local government shall schedule a public hearing within 60 days after receipt of the petition. The public hearing shall be advertised at least 30 days prior to the hearing. In addition to the public hearing notice by the local government, the petitioner, except when the petitioner is a local government, shall provide actual notice to each person owning land within the proposed areawide development plan at least 30 days prior to the hearing. If the petitioner is a local government, or local governments pursuant to an interlocal agreement, notice of the public hearing shall be provided by the publication of an advertisement in a newspaper of general circulation that meets the requirements of this paragraph. The advertisement must be no less than one-quarter page in a standard size or tabloid size newspaper, and the headline in the advertisement must be in type no smaller than 18 point. The advertisement shall not be published in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement must be published in a newspaper of general paid circulation in the county and of general interest and readership in the community, not one of limited subject matter, pursuant to chapter 50. Whenever possible, the advertisement must appear in a newspaper that is published at least 5 days a week, unless the only newspaper in the community is published less than 5 days a week. The advertisement must be in substantially the form used to advertise amendments to comprehensive plans pursuant to s. 163.3184. The local government shall specifically notify in writing the regional planning agency and the state land planning agency at least 30 days prior to the public hearing. At the public hearing, all interested parties may testify and submit evidence regarding the petitioner's qualifications, the need for and benefits of an areawide development of regional impact, and such other issues relevant to a full consideration of the petition. If more than one local government has jurisdiction over the defined planning area in an areawide development plan, the local governments shall hold a joint public hearing. Such hearing shall address, at a minimum, the need to resolve conflicting ordinances or comprehensive plans, if any. The local government holding the joint hearing shall comply with the following additional requirements:

1. The notice of the hearing shall be published at least 60 days in advance of the hearing and shall specify where the petition may be reviewed.

2. The notice shall be given to the state land planning agency, to the applicable regional planning agency, and to such other persons as may have been designated by the state land planning agency as entitled to receive such notices.

3. A public hearing date shall be set by the appropriate local government at the next scheduled meeting.

(f) Following the public hearing, the local government shall issue a written order, appealable under s. 380.07, which approves, approves with conditions, or denies the petition. It shall approve the petitioner as the developer if it finds that the petitioner and defined planning area meet the standards and criteria, consistent with applicable law, pursuant to subparagraph (b)3.

(g) The local government shall submit any order which approves the petition, or approves the petition with conditions, to the petitioner, to all owners of property within the defined planning area, to the regional planning agency, and to the state land planning agency within 30 days after the order becomes effective.

(h) The petitioner, an owner of property within the defined planning area, the appropriate regional planning agency by vote at a regularly scheduled meeting, or the state land planning agency may appeal the decision of the local government to the Florida Land and Water Adjudicatory Commission by filing a notice of appeal with the commission. The procedures established in s. 380.07 shall be followed for such an appeal.

(i) After the time for appeal of the decision has run, an approved developer may submit an application for development approval for a proposed areawide development of regional impact for land within the defined planning area, pursuant to subsection (6). Development undertaken in conformance with an areawide development order issued under this section shall not require further development-of-regional-impact review.

(j) In reviewing an application for a proposed areawide development of regional impact, the regional planning agency shall evaluate, and the local government shall consider, the following criteria, in addition to any other criteria set forth in this section:

1. Whether the developer has demonstrated its legal, financial, and administrative ability to perform any commitments it has made in the application for a proposed areawide development of regional impact.

2. Whether the developer has demonstrated that all property owners within the defined planning area consent or do not object to the proposed areawide development of regional impact.

3. Whether the area and the anticipated development are consistent with the applicable local, regional, and state comprehensive plans, except as provided for in paragraph (k).

(k) In addition to the requirements of subsection (14), a development order approving, or approving with conditions, a proposed areawide development of regional impact shall specify the approved land uses and the amount of development approved within each land use category in the defined planning area. The development order shall incorporate by reference the approved areawide development plan. The local government shall not approve an areawide development plan that is inconsistent with the local comprehensive plan, except that a local government may amend its comprehensive plan pursuant to paragraph (6)(b).

(*l*) Any owner of property within the defined planning area may withdraw his or her consent to the areawide development plan at any time prior to local government approval, with or without conditions, of the petition; and the plan, the areawide development order, and the exemption from development-of-regional-impact review of individual projects under this section shall not thereafter apply to the owner's property. After the areawide development order is issued, a landowner may withdraw his or her consent only with the approval of the local government.

(m) If the developer of an areawide development of regional impact is a general purpose local government with jurisdiction over the land area included within the areawide development proposal and if no interest in the land within the land area is owned, leased, or otherwise controlled by a person, corporate or natural, for the purpose of mining or beneficiation of minerals, then:

1. Demonstration of property owner consent or lack of objection to an areawide development plan shall not be required; and

2. The option to withdraw consent does not apply, and all property and development within the areawide development planning area shall be subject to the areawide plan and to the development order conditions.

(n) After a development order approving an areawide development plan is received, changes shall be subject to the provisions of subsection (19), except that the percentages and numerical criteria shall be double those listed in paragraph (19)(b).

(26) Abandonment of developments of regional impact.--

(a) There is hereby established a process to abandon a development of regional impact and its associated development orders. A development of regional impact and its associated development orders may be proposed to be abandoned by the owner or developer. The local government in which the development of regional impact is located also may propose to abandon the development of regional impact, provided that the local government gives individual written notice to each development-of-regional-impact owner and developer of record, and provided that no such owner or developer objects in writing to the local government prior to or at the public hearing pertaining to abandonment of the development of regional impact. The state land planning agency is authorized to promulgate rules that shall include, but not be limited to, criteria for determining whether to grant, grant with conditions, or deny a proposal to abandon, and provisions to ensure that the developer satisfies all applicable conditions of the development order and adequately mitigates for the impacts of the development. If there is no existing development within the development of regional impact at the time of abandonment and no development within the development of regional impact is proposed by the owner or developer after such abandonment, an abandonment order shall not require the owner or developer to contribute any land, funds, or public facilities as a condition of such abandonment order. The rules shall also provide a procedure for filing notice of the abandonment pursuant to s. 28.222 with the clerk of the circuit court for each county in which the development of regional impact is located. Any decision by a local government concerning the abandonment of a development of regional impact shall be subject to an appeal pursuant to s. 380.07. The issues in any such appeal shall be confined to whether the provisions of this subsection or any rules promulgated thereunder have been satisfied.

(b) Upon receipt of written confirmation from the state land planning agency that any required mitigation applicable to completed development has occurred, an industrial development of regional impact located within the coastal high-hazard area of a rural area of opportunity which was approved before the adoption of the local government's comprehensive plan required under s. 163.3167 and which plan's future land use map and zoning designates the land use for the development of regional impact as commercial may be unilaterally abandoned without the need to proceed through the process described in paragraph (a) if the developer or owner provides a notice of abandonment to the local government and records such notice with the applicable clerk of court. Abandonment shall be deemed to have occurred upon the recording of the notice. All development following abandonment shall be fully consistent with the current comprehensive plan and applicable zoning.

(27) Rights, responsibilities, and obligations under a development order.--If a developer or owner is in doubt as to his or her rights, responsibilities, and obligations under a development order and the development order does not clearly define his or her rights, responsibilities, and obligations, the developer or owner may request participation in resolving the dispute through the dispute resolution process outlined in s. 186.509. The Department of Economic Opportunity shall be notified by certified mail of any meeting held under the process provided for by this subsection at least 5 days before the meeting.

(28) Partial statutory exemptions.--

(a) If the binding agreement referenced under paragraph (24)(l) for urban service boundaries is not entered into within 12 months after establishment of the urban service boundary, the development-of-regional-impact review for projects within the urban service boundary must address transportation impacts only.

(b) If the binding agreement referenced under paragraph (24)(m) for rural land stewardship areas is not entered into within 12 months after the designation of a rural land stewardship area, the development-of-regional-impact review for projects within the rural land stewardship area must address transportation impacts only.

(c) If the binding agreement for designated urban infill and redevelopment areas is not entered into within 12 months after the designation of the area or July 1, 2007, whichever occurs later, the development-of-regional-impact review for projects within the urban infill and redevelopment area must address transportation impacts only.

(d) A local government that does not wish to enter into a binding agreement or that is unable to agree on the terms of the agreement referenced under paragraph (24)(l) or paragraph (24)(m) shall provide written notification to the state land planning agency of the decision to not enter into a binding agreement or the failure to enter into a binding agreement within the 12-month period referenced in paragraphs (a), (b) and (c). Following the notification of the state land planning agency, development-of-regional-impact review for projects within an urban service boundary under paragraph (24)(l), or a rural land stewardship area under paragraph (24)(m), must address transportation impacts only.

(e) The vesting provision of s. 163.3167(5) relating to an authorized development of regional impact does not apply to those projects partially exempt from the development-of-regional-impact review process under paragraphs (a)-(d).

(29) Exemptions for dense urban land areas.--

(a) The following are exempt from this section:

1. Any proposed development in a municipality that has an average of at least 1,000 people per square mile of land area and a minimum total population of at least 5,000;

2. Any proposed development within a county, including the municipalities located in the county, that has an average of at least 1,000 people per square mile of land area and is located within an urban service area as defined in s. 163.3164 which has been adopted into the comprehensive plan;

3. Any proposed development within a county, including the municipalities located therein, which has a population of at least 900,000, that has an average of at least 1,000 people per square mile of land area, but which does not have an urban service area designated in the comprehensive plan; or

4. Any proposed development within a county, including the municipalities located therein, which has a population of at least 1 million and is located within an urban service area as defined in s. 163.3164 which has been adopted into the comprehensive plan.

The Office of Economic and Demographic Research within the Legislature shall annually calculate the population and density criteria needed to determine which jurisdictions meet the density criteria in subparagraphs 1.-4. by using the most recent land area data from the decennial census conducted by the Bureau of the Census of the United States Department of Commerce and the latest available population estimates determined pursuant to s. 186.901. If any local government has had an annexation, contraction, or new incorporation, the Office of Economic and Demographic Research shall determine the population density using the new jurisdictional boundaries as recorded in accordance with s. 171.091. The Office of Economic and Demographic Research shall annually submit to the state land planning agency by July 1 a list of jurisdictions that meet the total population and density criteria. The state land planning agency shall publish the list of jurisdictions on its Internet website within 7 days after the list is received. The designation of jurisdictions that meet the criteria of subparagraphs 1.-4. is effective upon publication on the state land planning agency's Internet website. If a municipality that has previously met the criteria no longer meets the criteria, the state land planning agency shall maintain the municipality on the list and indicate the year the jurisdiction last met the criteria. However, any proposed development of regional impact not within the established boundaries of a municipality at the time the municipality last met the criteria must meet the requirements of this section until such time as the municipality as a whole meets the criteria. Any county that meets the criteria shall remain on the list in accordance with the provisions of this paragraph. Any jurisdiction that was placed on the dense urban land area list before June 2, 2011, shall remain on the list in accordance with the provisions of this paragraph.

(b) If a municipality that does not qualify as a dense urban land area pursuant to paragraph (a)[4] designates any of the following areas in its comprehensive plan, any proposed development within the designated area is exempt from the development-of-regional-impact process:

1. Urban infill as defined in s. 163.3164;

2. Community redevelopment areas as defined in s. 163.340;

3. Downtown revitalization areas as defined in s. 163.3164;

4. Urban infill and redevelopment under s. 163.2517; or

5. Urban service areas as defined in s. 163.3164 or areas within a designated urban service boundary under s. 163.3177(14).

(c) If a county that does not qualify as a dense urban land area designates any of the following areas in its comprehensive plan, any proposed development within the designated area is exempt from the development-of-regional-impact process:

1. Urban infill as defined in s. 163.3164;

2. Urban infill and redevelopment under s. 163.2517; or

3. Urban service areas as defined in s. 163.3164.

(d) A development that is located partially outside an area that is exempt from the development-of-regional-impact program must undergo development-of-regional-impact review pursuant to this section. However, if the total acreage that is included within the area exempt from development-of-regional-impact review exceeds 85 percent of the total acreage and square footage of the approved development of regional impact, the development-of-regional-impact development order may be rescinded in both local governments pursuant to s. 380.115(1), unless the portion of the development outside the exempt area meets the threshold criteria of a development-of-regional-impact.

(e) In an area that is exempt under paragraphs (a)-(c), any previously approved development-of-regional-impact development orders shall continue to be effective, but the developer has the option to be governed by s. 380.115(1). A pending application for development approval shall be governed by s. 380.115(2).

(f) Local governments must submit by mail a development order to the state land planning agency for projects that would be larger than 120 percent of any applicable development-of-regional-impact threshold and would require development-of-regional-impact review but for the exemption from the program under paragraphs (a)-(c). For such development orders, the state land planning agency may appeal the development order pursuant to s. 380.07 for inconsistency with the comprehensive plan adopted under chapter 163.

(g) If a local government that qualifies as a dense urban land area under this subsection is subsequently found to be ineligible for designation as a dense urban land area, any development located within that area which has a complete, pending application for authorization to commence development may maintain the exemption if the developer is continuing the application process in good faith or the development is approved.

(h) This subsection does not limit or modify the rights of any person to complete any development that has been authorized as a development of regional impact pursuant to this chapter.

(i) This subsection does not apply to areas:

1. Within the boundary of any area of critical state concern designated pursuant to s. 380.05;

2. Within the boundary of the Wekiva Study Area as described in s. 369.316; or

3. Within 2 miles of the boundary of the Everglades Protection Area as described in s. 373.4592(2).

(30) New proposed developments.--A new proposed development otherwise subject to the review requirements of this section shall be approved by a local government pursuant to s. 163.3184(4) in lieu of proceeding in accordance with this section.

Credits

Laws 1972, c. 72-317, § 6; Laws 1974, c. 74-326, § 2; Laws 1975, c. 75-167, § 5; Laws 1976, c. 76-69, § 1; Laws 1977, c. 77-215, § 2; Laws 1979, c. 79-400, § 148; Laws 1980, c. 80-313, § 3; Laws 1983, c. 83-222, § 22; Laws 1983, c. 83-308, § 4; Laws 1984, c. 84-331, § 1; Laws 1985, c. 85-55, § 43; Laws 1986, c. 86-191, § 15; Laws 1988, c. 88-164, § 1; Laws 1989, c. 89-375, § 1; Laws 1989, c. 89-536, § 1; Laws 1990, c. 90-331, § 52; Laws 1991, c. 91-192, § 20; Laws 1991, c. 91-305, § 20; Laws 1991, c. 91-309, § 1; Laws 1992, c. 92-129, § 15; Laws 1993, c. 93-95, § 2; Laws 1993, c. 93-206, § 52; Laws 1994, c. 94-356, § 345; Laws 1995, c. 95-148, § 1029; Laws 1995, c. 95-149, § 11; Laws 1995, c. 95-322, § 9; Laws 1995, c. 95-412, § 3; Laws 1996, c. 96-410, § 114; Laws 1996, c. 96-416, § 10. Amended by Laws 1997, c. 97-28, § 1, eff. April 29, 1997; Laws 1997, c. 97-253, § 7, eff. May 30, 1997; Laws 1997, c. 97-278, § 52, eff. July 1, 1997; Laws 1998, c. 98-146, § 8, eff. May 22, 1998; Laws 1998, c. 98-176, § 26, eff. May 22, 1998; Laws 1999, c. 99-251, § 71, eff. July 1, 1999; Laws 1999, c. 99-378, § 7, eff. July 1, 1999; Laws 2001, c. 2001-201, § 27, eff. July 1, 2001; Laws 2002, c. 2002-20, § 95, eff. July 1, 2002; Laws 2002, c. 2002-296, § 30, eff. May 31, 2002; Laws 2004, c. 2004-10, § 1, eff. July 1, 2004; Laws 2005, c. 2005-157, § 16, eff. Jan. 1, 2006; Laws 2005, c. 2005-166, § 4, eff. June 8, 2005; Laws 2005, c. 2005-281, § 13, eff. June 20, 2005; Laws 2005, c. 2005-290, § 17, eff. July 1, 2005; Laws 2006, c. 2006-69, § 12, eff. July 1, 2006; Laws 2006, c. 2006-220, §§ 8, 9 eff. July 1, 2006; Laws 2007, c. 2007-5, § 73, eff. July 3, 2007; Laws 2007, c. 2007-198, §§ 8, 9, eff. July 1, 2007; Laws 2007, c. 2007-204, § 6, eff. July 1, 2007; Laws 2008, c. 2008-240, § 17, eff. July 1, 2008; Laws 2009, c. 2009-96, § 12, eff. June 1, 2009; Laws 2010, c. 2010-4, § 16, eff. June 29, 2010; Laws 2010, c. 2010-5, § 73, eff. June 29, 2010; Laws 2010, c. 2010-102, § 90, eff. May 26, 2010; Laws 2011, c. 2011-14, § 11, eff. April 27, 2011; Laws 2011, c. 2011-139, § 54, eff. June 2, 2011; Laws 2011, c. 2011-142, § 258, eff. July 1, 2011; Laws 2011, c. 2011-223, § 4, eff. July 1, 2011; Laws 2012, c. 2012-75, § 2, eff. July 1, 2012; Laws 2012, c. 2012-96, § 60, eff. April 6, 2012; Laws 2012, c. 2012-99, § 17, eff. April 6, 2012; Laws 2014, c. 2014-218, § 40, eff. July 1, 2014; Laws 2015, c. 2015-30, § 18, eff. May 14, 2015.

Editors' Notes

RETROACTIVITY

<Laws 2011, c. 2011-14, § 14, provides:>

<"This act shall take effect upon becoming a law [April 27, 2011], and those portions of this act which were amended or created by chapter 2009-96, Laws of Florida, shall operate retroactively to June 1, 2009. If such retroactive application is held by a court of last resort to be unconstitutional, this act shall apply prospectively from the date that this act becomes a law.">

Footnotes

1 As amended by Laws 2012, c. 2012-99, § 17. The amendment by Laws 2012, c. 2012-96, § 60 used the citation "s. 163.3184(3)(b) and (c)" rather than "s. 163.3184".

2 As amended by Laws 2002, c. 2002-20, § 95. The amendment by Laws 2002, c. 2002-296, § 30, provides for less than or equal to 100 percent.

3 As amended by Laws 2012, 2012-99, § 17. The amendment by Laws 2012, c. 2012-96, § 60, used "s. 163.3177(6)(k), Florida Statutes (2010)" rather than "s. 163.3177(6)(b) 4."

4 As amended by Laws 2012, c. 2012-99, § 17. The amendment by Laws 2012, c. 2012-96, § 60, deleted "pursuant to s. 163.3164"; following "area".

West's F. S. A. § 380.06, FL ST § 380.06

Current with laws and joint resolutions in effect from the 2021 First Regular Session and Special "A" and "B" Sessions of the Twenty-Seventh Legislature. Some statute sections may be more current, see credits for details.

Florida Administrative Code - 2014

West's Florida Administrative Code
Title 29. Regional Planning Council
Subtitle 29j. South Florida Regional Planning Council
Chapter 29J-2. Practice and Procedure

Rule 29J-2.001, F.A.C.
Fla. Admin. Code r. 29J-2.001

29J-2.001. General.

Currentness

The rules of this chapter provide the practices and procedures to be followed by all persons when dealing with the South Florida Regional Planning Council. These rules are in addition to all practices, procedures and definitions imposed by applicable statutes, regulations, and rules including, but not limited to, the following: Chapters 23, 120, 163, 186, and 380, F.S., and Chapter 28, F.A.C.

Credits

Adopted Aug. 6, 1975; Transferred from 29J-2.01; Amended Mar. 9, 1999.

AUTHORITY: 120.54, 163.01, 186.501 FS. Law Implemented 120.54, 163.01(5)(h), 186.505 FS.

Current with amendments available through January 5, 2015.

Rule 29J-2.001, F.A.C., 29 FL ADC 29J-2.001

Florida Administrative Code - 2014

West's Florida Administrative Code
Title 29. Regional Planning Council
Subtitle 29j. South Florida Regional Planning Council
Chapter 29J-2. Practice and Procedure

Rule 29J-2.002, F.A.C.
Fla. Admin. Code r. 29J-2.002

29J-2.002. Meetings, Hearings and Workshops.

Currentness

(1) Persons who wish to address the Council on a matter not specifically included on the agenda for the Council's upcoming public meeting, hearing or workshop shall so notify the Chairman or the Executive Director not less than ten (10) days before the Council's upcoming public meeting, hearing or workshop. The Chairman or Executive Director shall include the party on the agenda or notify the party in writing of the reasons for not including the person on the agenda.

(2) Persons participating in a public meeting, hearing or workshop of the Council shall be allocated a reasonable amount of time to present oral testimony and offer any appropriate written materials relevant to the person's position. The Chairman shall instruct all persons as to the amount of time allocated for presentation and as to the appropriateness of written materials offered.

(3) Robert's Rules of Order shall apply to all of the Council's public meetings, hearings and workshops, to the extent not inconsistent with Chapter 120, F.S., and to the extent reasonable and practical.

Credits
Adopted Aug. 6, 1975; Transferred from 29J-2.02.

AUTHORITY: 120.54, 163.01, 186.501 FS. Law Implemented 120.54, 163.01(5)(h), 186.505 FS.

Current with amendments available through January 5, 2015.

Rule 29J-2.002, F.A.C., 29 FL ADC 29J-2.002

End of Document

Florida Administrative Code - 2014

West's Florida Administrative Code
Title 29. Regional Planning Council
Subtitle 29j. South Florida Regional Planning Council
Chapter 29J-2. Practice and Procedure

Rule 29J-2.003, F.A.C.
Fla. Admin. Code r. 29J-2.003

29J-2.003. Developments of Regional Impact (DRI).

Currentness

The South Florida Regional Planning Council coordinates the multi-agency, intergovernmental review of Developments of Regional Impact (DRI), including Florida Quality Developments, and Areawide and Downtown DRIs, and amendments to same in accordance with Section 380.06, F.S., and Chapter 9J-2, F.A.C., as amended, and the Strategic Regional Policy Plan for South Florida (Rule 29J-2.009, F.A.C.).

Credits

Adopted Aug. 6, 1975; Amended July 6, 1981, Sept. 1, 1981; Transferred from 29J-2.03; Amended June 2, 1986, Nov. 9, 1986, May 3, 1987, Nov. 30, 1987, Dec. 26, 1988, Mar. 9, 1999.

AUTHORITY: 120.54, 186.505 FS. Law Implemented 120.54, 185.505 FS.

Current with amendments available through January 5, 2015.

Rule 29J-2.003, F.A.C., 29 FL ADC 29J-2.003

End of Document

Florida Administrative Code - 2014

West's Florida Administrative Code
Title 29. Regional Planning Council
Subtitle 29j. South Florida Regional Planning Council
Chapter 29J-2. Practice and Procedure

Rule 29J-2.004, F.A.C.
Fla. Admin. Code r. 29J-2.004

29J-2.004. Intergovernmental Coordination and Review Procedures.

Currentness

(1) The South Florida Regional Planning Council has been designated as the Regional Clearinghouse (RCH) for substate district 11, which includes Broward, Miami-Dade, and Monroe counties, to exercise the responsibilities pursuant to the Florida Office of Planning and Budgeting's Intergovernmental Coordination and Review Process.

(2) The functions which the South Florida Regional Planning Council shall perform include:

(a) Evaluating the significance of proposed Federal and federally assisted projects to state, areawide, or local plans and programs.

(b) Receiving and disseminating project notifications and providing liaison between applicants and appropriate units of government and agencies.

(c) Providing agencies charged with enforcing and furthering the objectives of state and local environmental standards with the opportunity to review and comment on the environmental significance of Federal assistance projects.

(d) Providing agencies charged with enforcing and furthering the objectives of state and local civil rights laws with the opportunity to review and comment on the civil rights aspects of federal assistance projects.

(e) Providing liaison between Federal agencies contemplating direct Federal development projects and state and areawide or local agencies or governments having plans or projects which might be affected by the proposed project.

(3) When evaluating the project or program, comments by the South Florida Regional Planning Council are to include information about:

(a) The extent to which the project is consistent with comprehensive planning for the area.

(b) The extent to which the project duplicates or needs to be coordinated with other projects or programs.

(c) The extent to which it might be revised to increase its effectiveness or efficiency.

(d) The extent to which the project meets areawide objectives relating to natural and human resources, and economic and community development.

(e) The extent to which the project impacts the natural environment.

(f) The project impact on balanced patterns of settlement and the delivery of services to all sectors of the area population, including minority groups.

(4) The authority of the Council to take appropriate action on applications is hereby delegated to the Executive Director, in the following manner:

(a) Application is determined by staff not to be of regional interest, the Executive Director shall so comment to the appropriate Federal agency on behalf of the Council.

(b) When an application is determined to be of regional interest but which is either consistent with or not inconsistent with regional plans or policies, completed or in progress, or which is modified during the review period to be so classified, the Executive Director shall so comment to the appropriate Federal agency on behalf of the Council.

(c) When an application is determined to be inconsistent with regional plans or policies, completed or in progress, and it is recommended by staff to receive adverse comment, the Executive Director shall submit the application and recommended adverse comments to the Council for its consideration and action.

(5) The Executive Director shall provide a monthly report to the Council indicating the status of all applications currently being reviewed by the Council's staff.

Credits

Adopted Aug. 6, 1975; Transferred from 29J-2.04; Amended Mar. 9, 1999.

AUTHORITY: 120.54, 163.01, 186.505 FS. Law Implemented 120.54, 163.01, 186.505 FS.

Current with amendments available through January 5, 2015.

Rule 29J-2.004, F.A.C., 29 FL ADC 29J-2.004

Florida Administrative Code - 2014

West's Florida Administrative Code
Title 29. Regional Planning Council
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Chapter 29J-2. Practice and Procedure

Rule 29J-2.009, F.A.C.
Fla. Admin. Code r. 29J-2.009

29J-2.009. Strategic Regional Policy Plan for South Florida.

Currentness

The Strategic Regional Policy Plan (SRPP) for South Florida, was prepared in response to Section 186.507, F.S., and is based on current studies of the Region. The Council adopts the Strategic Regional Policy Plan for South Florida, which is incorporated herein by reference and copies of which are kept at the Council offices at 3440 Hollywood Boulevard, Suite 140, Hollywood, Florida, to guide Council decision-making.

Credits

Adopted Aug. 13, 1995; Amended Dec. 26, 1996, July 12, 2004.

AUTHORITY: 186.507 FS. Law Implemented 186.507, 186.508 FS., Chapter 93-206, Laws of Florida.

Current with amendments available through January 5, 2015.

Rule 29J-2.009, F.A.C., 29 FL ADC 29J-2.009

West's Florida Statutes Annotated
Title XI. County Organization and Intergovernmental Relations (Chapters 124-164) (Refs & Annos)
Chapter 163. Intergovernmental Programs (Refs & Annos)
Part II. Growth Policy; County and Municipal Planning; Land Development Regulation (Refs & Annos)

This section has been updated. Click here for the updated version.

West's F.S.A. § 163.3180

163.3180. Concurrency

Effective: May 30, 2013 to June 27, 2019

(1) Sanitary sewer, solid waste, drainage, and potable water are the only public facilities and services subject to the concurrency requirement on a statewide basis. Additional public facilities and services may not be made subject to concurrency on a statewide basis without approval by the Legislature; however, any local government may extend the concurrency requirement so that it applies to additional public facilities within its jurisdiction.

(a) If concurrency is applied to other public facilities, the local government comprehensive plan must provide the principles, guidelines, standards, and strategies, including adopted levels of service, to guide its application. In order for a local government to rescind any optional concurrency provisions, a comprehensive plan amendment is required. An amendment rescinding optional concurrency issues shall be processed under the expedited state review process in s. 163.3184(3), but the amendment is not subject to state review and is not required to be transmitted to the reviewing agencies for comments, except that the local government shall transmit the amendment to any local government or government agency that has filed a request with the governing body and, for municipal amendments, the amendment shall be transmitted to the county in which the municipality is located. For informational purposes only, a copy of the adopted amendment shall be provided to the state land planning agency. A copy of the adopted amendment shall also be provided to the Department of Transportation if the amendment rescinds transportation concurrency and to the Department of Education if the amendment rescinds school concurrency.

(b) The local government comprehensive plan must demonstrate, for required or optional concurrency requirements, that the levels of service adopted can be reasonably met. Infrastructure needed to ensure that adopted level-of-service standards are achieved and maintained for the 5-year period of the capital improvement schedule must be identified pursuant to the requirements of s. 163.3177(3). The comprehensive plan must include principles, guidelines, standards, and strategies for the establishment of a concurrency management system.

(2) Consistent with public health and safety, sanitary sewer, solid waste, drainage, adequate water supplies, and potable water facilities shall be in place and available to serve new development no later than the issuance by the local government of a certificate of occupancy or its functional equivalent. Prior to approval of a building permit or its functional equivalent, the local government shall consult with the applicable water supplier to determine whether adequate water supplies to serve the new development will be available no later than the anticipated date of issuance by the local government of a certificate of occupancy or its functional equivalent. A local government may meet the concurrency requirement for sanitary sewer through the use of onsite sewage treatment and disposal systems approved by the Department of Health to serve new development.

(3) Governmental entities that are not responsible for providing, financing, operating, or regulating public facilities needed to serve development may not establish binding level-of-service standards on governmental entities that do bear those responsibilities.

(4) The concurrency requirement as implemented in local comprehensive plans applies to state and other public facilities and development to the same extent that it applies to all other facilities and development, as provided by law.

(5)(a) If concurrency is applied to transportation facilities, the local government comprehensive plan must provide the principles, guidelines, standards, and strategies, including adopted levels of service to guide its application.

(b) Local governments shall use professionally accepted studies to evaluate the appropriate levels of service. Local governments should consider the number of facilities that will be necessary to meet level-of-service demands when determining the appropriate levels of service. The schedule of facilities that are necessary to meet the adopted level of service shall be reflected in the capital improvement element.

(c) Local governments shall use professionally accepted techniques for measuring levels of service when evaluating potential impacts of a proposed development.

(d) The premise of concurrency is that the public facilities will be provided in order to achieve and maintain the adopted level of service standard. A comprehensive plan that imposes transportation concurrency shall contain appropriate amendments to the capital improvements element of the comprehensive plan, consistent with the requirements of s. 163.3177(3). The capital improvements element shall identify facilities necessary to meet adopted levels of service during a 5-year period.

(e) If a local government applies transportation concurrency in its jurisdiction, it is encouraged to develop policy guidelines and techniques to address potential negative impacts on future development:

1. In urban infill and redevelopment, and urban service areas.

2. With special part-time demands on the transportation system.

3. With de minimis impacts.

4. On community desired types of development, such as redevelopment, or job creation projects.

(f) Local governments are encouraged to develop tools and techniques to complement the application of transportation concurrency such as:

1. Adoption of long-term strategies to facilitate development patterns that support multimodal solutions, including urban design, and appropriate land use mixes, including intensity and density.

2. Adoption of an areawide level of service not dependent on any single road segment function.

3. Exempting or discounting impacts of locally desired development, such as development in urban areas, redevelopment, job creation, and mixed use on the transportation system.

4. Assigning secondary priority to vehicle mobility and primary priority to ensuring a safe, comfortable, and attractive pedestrian environment, with convenient interconnection to transit.

5. Establishing multimodal level of service standards that rely primarily on nonvehicular modes of transportation where existing or planned community design will provide adequate level of mobility.

6. Reducing impact fees or local access fees to promote development within urban areas, multimodal transportation districts, and a balance of mixed-use development in certain areas or districts, or for affordable or workforce housing.

(g) Local governments are encouraged to coordinate with adjacent local governments for the purpose of using common methodologies for measuring impacts on transportation facilities.

(h) 1. Local governments that continue to implement a transportation concurrency system, whether in the form adopted into the comprehensive plan before the effective date of the Community Planning Act, chapter 2011-139, Laws of Florida, or as subsequently modified, must:

a. Consult with the Department of Transportation when proposed plan amendments affect facilities on the strategic intermodal system.

b. Exempt public transit facilities from concurrency. For the purposes of this sub-subparagraph, public transit facilities include transit stations and terminals; transit station parking; park-and-ride lots; intermodal public transit connection or transfer facilities; fixed bus, guideway, and rail stations; and airport passenger terminals and concourses, air cargo facilities, and hangars for the assembly, manufacture, maintenance, or storage of aircraft. As used in this sub-subparagraph, the terms “terminals” and “transit facilities” do not include seaports or commercial or residential development constructed in conjunction with a public transit facility.

c. Allow an applicant for a development-of-regional-impact development order, development agreement, rezoning, or other land use development permit to satisfy the transportation concurrency requirements of the local comprehensive plan, the local government's concurrency management system, and s. 380.06, when applicable, if:

(I) The applicant in good faith offers to enter into a binding agreement to pay for or construct its proportionate share of required improvements in a manner consistent with this subsection.

(II) The proportionate-share contribution or construction is sufficient to accomplish one or more mobility improvements that will benefit a regionally significant transportation facility. A local government may accept contributions from multiple applicants for a planned improvement if it maintains contributions in a separate account designated for that purpose.

d. Provide the basis upon which the landowners will be assessed a proportionate share of the cost addressing the transportation impacts resulting from a proposed development.

2. An applicant shall not be held responsible for the additional cost of reducing or eliminating deficiencies. When an applicant contributes or constructs its proportionate share pursuant to this paragraph, a local government may not require payment or construction of transportation facilities whose costs would be greater than a development's proportionate share of the improvements necessary to mitigate the development's impacts.

a. The proportionate-share contribution shall be calculated based upon the number of trips from the proposed development expected to reach roadways during the peak hour from the stage or phase being approved, divided by the change in the peak hour maximum service volume of roadways resulting from construction of an improvement necessary to maintain or achieve the adopted level of service, multiplied by the construction cost, at the time of development payment, of the improvement necessary to maintain or achieve the adopted level of service.

b. In using the proportionate-share formula provided in this subparagraph, the applicant, in its traffic analysis, shall identify those roads or facilities that have a transportation deficiency in accordance with the transportation deficiency as defined in subparagraph 4. The proportionate-share formula provided in this subparagraph shall be applied only to those facilities that are determined to be significantly impacted by the project traffic under review. If any road is determined to be transportation deficient without the project traffic under review, the costs of correcting that deficiency shall be removed from the project's proportionate-share calculation and the necessary transportation improvements to correct that deficiency shall be considered to be in place for purposes of the proportionate-share calculation. The improvement necessary to correct the transportation deficiency is the funding responsibility of the entity that has maintenance responsibility for the facility. The development's proportionate share shall be calculated only for the needed transportation improvements that are greater than the identified deficiency.

c. When the provisions of subparagraph 1. and this subparagraph have been satisfied for a particular stage or phase of development, all transportation impacts from that stage or phase for which mitigation was required and provided shall be deemed fully mitigated in any transportation analysis for a subsequent stage or phase of development. Trips from a previous stage or phase that did not result in impacts for which mitigation was required or provided may be cumulatively analyzed with trips from a subsequent stage or phase to determine whether an impact requires mitigation for the subsequent stage or phase.

d. In projecting the number of trips to be generated by the development under review, any trips assigned to a toll-financed facility shall be eliminated from the analysis.

e. The applicant shall receive a credit on a dollar-for-dollar basis for impact fees, mobility fees, and other transportation concurrency mitigation requirements paid or payable in the future for the project. The credit shall be reduced up to 20 percent by the percentage share that the project's traffic represents of the added capacity of the selected improvement, or by the amount specified by local ordinance, whichever yields the greater credit.

3. This subsection does not require a local government to approve a development that, for reasons other than transportation impacts, is not qualified for approval pursuant to the applicable local comprehensive plan and land development regulations.

4. As used in this subsection, the term "transportation deficiency" means a facility or facilities on which the adopted level-of-service standard is exceeded by the existing, committed, and vested trips, plus additional projected background trips from any source other than the development project under review, and trips that are forecast by established traffic standards, including traffic modeling, consistent with the University of Florida's Bureau of Economic and Business Research medium population projections. Additional projected background trips are to be coincident with the particular stage or phase of development under review.

(i) If a local government elects to repeal transportation concurrency, it is encouraged to adopt an alternative mobility funding system that uses one or more of the tools and techniques identified in paragraph (f). Any alternative mobility funding system adopted may not be used to deny, time, or phase an application for site plan approval, plat approval, final subdivision approval, building permits, or the functional equivalent of such approvals provided that the developer agrees to pay for the development's identified transportation impacts via the funding mechanism implemented by the local government. The revenue from the funding mechanism used in the alternative system must be used to implement the needs of the local government's plan which serves as the basis for the fee imposed. A mobility fee-based funding system must comply with the dual rational nexus test applicable to impact fees. An alternative system that is not mobility fee-based shall not be applied in a manner that imposes upon new development any responsibility for funding an existing transportation deficiency as defined in paragraph (h).

(6)(a) Local governments that apply concurrency to public education facilities shall include principles, guidelines, standards, and strategies, including adopted levels of service, in their comprehensive plans and interlocal agreements. The choice of one or more municipalities to not adopt school concurrency and enter into the interlocal agreement does not preclude implementation of school concurrency within other jurisdictions of the school district if the county and one or more municipalities have adopted school concurrency into their comprehensive plan and interlocal agreement that represents at least 80 percent of the total countywide population. All local government provisions included in comprehensive plans regarding school concurrency within a county must be consistent with each other and the requirements of this part.

(b) Local governments and school boards imposing school concurrency shall exercise authority in conjunction with each other to establish jointly adequate level-of-service standards necessary to implement the adopted local government comprehensive plan, based on data and analysis.

(c) Public school level-of-service standards shall be included and adopted into the capital improvements element of the local comprehensive plan and shall apply districtwide to all schools of the same type. Types of schools may include elementary, middle, and high schools as well as special purpose facilities such as magnet schools.

(d) Local governments and school boards may utilize tiered level-of-service standards to allow time to achieve an adequate and desirable level of service as circumstances warrant.

(e) A school district that includes relocatable facilities in its inventory of student stations shall include the capacity of such relocatable facilities as provided in s. 1013.35(2)(b)2.f., provided the relocatable facilities were purchased after 1998 and the relocatable facilities meet the standards for long-term use pursuant to s. 1013.20.

(f) 1. In order to balance competing interests, preserve the constitutional concept of uniformity, and avoid disruption of existing educational and growth management processes, local governments are encouraged, if they elect to adopt school concurrency, to apply school concurrency to development on a districtwide basis so that a concurrency determination for a specific development will be based upon the availability of school capacity districtwide.

2. If a local government elects to apply school concurrency on a less than districtwide basis, by using school attendance zones or concurrency service areas:

a. Local governments and school boards shall have the burden to demonstrate that the utilization of school capacity is maximized to the greatest extent possible in the comprehensive plan and amendment, taking into account transportation costs and court-approved desegregation plans, as well as other factors. In addition, in order to achieve concurrency within the service area boundaries selected by local governments and school boards, the service area boundaries, together with the standards for establishing those boundaries, shall be identified and included as supporting data and analysis for the comprehensive plan.

b. Where school capacity is available on a districtwide basis but school concurrency is applied on a less than districtwide basis in the form of concurrency service areas, if the adopted level-of-service standard cannot be met in a particular service area as applied to an application for a development permit and if the needed capacity for the particular service area is available in one or more contiguous service areas, as adopted by the local government, then the local government may not deny an application for site plan or final subdivision approval or the functional equivalent for a development or phase of a development on the basis of school concurrency, and if issued, development impacts shall be subtracted from the contiguous service area's capacity totals. Students from the development may not be required to go to the adjacent service area unless the school board rezones the area in which the development occurs.

(g) The premise of concurrency is that the public facilities will be provided in order to achieve and maintain the adopted level-of-service standard. A comprehensive plan that imposes school concurrency shall contain appropriate amendments to the capital improvements element of the comprehensive plan, consistent with the requirements of s. 163.3177(3). The capital improvements element shall identify facilities necessary to meet adopted levels of service during a 5-year period consistent with the school board's educational facilities plan.

(h) 1. In order to limit the liability of local governments, a local government may allow a landowner to proceed with development of a specific parcel of land notwithstanding a failure of the development to satisfy school concurrency, if all the following factors are shown to exist:

a. The proposed development would be consistent with the future land use designation for the specific property and with pertinent portions of the adopted local plan, as determined by the local government.

b. The local government's capital improvements element and the school board's educational facilities plan provide for school facilities adequate to serve the proposed development, and the local government or school board has not implemented that element or the project includes a plan that demonstrates that the capital facilities needed as a result of the project can be reasonably provided.

c. The local government and school board have provided a means by which the landowner will be assessed a proportionate share of the cost of providing the school facilities necessary to serve the proposed development.

2. If a local government applies school concurrency, it may not deny an application for site plan, final subdivision approval, or the functional equivalent for a development or phase of a development authorizing residential development for failure to achieve and maintain the level-of-service standard for public school capacity in a local school concurrency management system where adequate school facilities will be in place or under actual construction within 3 years after the issuance of final subdivision or site plan approval, or the functional equivalent. School concurrency is satisfied if the developer executes a legally binding commitment to provide mitigation proportionate to the demand for public school facilities to be created by actual development of the property, including, but not limited to, the options described in sub-subparagraph a. Options for proportionate-share mitigation of impacts on public school facilities must be established in the comprehensive plan and the interlocal agreement pursuant to s. 163.31777.

a. Appropriate mitigation options include the contribution of land; the construction, expansion, or payment for land acquisition or construction of a public school facility; the construction of a charter school that complies with the requirements of s. 1002.33(18); or the creation of mitigation banking based on the construction of a public school facility in exchange for the right to sell capacity credits. Such options must include execution by the applicant and the local government of a development agreement that constitutes a legally binding commitment to pay proportionate-share mitigation for the additional residential units approved by the local government in a development order and actually developed on the property, taking into account residential density allowed on the property prior to the plan amendment that increased the overall residential density. The district school board must be a party to such an agreement. As a condition of its entry into such a development agreement, the local government may require the landowner to agree to continuing renewal of the agreement upon its expiration.

b. If the interlocal agreement and the local government comprehensive plan authorize a contribution of land; the construction, expansion, or payment for land acquisition; the construction or expansion of a public school facility, or a portion thereof; or the construction of a charter school that complies with the requirements of s. 1002.33(18), as proportionate-share mitigation, the local government shall credit such a contribution, construction, expansion, or payment toward any other impact fee or exaction imposed by local ordinance for the same need, on a dollar-for-dollar basis at fair market value.

c. Any proportionate-share mitigation must be directed by the school board toward a school capacity improvement identified in the 5-year school board educational facilities plan that satisfies the demands created by the development in accordance with a binding developer's agreement.

3. This paragraph does not limit the authority of a local government to deny a development permit or its functional equivalent pursuant to its home rule regulatory powers, except as provided in this part.

(i) When establishing concurrency requirements for public schools, a local government must enter into an interlocal agreement that satisfies the requirements in ss. 163.3177(6)(h) 1. and 2. and 163.31777 and the requirements of this subsection. The interlocal agreement shall acknowledge both the school board's constitutional and statutory obligations to provide a uniform system of free public schools on a countywide basis, and the land use authority of local governments, including their authority to approve or deny comprehensive plan amendments and development orders. The interlocal agreement shall meet the following requirements:

1. Establish the mechanisms for coordinating the development, adoption, and amendment of each local government's school concurrency related provisions of the comprehensive plan with each other and the plans of the school board to ensure a uniform districtwide school concurrency system.

2. Specify uniform, districtwide level-of-service standards for public schools of the same type and the process for modifying the adopted level-of-service standards.

3. Define the geographic application of school concurrency. If school concurrency is to be applied on a less than districtwide basis in the form of concurrency service areas, the agreement shall establish criteria and standards for the establishment and modification of school concurrency service areas. The agreement shall ensure maximum utilization of school capacity, taking into account transportation costs and court-approved desegregation plans, as well as other factors.

4. Establish a uniform districtwide procedure for implementing school concurrency which provides for:

a. The evaluation of development applications for compliance with school concurrency requirements, including information provided by the school board on affected schools, impact on levels of service, and programmed improvements for affected schools and any options to provide sufficient capacity;

b. An opportunity for the school board to review and comment on the effect of comprehensive plan amendments and rezonings on the public school facilities plan; and

c. The monitoring and evaluation of the school concurrency system.

5. A process and uniform methodology for determining proportionate-share mitigation pursuant to paragraph (h).

(j) This subsection does not limit the authority of a local government to grant or deny a development permit or its functional equivalent prior to the implementation of school concurrency.

Credits

Added by Laws 1993, c. 93-206, § 8, eff. July 1, 1993. Amended by Laws 1995, c. 95-341, § 12, eff. June 16, 1995; Laws 1996, c. 96-416, § 3, eff. June 6, 1996; Laws 1997, c. 97-253, § 1, eff. May 30, 1997; Laws 1998, c. 98-176, § 5, eff. July 1, 1998; Laws 1999, c. 99-378, § 4, eff. July 1, 1999; Laws 2002, c. 2002-13, § 2, eff. July 1, 2002; Laws 2002, c. 2002-296, § 6, eff. May 31, 2002; Laws 2005, c. 2005-290, § 5, eff. July 1, 2005; Laws 2005, c. 2005-291, § 11, eff. June 24, 2005; Laws 2006, c. 2006-1, § 18, eff. July 4, 2006; Laws 2006, c. 2006-220, § 3, eff. July 1, 2006; Laws 2006, c. 2006-252, § 3, eff. July 1, 2006; Laws 2007, c. 2007-196, § 11, eff. July 1, 2007; Laws 2007, c. 2007-198, § 2, eff. July 1, 2007; Laws 2007, c. 2007-204, § 3, eff. July 1, 2007; Laws 2009, c. 2009-85, § 5, eff. July 1, 2009; Laws 2009, c. 2009-96, § 4, eff. June 1, 2009; Laws 2010, c. 2010-5, § 17, eff. June 29, 2010; Laws 2010, c. 2010-33, § 1, eff. July 1, 2010; Laws 2011, c. 2011-14, § 4, eff. April 27, 2011; Laws 2011, c. 2011-139, § 15, eff. June 2, 2011; Laws 2012, c. 2012-99, § 7, eff. April 6, 2012; Laws 2013, c. 2013-78, § 1, eff. May 30, 2013.

Editors' Notes

RETROACTIVITY

<Laws 2011, c. 2011-14, § 14, provides:>

<“This act shall take effect upon becoming a law [April 27, 2011], and those portions of this act which were amended or created by chapter 2009-96, Laws of Florida, shall operate retroactively to June 1, 2009. If such retroactive

application is held by a court of last resort to be unconstitutional, this act shall apply prospectively from the date that this act becomes a law.”>

West's F. S. A. § 163.3180, FL ST § 163.3180
Current with laws, joint and concurrent resolutions and memorials through April 25, 2022, in effect from the 2022 Second Regular Session. Some statute sections may be more current, see credits for details.

Florida Administrative Code - 2014

West's Florida Administrative Code
Title 29. Regional Planning Council
Subtitle 29j. South Florida Regional Planning Council
Chapter 29J-3. Regional Dispute Resolution Process

Rule 29J-3.001, F.A.C.
Fla. Admin. Code r. 29J-3.001

29J-3.001. Purpose.

Currentness

(1) The purpose of this rule is to establish a voluntary regional dispute resolution process (RDRP) to reconcile differences on planning, growth management and other issues among local governments, regional agencies and private interests. The process consists of two basic components: (a) process initiation (initiation and response letters), and (b) settlement meetings; and five optional components: pre-initiation meeting, situation assessments, mediation, advisory decision-making, and reference to other dispute resolution processes (judicial, administrative or arbitration proceedings).

(2) The intent of the RDRP is to provide a flexible process to reconcile differences on planning and growth management issues that will: clearly identify and resolve problems as early as possible; utilize the procedures in a low-to-high cost sequence; allow flexibility in the order in which the procedures are used; provide for the appropriate involvement of affected and responsible parties; and provide as much process certainty as possible.

(3) The RDRP may be used to resolve disputes involving: extrajurisdictional impacts as provided for in the intergovernmental coordination elements of local comprehensive plans, as required by Section 163.3177, F.S.; inconsistencies between port master plans and local comprehensive plans, as required by Section 163.3178, F.S.; the siting of community residential homes, as required by Section 419.001(5), F.S.; and any other matters covered by statutes which reference the RDRP.

(4) The RDRP shall not be used to address disputes involving environmental permits or other regulatory matters unless all of the parties involved agree to initiate use of the RDRP.

(5) Use of the RDRP shall not alter a jurisdiction's, organization's, group's, or individual's right to a judicial or administrative determination of any issue if that entity is entitled to such a determination under statutory or common law.

(6) Participation in the RDRP as a named party or in any other capacity does not convey or limit intervenor status or standing in any judicial or administrative proceedings.

Credits

Adopted Aug. 17, 1994.

AUTHORITY: 186.509 FS. Law Implemented 186.509 FS.

Current with amendments available through January 5, 2015.

Rule 29J-3.001, F.A.C., 29 FL ADC 29J-3.001

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Rule 29J-3.002, F.A.C.
Fla. Admin. Code r. 29J-3.002

29J-3.002. Definitions.

Currentness

(1) Situation assessment is a procedure of information collection that may involve review of documents, interviews and an assessment meeting leading to a written or verbal report identifying: the issues in dispute; the stakeholders; information needed before a decision can be made; and a recommendation for appropriate dispute resolution procedures.

(2) "Pre-initiation meetings" are opportunities for a party to discuss the suitability of the RDRP with the SFRPC staff for resolving their dispute before formally initiating the RDRP.

(3) Facilitation is a procedure in which the facilitator helps the parties design and follow a meeting agenda and assists parties to communicate more effectively throughout the process. The facilitator has no authority to make or recommend a decision.

(4) Mediation is a procedure in which a neutral party assists disputing parties in a negotiation process to explore their interests, develop and evaluate options, and reach a mutually acceptable agreement without prescribing a resolution. A mediator may take more control of the process than a facilitator and usually works in more complex cases where a dispute is more clearly defined.

(5) Advisory decision-making is a procedure aimed at enhancing the effectiveness of negotiations and helping parties more realistically evaluate their negotiation positions. This procedure may include fact-finding, neutral evaluation, or advisory arbitration in which a neutral party or panel listens to the facts and arguments presented by the parties and renders a non-binding advisory decision.

(6) Jurisdiction is any local government or regional agency, including special districts, authorities or school boards.

(7) Named party shall be any jurisdiction, public or private organization, group or individual who is named in an initiation letter, including the initiating jurisdiction, or is admitted by the named parties to participate in settlement of a dispute pursuant to subsection 29J-3.003(1), (2) and (3), F.A.C. Being a named party in the RDRP does not convey or limit standing in any judicial or administrative proceeding.

(8) Representative is an individual who is given guidance and authority to act, to the extent possible, by a named party to represent them in a RDRP case. Subsection 29J-3.003(4), F.A.C., sets forth the designation process.

(9) Initiation letter is a letter from a jurisdiction formally identifying a dispute and asking named parties to engage in this process to resolve the dispute and, at a minimum, attend the initial settlement meeting. Subsection 29J-3.010(2), F.A.C., specifies what must be included in an initiation letter.

(10) Response letter formally notifies the initiator and other named parties that a party is willing to participate in the RDRP and, at a minimum, attend at least one settlement meeting. Subsection 29J-3.010(3), F.A.C., specifies what must be included in a response letter.

(11) "Settlement agreements" may be voluntarily approved by the individual or governing body authorized to bind the named party. Agreements may take the form of memorandums of understanding, contracts, interlocal agreements or other form mutually agreed to by the signatory parties or as required by law. A settlement may be agreed to by some or all of the named parties.

Credits

Adopted Aug. 17, 1994.

AUTHORITY: 186.509 FS. Law Implemented 186.509 FS.

Current with amendments available through January 5, 2015.

Rule 29J-3.002, F.A.C., 29 FL ADC 29J-3.002

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Rule 29J-3.003, F.A.C.
Fla. Admin. Code r. 29J-3.003

29J-3.003. Participation.

Currentness

(1) Named parties shall automatically be allowed to participate. Other jurisdictions, public or private organizations, groups, or individuals suggested by named parties in response letters or during RDRP meetings or by submitting a petition to participate shall become named parties if agreed to by a two-thirds majority of the named parties except as provided for in subsection 29J-3.003(2), F.A.C. Fee allocation agreements will be amended as appropriate.

(2) All initiation and response letters made in accordance with intergovernmental coordination elements (ICE) of local government comprehensive plans shall only list affected jurisdictions as named parties. The named parties may at the initial settlement meeting or at subsequent RDRP meetings add public or private named parties by mutual agreement of all the current named parties.

(3) Other jurisdictions, public or private organizations, groups or individuals seeking to become named parties shall submit to the South Florida Regional Planning Council (SFRPC) staff a written petition to participate, including reasons for the request and information required in subsection 29J-3.010(2), F.A.C. Such jurisdictions, public or private organizations, groups, or individuals shall become named parties if agreed to by a two-thirds majority of the named parties, prior to or during RDRP meetings, except as pursuant to subsection 29J-3.003(2), F.A.C. Named parties who do not respond within 21 days of the initiation letter may not participate in the RDRP unless they submit a petition for participation.

(4) Each of the jurisdictions, organizations, groups, or individuals participating as named parties in this process shall designate a representative, in writing, or be represented by the chief executive officer. Such a representative shall have authority to act, to the maximum extent possible, and shall have the responsibility for representing that party's interest in this process and maintaining communications with that party throughout the process. Jurisdictions are encouraged to designate a representative to participate in the RDRP in advance of initiating or receiving a request.

(5) Any named party may invite individuals or organizations to attend meetings under this process who can provide information and technical assistance useful in the resolution of the dispute. The parties, by agreement, or the presiding neutral shall determine when and under what circumstances such invited parties may provide input.

(6) All communications by a named party called for in this process shall be submitted to all other named parties and the SFRPC staff in writing.

(7) All named parties who agree to participate in this process commit to a good faith effort to resolve problems or disputes.

(8) Any named party may withdraw from participation in the RDRP upon written notice to all other named parties and the SFRPC staff.

Credits
Adopted Aug. 17, 1994.

AUTHORITY: 186.509 FS. Law Implemented 186.509 FS.

Current with amendments available through January 5, 2015.

Rule 29J-3.003, F.A.C., 29 FL ADC 29J-3.003

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Rule 29J-3.004, F.A.C.
Fla. Admin. Code r. 29J-3.004

29J-3.004. Costs.

Currentness

(1) There shall be no charge for processing a RDRP initiation request and facilitation of the initial settlement meeting. The SFRPC shall be compensated for situation assessments, facilitation of additional settlement meetings, mediation, technical assistance and other staff services at a rate based on reasonable actual costs plus any additional out-of-pocket expenses. Outside professional neutrals shall be compensated at their standard rate or as negotiated by the parties.

(2) The costs of administration, settlement meetings, mediation or advisory decision-making shall be split equally between the parties or according to another agreed upon allocation. The agreed upon cost allocation shall be documented in a written fee agreement.

Credits
Adopted Aug. 17, 1994.

AUTHORITY: 186.509 FS. Law Implemented 186.509 FS.

Current with amendments available through January 5, 2015.

Rule 29J-3.004, F.A.C., 29 FL ADC 29J-3.004

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Rule 29J-3.005, F.A.C.
Fla. Admin. Code r. 29J-3.005

29J-3.005. Timeframes.

Currentness

(1) The initial settlement meeting shall be scheduled and held within 30 days of the date of receipt of the initiation letter at a time and place convenient to the named parties.

(2) Additional settlement meetings, mediation or advisory decision-making shall be completed within forty-five (45) days of the date of the conclusion of the initial settlement meeting.

(3) All timeframes specified in this rule may be shortened or extended by mutual agreement of the named parties.

(4) The parties may, by mutual agreement, utilize procedures in the RDRP in any order.

(5) Where necessary to allow this process to be effectively carried out, named parties should address deferring or seeking stays of judicial or administrative proceedings.

Credits
Adopted Aug. 17, 1994.

AUTHORITY: 186.509 FS. Law Implemented 186.509 FS.

Current with amendments available through January 5, 2015.

Rule 29J-3.005, F.A.C., 29 FL ADC 29J-3.005

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Rule 29J-3.006, F.A.C.
Fla. Admin. Code r. 29J-3.006

29J-3.006. Administrative Protocols.

Currentness

The SFRPC is authorized to write and adopt such administrative guidelines and policies as are necessary to implement this rule. These may address staff and council roles, procedures for situation assessment, selection of neutrals, consumer guides or other matters. Where required pursuant to Section 120.52, F.S., policies and guidelines shall be adopted as rules.

Credits
Adopted Aug. 17, 1994.

AUTHORITY: 186.509 FS. Law Implemented 186.509 FS.

Current with amendments available through January 5, 2015.

Rule 29J-3.006, F.A.C., 29 FL ADC 29J-3.006

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Rule 29J-3.007, F.A.C.
Fla. Admin. Code r. 29J-3.007

29J-3.007. Public Notice, Records, and Confidentiality.

Currentness

(1) Named parties shall consider appropriate opportunities for public input at each step in this process, such as submitting written or verbal comments on issues, alternative solutions, and impacts of proposed agreements.

(2) Applicable public notice and public records requirements shall be observed as required by Chapters 119 and 120, F.S.

(3) Participants in these procedures agree by their participation that no comments, meeting records, or written or verbal offers of settlement shall be offered by them as evidence in a subsequent judicial or administrative action.

(4) To the extent permitted by law, mediation under this process will be governed by the confidentiality provisions of Section 44.302(2), F.S., and other applicable law.

Credits
Adopted Aug. 17, 1994.

AUTHORITY: 186.509 FS. Law Implemented 186.509 FS.

Current with amendments available through January 5, 2015.

Rule 29J-3.007, F.A.C., 29 FL ADC 29J-3.007

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Rule 29J-3.008, F.A.C.
Fla. Admin. Code r. 29J-3.008

29J-3.008. Pre-initiation Meeting.

Currentness

A jurisdiction, organization, group, or individual contemplating initiation of this process may request an informal pre-initiation meeting with the SFRPC staff in order to ascertain whether the potential dispute would be appropriate for this process.

Credits
Adopted Aug. 17, 1994.

AUTHORITY: 186.509 FS. Law Implemented 186.509 FS.

Current with amendments available through January 5, 2015.

Rule 29J-3.008, F.A.C., 29 FL ADC 29J-3.008

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Rule 29J-3.009, F.A.C.
Fla. Admin. Code r. 29J-3.009

29J-3.009. Situation Assessment.

Currentness

(1) A jurisdiction, organization, group, or individual may request that the SFRPC staff or other neutral perform a situation assessment at any time, before or after initiation of the process.

(2) The situation assessment may involve examination of documents, interviews and assessment meetings, and shall recommend issues to be addressed, parties that may participate, appropriate resolution procedures, and a proposed schedule.

Credits
Adopted Aug. 17, 1994.

AUTHORITY: 186.509 FS. Law Implemented 186.509 FS.

Current with amendments available through January 5, 2015.

Rule 29J-3.009, F.A.C., 29 FL ADC 29J-3.009

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Rule 29J-3.010, F.A.C.
Fla. Admin. Code r. 29J-3.010

29J-3.010. Initiation of the Process by Jurisdictions.

Currentness

(1) This process is initiated by an initiation letter from the representative of the governing body of a jurisdiction, other than a regional planning council, to the named parties as provided for in subsections 29J-3.003(1) and (2), F.A.C., and to the SFRPC staff. The initiation letter must be accompanied by a resolution of the governing body authorizing initiation or by a copy of a written authorization of a representative to initiate requests to use the RDRP.

(2) Such an initiation letter shall identify: the issues to be discussed, named parties to be involved in the dispute resolution process, the initiating party's representative and others who will attend, and a brief history of the dispute indicating why it is appropriate for this process.

(3) Within twenty-one (21) days of receipt of the initiation letter, named parties shall send a response letter to the SFRPC staff, and all other named parties confirming their willingness to participate in a settlement meeting. This response shall include any additional issues and potential named parties the respondent wishes considered, as well as, a brief history of the dispute and a description of the situation from the respondent's point of view.

(4) Upon receipt of a request, the SFRPC staff shall assess its interest in the case. If the SFRPC is a named party or sees itself as a potential party, it shall notify the named parties of the nature of its interest and ascertain whether the parties desire an outside facilitator for the initial settlement meeting.

(5) The SFRPC may not initiate the RDRP but may recommend that a potential dispute is suitable for this process and transmit its recommendation to potential parties, who may, at their discretion, initiate the RDRP.

(6) The SFRPC staff shall schedule a meeting at the most convenient time within thirty (30) days of receipt of the date of the initiation request.

(7) In the event that a dispute involves jurisdictions under two or more regional planning councils, the process adopted by the region of the initiating jurisdiction shall govern, unless the named parties agree otherwise.

Credits
Adopted Aug. 17, 1994.

AUTHORITY: 186.509 FS. Law Implemented 186.509 FS.

Current with amendments available through January 5, 2015.

Rule 29J-3.010, F.A.C., 29 FL ADC 29J-3.010

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Rule 29J-3.011, F.A.C.
Fla. Admin. Code r. 29J-3.011

29J-3.011. Requests to Initiate Submitted by Others.

Currentness

(1) Private interests may ask any jurisdiction to initiate the process.

(2) Any public or private organization, group, or individual may request that the SFRPC recommend use of this process to address a potential dispute in accordance with subsection 29J-3.010(5), F.A.C. Such a request shall be submitted in writing and shall include the information required for an initiation letter in subsection 29J-3.010(2), F.A.C.

(3) After reviewing the rationale submitted by, and consulting with, the requesting organization, group, or individual, the SFRPC staff will conduct a situation assessment and respond in writing.

(4) If the SFRPC determines that the potential dispute is suitable for the process, it shall transmit that determination in writing to the potential parties, as agreed upon by the SFRPC and the requester. The determination may include a recommendation that one or more of the jurisdictions among the potential parties initiate the procedure. The SFRPC may also suggest that other resolution processes be used.

Credits
Adopted Aug. 17, 1994.

AUTHORITY: 186.509 FS. Law Implemented 186.509 FS.

Current with amendments available through January 5, 2015.

Rule 29J-3.011, F.A.C., 29 FL ADC 29J-3.011

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Rule 29J-3.012, F.A.C.
Fla. Admin. Code r. 29J-3.012

29J-3.012. Settlement Meetings.

Currentness

(1) Settlement meetings shall, at a minimum, be attended by the named parties' representatives designated pursuant to subsection 29J-3.003(3), F.A.C.

(2) Settlement meetings may be facilitated by an SFRPC staff member or other neutral facilitator acceptable to the parties and shall be held at a time and place acceptable to the parties.

(3) At the settlement meeting, the parties shall: consider adding named parties, consider guidelines for participation, identify the issues to be addressed, present their concerns and constraints, explore options for a solution, and seek agreement.

(4) The parties shall submit a settlement meeting report in accordance with subsection 29J-3.015(4), F.A.C., of this process.

(5) If an agreed-upon settlement meeting is not held or a settlement meeting produces no agreement to proceed to additional settlement meetings, mediation or advisory decision-making, any party who has agreed to participate in this procedure may proceed to: a joint meeting of governing bodies pursuant to Chapter 164, F.S., litigation, an administrative hearing or arbitration, as appropriate.

Credits
Adopted Aug. 17, 1994.

AUTHORITY: 186.509 FS. Law Implemented 186.509 FS.

Current with amendments available through January 5, 2015.

Rule 29J-3.012, F.A.C., 29 FL ADC 29J-3.012

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Rule 29J-3.013, F.A.C.
Fla. Admin. Code r. 29J-3.013

29J-3.013. Mediation.

Currentness

(1) If two or more named parties submit a request for mediation to the SFRPC, the SFRPC shall assist them to select and retain a mediator or the named parties may request that the SFRPC select a mediator.

(2) All disputes shall be mediated by a mediator who understands Florida growth management issues, has mediation experience, and is acceptable to the parties. Parties may consider mediators who are on the Florida Growth Management Conflict Resolution Consortium rosters or any other mutually acceptable mediator. Mediators shall be guided by the Standards of Professional Conduct, Florida Rules of Civil Procedure, Rule 10, Part II, Section 020-150.

(3) The parties shall submit a mediation report in accordance with subsection 29J-3.015(4), F.A.C., of this process.

Credits
Adopted Aug. 17, 1994.

AUTHORITY: 186.509 FS. Law Implemented 186.509 FS.

Current with amendments available through January 5, 2015.

Rule 29J-3.013, F.A.C., 29 FL ADC 29J-3.013

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Rule 29J-3.014, F.A.C.
Fla. Admin. Code r. 29J-3.014

29J-3.014. Advisory Decision-making.

Currentness

(1) If two or more of the named parties submit a request for advisory decision-making to the SFRPC, the SFRPC shall assist the parties to select and retain an appropriate neutral or the parties may request that the SFRPC make the selection.

(2) All disputes shall be handled by a neutral who understands Florida growth management issues, has appropriate experience, and is acceptable to the parties.

(3) The parties shall submit an advisory decision-making report in accordance with subsection 29J-3.015, F.A.C., (4) of this process at the conclusion.

Credits
Adopted Aug. 17, 1994.

AUTHORITY: 186.509 FS. Law Implemented 186.509 FS.

Current with amendments available through January 5, 2015.

Rule 29J-3.014, F.A.C., 29 FL ADC 29J-3.014

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Rule 29J-3.015, F.A.C.
Fla. Admin. Code r. 29J-3.015

29J-3.015. Settlement Agreements and Reports.

Currentness

(1) The form of all settlements reached through this process shall be determined by the named parties, and may include interlocal agreements, concurrent resolutions, memoranda of understanding, plan amendments, deed restrictions, or other forms as appropriate.

(2) Agreements signed by designated representatives may be in the form of recommendations to formal bodies and subject to their formal approval.

(3) Agreements may be reached by two or more parties even if all of the named parties do not agree or do not sign a formal agreement.

(4) After settlement meetings, mediation, or advisory decision-making under this process, the named parties shall submit a joint report to the SFRPC staff which shall, at a minimum include:

(a) identification of the issues discussed and copies of any agreements reached;

(b) a list of potentially affected or involved jurisdictions, organizations, groups, or individuals (including those which may not be named parties);

(c) a timeframe for starting and ending agreed-to informal negotiations, additional settlement meetings, mediation, advisory decision-making, joint meetings of elected bodies, administrative hearings or litigation;

(d) any additional SFRPC assistance requested;

(e) written fee allocation agreement to cover the costs of agreed-upon RDRP procedures; and

(f) a description of responsibilities and schedules for implementing and enforcing agreements reached. The report shall include any statements that any named party wishes to include.

Credits
Adopted Aug. 17, 1994.

AUTHORITY: 186.509 FS. Law Implemented 186.509 FS.

Current with amendments available through January 5, 2015.

Rule 29J-3.015, F.A.C., 29 FL ADC 29J-3.015

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Title 28. Administration Commission
Subtitle 28. Model Rules of Procedure
Chapter 28-24. Land Planning -- Part II Developments Presumed to be of Regional Impact

Rule 28-24.001, F.A.C.
Fla. Admin. Code r. 28-24.001

28-24.001. Airports.

Currentness

The following development shall be presumed to be a development of regional impact and subject to the requirements of Chapter 380, Florida Statutes:

The proposed construction of any airport development project as defined in the Federal Airport and Airway Development Act of 1970, Title 49 United States Code, Section 1701 et seq., involving the location of a new airport, a new runway or a runway extension.

Credits
Adopted July 1, 1973; Transferred from 22F-2.01, 27F-2.01, 27F-2.001.

Authority: 14.202 FS. Law Implemented 380.06 FS.

Current with amendments available through January 5, 2015.

Rule 28-24.001, F.A.C., 28 FL ADC 28-24.001

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West's Florida Administrative Code
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Chapter 28-24. Land Planning -- Part II Developments Presumed to be of Regional Impact

Rule 28-24.002, F.A.C.
Fla. Admin. Code r. 28-24.002

28-24.002. Attractions and Recreation Facilities.

Currentness

The following developments shall be presumed to be developments of regional impact and subject to the requirements of Chapter 380, Florida Statutes:

(1) Any sports, entertainment, amusement or recreation facility, including, but not limited to, sports arenas, stadiums, race tracks, tourist attractions and amusement parks, the proposed construction or expansion of which:

(a) For single performance facilities:

1. Provides parking spaces for more than two thousand five hundred (2,500) cars; or

2. Provides more than ten thousand (10,000) permanent seats for spectators; or

(b) For serial performance facilities:

1. Provides parking spaces for more than one thousand (1,000) cars; or

2. Provides more than four thousand (4,000) permanent seats for spectators.

For purposes of this subsection “serial performance facilities” shall mean those using their parking areas or permanent seating more than one time per day on a regular or continuous basis.

(2) The proposed construction of any facility authorized under state law to conduct pari-mutual wagering activities or the proposed expansion of such a facility, which would result in more than a ten percent (10%) increase in parking spaces or permanent seats for spectators.

Credits
Adopted July 1, 1973; Transferred from 22F-2.02, 27F-2.02, 27F-2.002.

Authority: 14.202 FS. Law Implemented 380.06 FS.

Current with amendments available through January 5, 2015.

Rule 28-24.002, F.A.C., 28 FL ADC 28-24.002

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West's Florida Administrative Code
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Rule 28-24.003, F.A.C.
Fla. Admin. Code r. 28-24.003

28-24.003. Electrical Generating Facilities and Transmission Lines.

Currentness

The following developments shall be presumed to be developments of regional impact and subject to the requirements of Chapter 380, Florida Statutes:

(1) Any proposed steam electrical generating facility with a total generating capacity greater than one hundred (100) megawatts, or a proposed steam addition to an existing electrical generating facility, which addition has a generating capacity of greater than one hundred (100) megawatts; except that this paragraph shall not apply to a facility which produces electricity not for sale to others. Generating capacity shall be measured by the manufacturer's rated "name plate" capacity.

(2) Any proposed electrical transmission line which has a capacity of two hundred thirty (230) kilovolts or more and crosses a county line.

Provided, however, that no electrical transmission line shall be considered as falling within this standard if its construction is to be limited to an established right-of-way, as specified in Subsection 380.04(3)(b), Florida Statutes.

Credits
Adopted July 1, 1973; Transferred from 22F-2.03, 27F-2.03, 27F-2.003.

Authority: 14.202 FS. Law Implemented 380.06 FS.

Current with amendments available through January 5, 2015.

Rule 28-24.003, F.A.C., 28 FL ADC 28-24.003

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Chapter 28-24. Land Planning -- Part II Developments Presumed to be of Regional Impact

Rule 28-24.004, F.A.C.
Fla. Admin. Code r. 28-24.004

28-24.004. Hospitals.

Currentness

The following development shall be presumed to be a development of regional impact and subject to the requirements of Chapter 380, Florida Statutes:

Any proposed hospital which has a design capacity of more than six hundred (600) beds, or whose application for a certificate of need under Section 381.494, Florida Statutes, shows in the statement of purpose and need that such hospital is designed to serve the citizens of more than one county.

Credits
Adopted July 1, 1973; Transferred from 22F-2.04, 27F-2.04, 27F-2.004.

Authority: 14.202 FS. Law Implemented 380.06 FS.

Current with amendments available through January 5, 2015.

Rule 28-24.004, F.A.C., 28 FL ADC 28-24.004

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Chapter 28-24. Land Planning -- Part II Developments Presumed to be of Regional Impact

Rule 28-24.005, F.A.C.
Fla. Admin. Code r. 28-24.005

28-24.005. Industrial Plants and Industrial Parks.

Currentness

The following development shall be presumed to be a development of regional impact and subject to the requirements of Chapter 380, Florida Statutes:

Any proposed industrial, manufacturing, or processing plant under common ownership, or any proposed industrial park under common ownership which provides sites for industrial, manufacturing, or processing activity, which:

(1) Provides parking for more than one thousand five hundred (1,500) motor vehicles; or

(2) Occupies a site greater than one (1) square mile.

Credits

Adopted July 1, 1973; Transferred from 22F-2.05, 27F-2.05, 27F-2.005.

Authority: 14.202 FS. Law Implemented 380.06 FS.

Current with amendments available through January 5, 2015.

Rule 28-24.005, F.A.C., 28 FL ADC 28-24.005

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Chapter 28-24. Land Planning -- Part II Developments Presumed to be of Regional Impact

Rule 28-24.006, F.A.C.
Fla. Admin. Code r. 28-24.006

28-24.006. Mining Operations.

Currentness

(1) The following development shall be presumed to be a development of regional impact and subject to the requirements of Chapter 380, Florida Statutes:

Any proposed solid mineral mining operation which annually requires the removal or disturbance of solid minerals or overburden over an area, whether or not contiguous, greater than one hundred (100) acres or whose proposed consumption of water would exceed three million (3,000,000) gallons per day. In computing the acreage for this purpose, a removal or disturbance of solid minerals or overburden shall be considered part of the same operation if it is all located within a circle, the radius of which is one (1) mile and the center of which is located in an area of removal or disturbed solid minerals or overburden.

(2) As used in this section:

(a) The term “overburden” means the natural covering of any solid mineral sought to be mined, including, but not limited to, soils, sands, rocks, gravel, limestone, water or peat.

(b) The term “solid mineral” includes, but is not limited to, clay, sand, gravel, phosphate rock, lime, shells (excluding live shellfish), stone and any rare earths contained in the soils or waters of this state, which have theretofore been discovered or may be hereafter discovered.

Credits
Adopted July 1, 1973; Transferred from 22F-2.06, 27F-2.06, 27F-2.006.

Authority: 14.202 FS. Implemented 380.06 FS.

Current with amendments available through January 5, 2015.

Rule 28-24.006, F.A.C., 28 FL ADC 28-24.006

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Rule 28-24.007, F.A.C.
Fla. Admin. Code r. 28-24.007

28-24.007. Office Parks.

Currentness

The following development shall be presumed to be a development of regional impact and subject to the requirements of Chapter 380, Florida Statutes:

Any proposed office park operated under one common property ownership or management, that:

(1) Occupies more than thirty (30) acres of land; or

(2) Encompasses more than three hundred thousand (300,000) square feet of gross floor area.

Credits
Adopted July 1, 1973; Transferred from 22F-2.07, 27F-2.07, 27F-2.007.

Authority: 14.202 FS. Law Implemented 380.06 FS.

Current with amendments available through January 5, 2015.

Rule 28-24.007, F.A.C., 28 FL ADC 28-24.007

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Rule 28-24.008, F.A.C.
Fla. Admin. Code r. 28-24.008

28-24.008. Petroleum Storage Facilities.

Currentness

(1) The following developments shall be presumed to be developments of regional impact and subject to the requirements of Chapter 380, Florida Statutes:

(a) Any proposed facility or combination of facilities located within one thousand (1,000) feet of any navigable water for the storage of any petroleum product with a storage capacity of over fifty thousand (50,000) barrels.

(b) Any other proposed facility or combination of facilities for the storage of any petroleum products with a storage capacity of over two hundred thousand (200,000) barrels.

(2) For the purpose of this section, “barrel” shall mean forty-two (42) U. S. Gallons.

Credits

Adopted July 1, 1973; Transferred from 22F-2.08, 27F-2.08, 27F-2.008.

Authority: 14.202 FS. Law Implemented 380.06 FS.

Current with amendments available through January 5, 2015.

Rule 28-24.008, F.A.C., 28 FL ADC 28-24.008

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Rule 28-24.009, F.A.C.
Fla. Admin. Code r. 28-24.009

28-24.009. Port Facilities.

Currentness

The following development shall be presumed to be a development of regional impact and subject to the requirements of Chapter 380, Florida Statutes:

The proposed construction of any water port, except those designed primarily for the mooring or storage of watercraft used exclusively for sport or pleasure of less than one hundred (100) slips for moorings.

Credits
Adopted July 1, 1973; Transferred from 22F-2.09, 27F-2.09, 27F-2.009.

Authority: 14.202 FS. Law Implemented 380.06 FS.

Current with amendments available through January 5, 2015.

Rule 28-24.009, F.A.C., 28 FL ADC 28-24.009

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Rule 28-24.010, F.A.C.
Fla. Admin. Code r. 28-24.010

28-24.010. Residential Developments.

Currentness

(1) The following developments shall be presumed to be developments of regional impact and subject to the requirements of Chapter 380, Florida Statutes:

Any proposed residential development that is planned to create or accommodate more than the following number of dwelling units:

(a) In counties with a population of less than 25,000 -- 250 dwelling units.

(b) In counties with a population between 25,000 and 50,000 -- 500 dwelling units.

(c) In counties with a population between 50,001 and 100,000 -- 750 dwelling units.

(d) In counties with a population between 100,001 and 250,000 -- 1,000 dwelling units.

(e) In counties with a population between 250,001 and 500,000 -- 2,000 dwelling units.

(f) In counties with a population in excess of 500,000 -- 3,000 dwelling units.

Provided, however, that any residential development located within two (2) miles of a county line shall be treated as if it were located in the less populous county.

(2) As used in this section, the term “residential development” shall include, but not be limited to:

(a) The subdivision of any land attributable to common ownership into lots, parcels, units or interests, or

(b) Land or dwelling units which are part of a common plan of rental, advertising, or sale, or

(c) The construction of residential structures, or

(d) The establishment of mobile home parks.

(3) As used in this section, the term "dwelling unit" shall mean a single room or unified combination of rooms, regardless of form of ownership, that is designed for residential use by a single family. This definition shall include, but not be limited to, condominium units, individual apartments and individual houses.

(4) For the purpose of this section, the population of the county shall be the most recent estimate for that county, at the time of the application for a development permit. The most recent estimate shall be that determined by the Executive Office of the Governor pursuant to Section 23.019, Florida Statutes.

Credits
Adopted July 1, 1973; Transferred from 22F-2.10, 27F-2.10, 27F-2.010.

Authority: 14.202 FS. Law Implemented 380.06 FS.

Current with amendments available through January 5, 2015.

Rule 28-24.010, F.A.C., 28 FL ADC 28-24.010

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Rule 28-24.011, F.A.C.
Fla. Admin. Code r. 28-24.011

28-24.011. Schools.

Currentness

(1) The following development shall be presumed to be a development of regional impact and subject to the requirements of Chapter 380, Florida Statutes:

The proposed construction of any public, private or proprietary post-secondary educational campus which provides for a design population of more than three thousand (3,000) full-time equivalent students, or the proposed physical expansion of any public, private or proprietary post-secondary educational campus having such a design population, by at least twenty percent (20%) of the design population.

(2) As used in this section, the term “full-time equivalent student” shall mean enrollment for fifteen (15) quarter hours during a single academic semester. In area vocational schools or other institutions which do not employ semester hours or quarter hours in accounting for student participation, enrollment for eighteen (18) contact hours shall be considered equivalent to one (1) quarter hour and enrollment for twenty-seven (27) contact hours shall be considered equivalent to one (1) semester hour.

Credits
Adopted July 1, 1973; Transferred from 22F-2.11, 27F-2.11, 27F-2.011.

Authority: 14.202 FS. Law Implemented 380.06 FS.

Current with amendments available through January 5, 2015.

Rule 28-24.011, F.A.C., 28 FL ADC 28-24.011

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Rule 28-24.012, F.A.C.
Fla. Admin. Code r. 28-24.012

28-24.012. Shopping Centers.

Currentness

The following development shall be presumed to be a development of regional impact and subject to the requirements of Chapter 380, Florida Statutes:

Any proposed retail or wholesale business establishment or group of establishments operated under one common property ownership or management, such as a shopping center or trade center, that:

(1) Occupies more than forty (40) acres of land; or

(2) Encompasses more than four hundred thousand (400,000) square feet of gross floor area; or

(3) Provides parking spaces for more than two thousand five hundred (2,500) cars.

Credits
Adopted July 1, 1973; Transferred from 22F-2.12, 27F-2.12, 27F-2.012.

Authority: 14.202 FS. Law Implemented 380.06 FS.

Current with amendments available through January 5, 2015.

Rule 28-24.012, F.A.C., 28 FL ADC 28-24.012

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Rule 28-24.013, F.A.C.
Fla. Admin. Code r. 28-24.013

28-24.013. Application of Presumptive Thresholds.

Currentness

The guidelines and standards in Rules 28-24.001 through 28-24.012, F.A.C., shall apply to developers who received authorization to commence development from the local government prior to October 1, 1985.

Credits

Adopted Dec. 31, 1985; Transferred from 27F-2.013.

Authority: 14.202 FS. Law Implemented 380.06 FS.

Current with amendments available through January 5, 2015.

Rule 28-24.013, F.A.C., 28 FL ADC 28-24.013

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Rule 28-24.014, F.A.C.
Fla. Admin. Code r. 28-24.014

28-24.014. Application of Banded Thresholds.

Currentness

(1) The guidelines and standards in Rules 28-24.015 through 28-24.017, 28-24.019 through 28-24.021, 28-24.023 through 28-24.024, and 28-24.026 through 28-24.027, F.A.C., for developments required to undergo development-of-regional-impact review shall apply to developers who receive authorization to commence development from the local government on or after October 1, 1985.

(2) The guidelines and standards in Rules 28-24.018, 28-24.022, 28-24.025 and 28-24.028, F.A.C., for developments required to undergo development-of-regional-impact review shall apply to developers who received authorization to commence development for these uses from the local government on or after October 1, 1985 through June 30, 1988.

(3) The guidelines and standards in Rule 28-24.0281, F.A.C., for developments required to undergo development-of-regional-impact review shall apply to developers who receive authorization to commence development for this use from the local government on or after July 1, 1986 through June 30, 1993.

(4) The guidelines and standards in Rules 28-24.029, 28-24.031, and 28-24.032, F.A.C., for developments required to undergo development-of-regional-impact review shall apply to developers who receive authorization to commence development for these uses from the local government on or after July 1, 1988.

(5) Pursuant to the requirements of Section 369.307, Florida Statutes, the numerical thresholds for the types of development listed under the guidelines and standards in Rule 28-24.013, and subsections (1), (2), (3), (4), (6), (7), (8), and (9) in Rule 28-24.014, F.A.C., shall be reduced by 50 percent when applied to proposed developments entirely or partially located within the Wekiva River Protection Area where the developer received authorization to commence development from the local government on or after June 17, 1988.

(6) The guidelines and standards in Rule 28-24.030, F.A.C., for developments required to undergo development-of-regional-impact review shall apply to developers who receive authorization to commence development for this use from the local government on or after July 1, 1988 until July 5, 1989.

(7) The guidelines and standards in Rule 28-24.033, F.A.C., for developments required to undergo development-of-regional-impact review shall apply to developers who receive authorization to commence development for this use from the local government on July 6, 1989.

(8) The guidelines and standards in Rule 28-24.034, F.A.C., for developments required to undergo development-of-regional-impact review shall apply to developers who receive authorization to commence development for this use from the local government on or after July 7, 1989 until June 30, 1993.

(9) The guidelines and standards in Rules 28-24.035 and 28-24.036, F.A.C., for developments required to undergo development-of-regional-impact review shall apply to developers who receive authorization to commence development for these uses from the local government on or after July 1, 1993.

(10)(a) Pursuant to Chapter 93-206, Laws of Florida, the following guidelines and standards shall apply to developments located within urban central business districts and regional activity centers for jurisdictions whose local comprehensive plan is in compliance with Part II of Chapter 163, Florida Statutes. These guidelines and standards apply to developments where the developer received authorization to commence development from the local government on or after the date on which a local government comprehensive plan amendment or ordinance as indicated below becomes effective after the date of adoption of this rule. This amendment shall specifically delineate the boundaries of an urban central business district or a regional activity center encompassing the development area and indicate that these boundaries shall be utilized for increased development-of-regional-impact guidelines and standards, consistent with the criteria of this rule. In order to expedite the use of these guidelines and standards, a local government may submit to the state land planning agency, a proposed ordinance specifically delineating the boundaries of an urban central business district or a regional activity center encompassing the development, consistent with the criteria of this rule. Within thirty (30) days of receipt of the proposed ordinance, the state land planning agency shall determine whether or not the proposed ordinance is consistent with the criteria of this rule. If the proposed ordinance is determined by the state land planning agency to be consistent with the criteria of this rule, then the guidelines and standards for developments within the designated urban central business district or regional activity center shall take effect upon adoption of the ordinance by the local government. The local government shall subsequently adopt the ordinance designation by an amendment to the local government comprehensive plan at the next opportunity for amendment. The following guidelines and standards shall apply to developments within designated urban central business districts and regional activity centers:

1. For residential, hotel, motel, office, or retail developments, the applicable guidelines and standards shall increase by 50 percent.

2. The applicable multi-use guidelines and standards shall increase by 100 percent, provided that one land use of the multi-use development is residential and the residential development amounts to not less than 35 percent of the jurisdiction's applicable residential threshold.

3. For a resort or convention hotel development, the applicable hotel guidelines and standards shall increase by 150 percent, when the proposed development is located in a county with a population greater than 500,000, and the local government specifically designates that the proposed resort or convention hotel development will serve an existing convention center of more than 250,000 gross square feet built prior to July 1, 1992.

(b) If any portion of a proposed development is located outside the delineated urban central business district or regional activity center boundary, then the increased guidelines and standards of subsection 28-24.014(10), F.A.C., shall not apply.

(c) The following definitions are provided to clarify terms used in subsection 28-24.014(10), F.A.C., and are not intended to establish or limit the regulatory authority of other agencies or programs.

1. “Urban Central Business District” means the single urban core area of a municipality with a population of 25,000 or greater, which is located within an urbanized area as identified by the 1990 Census (1990 U.S. Department of Commerce, Bureau of Census publication, Census of Population and Housing Unit Counts (1990 CPH-2) maps, Report No. 11 for the State of Florida). The designated area shall be consistent with the local government comprehensive plan and future land use map intensities, shall contain mass transit service as defined in Chapter 9J-5, F.A.C., and shall contain high intensity, high density multi-use development which may include any of the following: retail; office, including professional and governmental offices; cultural, recreational, and entertainment facilities; high density residential; hotels and motels; or appropriate industrial activities.

2. “Regional Activity Center” means a compact, high intensity, high density multi-use area designated as appropriate for intensive growth by the local government of jurisdiction and may include: retail; office; cultural, recreational and entertainment facilities; hotels and motels; or appropriate industrial activities. The designated area shall be consistent with the local government comprehensive plan and future land use map intensities; shall routinely provide service to, or be regularly used by, a significant number of citizens of more than one county; contain adequate existing public facilities as defined in Chapter 9J-5, F.A.C., or committed public facilities, as identified in the capital improvements element of the local government comprehensive plan; and shall be proximate and accessible to interstate or major arterial roadways.

(d) The guidelines and standards of subsection 28-24.014(10), F.A.C., shall not apply to urban central business district and regional activity centers designated in a local government comprehensive plan prior to the effective date of this rule. Such prior designated areas may propose to utilize the criteria of this rule by following the procedures of paragraph 28-24.014(10)(a), F.A.C. above.

(11) The banded numerical guidelines and standards in Rules 28-24.015 through 28-24.036, F.A.C., shall be applied as follows:

(a) A development that is at or below 80 percent of all numerical thresholds shall not be required to undergo development-of-regional-impact review.

(b) A development that is between 80 and 100 percent of a numerical threshold shall be presumed to not require development-of-regional-impact review.

(c) A development that is at 100 percent or between 100 and 120 percent of a numerical threshold shall be presumed to require development-of-regional-impact review.

(d) A development that is at or above 120 percent of any numerical threshold shall be required to undergo development-of-regional-impact review.

(12) The following chart is intended to illustrate the eighty, one hundred and one hundred twenty percentages of each numerical threshold. In the event of a conflict between the chart and the written thresholds, the written thresholds shall control.

Development	**Threshold Percentage**		
Type/Threshold Unit	80%	100%	120%
(a) Expansion Runway/Terminal (Rule 28-24.015, F.A.C.)	20%	25%	30%
(b) Attraction/Recreation (Rule 28-24.016, F.A.C.)			
1. Single Performance			
a. Parking Spaces	2,000	2,500	3,000
b. Seats	8,000	10,000	12,000
2. Serial Performance			
a. Parking Spaces	800	1,000	1,2000
b. Seats	3,200	4,000	4,800
(c) Hospitals -- Beds (Rule 28-24.017, F.A.C.)	480	600	720
(d) Industrial (Rule 28-24.018, F.A.C.)			
1. Parking Spaces	2,000	2,500	3,000
2. Acres	256	320	384
(e) Mining (Rule 28-24.019, F.A.C.)			
1. Acres	80	100	120
2. Gallons	2.4M	3.0M	3.6M
(f) Office (Rule 28-24.020, F.A.C.)			
1. Gross Square Feet	240,000	300,000	360,000
2. Acres	24	30	36
3. Gross Square Feet *	480,000	600,000	720,000
(g) Petroleum Storage (Rule 28-24.021, F.A.C.)			
1. Barrels -- within 1000 ft. of navigable water	40,000	50,000	60,000
2. Barrel -- all others	160,000	200,000	240,000
(h) Ports (Marinas) (Rule 28-24.022, F.A.C.)			
1. Wet Storage or Mooring of Watercraft	80	100	120

2. Dry Storage of Watercraft	120	150	180
3. Wet/Dry Storage or Mooring of Watercraft **	240	300	360
4. Dry Storage of Watercraft in a Marina Constructed and in Operation prior to July 1, 1985	240	300	360
(i) Residential -- dwelling units (Rule 28-24.023, F.A.C.)			
1. 25,000 population or less	200	250	300
2. 25,001-50,000 population	400	500	600
3. 50,001-100,000 population	600	750	900
4. 100,001-250,000 population	800	1,000	1,200
5. 250,001-500,000 population	1,600	2,000	2,400
6. 500,001 population or more	2,400	3,000	3,600
(j) Schools (Rule 28-24.024, F.A.C.)			
1. Full Time Equivalent Students	2,400	3,000	3,600
2. Expansion in design population -- percentage	16%	20%	24%
(k) Retail (Rule 28-24.025, F.A.C.)			
1. Gross Square Feet	320,000	400,000	480,000
2. Acres	32	40	48
3. Parking Spaces	2,000	2,500	3,000
(l) Hotel/Motel (Rule 28-24.026, F.A.C.)			
1. Rooms	280	350	420
2. Rooms *	600	750	900
(m) Recreational Vehicle -- Spaces (Rule 28-24.027, F.A.C.)	400	500	600
(n) Multi-Use -- Percentage (Rule 28-24.028, F.A.C.)	104	130	156
(o) Airports (Rule 28-24.0281, F.A.C.) Expansion Runway/Terminal	20	25	30
(p) Industrial Plants, Industrial Parks and Distribution, Warehousing or Wholesaling Facilities (Rule 28-24.029, F.A.C.)			
1. Parking spaces	2,000	2,500	3,000
2. Acres	256	320	384

(q) Port Facilities (Rule 28-24.030, F.A.C.)			
1. Wet Storage or Mooring of Watercraft	120	150	180
2. Dry Storage of Watercraft	160	200	240
3. Wet or Dry Storage or Mooring of Watercraft in areas designated by Governor and Cabinet **	240	300	360
4. Dry Storage of Watercraft in a Marina Constructed and in Operation prior to July 1, 1985	240	300	360
5. Mixture of Wet and Dry Mooring or Storage of Watercraft -- Percentage	80	100	120
(r) Retail and Service Development (Rule 28-24.031, F.A.C.)			
1. Gross Square Footage	320,000	400,000	480,000
2. Acres	32	40	48
3. Parking spaces	2,000	2,500	3,000
(s) Multi-Use Developments (Rule 28-24.032, F.A.C.)			
1. Two or more land uses	116	145	174
2. Three or more land uses, one of which is residential with at least 100 dwelling units or 15 percent of the applicable residential threshold, whichever is greater	128	160	192
(t) Port Facilities (Rule 28-24.033, F.A.C.)			
1. Wet Storage or Mooring of Watercraft	120	150	180
2. Dry Storage of Watercraft	160	200	240
3. Wet or Dry Storage or Mooring of Watercraft with all necessary approvals pursuant to Chapters 253, 373, and 403, Florida Statutes, and located outside Outstanding Florida Waters and Class II waters	320	400	480
4. Dry Storage of Watercraft in a Marina Constructed and in Operation prior to July 1, 1985	240	300	360
5. Mixture of Wet and Dry Mooring or Storage of Watercraft -- Percentage	80	100	120
(u) Port Facilities (Rule 28-24.034, F.A.C.)			
1. Wet Storage or Mooring of Watercraft	120	150	180
2. Dry Storage of Watercraft	160	200	240
3. Wet or Dry Storage or Mooring of Watercraft with all necessary approvals pursuant to Chapters 253, 373, and	320	400	480

403, F.S., and located outside Outstanding Florida Waters and Class II waters			
4. Dry Storage of Watercraft in a Marina Constructed and in Operation prior to July 1, 1985	240	300	360
5. Mixture of Wet and Dry Mooring or Storage of Watercraft -- Percentage	80	100	120
(v) Airports (Rule 28-24.035, F.A.C.)			
Expansion Runway/Terminal ***			
1. Percentages	20	25	30
2. Gross Square Footage	40,000	50,000	60,000
(w) Port Facilities (Rule 28-24.036, F.A.C.)			
1. Wet Storage or Mooring of Watercraft	120	150	180
2. Dry Storage of Watercraft	160	200	240
3. Wet or Dry Storage or Mooring of Watercraft with all necessary approvals pursuant to Chapters 253, 373, and 403, Florida Statutes, and located outside Outstanding Florida Waters and Class II waters	320	400	480
4. Dry Storage of Watercraft in a Marina Constructed and in Operation prior to July 1, 1985	240	300	360
5. Mixture of Wet and Dry Mooring or Storage of Watercraft -- Percentage	80	100	120
6. Wet or Dry Storage or Mooring of Watercraft adjacent to an inland freshwater lake ****	120	150	180
7. Wet or Dry Storage or Mooring of Watercraft of 40 feet in length or less of any type or purpose.*****	40	50	60

* In counties with population greater than 500,000, and only in geographic areas specifically designated as highly suitable for increased threshold intensity in the approved local comprehensive plan and the comprehensive regional policy plan.

** In areas designated by the Governor and Cabinet in the state marina siting plan as suitable for marina construction.

*** Expansion of existing terminal facilities at a non-hub or small hub commercial service airport shall not be presumed to be a DRI.

**** Except for Lake Okeechobee or any lake which has been designated an Outstanding Florida Water.

***** Exceptions to Section 380.0651(3)(e), F.S., requirements for DRI review shall not apply to any water port or marina facility located within or which serves physical development located within a coastal barrier resource unit on an unbridged barrier island designated pursuant to 16 U.S.C. 3501.

Credits

Adopted Dec. 31, 1985; Transferred from 27F-2.014; Amended July 25, 1989, Jan. 5, 1994.

AUTHORITY: 380.06(2), 380.0651 (Supp. 1988), 369.307 (Supp. 1988) FS., Section 52, Chapter 93-206, Laws of Florida. Law Implemented 380.06 FS., Chapter 93-206, Laws of Florida.

Current with amendments available through January 5, 2015.

Rule 28-24.014, F.A.C., 28 FL ADC 28-24.014

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Rule 28-24.015, F.A.C.
Fla. Admin. Code r. 28-24.015

28-24.015. Airports.

Currentness

(1) Any of the following proposed airport construction projects shall be presumed to be a development of regional impact:

(a) A new airport with paved runways.

(b) A new paved runway.

(c) A new passenger terminal facility.

(2)(a) Subject to Section 380.06(2)(d), Florida Statutes, the proposed expansion of an existing runway or terminal facility by 25 percent or more on a commercial service airport or a general aviation airport with regularly scheduled flights shall be a development of regional impact.

(b) For the purpose of this rule, runway expansion shall include strengthening the runway when the strengthening will result in an increase in aircraft size, or the addition of jet aircraft utilizing the airport.

(3) Any airport development project which is proposed for safety, repair, or maintenance reasons alone and would not have the potential to increase or change existing types of aircraft activity shall not be presumed to be a development of regional impact.

Credits
Adopted Dec. 31, 1985; Transferred from 27F-2.015.

AUTHORITY: 380.0651(3)(a) FS. Law Implemented 380.06 FS.

Current with amendments available through January 5, 2015.

Rule 28-24.015, F.A.C., 28 FL ADC 28-24.015

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Rule 28-24.016, F.A.C.
Fla. Admin. Code r. 28-24.016

28-24.016. Attractions and Recreation Facilities.

Currentness

Subject to Section 380.06(2)(d), Florida Statutes, any sports, entertainment, amusement, or recreation facility, including, but not limited to, sports arenas, stadiums, race tracks, tourist attractions, amusement parks, and pari-mutual facilities, the proposed construction or expansion of which:

(1) For single performance facilities:

(a) Provides parking spaces for more than 2,500 cars; or

(b) Provides more than 10,000 permanent seats for spectators; or

(2) For serial performance facilities:

(a) Provides parking spaces for more than 1,000 cars; or

(b) Provides more than 4,000 permanent seats for spectators; shall be a development of regional impact. For purposes of this subsection, “serial performance facilities” means those using their parking areas or permanent seating more than one time per day on a regular or continuous basis.

Credits
Adopted Dec. 31, 1985; Transferred from 27F-2.016.

AUTHORITY: 380.0651(3)(b) FS. Law Implemented 380.06 FS.

Current with amendments available through January 5, 2015.

Rule 28-24.016, F.A.C., 28 FL ADC 28-24.016

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Rule 28-24.017, F.A.C.
Fla. Admin. Code r. 28-24.017

28-24.017. Hospitals.

Currentness

(1) Any proposed hospital where the application for a certificate of need under Section 381.494, Florida Statutes, shows in the statement of purpose and need that such hospital is designed to serve the citizens of more than one (1) county shall be presumed to be a development of regional impact.

(2) Subject to Section 380.06(2)(d), Florida Statutes, any proposed hospital which has a design capacity of more than six hundred (600) beds shall be a development of regional impact.

Credits
Adopted Dec. 31, 1985; Transferred from 27F-2.017.

AUTHORITY: 380.06(2) FS. Law Implemented 380.06, 380.0651 FS.

Current with amendments available through January 5, 2015.

Rule 28-24.017, F.A.C., 28 FL ADC 28-24.017

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Rule 28-24.018, F.A.C.
Fla. Admin. Code r. 28-24.018

28-24.018. Industrial Plants and Industrial Parks.

Currentness

Subject to Section 380.06(2)(d), Florida Statutes, any proposed industrial, manufacturing, or processing plant under common ownership, or any proposed industrial park under common ownership which provides sites for industrial, manufacturing, or processing activity which:

(1) Provides parking for more than 2,500 motor vehicles; or

(2) Occupies a site greater than 320 acres, shall be a development of regional impact.

Credits
Adopted Dec. 31, 1985; Transferred from 27F-2.018.

AUTHORITY: 380.0651(3)(c) FS. Law Implemented 380.06 FS.

Current with amendments available through January 5, 2015.

Rule 28-24.018, F.A.C., 28 FL ADC 28-24.018

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Rule 28-24.019, F.A.C.
Fla. Admin. Code r. 28-24.019

28-24.019. Mining Operations.

Currentness

(1) Subject to Section 380.06(2)(d), Florida Statutes, the following development shall be a development of regional impact and subject to the requirements of Chapter 380, Florida Statutes:

Any proposed solid mineral mining operation which annually requires the removal or disturbance of solid minerals or overburden over an area, whether or not contiguous, greater than one hundred (100) acres or whose proposed consumption of water would exceed three million (3,000,000) gallons per day. In computing the acreage for this purpose, a removal or disturbance of solid minerals or overburden shall be considered part of the same operation if it is all located within a circle, the radius of which is one mile and the center of which is located in an area of removal or disturbed solid minerals or overburden.

(2) As used in this section:

(a) The term “overburden” means the natural covering of any solid material sought to be mined, including, but not limited to soils, sands, rocks, gravel, limestone, water or peat.

(b) The term “solid mineral” includes, but is not limited to, clay, sand, gravel, phosphate rock, lime, shells (excluding live shellfish), stone and any rare earths contained in the soils or waters of this state, which have theretofore been discovered or may be hereafter discovered.

Credits
Adopted Dec. 31, 1985; Transferred from 27F-2.019.

AUTHORITY: 380.06(2) FS. Law Implemented 380.06, 380.0651 FS.

Current with amendments available through January 5, 2015.

Rule 28-24.019, F.A.C., 28 FL ADC 28-24.019

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Rule 28-24.020, F.A.C.
Fla. Admin. Code r. 28-24.020

28-24.020. Office Development.

Currentness

Subject to Section 380.06(2)(d), Florida Statutes, any proposed office building or park operated under common ownership, development plan, or management, that:

(1) Encompasses 300,000 or more square feet of gross floor area;

(2) Has a total site size of 30 or more acres; or

(3) Encompasses more than 600,000 square feet of gross floor area in counties with a population greater than 500,000 and only in geographic areas specifically designated as highly suitable for increased threshold intensity in the approved local comprehensive plan and in the comprehensive regional policy plan; shall be a development of regional impact.

Credits
Adopted Dec. 31, 1985; Transferred from 27F-2.020.

AUTHORITY: 380.0651(3)(d) FS. Law Implemented 380.06 FS.

Current with amendments available through January 5, 2015.

Rule 28-24.020, F.A.C., 28 FL ADC 28-24.020

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Rule 28-24.021, F.A.C.
Fla. Admin. Code r. 28-24.021

28-24.021. Petroleum Storage Facilities.

Currentness

(1) Subject to Section 380.06(2)(d), Florida Statutes, the following developments shall be developments of regional impact and subject to the requirements of Chapter 380, Florida Statutes:

(a) Any proposed facility or combination of facilities located within one thousand (1,000) feet of any navigable water for the storage of any petroleum product with a storage capacity of over fifty thousand (50,000) barrels.

(b) Any other proposed facility or combination of facilities for the storage of any petroleum product, with a storage capacity of over two hundred thousand (200,000) barrels.

(2) For the purpose of this rule, "barrel" shall mean forty-two (42) U.S. Gallons.

Credits
Adopted Dec. 31, 1985; Transferred from 27F-2.021.

AUTHORITY: 380.06(2) FS. Law Implemented 380.06, 380.0651 FS.

Current with amendments available through January 5, 2015.

Rule 28-24.021, F.A.C., 28 FL ADC 28-24.021

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Rule 28-24.022, F.A.C.
Fla. Admin. Code r. 28-24.022

28-24.022. Port Facilities.

Currentness

Subject to Section 380.06(2)(d), Florida Statutes, the proposed construction of any waterport or marina shall be a development of regional impact, except those designed for:

(1) The wet storage or mooring of less than 100 watercraft used exclusively for sport, pleasure or commercial fishing.

(2) The dry storage of less than 150 watercraft used exclusively for sport, pleasure, or commercial fishing.

(3) The wet or dry storage or mooring of less than 300 watercraft used exclusively for sport, pleasure, or commercial fishing in an area designated by the Governor and Cabinet in the state marina siting plan as suitable for marina construction.

(4) The dry storage of less than 300 watercraft used exclusively for sport, pleasure, or commercial fishing at a marina constructed and in operation prior to July 1, 1985.

Credits
Adopted Dec. 31, 1985; Transferred from 27F-2.022.

AUTHORITY: 380.0651(3)(e) FS. Law Implemented 380.06 FS.

Current with amendments available through January 5, 2015.

Rule 28-24.022, F.A.C., 28 FL ADC 28-24.022

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Rule 28-24.023, F.A.C.
Fla. Admin. Code r. 28-24.023

28-24.023. Residential Developments.

Currentness

(1) Subject to Section 380.06(2)(d), Florida Statutes, the following developments shall be developments of regional impact:

Any proposed residential development that is planned to create or accommodate more than the following number of dwelling units:

(a) In counties with a population of less than 25,000 -- 250 dwelling units.

(b) In counties with a population between 25,000 and 50,000 -- 500 dwelling units.

(c) In counties with a population between 50,001 and 100,000 -- 750 dwelling units.

(d) In counties with a population between 100,001 and 250,000 -- 1,000 dwelling units.

(e) In counties with a population between 250,001 and 500,000 -- 2,000 dwelling units.

(f) In counties with a population in excess of 500,000 -- 3,000 dwelling units.

However, any residential development twenty-five percent (25%) of which is located within two (2) miles or less of a county line shall be treated as if it were located in the less populous county.

(2) As used in this rule the term “residential development” shall include but not be limited to:

(a) The subdivision of any land attributable to common ownership into lots, parcels, units or interests, or

(b) Land or dwelling units which are part of a common plan of rental, advertising, or sale, or

(c) The construction of residential structures, or

(d) The establishment of mobile home parks.

(3) As used in this rule the term "dwelling unit" shall mean a single room or unified combination of rooms, regardless of form of ownership, that is designed for residential use by a single family. This definition shall include, but not be limited to, condominium units, individual apartments and individual houses.

(4) For the purpose of this rule the population of the county shall be the most recent estimate for that county, at the time of the application for a development permit. The most recent estimate shall be that determined by the Executive Office of the Governor pursuant to Section 23.019, Florida Statutes.

Credits

Adopted Dec. 31, 1985; Transferred from 27F-2.023.

AUTHORITY: 380.06(2) FS. Law Implemented 380.06, 380.0651 FS.

Current with amendments available through January 5, 2015.

Rule 28-24.023, F.A.C., 28 FL ADC 28-24.023

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Rule 28-24.024, F.A.C.
Fla. Admin. Code r. 28-24.024

28-24.024. Schools.

Currentness

(1) Subject to Section 380.06(2)(d), Florida Statutes, the following development shall be a development of regional impact:

The proposed construction of any public, private or proprietary post-secondary educational campus which provides for a design population of more than three thousand (3,000) full-time equivalent students, or the proposed physical expansion of any public, private or proprietary post-secondary educational campus having such a design population, by at least twenty percent (20%) of the design population.

(2) As used in this section, the term "full-time equivalent student" shall mean enrollment for fifteen (15) quarter hours during a single academic semester. In area vocational schools or other institutions which do not employ semester hours or quarter hours in accounting for student participation, enrollment for eighteen (18) contact hours shall be considered equivalent to one quarter hour and enrollment for twenty-seven (27) contact hours shall be considered equivalent to one semester hour.

Credits
Adopted Dec. 31, 1985; Transferred from 27F-2.024.

AUTHORITY: 380.06(2) FS. Law Implemented 380.06, 380.0651 FS.

Current with amendments available through January 5, 2015.

Rule 28-24.024, F.A.C., 28 FL ADC 28-24.024

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Rule 28-24.025, F.A.C.
Fla. Admin. Code r. 28-24.025

28-24.025. Retail, Service, and Wholesale Development.

Currentness

Subject to the provisions of Section 380.06(2)(d), Florida Statutes, any proposed retail, service, or wholesale business establishment or group of establishments operated under one common property ownership, development plan, or management that:

(1) Encompasses more than 400,000 square feet of gross area; or

(2) Occupies more than 40 acres of land; or

(3) Provides parking spaces for more than 2,500 cars; shall be a development of regional impact.

Credits
Adopted Dec. 31, 1985; Transferred from 27F-2.025.

AUTHORITY: 380.0651(3)(f) FS. Law Implemented 380.06 FS.

Current with amendments available through January 5, 2015.

Rule 28-24.025, F.A.C., 28 FL ADC 28-24.025

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Rule 28-24.026, F.A.C.
Fla. Admin. Code r. 28-24.026

28-24.026. Hotel or Motel Development.

Currentness

Subject to Section 380.06(2)(d), Florida Statutes, the following developments shall be a development of regional impact:

(1) Any proposed hotel or motel development that is planned to create or accommodate 350 or more units; or

(2) Any proposed hotel or motel development that is planned to create or accommodate 750 or more units, in counties with a population greater than 500,000, and only in geographic areas specifically designated as highly suitable for increased threshold intensity in the approved local comprehensive plan and the comprehensive regional policy plan.

Credits
Adopted Dec. 31, 1985; Transferred from 27F-2.026.

AUTHORITY: 380.0651(3)(g) FS. Law Implemented 380.06 FS.

Current with amendments available through January 5, 2015.

Rule 28-24.026, F.A.C., 28 FL ADC 28-24.026

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Rule 28-24.027, F.A.C.
Fla. Admin. Code r. 28-24.027

28-24.027. Recreational Vehicle Development.

Currentness

Subject to Section 380.06(2)(d), Florida Statutes, any proposed recreational vehicle development planned to create or accommodate 500 or more spaces shall be a development of regional impact.

Credits
Adopted Dec. 31, 1985; Transferred from 27F-2.027.

AUTHORITY: 380.0651(3)(h) FS. Law Implemented 380.06 FS.

Current with amendments available through January 5, 2015.

Rule 28-24.027, F.A.C., 28 FL ADC 28-24.027

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Rule 28-24.028, F.A.C.
Fla. Admin. Code r. 28-24.028

28-24.028. Multi-Use Development.

Currentness

Subject to Section 380.06(2)(d), Florida Statutes, any proposed development with two or more land uses under common ownership, development plan, advertising or management where the sum of the percentages of the appropriate thresholds identified in Rules 28-24.015 through 28-24.027, F.A.C., for each land use in the development is equal to or greater than 130 percent shall be a development of regional impact. This threshold is in addition to, and does not preclude, a development from being required to undergo development-of-regional-impact review under any other threshold.

Credits
Adopted Dec. 31, 1985; Transferred from 27F-2.028.

AUTHORITY: 380.0651(3)(i) FS. Law Implemented 380.06 FS.

Current with amendments available through January 5, 2015.

Rule 28-24.028, F.A.C., 28 FL ADC 28-24.028

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Rule 28-24.0281, F.A.C.
Fla. Admin. Code r. 28-24.0281

28-24.0281. Airports.

Currentness

(1) Any of the following airport construction projects shall be presumed to be a development of regional impact:

(a) A new commercial service or general aviation airport with paved runways.

(b) A new commercial service or general aviation paved runway.

(c) A new passenger terminal facility.

(2)(a) Expansion of an existing runway or terminal facility by 25 percent or more on a commercial service airport or a general aviation airport with regularly scheduled flights shall be presumed to be a development of regional impact.

(b) For the purpose of this section, runway expansion shall include strengthening the runway when the strengthening will result in an increase in aircraft size or the addition of jet aircraft utilizing the airport.

(3) Any airport development project which is proposed for safety, repair, or maintenance reasons alone and would not have the potential to increase or change existing types of aircraft activity shall not be presumed to be a development of regional impact.

Credits
Adopted Jan. 5, 1994.

AUTHORITY: 380.0651(3)(a) FS. Law Implemented 380.06 FS.

Current with amendments available through January 5, 2015.

Rule 28-24.0281, F.A.C., 28 FL ADC 28-24.0281

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Rule 28-24.029, F.A.C.
Fla. Admin. Code r. 28-24.029

28-24.029. Industrial Plants, Industrial Parks and Distribution, Warehousing or Wholesaling Facilities.

Currentness

Subject to Section 380.06(2)(d), Florida Statutes, any proposed industrial, manufacturing, or processing plant, or distribution, warehousing, or wholesaling facility, excluding wholesaling developments which deal primarily with the general public on-site, under common ownership, or any proposed industrial, manufacturing, or processing activity or distribution, warehousing, or wholesaling activity, excluding wholesaling activities which deal primarily with the general public on-site, which:

(1) Provides parking for more than 2,500 motor vehicles; or

(2) Occupies a site greater than 320 acres.

Credits
Adopted July 25, 1989.

AUTHORITY: 380.0651(3)(c) FS. Law Implemented 380.06 FS.

Current with amendments available through January 5, 2015.

Rule 28-24.029, F.A.C., 28 FL ADC 28-24.029

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Rule 28-24.030, F.A.C.
Fla. Admin. Code r. 28-24.030

28-24.030. Port Facilities.

Currentness

Subject to Section 380.06(2)(d), Florida Statutes, the proposed construction of any waterport or marina shall be a development of regional impact, except one designed for:

(1) The wet storage or mooring of less than 150 watercraft used exclusively for sport, pleasure, or commercial fishing.

(2) The dry storage of less than 200 watercraft used exclusively for sport, pleasure, or commercial fishing.

(3) The wet or dry storage or mooring of less than 300 watercraft used exclusively for sport, pleasure, or commercial fishing in an area designated by the Governor and Cabinet in the state marina siting plan as suitable for marina construction.

(4) The dry storage of less than 300 watercraft used exclusively for sport, pleasure, or commercial fishing at a marina constructed and in operation prior to July 1, 1985.

(5) Any proposed marina development with both wet and dry mooring or storage used exclusively for sport, pleasure, or commercial fishing, where the sum of percentages of the applicable wet and dry mooring or storage thresholds equals 100 percent. This threshold is in addition to, and does not preclude, a development from being required to undergo development of regional impact review under subsections (1), (2), and (4) of this rule.

Credits
Adopted July 25, 1989.

AUTHORITY: 380.0651(3)(e) FS. Law Implemented 380.06 FS.

Current with amendments available through January 5, 2015.

Rule 28-24.030, F.A.C., 28 FL ADC 28-24.030

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Rule 28-24.031, F.A.C.
Fla. Admin. Code r. 28-24.031

28-24.031. Retail and Service Development.

Currentness

Subject to Section 380.06(2)(d), Florida Statutes, any proposed retail, service or wholesale business establishment or group of establishments which deals primarily with the general public on-site, operated under one common property ownership, development plan, or management that:

(1) Encompasses more than 400,000 square feet of gross area;

(2) Occupies more than 40 acres of land; or

(3) Provides parking spaces for more than 2,500 cars.

Credits
Adopted July 25, 1989.

AUTHORITY: 380.0651(3)(f) FS. Law Implemented 380.06 FS.

Current with amendments available through January 5, 2015.

Rule 28-24.031, F.A.C., 28 FL ADC 28-24.031

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Rule 28-24.032, F.A.C.
Fla. Admin. Code r. 28-24.032

28-24.032. Multi-Use Development.

Currentness

Subject to Section 380.06(2)(d), Florida Statutes, the following development shall be a development of regional impact:

(1) Any proposed development with two (2) or more land uses where the sum of the percentages of the appropriate thresholds identified in Rules 28-24.015 through 28-24.017, 28-24.019 through 28-24.021, 28-24.023 through 28-24.024, 28-24.026 through 28-24.027 and 28-24.029 through 28-24.031, F.A.C., for each land use in the development is equal to or greater than 145 percent; or

(2) Any proposed development with three or more land uses, one of which is residential and contains 100 dwelling units or 15 percent of the applicable residential threshold, whichever is greater, where the sum of the percentages of the appropriate thresholds identified in Rules 28-24.015 through 28-24.017, 28-24.019 through 28-24.021, 28-24.023 through 28-24.024, 28-24.026 through 28-24.027 and 28-24.029 through 28-24.031, F.A.C., for each land use in the development is equal to or greater than 160 percent. The thresholds listed in subsections (1) and (2) of this paragraph are in addition to, and do not preclude, a development from being required to undergo development of regional impact review under any other threshold.

Credits
Adopted July 25, 1989.

AUTHORITY: 380.06(2)(c), 380.0651(3) FS (Supp. 1988). Law Implemented 380.06 FS.

Current with amendments available through January 5, 2015.

Rule 28-24.032, F.A.C., 28 FL ADC 28-24.032

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Rule 28-24.033, F.A.C.
Fla. Admin. Code r. 28-24.033

28-24.033. Port Facilities.

Currentness

The proposed construction of any waterport or marina is required to undergo development-of-regional-impact review, except one designed for:

(1)(a) The wet storage or mooring of fewer than 150 watercraft used exclusively for sport, pleasure, or commercial fishing, or

(b) The dry storage of fewer than 200 watercraft used exclusively for sport, pleasure, or commercial fishing, or

(c) The wet or dry storage or mooring of fewer than 400 watercraft used exclusively for sport, pleasure, or commercial fishing with all necessary approvals pursuant to Chapters 253, 373, and 403, Florida Statutes, and located outside Outstanding Florida Waters and Class II waters. In addition to the foregoing, the Department of Environmental Protection must determine in writing that the marina is located so that it will not adversely impact Outstanding Florida Waters or Class II waters and will not contribute boat traffic in a manner that will have an adverse impact on an area known to be, or likely to be, frequented by manatees. The Department of Environmental Protection determination shall constitute final agency action pursuant to Chapter 120, Florida Statutes.

(2) The dry storage of fewer than 300 watercraft used exclusively for sport, pleasure, or commercial fishing at a marina constructed and in operation prior to July 1, 1985.

(3) Any proposed marina development with both wet and dry mooring or storage used exclusively for sport, pleasure, or commercial fishing, where the sum of percentages of the applicable wet and dry mooring or storage thresholds equals 100 percent. This threshold is in addition to, and does not preclude, a development from being required to undergo development-of-regional-impact review under paragraphs (1)(a) and (1)(b) and subsection (2) of this rule.

Credits
Adopted Jan. 5, 1994.

AUTHORITY: 380.0651(3)(e) FS. Law Implemented 380.06 FS.

Current with amendments available through January 5, 2015.

Rule 28-24.033, F.A.C., 28 FL ADC 28-24.033

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Rule 28-24.034, F.A.C.
Fla. Admin. Code r. 28-24.034

28-24.034. Port Facilities.

Currentness

The proposed construction of any waterport or marina is required to undergo development-of-regional-impact review, except one (1) designed for:

(1)(a) The wet storage or mooring of fewer than 150 watercraft used exclusively for sport, pleasure, or commercial fishing, or

(b) The dry storage of fewer than 200 watercraft used exclusively for sport, pleasure, or commercial fishing, or

(c) The wet or dry storage or mooring of fewer than 400 watercraft used exclusively for sport, pleasure, or commercial fishing with all necessary approvals pursuant to Chapters 253, 373, and 403, Florida Statues [FN1], and located outside Outstanding Florida Waters and Class II waters.

In addition to the foregoing, the Department of Environmental Protection must determine in writing that the marina is located so that it will not adversely impact Outstanding Florida Waters or Class II waters and will not contribute boat traffic in a manner that will have an adverse impact on an area known to be, or likely to be, frequented by manatees. The Department of Environmental Protection determination shall constitute final agency action pursuant to chapter 120.

(2) The dry storage of fewer than 300 watercraft used exclusively for sport, pleasure, or commercial fishing at a marina constructed and in operation prior to July 1, 1985.

(3) Any proposed marina development with both wet and dry mooring or storage used exclusively for sport, pleasure, or commercial fishing, where the sum of percentages of the applicable wet and dry mooring or storage thresholds equals 100 percent. This threshold is in addition to, and does not preclude, a development from being required to undergo development-of-regional-impact review under paragraphs (1)(a) and (1)(b) and subsection (2) of this rule.

Credits
Adopted Jan. 5, 1994.

AUTHORITY: 380.0651(3)(e) FS. Law Implemented 380.06 FS.

[FN1]
So in original.

Current with amendments available through January 5, 2015.

Rule 28-24.034, F.A.C., 28 FL ADC 28-24.034

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Rule 28-24.035, F.A.C.
Fla. Admin. Code r. 28-24.035

28-24.035. Airports.

Currentness

(1) Any of the proposed airport construction projects shall be presumed to be a development of regional impact:

(a) A new commercial service or general aviation airport with paved runways.

(b) A new commercial service or general aviation paved runway.

(c) A new passenger terminal facility.

(2)(a) Expansion of an existing runway or terminal facility by 25 percent or 50,000 square feet, whichever is greater, on a commercial service airport or general aviation airport with regularly scheduled flights shall be presumed to be a development of regional impact. However, expansion of existing terminal facilities at a non-hub or small hub commercial service airport shall not be presumed to be a development of regional impact.

(b) For the purpose of this section, runway expansion shall include strengthening the runway when the strengthening will result in an increase in aircraft size or the addition of jet aircraft utilizing the airport.

(3) Any airport development project which is proposed for safety, repair, or maintenance reasons alone and would not have the potential to increase or change existing types of aircraft activity shall not be presumed to be a development of regional impact.

Credits
Adopted Jan. 5, 1994.

AUTHORITY: Section 54, Chapter 93-206, Laws of Florida. Law Implemented Chapter 93-206, Laws of Florida.

Current with amendments available through January 5, 2015.

Rule 28-24.035, F.A.C., 28 FL ADC 28-24.035

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Rule 28-24.036, F.A.C.
Fla. Admin. Code r. 28-24.036

28-24.036. Port Facilities.

Currentness

The proposed construction of any waterport or marina is required to undergo development of regional impact review, except one designed for:

(1)(a) The wet storage or mooring of fewer than 150 watercraft used exclusively for sport, pleasure, or commercial fishing, or

(b) The dry storage of fewer than 200 watercraft used exclusively for sport, pleasure, or commercial fishing, or

(c) The wet or dry storage or mooring of fewer than 400 watercraft used exclusively for sport, pleasure, or commercial fishing with all necessary approvals pursuant to Chapters 253, 373, and 403, Florida Statutes, and located outside Outstanding Florida Waters and Class II waters, or

(d) The wet or dry storage or mooring of fewer than 150 watercraft on or adjacent to an inland freshwater lake except Lake Okeechobee or any lake which has been designated an Outstanding Florida Water, or

(e) The wet or dry storage or mooring of fewer than 50 watercraft of 40 feet in length or less of any type or purpose. The exceptions to Section 380.0651(3)(e), Florida Statutes, requirements for development of regional impact review shall not apply to any waterport or marina facility located within or which serves physical development located within a coastal barrier resource unit on an unbridged barrier island designated pursuant to 16 U.S.C. 3501.

In addition to the foregoing, in order for any exception from requirements for development of regional impact review to apply to a particular waterport or marina development, the Department of Environmental Protection must determine through the issuance of an order that the marina is located so that it will not adversely impact Outstanding Florida Waters or Class II waters and will not contribute boat traffic in a manner that will have an adverse impact on an area known to be, or likely to be, frequented by manatees. Any Department of Environmental Protection order shall constitute final agency action pursuant to Chapter 120, Florida Statutes.

(2) The dry storage of less than 300 watercraft used exclusively for sport, pleasure, or commercial fishing at a marina constructed and in operation prior to July 1, 1985.

(3) Any proposed marina development with both wet and dry mooring or storage used exclusively for sport, pleasure, or commercial fishing, where the sum of percentages of the applicable wet and dry mooring or storage thresholds equals 100 percent. This threshold is in addition to, and does not preclude, a development of regional impact review under paragraphs (1)(a), (1)(b), and subsection (2) of this rule.

Credits

Adopted Jan. 5, 1994.

AUTHORITY: Section 54, Chapter 93-206, Laws of Florida. Law Implemented Chapter 93-206, Laws of Florida.

Current with amendments available through January 5, 2015.

Rule 28-24.036, F.A.C., 28 FL ADC 28-24.036

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West's Florida Administrative Code
Title 73. Department of Economic Opportunity
Subtitle 73c. Division of Community Development
Chapter 73C-40. Community Planning: Rules of Procedure and Practice Pertaining to Developments of Regional Impact

Rule 73C-40.001, F.A.C.
Fla. Admin. Code r. 73C-40.001

73C-40.001. Definitions.

Currentness

(1) All the terms defined in Section 380.031, F.S., shall have the meanings enumerated in such statute, whenever used in this chapter.

(2) “Division” means the Division of Community Development of the Department of Economic Opportunity, which is the “state land planning agency” referred to in Chapter 380, F.S.

(3) “Development of Regional Impact (DRI)” means any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county.

Credits
Adopted Apr. 12, 1981; Amended May 4, 1983; Transferred from 27F-1.01, 9B-16.01; Amended Nov. 20, 1990, Feb. 21, 2001; Transferred from 9J-2.001.

Authority: 380.032(2)(a), 380.06(23)(a) FS. Law Implemented 380, 380.031, 380.06(1), (23) FS.

Current with amendments available through January 5, 2015.

Rule 73C-40.001, F.A.C., 73 FL ADC 73C-40.001

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Rule 73C-40.010, F.A.C.
Fla. Admin. Code r. 73C-40.010

73C-40.010. Forms.

Currentness

(1) The following forms are prescribed for use with these rules and are incorporated by reference:

(a) Form Number DEO-BCP-ADA-1, Developments of Regional Impact Application for Development Approval, effective 11-20-90 (revised 10-1-11);

(b) Form Number DEO-BCP-ADA-2, Development of Regional Impact Short Form Application for Development Approval, effective 3-23-94 (revised 10-1-11);

(c) Form Number DEO-BCP-BLID-1, Application for a Binding Letter of Development of Regional Impact Status, effective 11-20-90 (revised 10-1-11);

(d) Form Number DEO-BCP-BLIVR-1, Application for a Binding Letter of Vested Rights, effective 11-20-90 (revised 10-1-11);

(e) Form Number DEO-BCP-BLIM-1, Application for a Binding Letter of Modification to a Development of Regional Impact with Vested Rights, effective 11-20-90 (revised 10-1-11)

(f) Form Number DEO-BCP-AGENCIES-1, Report of Agency Participation in Development of Regional Impact Preapplication Conferences, effective 11-20-90 (revised 10-1-11);

(g) Form Number DEO-BCP-PREAPP INFO-1, specifying the minimum information to be supplied by the applicant at the preapplication conference, effective 11-20-90 (revised 10-1-11);

(h) Form Number DEO-BCP-BIENNIAL REPORT-1, Biennial Status Report, effective 6-1-03 (revised 10-1-11);

(i) Form Number DEO-BCP-PROPCHANGE-1, Notification of a Proposed Change to a Previously Approved Development of Regional Impact, effective 11-20-90 (revised 10-1-11);

(j) Form Number DEO-BCP-ABANDON PDA-1, Notice of Intent to Abandon Preliminary Development Agreement, effective 11-20-90 (revised 10-1-11); and

(k) Form Number DEO-BCP-EFFECTIVE RULES-1, Notification to be Bound By Rules Adopted Pursuant to Chapters 403 and 373, F.S., In Effect When the Development Order Is Issued, effective 11-20-90 (revised 10-1-11).

(2) These forms may be obtained without cost from the appropriate regional planning agency or by making written request to: Division of Community Development, 107 East Madison Street, MSC 160, Caldwell Building, Tallahassee, FL 32399-6545.

Credits

Adopted Apr. 12, 1981; Amended May 4, 1983; Transferred from 27F-1.31, 9B-16.17, 9J-2.017; Amended Nov. 20, 1990, Mar. 23, 1994, Feb. 21, 2001, June 1, 2003; Transferred from 9J-2.010.

Authority: 380.032(2)(a), 380.06(15)(c)4., (19)(f)1., (23)(a), (c)2., (26) FS. Law Implemented 380.031(13), 380.06(4)-(10), (15)(c)4., (18), (19), (23)(c)2., (26) FS.

Current with amendments available through January 5, 2015.

Rule 73C-40.010, F.A.C., 73 FL ADC 73C-40.010

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Rule 73C-40.015, F.A.C.
Fla. Admin. Code r. 73C-40.015

73C-40.015. Clearance Letters.

Currentness

(1) At the request of a developer, the Division may issue an informal determination in the form of a clearance letter as to whether a development may be required to undergo DRI review. The Division will issue clearance letters in order to respond to inquiries when the answer is clear. For example, the Division has issued clearance letters in the following circumstances:

(a) When a developer is in doubt as to whether two or more developments are subject to aggregation pursuant to subsection 380.0651(4), F.S., and Rule 73C-40.0275, F.A.C.; or

(b) When a development is below 100 percent of all applicable thresholds contained in Section 380.0651, F.S., and Chapter 28-24, F.A.C.

(2) A developer may request that a clearance letter be issued by submitting a written request to the Division along with a statement of all facts regarding the development and any other information the developer believes is necessary for the Division's consideration in its decision to issue a letter. The request and all other information and documentation must be submitted to the Division, with a copy simultaneously submitted to the appropriate regional planning agency and the local government with jurisdiction over the development.

(3) Upon receipt of sufficient information to determine whether or not the proposed development may be required to undergo DRI review, the Division will determine whether a clearance letter may be issued. The Division shall, if it believes the issue is debatable or unclear, decline to issue a clearance letter.

Credits
Adopted Nov. 20, 1990; Amended June 1, 2003; Transferred from 9J-2.015.

Authority: 380.032(2)(a), 380.06(23)(a), 380.0651(4)(f) FS. Law Implemented 380.032(2), 380.06(4)(i), 380.0651(4) FS.

Current with amendments available through January 5, 2015.

Rule 73C-40.015, F.A.C., 73 FL ADC 73C-40.015

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Rule 73C-40.016, F.A.C.
Fla. Admin. Code r. 73C-40.016

73C-40.016. Binding Letters of Interpretation.

Currentness

(1) If any developer is in doubt whether his proposed development is required to undergo DRI review or whether his development rights have vested pursuant to Section 380.06(20), F.S., or whether a proposed substantial change to a development of regional impact previously vested pursuant to Section 380.06(20), F.S., would divest such rights, the developer may file an application for a Binding Letter of Interpretation with the Division. Prior to submitting a formal application, the developer is encouraged to consult with the Division staff to insure that appropriate information is presented. The developer shall submit an application for a binding letter of interpretation by completing and filing with the Division Form DEO-BCP-BLID-1 (development of regional impact status), DEO-BCP-BLIVR-1 (vested rights), or DEO-BCP-BLIM-1 (substantial modification to a previously vested development), as appropriate. These forms may be obtained upon request to any regional planning agency or to the Division of Community Planning Development, whose address is 107 East Madison Street, MSC 160, Caldwell Building, Tallahassee, Florida 32399-6545. The completed form shall be submitted to the Division of Community Development.

(2)(a) The Division or the local government with jurisdiction over the land on which a development is proposed may require a developer to obtain a binding letter if the development is at any presumptive numerical threshold or up to 20 percent above any numerical threshold in the guidelines and standards.

(b) Such requirement for an application to be submitted shall be in the form of a written request sent to the developer via certified first-class U.S. mail, return receipt requested, with copies sent to the regional planning agency and the Division or the local government of jurisdiction as appropriate. If the development is found to be a DRI, no development shall occur until a final DRI development order is issued or an agreement is executed pursuant to Section 380.06(8) or 380.032(3), F.S.

(3) Any local government may petition the Division to require a developer of a development located in an adjacent jurisdiction to obtain a binding letter of interpretation. The petition shall state with particularity facts sufficient to support a finding that the development as proposed is a development of regional impact. After consideration of the facts in the petition, the Division shall make a decision whether or not to require the developer to obtain a binding letter and shall notify the petitioning local government of that decision. This paragraph shall not be construed to grant standing to the petitioning local government to initiate an administrative or judicial proceeding pursuant to this rule.

(4) A copy of the entire application for a Binding Letter of Interpretation and any supplemental information shall be provided by the applicant to the regional planning agency and local government with jurisdiction over the development site at the time it

is submitted to the Division. The Division shall give notice of receipt of the application for a Binding Letter of Interpretation by publication in the Florida Administrative Weekly. Notice shall also be given to the local government having jurisdiction over the proposed development and to the appropriate regional planning agency. A copy of the notice shall be given to the applicant.

(5) Within 15 days from the receipt of an application for a Binding Letter of Interpretation, the Division shall determine and notify the applicant, the local government and the regional planning agency whether the application information is sufficient to enable the agency to issue a binding letter, and the Division shall request any additional information needed. If the Division determines that the information in the application is not sufficient, the applicant shall either provide additional information as requested, or shall notify the Division in writing that the information will not be supplied and the reasons therefor. If the applicant declines to provide the requested information, the Division will so notify the local government and regional planning agency and begin the binding letter review. If the applicant does not respond to the request for additional information within 120 days, then the binding letter application shall be deemed to be withdrawn, and the Division shall provide notice of such to the applicant. If the applicant provides the requested additional information, the Division shall, within 15 days from receipt of the additional information, determine whether the additional information furnished is sufficient to comply with its request. If the additional information is not sufficient, the Division shall notify the applicant, the local government, and the regional planning agency how the information does not satisfy the original request. The Division may only request additional information needed to clarify the information received or to answer new questions raised by, or directly related to, the information received. The applicant then has 120 days from the rendering of the request to respond to the request for additional information. When all the requested information is received, the application will be considered sufficient and the applicant, the local government and the regional planning agency will be so notified.

(6) The Division shall review the completed application and any additional information provided. The Division shall consider all written documents, written statements, and information submitted by the applicant or gathered and made part of the record by the Division during its investigation and evaluation of the application. The Division may initiate an investigation of the application or of any information submitted and may utilize in its evaluation any relevant facts obtained during its investigation. The applicant shall be informed of and provided copies of any relevant facts obtained or received by the Division that will be utilized in the binding letter determination and shall be given an opportunity to respond to them. The Division shall solicit and accept submissions of information from the appropriate regional planning agency and appropriate local government, relevant to any applications. The Division may solicit and accept submissions from any person or agency who may possess factual information relevant to the Division's investigation of an application. The Division may specify that all information submitted by the regional planning agency, local government, or governmental agencies relevant to a binding letter application or responses to information submitted by the developer must be transmitted to the Division by a certain date. Failure to submit such information by the specified date may result in that information not being considered by the Division in its determination. In evaluating an application prior to making a determination, the Division shall convene a conference if it considers that such conference will advance its evaluation of the application. At the request of the Division or the applicant, any such conference shall be recorded and such information may become a part of the record on which the determination is made. A party shall be entitled to a transcript of any conference upon payment of costs.

(7) Within thirty-five (35) days of acknowledging receipt of a sufficient application, or receiving written notification that additional information requested pursuant to subsection (4) will not be supplied, but not sooner than fourteen (14) days after publication of the notice in the Florida Administrative Weekly, the Division shall issue a Binding Letter of Interpretation with respect to the proposed development. The time for issuance of a binding letter of interpretation, or reconsideration thereof, may be extended upon agreement between the Division and the applicant.

(8)(a) In response to a sufficient application for a Binding Letter of Interpretation determining development of regional impact status received by the Division, the Division shall determine whether the proposed development will be required to undergo

DRI review. This determination shall be based upon: the guidelines and standards in Section 380.0651, F.S., and Chapter 28-24, F.A.C., and applied as indicated in Sections 380.06(2)(c) and (d), F.S., and Rules 28-24.013 and .014, F.A.C.; the information submitted on Form DEO-BCP-BLID-1; and other factual information obtained from third parties including an appropriate regional planning agency and local government. The Division may determine that proposed development below the applicable numerical threshold contained in Section 380.0651, F.S., or Chapter 28-24, F.A.C., is required to undergo DRI review if the Division has determined that such development, because of its character, magnitude or location, would have a substantial effect on the health, safety or welfare of citizens of more than one county. Also, the Division may determine that a proposed development above the applicable numerical threshold contained in Section 380.0651, F.S., or Chapter 28-24, F.A.C., is not required to undergo DRI review, if it would not have such an effect.

(b) The burden of establishing that a proposed development which exceeds the applicable numerical threshold contained in Section 380.0651, F.S., or Chapter 28-24, F.A.C., is not required to undergo DRI review shall be on the applicant. The burden of establishing that a proposed development which does not exceed the applicable numerical threshold contained in Section 380.0651, F.S., or Chapter 28-24, F.A.C., is required to undergo DRI review shall be on the Division.

(9) When requested by the submission of Form DEO-BCP-BLIVR-1, and if the Division has determined that the proposed development is required to undergo DRI review, the Division will make a determination as to whether rights have vested pursuant to Section 380.06(20), F.S. In order for the Division to make such a determination, the developer shall furnish sufficient information indicating that the development has acquired vested rights pursuant to Section 380.06(20), F.S..

(10) When requested by the submission of Form DEO-BCP-BLIM-1, and if the Division has determined that the proposed development is required to undergo DRI review and that rights have vested, the Division shall make a determination as to whether a proposed change to the vested plan of development is substantial, and, if substantial, whether the proposed change would result in reduced regional impacts. In making such a determination, the criteria in Sections 380.06(4)(e) and (f) and 380.06(19)(b), F.S., shall be considered.

(11) If the Division concludes that the proposed development is required to undergo DRI review, that rights have not vested, or that a proposed change to a previously vested development would increase regional impacts so as to divest rights to complete the development, it shall issue a binding letter requiring compliance with Chapter 380, F.S.

(12) If the Division concludes that the proposed development is not required to undergo DRI review, that rights have vested, or that a proposed change to a previously vested development would not divest rights to complete the development, it shall issue a binding letter indicating that compliance with Chapter 380, F.S., is not required.

(13) If the applicant declines to provide information requested by the Division, and the Division concludes that it does not have sufficient information to determine whether the proposed development is required to undergo DRI review, whether the development rights have vested, or whether a proposed substantial change to a development of regional impact previously vested would divest such rights, then the letter issued by the Division pursuant to Section 380.06(4)(a), F.S., shall state that the information was insufficient to make the binding determination requested by the applicant.

(14) A Binding Letter of Interpretation shall contain findings of fact and conclusions of law which shall specify the factual, legal, and policy grounds supporting the Division's determination. The Binding Letter of Interpretation shall be final agency action.

(15) Every binding letter issued by the Division determining that a proposed development is not required to undergo DRI review, but not including binding letters of vested rights or of modification of vested rights, shall expire and become void unless the plan of development has been substantially commenced within:

(a) Three years from October 1, 1985 for binding letters issued prior to October 1, 1985; or

(b) Three years from the date of issuance of binding letters issued on or after October 1, 1985.

The expiration date of a binding letter shall begin to run after final disposition of all administrative and judicial appeals of the binding letter any may be extended by mutual agreement of the Division, the local government with jurisdiction, and the developer. Comments from the regional planning agency will be solicited by the Division when any request for an extension of the expiration date is made.

(16) Rights which have vested pursuant to Section 380.06(20)(a), F.S., and for which the notification requirements of Section 380.06(20)(a), F.S., have been met, shall expire and become void after June 30, 1990, unless development of the vested plan has commenced prior to that date upon the property that the Division has determined has acquired vested rights following the notification or in a binding letter of interpretation. When the notification requirements of Section 380.06(20)(a), F.S., have not been met, vested rights authorized by Section 380.06(20)(a), F.S., expired June 30, 1986, unless development commenced prior to that date.

(17) Copies of the binding letter shall be provided to the applicant, the local government, the regional planning agency, and appropriate state agencies. The Division shall request such governments or agencies to notify the Division of potential violations of Section 380.06, F.S. In addition, notice of the issuance of a binding letter shall be given to persons who have requested notice. Pursuant to Section 380.06(4)(d), F.S., Binding Letters of Interpretation issued by the Division shall bind all state, regional and local agencies as well as the developer.

Credits

Adopted Apr. 12, 1981; Amended May 4, 1983; Transferred from 27F-1.16, 9B-16.16; Amended Nov. 20, 1990, Feb. 21, 2001, June 1, 2003; Transferred from 9J-2.016.

Authority: 380.032(2)(a), 380.06(23)(a) FS. Law Implemented 120.569, 380.031, 380.032, 380.06(1), (2)(c), (d), (e), (4), (20), 380.0651 FS.

Current with amendments available through January 5, 2015.

Rule 73C-40.016, F.A.C., 73 FL ADC 73C-40.016

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Rule 73C-40.0185, F.A.C.
Fla. Admin. Code r. 73C-40.0185

73C-40.0185. Preliminary Development Agreements.

Currentness

(1) No development which is subject to DRI review, as defined in Section 380.04, F.S., shall be undertaken on a project prior to the issuance of a DRI development order except as authorized by a Preliminary Development Agreement (PDA) as provided in Section 380.06(8), F.S., or as otherwise authorized by Chapter 380, F.S..

(2)(a) The PDA process shall be initiated by the submission from a developer to the Department of a proposed PDA and a statement which justifies development being undertaken prior to issuance of a DRI development order, together with such documentation and information as may be required by paragraphs (2)(b) and (d) of this rule section. A proposed PDA shall include all conditions set forth in Section 380.06(8), F.S., with compliance dates where appropriate. The Department, the developer, and all owners of the land in the total proposed development are the only signatories necessary for the consummation of a PDA; however, the regional planning agency and local government may be made parties to a PDA with the concurrence of the Department and the developer. The developer shall provide copies of the proposed PDA, the statement of justification, and any supplemental information to the regional planning agency and local government with jurisdiction over the development at the same time it is submitted to the Department. Any recommendations by the regional planning agency, other governmental agency, or the local government regarding the proposed PDA must be submitted in writing to the Department within 45 days after receiving the proposed PDA and justification statement.

(b) The developer shall provide all documentation and information necessary to demonstrate that the preliminary development may be authorized under Section 380.06(8), F.S., and this rule section.

(c) The Department will convene conferences and obtain information from any source needed to assist it in evaluating a proposed PDA. At any time before or after the initiation of the PDA review process, the developer may request a conference with the Department to clarify and delineate the types of documentation and information required pursuant to subsections 2(b) and 2(d) of this rule section.

(d) Documentation and information submitted with the proposed PDA shall include the following:

1. A disclosure by the developer and each owner of any parcel of real property which is included in the total proposed development of any interest in any other parcel or development located within ½ mile of any boundary of the total proposed

development and a map depicting the location of any parcel or other development in which the developer or any owner has an interest within one mile of any boundary of the total proposed development.

2. A description of any deed or other instrument of conveyance by which the owner or developer acquired a property interest in the total proposed development or parcel within ½ mile of the same, with reference being made to the book and page of any such deed or instrument recorded in the public records.

3. Development plans setting forth number of dwelling units, number of square feet, number of boat slips, total acreage, and other descriptive information regarding the development of each parcel within ½ mile of the total proposed development in which the developer or each owner of the total proposed development has an interest.

4. A legal description of each parcel within ½ mile of the total proposed development in which the developer or each owner of the total proposed development has an interest.

5. Sufficient documentation and information to allow the Division to determine that the lands on which preliminary development is proposed are suitable for such development, including consistency with the State Comprehensive Plan, Strategic Regional Policy Plan, and local government comprehensive plan, and that existing resources and existing and planned facilities expected to be affected by the preliminary development will not be materially, adversely impacted.

6. Any other information which supports a finding that the preliminary development may be authorized under Section 380.06(8), F.S.

(e) Within 15 days after receipt of a proposed PDA the Department shall notify the developer whether the information in the request is complete or the Department shall request any additional information needed to evaluate the proposal. An application for a PDA is complete when the Department determines that all documentation and information it finds necessary to evaluate the proposed PDA have been provided. The Department shall grant, deny or suggest modifications to the proposed PDA within 45 days after receipt of a complete proposed PDA. Nothing contained herein shall preclude the modification of any time limit in the PDA submission process with the consent of the developer and the Department.

(3)(a) A PDA which authorizes development of less than 100 percent of any applicable threshold pursuant to Section 380.06(2) and Section 380.0651, F.S., including thresholds in terms of acreage, may be entered into provided that:

1. The preliminary development is limited to lands that the Department agrees are suitable for development;

2. The existing public infrastructure will accommodate the uses planned for the development, when such development will utilize public infrastructure; and

3. The developer demonstrates that existing resources and existing and planned facilities expected to be affected by the preliminary development will not be materially, adversely impacted.

(b) The suitability of lands for development depends on the location and nature of the property upon which development will occur and the type and magnitude of impacts which will result from the proposed development.

(c) Material adverse impacts to existing resources or existing or planned facilities means significant degradation caused by the proposed development. The Department shall consider relevant impacts which significantly affect such resources and facilities which include, but are not limited to, the following:

1. Public transportation facilities and air and water resources;

2. Energy, drinking water, and wastewater and solid waste collection and disposal facilities and other public facilities;

3. Endangered, threatened and special concern plant and animal species, populations and habitats; unique or rare natural communities; significant archaeological and historical resources; and floodplains, wetlands, estuaries, beaches, dunes, aquifer and recharge areas.

(4) No PDA may be entered into which authorizes development at or above 100 percent of any applicable threshold in Section 380.06(2), Section 380.0651, F.S., and Rule Chapter 28-24, F.A.C., including thresholds in terms of acreage, unless a developer satisfies the requirements of subsection (3) of this rule, and demonstrates one or more of the following:

(a) The developer has received an order from the local government approving his petition for authorization to submit a proposed areawide DRI pursuant to Section 380.06(25), F.S., and the proposed preliminary development falls within the boundaries of the areawide DRI;

(b) A downtown development authority has submitted a DRI application pursuant to Section 380.06(22), F.S., and the proposed preliminary development falls within the boundaries of the downtown DRI.

(5) A Preliminary Development Agreement does not:

(a) Waive the development of regional impact review requirements of Chapter 380, F.S.;

(b) Entitle a developer to any other necessary approvals or permits from any other authority or in any other jurisdiction prior to the preliminary development being undertaken, such as zoning ordinances and land use regulations, building permits, or state regulatory agency permits; or

(c) Entitle a developer to claim vested rights, or assert equitable estoppel, arising from the agreement or any expenditures or actions taken in reliance on the agreement beyond the development authorized in the PDA.

(6)(a) If a developer proposes to abandon a PDA pursuant to Section 380.06(8)(a) 11., F.S., notice shall be submitted by the developer to the Division, the local government of jurisdiction, and the regional planning agency indicating intent to abandon the PDA and to no longer pursue the development identified in the PDA as a DRI. Such notice shall be on Form DEO-BCP-ABANDON PDA-1 and shall include, at a minimum, the following documentation:

1. Summary of all development activity to date (for example, number of lots sold, acres mined, dwelling units built or under construction, gross floor area built or under construction, barrels of storage capacity completed, site improvements, permits obtained, etc.);

2. Identification of the total plan of development which will be completed;

3. Statement from local government of jurisdiction indicating whether all development to date is in compliance with all applicable local regulations. If evidence is presented that a request was made to the local government for such a statement but no statement is provided within 30 days of the request, the developer may provide evidence in support of such a claim of compliance;

4. Evidence of mitigation for the impacts of the development to date if a final development order has not been issued and the amount of development is less than 100 percent of all applicable DRI thresholds;

5. Identification of all state and federal permits applied for or obtained to date (specify agency, type of permit, and function of each);

6. Identification of any undeveloped tracts of land (other than individual single-family lots) sold to a separate entity or developer, including location on map, size, and buyer of tract or parcel; and

7. Statement of concurrence with notice to abandon the PDA from all other property owners who were signatories to the PDA or are successors to such signatories.

(b) Within 15 days from the receipt of a notice to abandon a PDA, the Division shall determine and notify the developer whether the notice and documentation are adequate to determine that the criteria of Section 380.06(8)(a) 11., F.S., have been met, and the Division shall request any additional information needed. If the Division determines that the documentation with the notice of intent to abandon is not adequate, the developer shall either provide additional information as requested or shall notify the Division in writing that the information will not be supplied and the reasons therefore. If the developer does not respond to the request for additional information within 60 days, then the notice of intent to abandon shall be deemed to be withdrawn. When the requested information is received, the notice of intent and documentation shall be considered adequate, and the developer, local government, and the regional planning agency will be so notified. The local government and regional planning agency will have 15 days from this notification to submit comments for the Division's consideration.

(c) Within 30 days of receipt of adequate documentation of such notice, the Division will determine whether the developer meets the criteria for abandonment. If the criteria are met, the Division will issue a notice of abandonment. Copies of the notice of abandonment will be provided to the developer, the local government, and the regional planning agency.

(d) Pursuant to Section 380.06(8)(a) 11., F.S., the notice of abandonment shall be recorded by the developer in accordance with Section 28.222, F.S., with the clerk of the circuit court for each county in which land covered by the terms of the agreement is located.

Credits

Adopted Jan. 29, 1986; Amended July 2, 1986, Nov. 20, 1990, Feb. 21, 2001, June 1, 2003; Transferred from 9J-2.0185.

Authority: 380.032(2)(a), 380.06(23)(a) FS. Law Implemented 380.032(3), 380.06(8), 380.0651(4) FS.

Current with amendments available through January 5, 2015.

Rule 73C-40.0185, F.A.C., 73 FL ADC 73C-40.0185

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Rule 73C-40.021, F.A.C.
Fla. Admin. Code r. 73C-40.021

73C-40.021. Preapplication Conferences and Conceptual Agency Review Process.

Currentness

(1)(a) Before filing an application for development approval, the developer shall contact the regional planning agency with jurisdiction over the proposed development to arrange a preapplication conference. The regional planning agency shall make available to the developer information about the DRI process and the use of preapplication conferences to encourage cooperation and mutually beneficial solutions to problems, identify issues, coordinate appropriate state and local agency requirements, and otherwise promote a proper and efficient review of the proposed development. The information shall include copies of the Strategic Regional Policy Plans and other appropriate material indicating issues of regional significance in the region, or containing regional policies. It shall include material describing planning, permitting or review requirements of state, regional or local agencies that has been obtained by the regional planning agency. Such information shall be made available before or during the preapplication conference.

(b) The regional planning agency shall arrange a preapplication conference pursuant to Section 380.06(7), F.S. Reviewing agencies shall make reasonable efforts to attend these conferences and shall participate when requested to do so pursuant to Section 380.06(7), F.S.. The preapplication conference shall be used to specify information requirements, including the required number of Applications for Development Approval and the method of their distribution to reviewing agencies; to agree to the deletion of questions from the Application for Development Approval; and to clarify concerns of reviewing agencies. In addition to meetings, preapplication conference activities may consist of telephone calls, written correspondence or reports, or other means of communication that can be used effectively to fulfill the intent of Section 380.06(7), F.S.

(c) Upon the request of the developer or the regional planning agency, other affected state and regional agencies shall participate in conference proceedings and shall identify the types of permits issued by the agencies, the level of information required, and the permit issuance procedures as applied to the proposed development. If, based upon the preapplication information, any agency attending the preapplication conference is aware of a particular concern regarding informational needs related to the proposed development, that concern should be presented and discussed at the preapplication conference. Such concerns and information shall be provided for initial project planning and coordination and shall not constitute a binding agency commitment to a course of action on an Application for Development Approval or permit review.

(d) In order to increase the effectiveness of agency participation and to more closely fulfill the intent of the preapplication conference, the applicant shall provide the participants in the preapplication conference with the information identified in Form DEO-BCP-PREAPP INFO-1 at least ten (10) working days before the scheduled preapplication conference, or a longer period if so stipulated by the regional planning agency. At a minimum, this information shall include an identification of the project location relative to any existing urban service areas and regional activity centers, whether a local comprehensive plan amendment will be required, the type and magnitude of land uses, preliminary site and environmental information, preliminary phasing and buildout dates of the project, and specific methodology proposals. If this information is not made available within the allotted time prior to the preapplication conference, the conference will be rescheduled.

(e) As a part of the preapplication conference, the regional planning agency shall state the objectives to be achieved in the proceedings, help distinguish between DRI application and state or regional permit reviews, provide information about any local government review procedures that may apply, provide opportunities for the developer and affected agencies to obtain and comment on information of significance to the project, provide information about state land planning agency rules, the State Comprehensive Plan, and the Strategic Regional Policy Plan and seek to promote expeditious and well-coordinated processing of DRI applications.

(f) Within 35 days following the preapplication conference, the regional planning agency shall document the findings and agreements made by the participants, including a summary of all assumptions and methodologies agreed upon at the conference. This documentation shall be provided to all participants at the preapplication conference and regional and state agencies involved in the DRI review, who shall have a time period specified by the regional planning agency, but not less than 14 days, to comment, agree, or disagree in writing with the summary. After agreement has been reached regarding assumptions and methodologies, reviewing agencies may not subsequently object to the assumptions and methodologies, unless subsequent changes to the project or information obtained during the review make those assumptions and methodologies inappropriate. If agreement cannot be reached, then the regional planning agency may designate an assumption or methodology to be used, but reviewing agencies are not bound by such assumption or methodology in their reviews.

(g) Pursuant to Section 380.06(7)(b), F.S., each regional planning agency shall establish by rule a preapplication procedure by which a developer may enter into binding written agreements with the regional planning agency to eliminate questions from the application for development approval where those questions are found to be unnecessary for DRI review. Elimination of questions shall be consistent with the stated legislative intent contained in Section 380.06(7), F.S., and shall not preclude consideration of, recommendations regarding, or appeal on those issue areas. Any reference to State Comprehensive Plan goals and policies in the application is intended to provide guidance to the applicant as to general applicability of, and consistency with, the State Comprehensive Plan. Such references are not exclusionary or limiting in any way. The elimination of questions in the application for development approval does not eliminate the applicability of any State Comprehensive Plan goal or policy to the proposed development. Consistency of the proposed plan of development with a local comprehensive plan should be a factor taken into consideration when agreeing to the elimination of certain questions from the application for development approval.

(2) As part of the preapplication conference, the developer may, in addition to regular DRI review, elect to proceed in conceptual agency review, pursuant to Section 380.06(9), F.S., with the state or regional agencies that will require construction or operation permits for the development. The developer may select the state or regional permitting agencies which will participate in conceptual agency review.

(3) If the Application for Development Approval is not submitted within one (1) year of the date of the preapplication conference, the regional planning agency, the local government with jurisdiction, or the applicant may request that another preapplication conference be held.

Credits

Adopted May 4, 1983; Transferred from 9B-16.21; Amended Nov. 20, 1990, Feb. 21, 2001; Transferred from 9J-2.021.

Authority: 380.032(2)(a), 380.06(23)(a) FS. Law Implemented 380.06(7), (9), (23) FS.

Current with amendments available through January 5, 2015.

Rule 73C-40.021, F.A.C., 73 FL ADC 73C-40.021

End of Document

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West's Florida Administrative Code
Title 73. Department of Economic Opportunity
Subtitle 73c. Division of Community Development
Chapter 73C-40. Community Planning: Rules of Procedure and Practice Pertaining to Developments of Regional Impact

Rule 73C-40.022, F.A.C.
Fla. Admin. Code r. 73C-40.022

73C-40.022. Filing the Application for Development Approval.

Currentness

(1) In accordance with Sections 380.06(6), (7), and (10), F.S., the developer shall simultaneously file completed copies of an application for development approval using Form DEO-BCP-ADA-1 with the local government having jurisdiction, the appropriate regional planning agency, and the Division. Other copies of the application for development approval shall be distributed as agreed upon at the preapplication conference. Copies of the application, Form DEO-BCP-ADA-1, may be obtained from the Division or the regional planning agency. The application should be filed in accordance with the local government's applicable procedures and as early as possible in its planning or permitting approval processes.

(a) If a proposed project includes two or more DRIs, a developer may file a comprehensive DRI application for development approval covering more than one DRI pursuant to Section 380.06(21)(a), F.S.

(b) If a proposed development is planned for development over an extended period of time, the developer may file an application for master development approval of the project pursuant to Sections 380.06(21)(b) and (c), F.S., and Rule 73C-40.028, F.A.C.

(c) A downtown development authority as defined in Section 380.031, F.S., may submit a downtown DRI application for development approval pursuant to Section 380.06(22), F.S., and Rule 73C-40.029, F.A.C.

(d) Any person may submit a petition to a local government requesting that he be approved as a developer of an areawide DRI. If approved by the local government with jurisdiction over the area concerned in the petition, that person, or any general purpose local government, may submit an areawide DRI application for development approval pursuant to Section 380.06(25), F.S., and Chapter 9J-3, F.A.C.

(e) A developer may submit an application for development designation as a Florida Quality Development pursuant to Section 380.061, F.S., and Chapter 73C-42, F.A.C.

(f) If a developer has elected to proceed in a conceptual agency review process, then he must submit copies of the application for development approval to all state or regional agencies which are to participate in the review process. The application shall include additional information identified by state or regional permitting agencies as provided for in Sections 380.06(9)(c) 1. and 2., F.S.

(2) If requested by the applicant, the regional planning agency may contract with the applicant to provide responses to certain questions in the application for development approval for which the regional planning agency has specific data, knowledge, or staff expertise.

(3) Pursuant to Section 380.06(10), F.S., the regional planning agency shall make a determination as to the sufficiency of the information contained in the application. The regional planning agency may solicit comments from other state, regional, and local agencies and governments regarding sufficiency of application information.

(a) Information should be considered sufficient when it has been presented in a manner which allows the reviewing agencies to assess the impacts of the proposed development. A determination of sufficiency does not necessarily indicate that the regional planning agency or other reviewing agencies agree with the information and conclusions presented in the application.

(b) Reviewing agencies should submit sufficiency comments to the applicant at the same time the comments are submitted to the regional planning agency so that the applicant can begin to prepare a response to the concerns before receipt of the formal sufficiency determination. The regional planning agency shall provide copies of agency requests for additional information and the applicant's responses to the Division, the local government and all reviewing agencies to expedite review and enhance coordination within the review process.

(c) If the regional planning agency determines that the application is insufficient to begin review, the regional planning agency shall provide written notice by regular mail or hand delivery to the appropriate local government and the applicant within 30 days of receipt of the application stating that the application contains insufficient information for the regional planning agency to discharge its responsibilities under Section 380.06(12), F.S., and requesting additional information. Comments and questions not referenced or included within the written notice and rendered to the applicant after the regional planning agency's 30-day review period has expired may not be used as the basis for additional sufficiency questions and may be answered at the applicant's discretion. Within five working days of the receipt of the statement the applicant shall provide written notice to the local government and the regional planning agency that the requested information will be supplied, or will not be supplied, in whole or in part. Within 30 days after receipt of the requested information, the regional planning agency shall review it and may only request any additional information needed to clarify the information received or to answer new questions raised by, or directly related to, the information received. The regional planning agency may request additional information no more than twice, unless the developer waiver this limitation. If the applicant does not provide information requested by the regional planning agency within 120 days of the regional planning agency's request, or within a time agreed upon by the applicant and the regional planning agency, the application shall be considered withdrawn. The applicant may request that the regional planning agency arrange a conference with the appropriate reviewing agencies after the applicant has received the second request for additional information from the regional planning agency and prior to the submission by the applicant of information in response to that request. The purpose of such a conference is to resolve any reviewing agency's informational needs.

(d) When the regional planning agency determines that the application is sufficient to begin review or receives notification from the applicant that additional information requested will not be supplied, the regional planning agency shall provide written notice within ten (10) days to the appropriate local government pursuant to Section 380.06(10)(c), F.S., stating that the application contains sufficient information for the regional planning agency to being review pursuant to the criteria of

Section 380.06(12), F.S., or that no additional information will be provided by the applicant, and that a public hearing date may be set. Notice of such determination shall also be provided to all reviewing agencies.

(e) The regional planning agency shall keep all affected agencies informed of the progress of the DRI review process and otherwise coordinate reviews of DRIs.

1. To further effectuate these review processes, the regional planning agency may encourage additional conferences, the development of permit processing schedules with other agencies, concurrent processing of applications, the use of the DRI application for development approval as a substitute for permit data requirements or plans, and other appropriate techniques.

2. No later than May 15 of each year beginning in 1984, each regional planning agency shall forward a report of state, regional and local agency participation in the DRI review process within the region for the preceding year to the Division. This report shall include Form DEO-BCP-AGENCIES-1 and shall contain data about requests for, and the incidence and extent of, agency participation in DRI and optional conceptual reviews.

Credits

Adopted July 7, 1976; Amended May 4, 1983; Transferred from 27F-1.20, 9B-16.22; Amended Nov. 20, 1990, Feb. 21, 2001; Transferred from 9J-2.022.

Authority: 380.032(2)(a), 380.06(23)(a) FS. Law Implemented 380.06(5)--(7), (9), (10), (21), (22), (25), 380.061 FS.

Current with amendments available through January 5, 2015.

Rule 73C-40.022, F.A.C., 73 FL ADC 73C-40.022

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Rule 73C-40.024, F.A.C.
Fla. Admin. Code r. 73C-40.024

73C-40.024. Regional Report and Recommendations.

Currentness

(1) Upon receipt of the notice of public hearing issued pursuant to Section 380.06(11), F.S., the appropriate regional planning agency shall prepare a report and recommendations on the regional impact of the proposed development in accordance with the criteria identified in Section 380.06(12), F.S. In preparing the regional report, the regional planning agency shall identify and make recommendations on regional issues. Regional issues to be used in reviewing DRI applications are included in the applicable local government comprehensive plans, the Development of Regional Impact Uniform Standards Rule, the State Comprehensive Plan, and Sections 380.06(12)(a) 1., 2., and 3., F.S. In addition, Strategic Regional Policy Plans adopted by regional planning councils pursuant to Sections 186.507 and .508, F.S., are a long-range policy guide for the development of the region and shall be used as the basis for regional review of DRIs. The regional planning agency may also identify and make recommendations on other local issues. However, local issues shall not be grounds for or be included as issues in a regional planning agency recommendation for appeal of a local government development order.

(2) The regional planning agency may request other agencies to prepare reports and recommendations on issues that are clearly within their jurisdiction. If any other agency reports and recommendations are received, they shall be included in the regional planning agency report pursuant to Section 380.06(12)(b), F.S. The regional planning agency may then attach dissenting views.

(3) The regional planning agency shall afford any substantially affected party the opportunity to present evidence to the regional planning agency head related to the proposed regional report and recommendations.

(4) As part of the regional report and recommendations, the regional planning agency may prepare a short summary of conclusions and recommendations for the purpose of providing easy-to-read public information about the DRI. The regional planning agency may also address the consistency of the development with the State Comprehensive Plan, the State Land Development Plan, and the local government comprehensive plan.

(5) Copies of the completed report and recommendations shall be submitted by the regional planning agency to the local government, the Division, and the developer within 50 days after receipt by the regional planning agency of notice of public hearing.

(6)(a) When the proposed DRI lies within the review jurisdiction of two or more regional planning agencies, the state land planning agency shall designate a lead regional planning council. The lead regional planning council shall prepare the regional report.

(b) Upon completion of the staff report and recommendations, copies should be transmitted to the respective regional planning agencies for formal action.

(c) The regional report and recommendations adopted by formal action of the respective regional planning agencies where possible should be coordinated and consistent. Upon concurrence by each regional planning agency, the report and recommendations should be submitted to the appropriate local governments pursuant to Section 380.06(12), F.S. When the reviewing regional planning agencies are unable to concur in the adoption of a joint report and recommendations, each agency shall prepare and submit to the local government within its jurisdiction and the other regional planning agencies and local governments with jurisdiction involved in the DRI review a separate report and recommendations.

Credits

Adopted July 7, 1976; Amended May 4, 1983; Transferred from 27F-1.22, 9B-16.24; Amended Nov. 20, 1990, Feb. 21, 2001, June 1, 2003; Transferred from 9J-2.024.

Authority: 380.032(2)(a), 380.06(23)(a), (b) FS. Law Implemented 380.06(12) FS.

Current with amendments available through January 5, 2015.

Rule 73C-40.024, F.A.C., 73 FL ADC 73C-40.024

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Rule 73C-40.025, F.A.C.
Fla. Admin. Code r. 73C-40.025

73C-40.025. Local Government Development Orders.

Currentness

(1) This rule provides the form, manner of rendition and contents for development orders issued by local governments in Florida for DRIs pursuant to Section 380.06(15), F.S.

(2) Without an effective development order, the developer shall not have authorization to develop any portion of the development covered by the Application for Development Approval unless the developer has obtained an agreement with the Department of Economic Opportunity pursuant to Section 380.032(3) or 380.06(8), F.S.

(3) Requirements for a DRI development order:

(a) Any development order shall:

1. Consist of a written document, which shall be printed, typewritten or otherwise duplicated in legible form on white paper;

2. Include copies of all exhibits, attachments, references, and written materials, including portions of ordinances referenced in the text. The local government and the Division may enter into an agreement whereby major ordinances are transmitted in their entirety to the Division, followed by the transmittal of copies of all revisions in lieu of transmitting the entire ordinance with each individual development order;

3. Include copies of the application for development approval if the developer has not certified that a complete copy of the application as modified or amended has been delivered to all of the parties identified in this section;

4. Include copies of any supplements, development plans or specifications which are approved with the order, but which are not in the Application for Development Approval; and

5. Contain the signature of the official head of the governmental body issuing the order or the signature of an authorized representative of the governmental body, and shall contain an original certification as being a complete and accurate copy of the development order.

(b) The copy of any development order rendered to the Division, the regional planning agency, and the owner or developer shall contain the following:

1. The name of the development;

2. The authorized agent of the developer;

3. The name of the developer and name of the owner if different than the developer;

4. A statement that:

a. The application for development approval is approved;

b. The application for development approval is approved subject to conditions, specifying the conditions; or

c. The application for development approval is denied, specifying the reasons for denial and changes in the development proposal, if any, that would make it eligible to receive a development approval;

5. If approved, contain a description of the development which is approved, is reflected in a master plan exhibit, and specifies and describes: acreage attributable to each described land use; the magnitude of each land use, utilizing all land use criteria of each applicable threshold as identified in Section 380.0651, F.S., and Chapter 28-24, F.A.C.; open space; areas for preservation; green belts; structures or improvements to be placed on the property including locations; and other major characteristics or components of the development;

6. Findings of fact and conclusions of law addressing whether and the extent to which:

a. The development unreasonably interferes with the achievement of the objectives of an adopted state land development plan applicable to the area;

b. The development is consistent with the State Comprehensive Plan;

c. The development is consistent with the local land development regulations and the adopted local comprehensive plan;

d. The development will be consistent with the report and recommendations of the regional planning agency submitted pursuant to Section 380.06(12), F.S.;

7. A legal description of the property including the acreage;

8. The monitoring procedures and the local official responsible for assuring the development's compliance with the development order;

9. A provision incorporating by reference the application for development approval and other relevant written documents;

10. Compliance dates for the development order, including a deadline for commencing physical development and for compliance with conditions of approval or phasing requirements, and including a project termination date that reasonably reflects the time required to complete the development;

11. Project buildout date and phasing buildout dates;

12. An expiration date for the development order;

13. Establishment of a date until which the local government agrees that the approved DRI shall not be subject to down-zoning, unit density reduction, or intensity reduction, unless the local government can demonstrate that substantial changes in the conditions underlying the approval of the development order have occurred, or that the development order was based on substantially inaccurate information provided by the developer, or that the change is clearly established by local government to be essential to the public health, safety, or welfare; and

14. Specification of the requirements for the biennial report designated under Sections 380.06(15)(c) 4., (18), F.S., including the date of biennial submission, parties to whom the report is to be submitted, and contents of the report as specified by subsection 73C-40.025(7), F.A.C.

(c) A development order may contain provisions which specify the types of changes to the development, in addition to those listed under Section 380.06(19), F.S., which shall require a substantial deviation determination or which shall be deemed to constitute a change that requires further DRI review.

(4) Within 30 days after the DRI public hearing is concluded, the local government shall formally adopt and render a written decision on the application for development approval in the form of a development order unless an extension of time is requested in writing by the developer.

(5) Complete copies of all development orders issued pursuant to Section 380.06, F.S., including any amendments or modifications to previously issued development orders, shall be rendered by the local government to the Division of Community Development, to the appropriate regional planning agency, and to the owner or developer of the property subject to such order. As used in this chapter, rendition or rendering means issuance of a written development order and transmittal of a certified completed copy of the order by the local government with jurisdiction, together with all pertinent attachments. The rendition

shall be by first class certified U.S. Mail or other delivery service for which a receipt as proof of service is required to the Department of Economic Opportunity, Division of Community Development, the regional planning agency, and the owner or developer. A certified return receipt for U.S. Mail shall be prima facie evidence of transmittal. A DRI development order will not be considered to have been rendered if it is transmitted by facsimile machine, or if all pages, exhibits, references, and attachments are not included or are not legible. A development order shall take effect upon transmittal to the parties specified in Section 380.07(2), F.S., unless a later effective date is specified in the order. The effectiveness of a development order shall be stayed by the filing of a notice of appeal pursuant to Section 380.07, F.S.

(6) Conditions of approval of a development order that require developer exactions shall comply with Sections 380.06(15)(d), (e), and 380.06(16), F.S.

(7) The development order shall specify the requirements for the biennial report as required in Sections 380.06(15) and (18), F.S. The biennial report shall be submitted to the Division of Community Development, the appropriate regional planning council and local government on Form DEO-BCP-BIENNIAL REPORT-1. Every development order shall require the biennial report to include the following:

(a) Any changes in the plan of development, or in the representations contained in the Application for Development Approval, or in the phasing for the reporting year and for the next year;

(b) A summary comparison of development activity proposed and actually conducted for the year;

(c) Identification of undeveloped tracts of land, other than individual single family lots, that have been sold to a separate entity or developer;

(d) Identification and intended use of lands purchased, leased or optioned by the developer adjacent to the original DRI site since the development order was issued;

(e) A specific assessment of the developer's and the local government's compliance with each individual condition of approval contained in the DRI development order and the commitments which are contained in the Application for Development Approval and which have been identified by the local government, the Regional Planning Council or the Department of Economic Opportunity as being significant;

(f) Any known incremental DRI applications for development approval or requests for a substantial deviation determination that were filed in the reporting year and to be filed during the next year;

(g) An indication of a change, if any, in local government jurisdiction for any portion of the development since the development order was issued;

(h) A list of significant local, state and federal permits which have been obtained or which are pending by agency, type of permit, permit number and purpose of each;

(i) A statement that all persons have been sent copies of the biennial report in conformance with Sections 380.06(15) and (18), F.S.; and

(j) A copy of any recorded notice of the adoption of a development order or the subsequent modification of an adopted development order that was recorded by the developer pursuant to Section 380.06(15)(f), F.S.

(k) If no additional development pursuant to the development order has occurred since the submission of the previous report, then a letter from the developer stating that no development has occurred shall satisfy the requirement for the biennial report.

(l) The biennial report for an Areawide or a Downtown DRI shall only be required to include the information required in paragraphs (a), (b), (e), (f), (g), (i), (j), and (k) of this subsection, and any information requirements specified for biennial reports in paragraph 73C-40.029(2)(d), F.A.C., or Chapter 9J-3, F.A.C., whichever is applicable.

(8) Where possible, local governments shall issue development orders concurrently with any other local permits or development orders that may be applicable to the proposed development. A local government shall not issue any permits authorizing development of all or a portion of a DRI prior to the issuance of a development order for the DRI unless such development is authorized in an agreement entered into pursuant to Sections 380.032(3) and 380.06(8), F.S.

(9) Pursuant to Section 380.06(17), F.S., the local government issuing the development order shall establish procedures and assign staff responsibilities for monitoring the development and enforcing the terms of the development order.

(10) If a development order is issued approving or approving with conditions the application for development approval, subsequent requests for local development permits need not require further DRI review by the regional planning agency unless otherwise stipulated in the development order. Factors requiring further DRI review shall include:

(a) A substantial deviation as defined by Section 380.06(19), F.S., from the terms or conditions in the development order or other changes to the approved development plans which create a reasonable likelihood of adverse regional impacts or other regional impacts which have not been evaluated in the review by the regional planning agency;

(b) Expiration of the period of effectiveness of the development order; or

(c) Conditions in the development order which specify circumstances in which the development shall be required to undergo additional development of regional impact review.

(11)(a) For a substantial deviation determination, a notice of a proposed change to a previously approved DRI shall be submitted, simultaneously, to the local government, the appropriate regional planning agency, and the Division using Form DEO-BCP-PROPCHANGE-1 and must include the precise development order language which the developer proposes to add, delete, or modify. If such proposed language is not included as required pursuant to Section 380.06(19)(f) 1., F.S., the notice of a proposed change will not be considered to have been officially submitted.

(b) At least 30 days, but no more than 45 days, after the developer has officially submitted Form DEO-BCP-PROPCHANGE-1, the local government shall then give at least 15 days' notice of a public hearing to be held to determine whether the proposed change is a substantial deviation.

(c) Pursuant to Section 380.06(19)(f) 4., F.S., the Division or the appropriate regional planning agency shall review the proposed change, and within 45 days of submittal of Form DEO-BCP-PROPCHANGE-1, unless that time is extended by the developer, shall advise the local government in writing whether it objects to the proposed change, shall specify the reasons for its objection, if any, and shall provide a copy to the developer.

(d) Any change to a previously approved DRI which the developer believes meets the criteria of Sections 380.06(19)(e) 1. and 2., F.S., shall be submitted to the Division, the local government, and the regional planning agency using Form DEO-BCP-PROPCHANGE-1. Such changes are considered cumulatively with all other previous changes to the DRI in determining whether the conditions of Sections 380.06(19)(e) 1. and 2., F.S., are met. Any change which does meet these criteria is not subject to a public hearing to make a substantial deviation determination but is subject to any local government public hearing requirements that are necessary to amend the DRI development order.

(e) Finding a change to a previously approved DRI to be a substantial deviation shall be rendered in the form of a development order consistent with the provisions of subsection (2) and subparagraphs (4)(a)1., (4)(a)5., (4)(b)1., (4)(b)2., and (4)(b)3. of this section and shall contain a statement of the basis for the determination.

(f) Finding a change to a previously approved DRI not to be a substantial deviation shall be in the form of a development order consistent with all of the provisions of subsections (1), (2) and (3) of this section and those provisions of subsections (4), (6), (7), (8), (9) and (10) of this section that are applicable and appropriate to address the approved changes to the previously approved plan of development.

Credits

Adopted July 7, 1976; Amended May 4, 1983, July 7, 1985; Transferred from 22F-1.23, 27F-1.23, 9B-16.25, 9J-2.25; Amended Nov. 20, 1990, Feb. 21, 2001, June 1, 2003; Transferred from 9J-2.025.

Authority: 380.032(2)(a), 380.06(19)(f)1., (23)(a) FS. Law Implemented 380.06(5)(a)1., (13), (14), (15), (17), (18), (19), 380.07(2) FS.

Current with amendments available through January 5, 2015.

Rule 73C-40.025, F.A.C., 73 FL ADC 73C-40.025

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Chapter 73C-40. Community Planning: Rules of Procedure and Practice Pertaining to Developments of Regional Impact

Rule 73C-40.0251, F.A.C.
Fla. Admin. Code r. 73C-40.0251

73C-40.0251. Abandonment of Development Orders.

Currentness

(1) Purpose. This rule establishes the process for local governments to follow in the event a developer proposes to abandon a development of regional impact (DRI) which has been rendered a final development order.

(2) Procedures and Requirements for Abandonment. The following procedures and requirements shall be followed when seeking the abandonment of an approved DRI:

(a) Pursuant to Section 380.06(26), F.S., the developer shall submit a completed copy of an Application for Abandonment of a Development of Regional Impact to the local government(s) having jurisdiction. Copies of the application shall be simultaneously filed with the appropriate regional planning agency and the Division. The regional planning agency will distribute copies of the completed application to the appropriate commenting agencies normally involved in the DRI review. Copies of the Application for Abandonment of a Development of Regional Impact, FORM DEO-BCP-ABANDON-DRI-1, incorporated herein by reference, effective 3/91, may be obtained from either the Division or the appropriate regional planning agency.

(b) Upon receipt of the application, the local government shall, at its next regularly scheduled meeting, schedule a public hearing to consider the application and provide 45 days notice of this hearing to the Division and the appropriate regional planning agency.

(c) At the public hearing, the local government shall determine whether the request to abandon shall be granted, granted with conditions, or denied. In determining whether to grant, grant with conditions, or deny the request to abandon an approved DRI, the local government shall consider and adequately address:

1. The developer's reasons for seeking to abandon the DRI;

2. The types and amounts of the development constructed;

3. The types and amounts of impacts from the project's existing and proposed development to any resources, and existing and planned facilities;

4. The extent to which the proposed abandonment will affect areas previously set aside or identified for preservation or protection;

5. The extent to which the developer has complied with conditions of the development order which authorize existing development;

6. The extent to which the developer has relied upon benefits granted to authorized developments of regional impact, pursuant to Chapters 163, 403, and 380, F.S., which would not otherwise be available after abandonment;

7. The extent and types of impacts the proposed abandonment will have on the local comprehensive plan and local government land development regulations;

8. The extent to which the proposed development after abandonment will be inconsistent with the State Comprehensive Plan, the State Land Development Plan, or the appropriate Comprehensive Regional Policy Plan; and

9. Whether the development is eligible to request abandonment pursuant to subsection (5) below.

(d) Within 30 days after the public hearing, the local government shall render a written decision on the request to abandon which shall include findings of fact and conclusions of law consistent with the provisions of this rule unless a reasonable extension of time is requested in writing by the developer.

(e) Within 15 days after expiration of the appeal period in Section 380.07, F.S., for an amended development order granting, or granting with conditions, the abandonment of an approved DRI, or within 15 days of the resolution of any such appeal, the appropriate local government shall issue a notice of abandonment which shall be recorded by the developer in accordance with Section 28.222, F.S., with the clerk of the circuit court for each county in which land covered by the terms of the amended development order is located.

(3) Requirements for an Abandonment which has been granted or granted with conditions.

(a) If the local government determines that the abandonment shall be granted or granted with conditions, the local government shall issue an amendment to the development order which shall include findings of fact and conclusions of law consistent with the provisions of this rule, that either repeals the original DRI development order in its entirety (including previous amendments) or repeals portions of the existing development order, and includes any appropriate additional conditions of abandonment.

(b) The resulting development order must contain conditions which require the developer to mitigate the impacts of all existing and proposed development. This shall include mitigating any impacts resulting from changes in the plan due to abandonment.

(c) The resulting development order must contain conditions which require the developer to satisfy all applicable conditions of the existing development order with regard to existing and proposed development.

(d) The resulting development order must contain conditions which require the developer to request and receive a rescission or amendment to all permits or other approvals which authorize development beyond that which is authorized under the amended development order.

(4) Effect of denying a Request to Abandon. If the local government denies the request to abandon the DRI development order, including previous amendments in effect at the time the request was submitted, the DRI development order shall remain in full effect.

(5) Eligibility to Abandon.

(a) An approved DRI which is proposed after abandonment to be below 100 percent (100%) of any applicable guidelines and standards identified in Section 380.0651, F.S., or Chapter 28-24, F.A.C., is eligible to abandon an approved DRI.

(b) An approved DRI which is proposed after abandonment to be at 100 percent or between 100 and 120 percent of any applicable guidelines and standards identified in Section 380.0651, F.S., or Chapter 28-24, F.A.C., and upon which no development as defined in Section 380.04, F.S., has occurred, is eligible to request abandonment of an approved DRI if the Division has issued a binding letter which finds the proposed plan of development after abandonment not to be a DRI.

(c) An approved DRI which is proposed after abandonment to be at 100 percent or between 100 and 120 percent of any applicable guidelines and standards identified in Section 380.0651, F.S., or Chapter 28-24, F.A.C., and upon which no development as defined in Section 380.04, F.S., has occurred, is not eligible to request to abandon an approved DRI if the Division has issued a binding letter which finds the proposed plan of development after abandonment to be a DRI. If the Division issues a binding letter which finds the proposed plan of development after abandonment to be a DRI, such a development shall be evaluated under the substantial deviation provisions of subsection 380.06(19), F.S.

(d) An approved DRI which has commenced development as defined in Section 380.04, F.S., and which exceeds or is proposed after abandonment to be at or exceed 100 percent (100%) of any applicable guidelines and standards identified in Section 380.0651, F.S., or Chapter 28-24, F.A.C., shall not be eligible to request abandonment of an approved DRI. Such a development shall be evaluated under the substantial deviation provisions of Section 380.06(19), F.S.

(e) The provisions contained in Section 380.06(2)(c), F.S., shall govern which guidelines and standards are applicable for the purposes of this rule.

(6) Appeal Rights.

(a) Any amended development order or resolution issued pursuant to this rule shall be subject to the appeal provisions of Section 380.07, F.S.

(b) The issues in any such appeal shall be confined to whether the provisions of Section 380.06(26), F.S., and this rule have been satisfied.

Credits
Adopted Mar. 10, 1991; Amended Feb. 21, 2001, June 1, 2003; Transferred from 9J-2.0251.

Authority: 380.032(2)(a), 380.06(23)(a), (26) FS. Law Implemented 380.06(2), (26) FS.

Current with amendments available through January 5, 2015.

Rule 73C-40.0251, F.A.C., 73 FL ADC 73C-40.0251

End of Document

Florida Administrative Code - 2014

West's Florida Administrative Code
Title 73. Department of Economic Opportunity
Subtitle 73c. Division of Community Development
Chapter 73C-40. Community Planning: Rules of Procedure and Practice Pertaining to Developments of Regional Impact

Rule 73C-40.0252, F.A.C.
Fla. Admin. Code r. 73C-40.0252

73C-40.0252. Development of Regional Impact Review Fee Rule.

Currentness

(1) PURPOSE. The purpose of this rule is to set forth policies and procedures for the assessment and collection of fees by regional planning agencies for the review of developments of regional impact (DRI) and Florida Quality Developments (FQD). The rule also sets forth the procedures to be utilized by the Department of Economic Opportunity in reviewing and determining whether a fee in excess of $75,000 may be assessed by a regional planning agency.

(2) FEES. The applicant shall enter into a contract with the regional planning agency which obligates the applicant to reimburse the regional planning agency for the cost of coordinating and reviewing an application for development approval, an application for development approval of a substantial deviation, an application for development designation, or an application for development designation of a substantial change. The applicant shall also deposit a total of $35,000 with the regional planning agency in the following manner:

(a) For each application for development approval or application for development approval of a substantial deviation, the regional planning agency shall collect a fee deposit of $15,000, of which $5,000 is non-refundable, prior to conducting a preapplication conference in accordance with Section 380.06(7), F.S., or a related issue methodology meeting, whichever occurs first. The application for development approval of application for development approval of a substantial deviation shall not be accepted for review unless accompanied by an additional $20,000 deposit.

(b) For each application for development designation or application for development designation of a substantial change, the regional planning agency shall collect a fee deposit of $35,000, of which $5,000 is non-refundable, prior to conducting a preapplication conference in accordance with Section 380.061(5)(a), F.S., or related issue methodology meeting, whichever occurs first.

(c) All fees shall be payable by certified check or bank draft, in U.S. funds, made payable to the regional planning agency. Upon receipt of the initial fee deposit, the regional planning agency will establish an account or cost center for the project to be reviewed.

(3) ALLOWABLE CHARGES.

(a) The applicant shall be liable to the regional planning agency for 100% of the actual costs, both direct and indirect, of coordinating or reviewing an application for development approval, an application for development approval of a substantial deviation, an application for development designation, or an application for development designation of a substantial change. Each regional planning agency shall develop a cost allocation plan which addresses direct and indirect costs in compliance with the Office of Management and Budget Circular A-87, for use in its operations, including management of the DRI review process. A current copy of the plan shall be maintained on file in the offices of the regional planning agencies. Costs associated with an appeal filed pursuant to Section 380.07, F.S., shall not be charged to an applicant.

(b) No fee charged and collected by a regional planning agency for the coordination or review of an application for development approval, an application for development approval of a substantial deviation, and application for development designation, or an application for development designation of a substantial change shall exceed $75,000 unless the Department of Economic Opportunity determines, after reviewing any disputed expenses in accordance with subsection (4) below, that the expenses were reasonable and necessary for an adequate regional review of the impacts of the project.

(c) The applicant shall be notified by the regional planning agency when the funds in the project's account or cost center are less than or equal to $5,000. The notice shall indicate whether the regional planning agency estimates the costs of coordinating or reviewing the application will exceed the existing deposit and, if so, will request an additional deposit sufficient to cover the estimated remaining costs, not to exceed a total deposit of $75,000. The applicant shall make an additional deposit with the regional planning agency in an amount specified in the notice within 15 days of receipt of this notice.

(d) Upon completion of the review process, if the actual costs exceed the total amount deposited in the project's account or cost center, but are less than $75,000, the regional planning agency shall bill the applicant within 90 days. The applicant shall pay the amount due to the regional planning agency within 30 days after receipt of the bill. Any dispute regarding expenses included in a final bill which is less than $75,000 shall be submitted directly to the regional planning agency and handled by that agency in the same manner as other types of expense disputes. Upon completion of the review process, if the actual costs exceed the total amount deposited in the project's account or cost center, but are greater than $75,000, the regional planning agency shall bill the applicant within 90 days. If the applicant disputes any of the expenses included in a final bill which exceeds $75,000, the applicant shall notify the Department and the regional planning agency within 15 days of receipt of the bill in accordance with subsection (4) below.

(4) DISPUTED EXPENSES.

(a) If an applicant disputes any expenses incurred by a regional planning agency and included in a final bill which exceeds $75,000, the applicant shall notify the Agency Clerk in the Department of Economic Opportunity and the regional planning agency in writing of the specific expenses in dispute and the reasons why these expenses should not be considered reasonable and necessary for the regional review of the project. This notice shall be rendered within 15 days of receipt of the final bill; failure to do so shall be considered as a waiver of the applicant's right to dispute any expenses. Within 15 days of receipt of this notice, the regional planning agency shall submit to the Agency Clerk in the Department of Economic Opportunity a response to the applicant's notice of disputed expenses, including any other documentation or information which the regional planning agency deems appropriate to show that the disputed expenses were reasonable and necessary.

(b) Upon receipt of the regional planning agency's response, the Department of Economic Opportunity shall have thirty days in which to render a determination as to whether the disputed expenses were reasonable and necessary for an adequate regional review of the impacts of the proposed project. The Department of Economic Opportunity, in making its determination, shall consider without limitation the normal review practices of the regional planning agency, the issues and impacts associated with the project and the nature of the disputed expenses. This determination shall constitute final agency action. Within 15 days of receipt of the Department of Economic Opportunity's determination regarding the disputed expenses, the applicant shall pay any amount remaining outstanding.

(5) REFUNDS. If the applicant's deposit exceeds the final fee total, any remaining balance shall be refunded to the applicant within sixty days of the final charge to the project's account or cost center. Should the applicant notify the regional planning agency, in writing, at any time during the review process that he wishes to withdraw the application and discontinue the review process, the regional planning agency shall, within 60 days, refund to the applicant any remaining balance in the project's account or cost center, excluding the non-refundable $5,000 deposit, after deducting all costs incurred prior to receipt of written notification of withdrawal of the application

(6) OTHER REVIEWS. The applicant shall be responsible for 100% of the costs for the review of requests for a substantial deviation determination pursuant to Section 380.06(19)(f), F.S., requests for a substantial change determination pursuant to paragraph 73C-42.024(2)(a), F.A.C., or supplemental plans and reviews identified in a development order requiring regional review or approval. The submittal of these requests shall be accompanied by a deposit of $2,500 and charges will be handled in the same manner as for an application for development approval, an application for development approval of a substantial deviation, an application for development designation, or an application for development designation of a substantial change. In addition, the regional planning agency may charge $250 for the review of each annual report submitted in accordance with Section 380.06(18), F.S., or subsection 9J-28.023(6), F.A.C.

(7) APPLICABILITY AND EFFECTIVE DATE. This rule shall be effective on 11-14-90, and shall supersede any existing regional planning agency rules pertaining to development of regional impact review fees. This rule shall apply to all projects for which an application for development approval or development designation has not yet been filed and to all projects for which a development order has been rendered but for which a substantial deviation determination, a substantial change determination, an application for development approval of a substantial deviation, an application for development designation of a substantial change or a supplemental plan or review request is not already in the review process as of 11-14-90. If a preapplication conference or issue methodology meeting has been held and review fees have been paid pursuant to an adopted regional planning agency rule prior to 11-14-90, such fees shall be converted to a project account or cost center pursuant to this rule and credited towards the deposit required pursuant to subsection (2).

Credits

Adopted Nov. 14, 1990; Amended Feb. 21, 2001, May 22, 2005; Transferred from 9J-2.0252.

Authority: 380.032(2)(a), 380.06(23)(a), (d) FS. Law Implemented 380.06(23)(d) FS.

Current with amendments available through January 5, 2015.

Rule 73C-40.0252, F.A.C., 73 FL ADC 73C-40.0252

End of Document

Florida Administrative Code - 2014

West's Florida Administrative Code
Title 73. Department of Economic Opportunity
Subtitle 73c. Division of Community Development
Chapter 73C-40. Community Planning: Rules of Procedure and Practice Pertaining to Developments of Regional Impact

Rule 73C-40.0256, F.A.C.
Fla. Admin. Code r. 73C-40.0256

73C-40.0256. Hurricane Preparedness Policy Rule.

Currentness

(1) Purpose. This rule establishes how the Department will evaluate the impacts of proposed development on hurricane preparedness in the review of applications for a binding letter of interpretation of development of regional impact (DRI) status, in the review of proposed DRI development agreements, in the review of conditions in DRI development orders, and in the review of applications for development approval (ADA).

(2) Definitions. As used in this rule:

(a) "Strategic regional policy plan" means those plans developed according to Section 186.507, F.S., and adopted pursuant to Section 186.508, F.S.

(b) "Department" means the Florida Department of Economic Opportunity.

(c) "High hazard hurricane evacuation area" means the areas identified in the most current regional hurricane evacuation study as requiring evacuation during a category one hurricane event.

(d) "Hurricane evacuation routes" means the routes designated by county emergency management officials that have been identified with standardized statewide directional signs by the Florida Department of Transportation, or are identified in the regional hurricane evacuation study for the movement of persons to safety in the event of a hurricane. Pursuant to paragraph 73C-40.0255(4)(d), F.A.C., the Department considers hurricane evacuation routes to be regionally significant roadways.

(e) "Hurricane shelter space" means, at a minimum, an area of twenty square feet per person located within a hurricane shelter.

(f) "Hurricane vulnerability zone" means the areas delineated by a regional hurricane evacuation study as requiring evacuation in the event of a 100-year or category three hurricane event.

(g) “Inland shelter study” or “inland shelter plan” means the studies produced by the Department and the state's regional planning councils which detail regional public hurricane shelter availability according to various simulated regional hurricane events. The following studies are incorporated by reference: East Central Florida Inland Shelter Plan (1989);

This study is available at the respective regional planning councils.

(h) “Local comprehensive plan” means a plan or element or portions thereof prepared, adopted, or amended pursuant to Part II of Chapter 163, F.S., as amended.

(i) “Mobile home” means a structure as defined in Section 320.01(2), F.S.

(j) “Park trailer” or “park model recreational vehicle” means a structure as defined in Section 320.01(1)(b) 7., F.S.

(k) “Local Comprehensive Emergency Management Plan” means those plans developed by a county according to the provisions of Chapter 9G-6, F.A.C., under the authority provided in Section 252.38, F.S.

(l) “Primary public hurricane shelter” means a structure designated by local emergency management officials as a place for shelter during a hurricane event. For purposes of this rule, primary public hurricane shelter includes only those structures which are located outside of the high hazard hurricane evacuation area and which have been designated by the local government and the American Red Cross as primary shelters.

(m) “Recreational vehicle” means a vehicle as defined in Section 320.01(1)(b), F.S., except for park trailers.

(n) “Regional hurricane evacuation study” or “regional hurricane evacuation plan” means the studies produced by the Department, the state's regional planning councils, the U. S. Army Corps of Engineers, or the Federal Emergency Management Agency, which detail regional hurricane evacuation clearance times and public hurricane shelter availability according to various simulated regional hurricane events. The following studies are incorporated by reference:

1. Central Florida Regional Hurricane Evacuation Study Update, 1995, Central Florida Regional Planning Council;

2. South Florida Regional Hurricane Evacuation Study, 1996, South Florida Regional Planning Council;

3. Treasure Coast Region Hurricane Evacuation Study Update, 1994, U.S. Army Corps of Engineers;

4. Hurricane Evacuation Study, Southwest Florida, Update, 1995, Southwest Florida Regional Planning Council;

5. East Central Florida Regional Hurricane Evacuation Study Update, 2000, East Central Florida Regional Planning Council;

6. Northeast Florida Hurricane Evacuation Study, 1998, Northeast Florida Regional Planning Council;

7. Tampa Bay Region Hurricane Evacuation Study, 2000, Tampa Bay Regional Planning Council;

8. Northwest Florida Hurricane Evacuation Study, 1999, U.S. Army Corps of Engineers;

9. Cedar Key Basin Hurricane Evacuation Study, 1996, U.S. Army Corps of Engineers, (applicable to Withlacoochee and North Central Florida regions);

10. Apalachee Bay Region Hurricane Evacuation Study, 1997, U.S. Army Corps of Engineers.

These studies are available at the respective regional planning councils.

(o) “Secondary public hurricane shelter” means a structure designated by local emergency management officials and the American Red Cross as a shelter during a hurricane but does not meet the criteria identified in paragraph (l) above.

(p) “Special hurricane preparedness district” means a county or region that has been designated by Department rule for special consideration because of its unique hurricane vulnerability and preparedness situation.

(q) “Vertical evacuation” means the preplanned use of predetermined structures located in the hurricane vulnerability zone as hurricane shelters, and the onsite or inplace sheltering of residents in single or multi-family structures which are elevated above the predicted flood levels anticipated within the hurricane vulnerability zone.

(3) Application. This rule shall apply to all proposed mobile home and park trailer developments, all proposed residential developments located in the hurricane vulnerability zone, and all proposed recreational vehicle and hotel/motel developments located in the high hazard hurricane evacuation area.

(4) Determination of Substantial Impact on Regional Hurricane Preparedness. This section shall be used by the Department in the development of binding letters of interpretation and development agreements, in the review of applications for development approval, and in the review of DRI development orders. Any proposed development which exceeds the thresholds identified in paragraphs (a), (b), or (c) below, shall be determined by the Department to have a substantial impact on regional hurricane preparedness.

(a) When a development is proposed in a county where a public hurricane shelter space deficit is shown to exist according to the applicable, incorporated regional hurricane evacuation study, inland shelter study or county shelter assessment based on an adopted county peacetime emergency plan, and the proposed development's anticipated public hurricane shelter space demand will require a minimum of 200 additional spaces, or five percent of the county's public hurricane shelter space capacity, whichever is less, the proposed development will be determined by the Department to have a significant regional impact on public hurricane shelter space availability.

(b) When a development is proposed in a county where a public hurricane shelter space surplus is shown to exist according to the applicable, incorporated regional hurricane evacuation study, inland shelter study or county shelter capacity assessment based on an adopted county peacetime emergency plan, and the proposed development's anticipated public hurricane shelter space demand is projected to move the county into a deficit situation of 200 or more spaces, the proposed development will be determined by the Department to have a significant regional impact on public hurricane shelter space availability.

(c) When a development is proposed in a hurricane vulnerability zone and the proposed development's anticipated evacuation traffic will utilize twenty-five (25) percent or more of an identified hurricane evacuation route's level of service E hourly directional maximum service volume based on the Florida Department of Transportation's Generalized Peak Hour/Peak Direction Level of Service Maximum Volumes presented in the Florida Highway Systems Plan Level of Service Standards and Guidelines Manual and hereby incorporated by reference, the proposed development will be determined by the Department to have a significant regional impact on hurricane evacuation.

(5) Mitigation of Hurricane Preparedness Impacts. Due to the extreme vulnerability of the State of Florida to the impacts of hurricanes, the Department considers public hurricane shelters and hurricane evacuation routes as important public facilities that are required to insure the health, safety, and welfare of the residents of the state. In order to implement this policy, it is the intent of the Department to set forth in this rule hurricane preparedness conditions which, if included in a DRI development order and which ensure that the development's anticipated regional hurricane preparedness impacts are mitigated in a timely manner, would be deemed by the Department to comply with the requirements of Section 380.06(15)(e) 2., F.S. Such conditions would therefore not be the basis for the appeal of the development order by the Department on issues related to hurricane preparedness. The Department will review mitigative measures for all ADA proposals and DRI development orders that are determined to have a substantial impact on regional hurricane preparedness based on the criteria identified in subsection (4) above. Pursuant to Section 380.06(15)(e) 2., F.S., a DRI development order issued by a local government must make adequate provisions for the public facilities needed to accommodate the impacts of the proposed development. Any single or combination of mitigative techniques detailed in paragraphs (a) and (b) below must provide for mitigation equivalent to the proposed development's anticipated hurricane preparedness impacts. However, nothing contained herein shall preclude the local government from including hurricane preparedness conditions in a development order that are more stringent than those detailed in paragraphs (a) and (b) below.

(a) Techniques which shall be used singly or in concert pursuant to the provisions of subsection (5) above to mitigate the anticipated impact of a proposed development on public hurricane shelter availability are:

1. Donation of land for public facilities or donation of the use of private structures to be used as primary public hurricane shelters; however, the site or private structure shall be located in an area outside of the identified high hazard hurricane evacuation area. The facility shall be constructed in such a way as to insure its usefulness and use as a primary public hurricane shelter to offset, at a minimum, the impacts of the approved DRI development. In order to use this mitigation option, the developer must provide reasonable assurance from the local political subdivision and from local emergency management officials regarding the ability of the donation to reduce hurricane shelter impacts.

2. Provision of payments in lieu of donation of land for the upgrading of existing primary and secondary hurricane shelters located outside the identified hurricane vulnerability zone so as to increase the county's primary public hurricane shelter space availability equal to the proposed development's anticipated public hurricane shelter space demand. Upgrading for purposes of this rule shall include the addition of hurricane storm shutters to facilities, provision of electric generators, provision of potable water storage capability, and other items which may be appropriate for a public hurricane shelter. In order to use this mitigation option, the developer must provide reasonable assurance from the local political subdivision

and from local emergency management officials regarding the provision's ability to reduce the development's hurricane shelter impacts.

3. Provision of onsite shelter where the proposed shelter would be located outside of the identified hurricane vulnerability zone and the project includes a community center or other facility suitable for use as hurricane shelter and provides, at a minimum, shelter space available and equal to the proposed development's anticipated hurricane shelter space demand. Examples of community facilities include, but would not be limited to, clubhouses and recreation centers. All community facilities that are to be used as hurricane shelters under this mitigation option must be equipped with appropriate items as identified in subsection (2) above, and must be approved by local emergency management officials.

4. Provision of funds to be used for the purpose of training public hurricane shelter managers through a program provided by the local chapter of the American Red Cross, local emergency management officials, or the Department. In order to use this mitigation option, the developer must provide reasonable assurance from local emergency management officials and the local chapter of the American Red Cross regarding the provision's ability to reduce the development's hurricane shelter impacts.

5. Provision for the limitation of development to a density that does not cause substantial impact on regional hurricane preparedness as identified in subsection (4), paragraphs (a) and (b) above.

(b) Techniques which shall be used singly or in concert pursuant to the provisions of subsection (5) above to mitigate the anticipated impact of a proposed development on hurricane evacuation are:

1. Provision for the establishment and maintenance of a public information program within an existing homeowners association for the purpose of educating the development's residents regarding the potential hurricane threat; the need for timely evacuation in the event of an impending hurricane; the availability and location of hurricane shelters; and the identification of steps to minimize property damage and to protect human life. In order to use this mitigation option, the developer must develop a continuing hurricane awareness program and a hurricane evacuation plan. The hurricane evacuation plan shall address and include, at a minimum, the following items: operational procedures for the warning and notification of all residents and visitors prior to and during a hurricane watch and warning period; a public awareness program which addresses vulnerability, hurricane evacuation, hurricane shelter alternatives including hotels, friends and public hurricane shelter locations, and other protective actions which may be specific to the development; identification of who is responsible for implementing the plan; and other items as deemed appropriate. Where hurricane shelter space is being made available by the developer, it shall be addressed in the plan and shelter managers identified, and specific responsibilities established. Where the proposed development will include a private security force, the plan shall identify how the force will be integrated with the local sheriff's personnel or other responsible agencies during an impending hurricane event in order to assist in the notification, warning, and evacuation of the development's residents. The plan shall be developed in coordination with local emergency management officials. In order to use this mitigation option, the final plan must be found sufficient by the reviewing agencies and must address the recommendations provided by the reviewing agencies.

2. Provision for the elevation of all roads within the proposed development above the anticipated category three hurricane flood levels when these roadways are anticipated to flood during the category three hurricane event, therefore making evacuation impossible. This provision could also include the requirement of special drainage treatment for low-lying flood prone roads, elevation of roads leading to hurricane shelters which would be utilized by the development's residents, or

elevation of off-site roads which are low-lying and flood prone and which would serve as the only evacuation route for the development's residents during a hurricane event.

3. Provision of roadway capacity improvements committed to by the developer above and beyond the improvements required by Rule 73C-40.045, F.A.C., when those regional roadways anticipated to be impacted by the proposed development are also identified hurricane evacuation routes. Such provisions shall be consistent with adopted state, regional, and local infrastructure policies.

4. Provision of funds to be used for the purpose of procuring communications equipment which would upgrade the existing warning and notification capability of local emergency management officials. In order to use this mitigation option, the developer must provide reasonable assurance from local emergency management officials regarding the provision's ability to reduce the development's hurricane evacuation impacts.

5. Provision for the limitation of development to a density that does not cause substantial impact on regional hurricane preparedness as identified in subsection (4), paragraph (c) above.

(c) Mitigative techniques other than those identified in paragraphs (a) and (b) above may be employed; however, the developer shall demonstrate their appropriateness and ensure that the development's anticipated hurricane preparedness impacts are mitigated pursuant to subsection (5) of this rule.

(6) Vertical Evacuation. Vertical Evacuation is not an acceptable mitigation alternative unless it has been deemed an appropriate mitigation alternative in a designated special hurricane preparedness district pursuant to Rule 73C-40.0257, F.A.C. Any development order which requires utilization of vertical evacuation in order to mitigate a development's identified hurricane preparedness impacts may be subject to appeal by the Department.

(7) Construction of Rule. The rule shall not be construed to limit the ability of local governments to adopt more stringent mitigative measures than those delineated in this rule.

Credits

Adopted Nov. 30, 1988; Amended July 11, 1990, Feb. 21, 2001; Transferred from 9J-2.0256.

Authority: 380.032(2)(a), 380.06(23)(a), (c)1. FS. Law Implemented 380.06(23)(b) FS.

Current with amendments available through January 5, 2015.

Rule 73C-40.0256, F.A.C., 73 FL ADC 73C-40.0256

Florida Administrative Code - 2014

West's Florida Administrative Code
Title 73. Department of Economic Opportunity
Subtitle 73c. Division of Community Development
Chapter 73C-40. Community Planning: Rules of Procedure and Practice Pertaining to Developments of Regional Impact

Rule 73C-40.0257, F.A.C.
Fla. Admin. Code r. 73C-40.0257

73C-40.0257. Special Hurricane Preparedness Districts for Developments of Regional Impact.

Currentness

(1) Purpose. A county or region may be designated a "special hurricane preparedness district" based on unique regional hurricane preparedness considerations. Such a designation may allow a county or region to implement hurricane preparedness mitigation strategies for developments of regional impact which may not be deemed appropriate as identified in subsection (5) of Rule 73C-40.0256, F.A.C. Additionally, vertical evacuation may be employed by developments of regional impact within a special hurricane preparedness district if such a strategy has been identified as an acceptable mitigation alternative in a petition to the Department for designation. It is the intent of this rule that a special hurricane preparedness district shall not be designated on an individual project or municipal government basis.

(2) Definitions. For purposes of this rule the definitions are the same as those identified in Rule 73C-40.0256, F.A.C.

(3) Implementation. A county or region must petition the Department in writing in order to be considered for designation as a special hurricane preparedness district. Such a request shall identify why the county or region should be designated and establish what types of hurricane preparedness mitigation measures will be applied to developments of regional impact within the district. The request shall be based on unique regional hurricane preparedness considerations which have been identified as a major regional issue and addressed with appropriate policies in an adopted comprehensive regional policy plan, in an adopted comprehensive plan or adopted hurricane preparedness ordinance, or in the adopted management plans or principles for guiding development for those areas designated by the Legislature at the recommendation of the Department pursuant to Sections 380.045 and 380.05, F.S., respectively. In addition, the request for designation should be based on, but not limited to, the following types of generalized regional or county considerations:

(a) The overall land elevation and the amount of area anticipated to flood during a hurricane event;

(b) The transportation system and its ability to transport residents to safe areas within a reasonable time;

(c) Less than twenty percent of a county's or region's hurricane shelters are available to the population during a 100-year or category three hurricane event; and

(d) The percentage of the total population anticipated to evacuate.

(4) Designation. Upon receiving a petition requesting designation as a special hurricane preparedness district from a county or region, the Department shall have thirty (30) days to notify the petitioner whether sufficient information regarding the need for designation and the acceptability of proposed mitigative measures has been submitted in the petition or if additional information is required. A petition for a special hurricane preparedness district designation is complete when the Department determines that all documentation and information it finds necessary to evaluate the request has been provided. The Department shall determine if the special hurricane preparedness district designation is appropriate within 45 days after receipt of a complete petition. If the request for designation is deemed inappropriate by the Department, a written response shall be sent to the petitioner identifying why designation was found to be inappropriate. If the petition for designation is deemed appropriate by the Department, a written notification shall be sent to the petitioner indicating the Department's intention of amending this rule to incorporate the special designation. The designation shall not become effective until the rule has been amended. The Department's designation shall also identify the hurricane preparedness mitigation alternatives that are deemed appropriate for developments of regional impact within the special hurricane preparedness district based on the unique regional considerations which were identified in the petition. In counties or regions that have been designated as special hurricane preparedness districts, the developer of a development of regional impact shall have the option to mitigate regional hurricane preparedness impacts as detailed in Rule 73C-40.0256, F.A.C. However, if the developer of a development of regional impact chooses to mitigate regional hurricane preparedness impacts by using the alternatives identified in the special hurricane preparedness district designation, the DRI development order must include a provision that requires that all deeds to property located within the proposed development be accompanied by a disclosure statement. The disclosure statement must be in the form of a covenant stating that the property is located in a hurricane vulnerability zone and that the hurricane evacuation clearance time for the county or region is high and/or hurricane shelter spaces are limited.

(5) Designation of Southwest Florida as a Special Hurricane Preparedness District for Developments of Regional Impact. Based on a written request supported by data and information received from the Southwest Florida Regional Planning Council, the Department designates the area contained within the category three hurricane flood zone as identified in the Hurricane Evacuation Study Update, 1995 Southwest Florida Regional Planning Council within the counties of Sarasota, Charlotte, Lee, and Collier as a special hurricane preparedness district for developments of regional impact. More specifically, the area that is designated as a special hurricane preparedness district for developments of regional impact is that portion of Southwest Florida that lies outside of areas subject to the impacts of a category two storm but within the area anticipated to be impacted by a category three hurricane as identified in the Hurricane Evacuation Study Update, 1995 Southwest Florida Regional Planning Council. The Department's designation is based on the following facts regarding the coastal counties of Southwest Florida:

(a) Large portions of the land area are anticipated to flood during a category three hurricane event;

(b) More than 70 percent of the region's population is vulnerable to a category three hurricane event;

(c) A large percentage of the region's population is aged or infirmed;

(d) Regional evacuation times are extremely high and major interregional evacuation routes are limited and/or prone to flooding during a hurricane event;

(e) Less than 20 percent of the region's public hurricane shelter spaces are available to the population during a category three hurricane event;

(f) Adjacent inland county public shelter space is limited; and

(g) Large portions of the region are vested for development through Chapters 163 and 380, F.S., development orders and vested rights determinations.

(6) Mitigation of Hurricane Preparedness Impacts Within the Designated Special Hurricane Preparedness District of Southwest Florida. Mitigation of regional hurricane preparedness impacts within the designated Special Hurricane Preparedness District of Southwest Florida may be mitigated consistent with Rule 73C-40.0256, F.A.C. If a DRI developer within the designated special hurricane preparedness district chooses not to mitigate a development's regional hurricane preparedness impacts consistent with Rule 73C-40.0256, F.A.C., the following mitigative criteria must be met:

(a) The DRI development order must incorporate those requirements identified in subsection (4) of Rule 73C-40.0257, F.A.C.

(b) The first finished floor of all residential units shall be elevated above the anticipated category three flood level as identified by the regional hurricane evacuation study or all residential development with finished first floor levels below the anticipated category three flood level shall provide onsite shelter facilities where it is determined that the necessary evacuation roadway or public hurricane shelter capacity is unavailable or inadequate according to the regional hurricane evacuation study.

(c) All residential development shall provide shelter space at a ratio consistent with Rule 73C-40.0256, F.A.C., in common areas or other shelter areas.

(d) Mobile home developments shall have onsite storm evacuation centers with sufficient structural characteristics, warning systems, and evacuation procedures consistent with the requirements identified in subparagraph 73C-40.0256(5)(b)1., F.A.C., for the resident population in the event of a hurricane.

(e) All onsite shelters within the category three hurricane evacuation zone shall be elevated to the anticipated category three flood level, be constructed to withstand winds of at least 120 miles per hour, be equipped with emergency power and potable water supplies, be constructed with a minimum of exterior glass, while providing adequate protection by shutters or boards for any glass used, and, have adequate ventilation, sanitary facilities, and first-aid equipment.

Credits

Adopted Nov. 30, 1988; Amended July 11, 1990, Feb. 21, 2001; Transferred from 9J-2.0257.

Authority: 380.032(2)(a), 380.06(23)(a), (b), (c)1. FS. Law Implemented 380.06, 380.06(23)(b) FS.

Current with amendments available through January 5, 2015.

Rule 73C-40.0257, F.A.C., 73 FL ADC 73C-40.0257

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Rule 73C-40.027, F.A.C.
Fla. Admin. Code r. 73C-40.027

73C-40.027. Monitoring and Enforcement.

Currentness

(1) The Department of Economic Opportunity shall promote the monitoring of existing or potential developments and the enforcement of Chapter 380, F.S., and any rules, regulations, or orders issued thereunder. The Department shall seek assistance from other state agencies, regional agencies and local governments in identifying potential developments which appear to be DRIs because of their character, magnitude or location and shall request state and regional agencies to notify the regional planning agency with jurisdiction or the Department of such developments.

(2) The Division may monitor any development described in Chapter 28-24, F.A.C., which may be at or greater than 100 percent of any applicable numerical threshold in the guidelines and standards in Section 380.0651, F.S., and Chapter 28-24, F.A.C. As used above, the term “monitor” means to notify a developer in writing that a development may be a DRI and to request that the developer advise the Division as to his development plans and as to his understanding of the applicability of Chapter 380, F.S. This notice shall also include a copy of Chapter 380, F.S., and any other pertinent rules and regulations. Copies of binding letter application forms may also be included and shall be used by the developer if he requests a Binding Letter of Interpretation from the Division.

(3) The Department shall seek assistance from state agencies, regional agencies, and local governments in identifying, monitoring and enforcing the requirements of Chapter 380, F.S., any DRI development order issued by a local government, and any order contained in a binding letter of interpretation issued by the Department.

(a) The local government issuing the DRI development order is primarily responsible for monitoring and enforcing the provisions of the development order and making substantial deviation determinations pursuant to Sections 380.06(15) and (19), F.S. Local governments shall not issue any permits or approvals or provide any extensions of services if the developer fails to act in substantial compliance with the development order.

(b) The regional planning agency shall send copies of local government DRI development orders, or relevant portions thereof, to state or regional agencies that either have participated in the review of the DRI or are identified as having planning or permitting responsibilities related to the DRI and have requested copies of development orders.

(c) The regional planning agency shall review the biennial report required by Section 380.06(18), F.S., and other information available to the agency and, when appropriate, notify the local government and the Department of potential violations of Section 380.06, F.S.

(4) Pursuant to Section 380.11, F.S., the Department may institute an administrative proceeding against any alleged violator of Chapter 380, F.S., or any rules, regulations, or orders issued thereunder.

(5) Pursuant to Section 380.11, F.S., the Department, all state attorneys, and all counties and municipalities may bring an action for injunctive relief against any person or developer found to be in violation of Chapter 380, F.S., or any rules, regulations or orders issued thereunder.

Credits

Adopted May 4, 1983; Transferred from 9B-16.27; Amended Nov. 20, 1990, June 1, 2003; Transferred from 9J-2.027.

Authority: 380.032(2), 380.06(23) FS. Law Implemented 380.06(15), (17)--(19), 380.11 FS.

Current with amendments available through January 5, 2015.

Rule 73C-40.027, F.A.C., 73 FL ADC 73C-40.027

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Rule 73C-40.0275, F.A.C.
Fla. Admin. Code r. 73C-40.0275

73C-40.0275. Aggregation Rule.

Currentness

(1) Purpose. The purpose of this rule section is to establish the terms and definitions which will be used to determine which of the development types listed in Chapter 28-24, F.A.C., will be aggregated pursuant to subsection 380.0651(4), F.S.

(2) Definitions. As established in this rule section:

(a) "Physically proximate" means that any portion of two or more developments is located:

1. No more than one-fourth (¼) mile apart in areas designated as urbanized areas in the latest decennial census, as revised, by the U.S. Department of Commerce, Bureau of Census. [This information may be obtained from the U.S. Department of Commerce or viewed at the appropriate Regional Planning Council offices]; or

2. No more than one-half (½) mile apart in areas that are not designated as urbanized areas by the Census Bureau. When any portion of the two or more developments is located within an area not designated as urbanized, the criteria in subparagraph (2)(a)2., F.A.C., shall apply. Notwithstanding anything in this rule to the contrary, two or more developments will be considered physically proximate when they are separated by property contiguous to the developments that are owned or controlled by the same person or entity who owns or controls a significant legal or equitable interest in those developments sought to be aggregated, so long as the distance between the developments does not exceed two miles.

(b) "Significant legal or equitable interest" means that the same person has an interest or an option to obtain an interest of more than 25 percent (25%) in each development for the following types of interests:

1. A fee simple estate;

2. A leasehold estate of more than thirty (30) years duration;

3. A life estate;

4. Mineral rights in mining developments; or

5. Similar equitable, beneficial or real property interests in the development. A lessor's interest under a lease of more than thirty (30) years duration is not a significant legal or equitable interest.

(c) "Reasonable closeness in time" for the purposes of this rule will mean within five (5) years.

(d) "Completion of 80 percent (80%)" means:

1. For purposes of residential development, when up to 80 percent (80%) of all improved lots or parcels have been constructed or received certificates of occupancy or have been sold to bona fide third party purchasers or when 80 percent (80%) of all dwelling units have received certificates of occupancy.

2. For purposes of all other types of development, up to 80 percent (80%) of all improved lots or parcels have been sold to bona fide third party purchasers or when 80 percent (80%) of all of the development has received certificates of occupancy, or when no certificates of occupancy are required for the use of the development, when 80 percent (80%) of the physical development activity or construction has occurred.

3. For purposes of satisfying the above eighty percent (80%) standard, the development and approval actions listed in subparagraphs 1. and 2. may be added together and accumulated.

(e) "Sharing of infrastructure" means the voluntary joint use by two or more developments of internal roadways, internal recreational facilities or parks, amenities, or water, sewage or drainage facilities specifically constructed to accommodate the developments sought to be aggregated. Shared infrastructure does not include:

1. Any joint or shared use of private or public infrastructure specifically required under an established policy if general applicability as set forth under a comprehensive plan adopted pursuant to Chapter 163, F.S., an adopted local government ordinance or resolution, state statute or by adopted rule of regional or state regulatory agencies;

2. Any joint or shared use of public recreational facilities or parks so long as they were not conveyed by a person with a significant legal or equitable interest in the developments sought to be aggregated;

3. Any joint or shared used of publicly financed drainage or stormwater management facilities, roadways or water or sewer facilities which were not constructed or financed specifically to accommodate the developments considered for aggregation; or

4. Design features, financial arrangements, donations, or construction that is specified in and required by an agreement under Section 380.0651(4)(e), F.S.

(f) “Common advertising scheme or promotional plan” means any depiction, illustration, or announcement which indicates a shared commercial promotion of two or more developments as components of a single development and is designed to encourage sales or leases of property.

(3) If each development considered for aggregation received authorization to commence development prior to September 1, 1988, aggregation shall be governed by the terms and provisions contained in Chapter 28-11, Aggregation Rule, F.A.C., (1986). When one or more of the developments considered for aggregation receive local government authorization to commence development on or after September 1, 1988, aggregation shall be governed by the terms and provisions of Section 380.0651(4), F.S., which this rule implements; however, this rule shall not affect written decisions, agreements, and binding letters of interpretation made or issued by the state land planning agency prior to September 1, 1988.

(4) If any developer is in doubt as to whether two or more developments are subject to aggregation, the developer may:

(a) Request a binding determination from the Division of Community Planning. The developer shall submit his application for a binding letter of interpretation by completing and filing Form DEO-BCP-BLID-1, incorporated herein by reference, along with supporting documentation sufficient to determine the applicability of Section 380.0651(4), F.S., to the particular projects, with the Division. This form may be obtained upon request to any regional planning agency or to:

Division of Community Development

107 East Madison Street, MSC 160, Caldwell Building

Tallahassee, Florida 32399-6545; or

or

(b) Request an informal determination in the form of a clearance letter by submitting a written request along with supporting documentation sufficient to determine the applicability of Section 380.0651(4), F.S., with the Division of Community Development. The Division shall, if it feels the issue is debatable, decline to issue a clearance letter.

Credits

Adopted Feb. 2, 1989; Amended Feb. 21, 2001; Transferred from 9J-2.0275.

Authority: 380.032(2)(a), 380.06(23)(a), 380.0651(4)(f) FS. Law Implemented 380.0651(4) FS.

Current with amendments available through January 5, 2015.

Rule 73C-40.0275, F.A.C., 73 FL ADC 73C-40.0275

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Rule 73C-40.028, F.A.C.
Fla. Admin. Code r. 73C-40.028

73C-40.028. Master Development Approval Alternative Review Procedure.

Currentness

(1) If a proposed development is planned for development over an extended period of time, the developer may seek to follow an alternative DRI review procedure by filing an application for master development approval of the project and agreeing to present subsequent increments of the development for preconstruction review pursuant to Sections 380.06(21)(b)--(c), F.S. One increment may be proposed and reviewed concurrently with the application for master development approval. All other increments must be submitted and approved subsequent to the issuance of the master development order. This alternative procedure shall follow DRI procedures established by statute and rule but shall not be used for the conceptual agency review process specified in Section 380.06(9), F.S. Where such a procedure may be appropriate, the developer shall consult with the local government and the regional planning agency regarding information to be provided; the timing of review of phases, increments, or issues related to regional impacts of the proposed development; and any other considerations that must be addressed in the application for master development approval and the agreement required by Section 380.06(21)(b), F.S. The agreement shall be entered into by the developer, the regional planning agency, and the local government having jurisdiction before the application for master development approval is filed.

(2) In determining sufficiency of information contained in an application for master development approval, the regional planning agency shall give consideration to: the adequacy and availability of sufficient, reliable information; the necessity of subsequent review of phases, increments, or issues related to regional impacts; additional information which may be required in subsequent incremental applications; and issues which could result in the denial of an incremental application.

(3) Prior to adoption of the master plan development order, the developer, the landowner, an appropriate regional planning agency and the local government having jurisdiction shall review the draft development order and, if appropriate, related agreements to ensure that the requirements of Section 380.06(21)(b), F.S., are met. In addition, the development order and any related agreements shall:

(a) Adequately address anticipated regional impacts considered in the application for master development approval and the report and recommendations of the regional planning agency;

(b) Specify which regional issues have been sufficiently reviewed;

(c) Deny, approve or approve with conditions the conceptual or master plan development and any initial increments or phases of development that may be appropriate and that have been reviewed by the regional planning agency;

(d) Define presently known information requirements for, and issues which are subject to, further review upon submission of subsequent incremental applications for development approval; and

(e) Identify issues which can result in denial of subsequent applications.

(4) The review of subsequent incremental applications shall be as prescribed in Section 380.06(21)(b), F.S. Substantial changes in conditions underlying the approval of the master development order or substantially inaccurate information upon which the master development order was based are to be construed to mean changed conditions or inaccurate information that creates a reasonable likelihood of additional adverse regional impact or any other regional impact not previously reviewed by the regional planning agency.

(5) This rule shall not be construed to limit or modify statutory responsibilities of regional planning agencies, local governments or the Department in complying with Section 380.06, F.S.

Credits
Adopted July 7, 1976; Amended May 4, 1983; Transferred from 27F-1.24, 9B-16.28; Amended Nov. 20, 1990; Transferred from 9J-2.028.

Authority: 380.032(2)(a), 380.06(21)(c), (23)(a) FS. Law Implemented 380.06(21) FS.

Current with amendments available through January 5, 2015.

Rule 73C-40.028, F.A.C., 73 FL ADC 73C-40.028

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Rule 73C-40.029, F.A.C.
Fla. Admin. Code r. 73C-40.029

73C-40.029. Downtown Development of Regional Impact Alternative Review Procedure.

Currentness

(1) A downtown development authority may submit a downtown DRI application for development approval pursuant to Section 380.06(22), F.S and paragraph 73C-40.022(1)(c), F.A.C.

(2) In addition to the requirements specified in subsection 380.06(22), F.S., the following shall apply:

(a) Upon request of the downtown development authority, the regional planning agency shall request that representatives of local government with jurisdiction over the land area participate in the preapplication conference arranged pursuant to Section 380.06(7), F.S., and Rule 73C-40.021, F.A.C.;

(b) Questions in the application for development approval that are not appropriate for a downtown development area may be eliminated from the application by agreement between the regional planning agency and the downtown development authority pursuant to Section 380.06(7), F.S., and adopted rules of the regional planning agency.

(c) In addition to the requirements for a development order specified in Sections 380.06(15) and (22), F.S., and Rule 73C-40.025, F.A.C., the development order shall specify a procedure for monitoring:

1. The amount of land use development occurring in each land use category pursuant to Section 380.06(22)(b), F.S.

2. The remaining capacities in public facilities and services and the condition of natural resources or archaeological or historical resources that are impacted by, or are pertinent to, the approved downtown development application and development order.

(d) In addition to the requirements for the biennial report pursuant to Section 380.06(15)(c), F.S., and subsection 73C-40.025(7), F.A.C., the biennial report for an approved downtown DRI shall include:

1. A comparison of the amount of development approved in each land use category and the amount of land use actually developed as of the end of the year; and

2. A comparison of the remaining capacities in public facilities and services and the conditions of natural resources or archaeological or historical resources with the projected needs and impacts of the yet undeveloped land uses approved in the downtown development application and development order.

(e) By written agreement the Division, the local government with jurisdiction, the downtown development authority and the regional planning agency may agree to eliminate or modify the requirements for the biennial report established in subsection 73C-40.025(7), F.A.C., which are not appropriate for a downtown DRI application.

Credits

Adopted May 4, 1983; Transferred from 9B-16.29; Amended Nov. 20, 1990, June 1, 2003; Transferred from 9J-2.029.

Authority: 380.032(2), 380.06(23) FS. Law Implemented 380.06(22) FS.

Current with amendments available through January 5, 2015.

Rule 73C-40.029, F.A.C., 73 FL ADC 73C-40.029

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Rule 73C-40.040, F.A.C.
Fla. Admin. Code r. 73C-40.040

73C-40.040. The Application of State, Regional and Local Plans in DRI Uniform Standard Rules.

Currentness

(1) Purpose. This rule establishes how the applicable state, regional and local plans will be utilized in the review of applications for binding letters, local government development orders, and DRI applications for development approval (ADA).

(a) The Legislature established Chapter 380, F.S., to Protect the natural resources and environment of Florida, to ensure a water management system that will reverse the deterioration of water quality and provide optimum utilization of limited water resources, to facilitate orderly and well-planned development and to protect the health, welfare, safety and quality of life of the residents of Florida by authorizing the state land planning agency to establish land and water management policies to guide local decisions relating to growth and development.

(b) Sections 186.002, 186.007, 186.009, and 187.101, F.S., establish the State Comprehensive Plan as the long-range, state land development policy guide to be considered in the DRI review process, pursuant to Sections 380.06(3), (4), (12), (13), (14), (15), (25), and 380.065(3), F.S.

(c) Sections 186.503, 186.505, 186.507, and 380.07, F.S., establish the Strategic Regional Policy Plan, as the long-range, regional land development policy guide to be considered in the DRI review process, pursuant to Sections 380.06(3), (12), (13), (14), (15), (25), and 380.065(3), F.S.

(d) Sections 163.3177, 163.3194, 380.031, and 380.07, F.S., establish Local Government Comprehensive Plans as the long-range, local land development policy guides to be considered in the DRI review process, pursuant to Sections 380.06(3), (6), (7), (10), (11), (13), (14), (15), (25), and 380.065(3), F.S.

(e) The statutory authority to promulgate and establish this rule is derived from Sections 380.032(2) and 380.06(23), F.S.

(2) Definitions.

(a) "Applicable Local Plan" or "Local government comprehensive plan" means a plan or element or portion thereof prepared, adopted, or amended pursuant to Part II of Chapter 163, F.S., as amended.

(b) "Applicable Regional Plan" means the Regional Planning Council's adopted Strategic Regional Policy Plan pursuant to Section 186.508, F.S.

(c) "Applicable State Plan" means the State Comprehensive Plan.

(d) "Department" means the Florida Department of Economic Opportunity.

(e) "DRI Uniform Standard Rule" means any one of the rules adopted under Part III of Rule 73C-40, F.A.C.

(f) "Regional planning council" means a governmental body created pursuant to Chapter 186, F.S.

(3) Department Applicability. The DRI Uniform Standard rules shall establish how the Department will evaluate specific regional and state facility and resource issues in the review of applications for binding letters, local government development orders, and DRI applications for development approval (ADA).

(a) A resource or facility specific DRI Uniform Standard rule shall be utilized in development reviews wherever a rule explicitly establishes the planning standards to be utilized for a specific regional or state significant facility or resource issue. For the purposes of this rule, Rule 73C-40.0256, F.A.C. (Hurricane Preparedness Policy Rule) and 73C-40.0257, F.A.C. (Special Hurricane Preparedness Districts for Developments of Regional Impact) shall be considered as DRI Uniform Standard rules.

(b) The goals, policies and objectives of the applicable state, regional, and local plans shall be utilized in development reviews wherever a resource or facility specific DRI Standard rule does not explicitly establish the planning standards to be utilized for a specific planning issue or a regional or state significant facility or resource issue.

(c) The Department will review a local government development order to ensure that it is consistent with the adopted local government comprehensive plan. A development order shall be subject to appeal by the Department, pursuant to Section 380.07, F.S., if it is inconsistent with the adopted local government comprehensive plan.

(4) Regional Planning Council Applicability. All regional planning councils shall be subject to the DRI Uniform Standard rules, and a regional planning council shall not adopt or apply a development review planning standard that differs materially from those planning standards delineated in the Department's DRI Uniform Standard rules for the same facility or resource issue, pursuant to Sections 380.06(23) and 186.507(13), F.S.

(5) Regional Standard.

(a) After the adoption of a DRI Uniform Standard rule, a regional planning council may petition the Department to adopt a regional planning standard for a specific regional planning council district, or portion of that district, that differs from the statewide planning standard adopted in the DRI Uniform Standard rule. Such a petition must be in writing and factually establish why the DRI Uniform Standard rule is inadequate to protect or promote the regional resource or facility issue of concern. The request shall be based upon a unique regional resource or facility consideration which has been identified as a regional issue and addressed with appropriate policies in either an applicable state plan, adopted applicable regional plan, or an adopted local government comprehensive plan, or in the adopted management plans or principles for guiding development for those areas designated by the Legislature at the recommendation of the Department, pursuant to Sections 380.045 and 380.05, F.S., respectively.

(b) Upon receiving a petition requesting a regional planning standard variation to an adopted DRI Uniform Standard rule, the Department shall have thirty (30) days to notify the petitioner whether sufficient information regarding the need for the regional planning standard and the acceptability of proposed mitigative measures has been submitted in the petition or if additional information is required. A petition for a regional planning standard variation to an adopted DRI Uniform Standard rule is complete when the Department determines that all documentation and information it finds necessary to evaluate the request has been provided. The Department shall determine if the regional planning standard is appropriate within 45 days after receipt of a complete petition. If the request for a regional standard is deemed inappropriate by the Department, a written response shall be sent to the petitioner identifying why the regional planning standard was found to be inappropriate. If the petition for a regional planning standard is deemed appropriate by the Department, a written notification shall be sent to the petitioner indicating the Department's intention of amending the appropriate adopted DRI Uniform Standard rule to incorporate the regional planning standard. The regional planning standard variation to the adopted DRI Uniform Standard rule shall not become effective until the rule has been amended.

(c) Once a regional planning standard has been adopted by the Department, the regional planning standard shall be applied by the Department and the regional planning council to all reviews conducted within the specific regional planning council district, or portion of that district, that are addressed by the regional planning standard adopted in the DRI Uniform Standard rule.

Credits

Adopted Mar. 23, 1994; Amended Feb. 21, 2001; Transferred from 9J-2.040.

Authority: 380.032(2)(a), 380.06(23)(a), (c)1. FS. Law Implemented 380.021, 380.06, 380.06(23)(b), (c)1., 380.065, 380.07 FS.

Current with amendments available through January 5, 2015.

Rule 73C-40.040, F.A.C., 73 FL ADC 73C-40.040

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Rule 73C-40.041, F.A.C.
Fla. Admin. Code r. 73C-40.041

73C-40.041. Listed Plant and Wildlife Resources Uniform Standard Rule.

Currentness

(1) Purpose. This rule establishes how the Department will evaluate the impacts of development on listed plant and wildlife species and listed wildlife species habitats in the review of applications for binding letters, local government development orders, and Development of Regional Impact (DRI) applications for development approval (ADA).

(a) The Legislature established Chapter 380, F.S., in order to protect the natural resources and environment of Florida, by authorizing the state land planning agency to establish land management policies to guide local decisions relating to growth and development. Sections 186.002, 186.007, 186.009, 186.021, 187.101, 380.031, and 380.07, F.S., establish the State Comprehensive Plan and the State Land Development Plan as long-range, state land development policy guides to be considered in the DRI review process in order to ensure orderly growth in Florida, pursuant to Sections 380.06(3), (4), (12), (13), (14), (15), (25), and 380.065(3), F.S.

(b) Consistent with the land management policies delineated in the State Comprehensive Plan and the State Land Development Plan, it is the intent of the Department to set forth in this rule the specific listed plant and wildlife review guideline standards and criteria to be utilized to implement the provisions of Sections 380.021, 380.06(4)(a), (b), (d), (e), and (f), 380.06(8)(a) 11., 380.06(12)(a)1. and 2., 380.06(13), 380.06(14)(a), (c) and (d), 380.06(15)(c), 380.06(19)(a) and (e), 380.06(19)(b)16., 380.06(19)(e)5.b., 380.06(19)(f)6., 380.06(19)(g) and (h), 380.06(21), 380.06(22), 380.06(25), 380.06(26), 380.06(27)(d), 380.065(3)(b) and (c) and 380.07, F.S.

(c) The statutory authority to promulgate and establish this rule is derived from Sections 380.032(2) and 380.06(23), F.S.

(2) Definitions. As used in this rule:

(a) "Acquisition" means the action of transferring fee simple interest in a parcel of land to a governmental or non-profit conservation agency for the in perpetuity preservation of the land for the protection of a particular listed species and its associated habitat.

(b) “Adverse impact” means any result of a development action that would reduce the habitat, viability, or quantity of a listed species covered by this rule.

(c) “Applicable Local Plan” or “Local government comprehensive plan” means a plan or element or portion thereof prepared, adopted, or amended pursuant to Part II of Chapter 163, F.S., as amended.

(d) “Applicable Regional Plan” means the Regional Planning Council's adopted Comprehensive Regional Policy Plan prior to the adoption of a Strategic Regional Policy Plan pursuant to Section 186.508, F.S., and thereafter means an adopted Strategic Regional Policy Plan.

(e) “Applicable State Plan” means the State Comprehensive Plan and the State Land Development Plan.

(f) “Critically Imperiled Plant” means a state or federally listed plant species that is ranked S1 by the Florida Natural Areas Inventory, consistent with Section 253.025(15), F.S., and is therefore considered as critically imperiled in Florida because of extreme rarity or because of extreme vulnerability to extinction due to some natural or man-made factor. When a plant species has a compound rank such as S1S2, the second listed rank will be utilized for the purposes of this rule.

(g) “Department” means the Florida Department of Economic Opportunity.

(h) “Documented offsite” means the existence of a scientifically creditable occurrence record for a listed species at a location outside of a project's boundaries including surveys, scientific publications, or other information from local, regional, state or federal agencies, but where the provision of such evidence is not the responsibility of the developer undergoing review.

(i) “Documented onsite” means the existence of a scientifically creditable occurrence record for a listed species at a location within the project boundaries, based upon the provision of such evidence from a developer, local, regional, state or federal agencies, or other reliable sources, including scientific publications and surveys.

(j) “Habitat” means the place or type of site where a species lives and includes any area that is associated with the life history requirements of a particular listed plant or animal species.

(k) “Imperiled Plant” means a state or federally listed plant species that is ranked S2 by the Florida Natural Areas Inventory, consistent with Section 253.025(15), F.S., and is therefore considered as imperiled in Florida because of rarity or because of vulnerability to extinction due to some natural or man-made factor. When a plant species has a compound rank such as S1S2 or S2S3, the second listed rank will be utilized for the purposes of this rule.

(l) “Land Bank” means a wildlife or vegetation mitigation facility established for the purpose of facilitating natural resource protection and mitigation efforts from local and state land use approval processes.

(m) “Listed Species’ means an animal species identified as a state endangered, threatened, or species of special concern in Chapter 68, F.A.C., a plant species identified as a state endangered or threatened in Rule 5B-40.0055, F.A.C., or a federally listed plant or animal species in 50 CFR 17.11-12, 4-25-94.

(n) “Listed Species Jurisdiction” means the jurisdiction given to the Fish and Wildlife Conservation Commission or to the Department of Environmental Protection over certain groups of listed animal species pursuant to Chapter 372, F.S. The Fish and Wildlife Conservation Commission is responsible for freshwater and upland listed animal species, and the Department of Environmental Protection is responsible for marine listed animal species.

(o) “Listed Wildlife Species Guideline” means, for the purpose of this rule, the following publications:

1. Nongame Wildlife Program Technical Report No. 4: ECOLOGY AND HABITAT PROTECTION NEEDS OF GOPHER TORTOISE (Gopherus polyphemus) POPULATIONS FOUND ON LANDS SLATED FOR LARGE-SCALE DEVELOPMENT IN FLORIDA; December 1987. By James Cox, Douglas Inkley, and Randy Kautz; Office of Environmental Services, Fish and Wildlife Conservation Commission.

2. Nongame Wildlife Program Technical Report No. 8: ECOLOGY AND DEVELOPMENT-RELATED HABITAT REQUIREMENTS OF THE FLORIDA SCRUB JAY (Aphelocoma coerulescens coerulescens); April, 1991. By John W. Fitzpatrick, Glen E. Woolfenden, and Mark T. Kopeny; Office of Environmental Services, Fish and Wildlife Conservation Commission.

3. Nongame Wildlife Program Technical Report No. 13: ECOLOGY AND HABITAT PROTECTION NEEDS OF THE SOUTHEASTERN AMERICAN KESTREL (Falco sparverius paulus) ON LARGE-SCALE DEVELOPMENT SITES IN FLORIDA; March 1993. By Beth Stys; Office of Environmental Services, Fish and Wildlife Conservation Commission.

4. HABITAT MANAGEMENT GUIDELINES FOR THE BALD EAGLE IN THE SOUTHEAST REGION; Third Revision, January, 1987. By the U.S. Fish and Wildlife Service.

(p) “Local government comprehensive plan” means a plan or element or portion thereof prepared, adopted, or amended pursuant to Part II of Chapter 163, F.S., as amended.

(q) “Management Plan” means a plan that details the necessary steps to ensure the continued viability of a given plant or wildlife resource within a given preservation area, including continued funding sources for implementation, the type and frequency of any vegetative management, the means of human disturbance controls, and the strategies for continuing resource protection, monitoring and enforcement of the plan. Such plans shall be subject to review and approval by the Fish and Wildlife Conservation Commission or the Florida Department of Environmental Protection when wildlife species or their habitats are involved that fall under their respective listed species jurisdictions.

(r) “Non-profit Conservation Agency or Organization” means an agency or organization whose purpose is the preservation of wildlife or land, and which is exempt from federal income tax under Section 501(c)(3) of the United States Internal Revenue Code.

(s) “Preservation” means the protection and maintenance of a listed species from the adverse impacts of development.

(t) “Rare Plant” means a state or federally listed plant species that is ranked S3 by the Florida Natural Areas Inventory, consistent with Section 253.025(15), F.S., and is therefore considered as either very rare and local throughout its range in Florida, is found locally within Florida in a restricted range, or is vulnerable to extinction because of other factors. When a plant species has a compound rank such as S2S3 of S3S4, the second listed rank will be utilized for the purposes of this rule.

(u) “Regional planning council” means a governmental body created pursuant to Chapter 186, F.S.

(v) “Secure/unranked Plant” means a state or federally listed plant species that is either ranked S4 or S5 as apparently or demonstrably secure within Florida by the Florida Natural Areas Inventory, is not ranked by the Florida Natural Areas Inventory, or is not considered native to Florida.

(w) “Sufficient land management capabilities” means that considering the size and shape of an onsite preservation area, its location, contiguous land uses, and the current condition and life history requirements of the listed species in the preservation area, that it is possible to manage and maintain the preservation area for the long-term continuance of the listed species and its associated habitat proposed for preservation onsite.

(3) Application.

(a) This rule shall be used by the Department to review listed plant and wildlife species and listed wildlife species habitats in binding letters and applications for development approval (ADA), effective the date of this rule. Any development that meets or exceeds the significant impact thresholds identified in this rule shall be determined by the Department to have a significant impact on state and regionally significant listed plant or wildlife species or listed wildlife species habitat. This rule shall not apply to any application submitted to the Department prior to the effective date of this rule, where such an application has continued to remain pending and active, consistent with Sections 380.06(4)(d) or (10)(b), F.S.

(b) This rule shall be used by the Department to review listed plant and wildlife species and listed wildlife species habitats in local government development orders. This rule shall not apply to any development order rendered to the Department after the effective date of this rule that approves, with or without conditions, an application that was submitted prior to the effective date of the rule and has continued to remain pending and active until the development order's approval.

(c) A development order shall be determined by the Department to make adequate provision for the protection of listed plant and wildlife species and listed wildlife species habitats addressed by this rule, and shall not be appealed by the Department on the basis of inadequate listed plant and wildlife protection, if it contains the applicable preservation and mitigation standards and criteria set forth in this rule.

If a development order does not contain the applicable mitigation standards and criteria set forth in this rule, the Department shall have discretion to appeal the development order, pursuant to the provisions of Section 380.07, F.S. However, nothing in this rule shall require the Department to undertake an appeal of the development order simply because it fails to comply with the provisions of this rule. A development order failing to comply with the provisions of this rule will be addressed on a case-by-case basis by the Department as to whether it otherwise complies with the intent and purposes of Chapter 380, F.S. The Department will take into consideration the balancing of this rule's provisions with the protection of property rights, the encouragement of economic development, the promotion of other state planning goals by the development, the utilization of alternative, innovative solutions in the development order to provide equal or better protection than the rule, and the degree of harm created by non-compliance with this rule's mitigation criteria and standards.

(d) The significant impact thresholds and mitigation criteria to be used for this rule are intended to be reflective of the relative endangerment of the listed plant and wildlife resources addressed by this rule. In general, those state and regional resources experiencing the greatest endangerment or threats to their continued viability need the lowest allowable development related impacts and the greatest protection or mitigation in order to avoid further endangerment or ultimate extinction.

(e) The avoidance of significant adverse impacts to state and regionally significant listed plant and wildlife resources is the most desirable and first option that should be considered by regional planning councils and local governments in all development review and approvals. However, in some circumstances, adverse impacts to state and regionally significant listed plant and wildlife resources will need to be addressed through appropriate mitigation. Generally, onsite mitigation and management is preferable, although often the mitigation of significant impacts will need to be, or will only be appropriate when accomplished through offsite mitigation; the approach selected should be that which best ensures long-term species and habitat protection.

(f) Any lands preserved onsite for a listed species shall count towards meeting other onsite listed species preservation or mitigation for this rule applicable to the same onsite habitat, as long as sufficient land management capabilities exist for all listed species requiring onsite protection.

(g) When multiple offsite mitigation acreage involving different mitigation categories of this rule are applicable to the same onsite habitat, only the offsite mitigation that requires the largest amount of acreage for that habitat type shall apply.

(h) This rule shall apply to the specific listed plant and wildlife issues delineated herein, and shall not limit the ability of the Department to address other natural resource issues or consistency with a local government comprehensive plan involved with a development.

(i) This rule shall not limit the ability of the Department to make a determination of significant impact or appeal a development order on the basis of inadequate, inappropriate, or inaccurate onsite listed plant or wildlife surveys carried out by the applicant or his agents, where the findings of such surveys are instrumental to forming the basis of information necessary to evaluate compliance with the application of this rule's criteria and standards. However, if agreement was reached at the DRI preapplication conference regarding listed plant and wildlife survey assumptions and methodologies to be used in an ADA, then reviewing agencies may not subsequently object to these assumptions and methodologies, consistent with the provisions of paragraph 9J-2.021(1)(h), F.A.C.

(j) This rule shall not be applicable to an area previously approved for development under a final DRI development order, except when a change is proposed to such a previously approved development area that would result in the circumstances described in Section 380.06(19)(f) 6., F.S.

(4) Determination of Significant Impacts on State and Regionally Significant Federally and State Listed Wildlife Species, Their Habitats, and the Mitigation of Significant Impacts.

(a) STATE AND REGIONAL SIGNIFICANCE. A state and regionally significant Endangered, Threatened, or Species of Special Concern listed wildlife species or its habitat shall occur wherever a population of the listed species is documented to occur or wherever an important area of its habitat is documented to occur.

(b) SIGNIFICANT IMPACT. In order of priority use for this rule, a significant impact shall consist of:

1. A Guideline Established Impact. Where a listed wildlife species guideline has been prepared to address developmental impacts on that listed species by either the Fish and Wildlife Conservation Commission (FWCC), the Florida Department of Environmental Protection (DEP), or the U.S. Fish and Wildlife Service, the impact criteria established in the guideline shall be considered by the Department to constitute a significant impact, consistent with any project specific recommendations by the FGFWFC or the DEP to utilize the guidelines under its listed species jurisdiction for the onsite and offsite impacts of the specific Chapter 380, F.S., land use application under review, pursuant to this rule.

2. A FWCC or DEP Indicated Significant Impact. Where a listed wildlife species guideline does not exist for a particular listed wildlife species, then a Fish and Wildlife Conservation Commission or a Florida Department of Environmental Protection written determination of significant impact by the development on the onsite or offsite habitat or listed wildlife species within its listed species jurisdiction shall be considered by the Department to constitute a significant impact, when the determination of significant impact is made in regards to a specific Chapter 380, F.S., land use application under review, pursuant to this rule.

3. Other Impacts. In the absence of both a guideline under subparagraph (b)1. and a determination under subparagraph (b)2. above, or when an applicant chooses to utilize this subparagraph, then the Department shall consider that the following impact by the development to onsite or offsite documented state and regionally significant listed wildlife species habitat, or to a state and regionally significant listed wildlife species, shall constitute a significant impact:

a. Endangered and Threatened Listed Wildlife. Any adverse impact shall be considered to constitute a significant impact.

b. Species of Special Concern Listed Wildlife. A net adverse impact shall be considered to constitute a significant impact.

(c) PRESERVATION OR MITIGATION. In order of priority use for this rule, appropriate preservation or mitigation of a significant impact shall consist of:

1. A Guideline Established Preservation or Mitigation. Where a listed wildlife species guideline has been prepared to address developmental impacts on that listed species by either the Fish and Wildlife Conservation Commission (FWCC), the Department of Environmental Protection (DEP), or the U.S. Fish and Wildlife Service, the preservation or mitigation criteria established in the guideline shall be considered by the Department to constitute adequate and appropriate preservation or mitigation of a significant impact, when consistent with any project specific recommendations by the FWCC or the DEP to utilize the guideline under its listed species jurisdiction for the onsite and offsite impacts of the specific Chapter 380, F.S., land use application under review, pursuant to this rule. The development order shall ensure compliance with these guidelines and recommendations through incorporation of the provisions of the applicable subsection (6), (7), or (8) of this rule.

2. A FWCC or DEP Recommended Preservation or Mitigation. Where a listed wildlife species guideline does not exist for a particular listed wildlife species, then a Fish and Wildlife Conservation Commission or a Florida Department of Environmental Protection written recommendation of preservation or mitigation for a specific Chapter 380, F.S., land use application under review, pursuant to this rule, shall be considered by the Department to constitute appropriate preservation or mitigation of a significant impact to the onsite and offsite habitat or listed species within that agency's listed species jurisdiction. The development order shall ensure compliance with these recommendations through incorporation of the provisions of the applicable subsection (6), (7), or (8) of this rule.

3. Other Preservation or Mitigation. In the absence of both a guideline under subparagraph (c)1. and a recommendation under subparagraph (c)2. above, or when an applicant choices to utilize this subparagraph, then the adequate preservation or mitigation of a significant impact shall be accomplished as follows:

a. Endangered Listed Wildlife.

(I) All state and regionally significant endangered species habitat and populations documented onsite shall require preservation onsite, coupled with the development of a management plan that will avoid the adverse impacts of development on the endangered species and its habitat, pursuant to the provisions of subsection (6) of this rule.

(II) All state and regionally significant endangered species habitat and populations documented offsite shall be protected from a significant impact by onsite development through compliance with an onsite management plan that shall avoid adverse impacts of onsite development to the offsite endangered species and its habitat, pursuant to the management plan provisions of subsection (8) of this rule.

b. Threatened Listed Wildlife.

(I) All state and regionally significant threatened species habitat and populations documented onsite shall require preservation onsite, coupled with the development of a management plan that will avoid the adverse impacts of development on the threatened species and its habitat, pursuant to the applicable provisions of subsections (6) and (7) of this rule. The developer shall demonstrate on a site-by-site basis that mitigation consisting of onsite preservation only, or offsite preservation only, or a combination of onsite and offsite preservation, coupled with management, pursuant to the provisions of subsections (6) and (7) of this rule, is unlikely to result in an adverse impact to the viability of the species and is unlikely to result in a decrease in the number of individuals of the species, unless permitted pursuant to Chapter 372, F.S. This demonstration shall be made during the application for development approval review process, prior to the approval of any development order that authorizes the development of the threatened species habitat.

(II) All state and regionally significant threatened species habitat and populations documented offsite shall be protected from a significant impact by onsite development through compliance with an onsite management plan that shall avoid adverse impacts of onsite development to the offsite threatened species and its habitat, pursuant to the management plan provisions of subsection (8) of this rule.

c. Species of Special Concern Listed Wildlife.

(I) All state and regionally significant species of special concern habitat and populations documented onsite shall require avoidance or mitigation against a significant impact through onsite preservation only, offsite preservation only, or a combination of onsite and offsite preservation, coupled with management, pursuant to the provisions of subsections (6) and (7) of this rule, such that the resulting approved development related impacts are unlikely to result in an adverse impact to the viability of the species and are unlikely to result in a significant decrease in the number of individuals of the species, unless permitted pursuant to Chapter 372, F.S. This demonstration that proposed development related impacts are unlikely to result in either a significant reduction in the number of individuals of the species or adversely impact the viability of the species of special concern, shall be made during the application for development approval review process, prior to the approval of any development order that authorizes the development of the species of special concern habitat. Exceptions to these mitigation requirements shall be considered on a site-by-site basis and require the demonstration in the ADA review process that the alternatively proposed mitigation mitigates for any significant impact to the species of special concern and its habitat.

(II) All state and regionally significant species of special concern habitat and populations documented offsite shall be protected from a significant impact by onsite development through compliance with an onsite management plan that shall avoid the adverse impacts of onsite development to the offsite species of special concern and its habitat, pursuant to the management plan provisions of subsection (8) of this rule.

(5) Determination of Significant Impacts on State and Regionally Significant Federally and State Listed Plants, and the Mitigation of Significant Impacts.

(a) LISTED PLANTS.

1. State and Regional Significance. State and regionally significant listed plant species shall occur wherever there is a documented occurrence of a population of one or more of the federal or state listed plant species that is also on the Critically Imperiled, Imperiled or Rare plant lists below.

2. Significant Impact.

a. Critically Imperiled and Imperiled Listed Plants. A significant impact shall consist of any adverse impact to an onsite or offsite documented state and regionally significant Critically Imperiled or Imperiled listed plant species.

b. Rare Listed Plants. A significant impact shall consist of a net adverse impact to an onsite or offsite documented state and regionally significant Rare listed plant species.

3. Critically Imperiled Plant Mitigation.

a. Avoidance or mitigation against a significant impact to an onsite population shall consist of the preservation of the critically imperiled listed plant species population, coupled with the development of a management plan that will avoid the adverse impacts of development on the listed plant species, pursuant to the provisions of subsections (6) and (7) of this rule. This shall be accomplished on a site-by-site basis where it is demonstrated that onsite preservation only, offsite preservation only, or a combination of onsite and offsite preservation, coupled with management, pursuant to the provisions of subsections (6) and (7) of this rule, is unlikely to result in an adverse impact to the viability of the population of a critically imperiled plant species. This demonstration, that such a proposal is unlikely to result in an adverse impact to the viability of the population of a critically imperiled plant species, shall be made during the application for development approval review process, prior to the approval of any development order that authorizes the development of the critically imperiled plant species habitat.

b. All state and regionally significant listed plant species documented offsite shall be protected from a significant impact by onsite development through compliance with a management plan that shall avoid adverse impacts of onsite development to the offsite listed plant species, pursuant to the management plan provisions of subsection (8) of this rule.

c. The critically imperiled listed plant species covered by these provisions are:

Acacia choriophylla (Tamarindillo)

Actaea pachypoda (Baneberry; White baneberry)

Actinostachys pennula [Schizaea germanii] (Ray fern)

Adiantum melanoleucum (Fragrant maidenhair fern)

Amorpha crenulata (Miami lead plant)

Anemonella thalictroides (Rue-anemone)

Aquilegia canadensis var. australis (Wild columbine)

Arabis canadensis (Sicklepod)

Asimina tetramera (Four-petal pawpaw)

Asplenium monanthes (San Felasco spleenwort)

Asplenium pumilum (Dwarf spleenwort)

Asplenium serratum (Bird's nest spleenwort)

Asplenium x biscayneaum (Eaton's spleenwort)

Asplenium x curtissii (Curtiss' spleenwort)

Asplenium x plenum [Asplenium plenum] (Double spleenwort)

Aster hemisphericus (Aster)

Aster spinulosus (Pinewoods aster)

Basiphyllaea corallicola (Rockland Orchid)

Bigelowia nuttallii (Nuttall's rayless goldenrod)

Blechnum occidentale (Sinkhole fern)

Botrychium lunarioides (Winter grape fern)

Bourreria cassinifolia (Little strongbark)

Brassia caudata (Long-tailed spider orchid)

Brickellia euphatorioides var. floridana [=B. mosieri] (Florida brickell-bush)

Bulbophyllum pachyrrhachis (Rattail orchid)

Burmannia flava (Fakahatchee burmannia)

Campanula robinsiae (Robins' bellflower)

Campylocentrum pachyrrhizum (Leafless orchid)

Campyloneurum angustifolium (Narrow swamp fern)

Catesbaea parviflora (Small-flowered lily-thorn)

Catopsis nutans (Nodding Catopsis)

Celtis iguanaea (Iguana hackberry)

Celtis pallida (Spiny hackberry)

Centrogenium setaceum (Spurred Neottia)

Cereus eriophorus var. fragrans (Fragrant prickly apple)

Cereus robinii (tree cactus)

Chamaesyce deltoidea deltoidea [=Euphorbia] (Deltoid purge)

Chamaesyce deltoidea serpyllum (Wedge spurge)

Chamaesyce garberi [=Euphorbia gerberi] (Garber's spurge)

Chamaesyce porteriana var. keyensis (Keys hairy-podded spurge)

Chrysopsis floridana (Florida's golden-aster)

Cladonia perforata (Florida perforate cladonia)

Conradina etonia (Etonia rosemary)

Conradina glabra (Apalachicola rosemary)

Corallorhiza odontorhiza (Autumn coralroot)

Crataegus phaenopyrum (Washington thorn)

Crotolaria avonensis (Avon Park harebells)

Cucurbita okeechobeensis (Okeechobee gourd)

Cupania glabra (Cupania)

Cyrtopodium punctatum (Cowhorn orchid)

Deeringothamnus pulchellus (Beautiful pawpaw)

Deeringothamnus rugelii (Rugel's pawpaw)

Delphinium carolinianum (Carolina larkspur)

Dennstaedtia bipinnata (Hay-scented fern)

Dicerandra christmanii (Garrett's mint)

Dicerandra cornutissima (Robin's mint)

Dicerandra frutescens (Lloyd's mint)

Dicerandra immaculata (Lakela's mint)

Dodecatheon meadia (Shooting-star)

Encyclia boothiana var. erythronioides (Dollar orchid)

Encyclia pygmaea (Dwarf epidendrum)

Epidendrum acunae (Acuna's epidendrum)

Epindendrum rigidum [E. strobiliferum] (Rigid epidendrum)

Eryngium cuneifolium (Wedge-leaved button-snakeroots)

Eugenia rhombea (Red stopper)

Euphorbia telephioides (Telephus spurge)

Galactia smalli (Small's milkpea)

Galeandra beyrichii (orchid)

Goodyera pubescens (Downy rattlesnake plantain)

Govenia utriculata (Sheathing govenia)

Harperocallis flava (Harper's beauty)

Hybanthus concolor (Green violet)

Hydrangea arborescens (Wild hydrangea)

Hypelate trifoliata (Inkwood)

Illicium parviflorum (Star anise)

Ionopsis utricularioides (Delicate ionopsis)

Isotria verticillata (Large whorled pogonia)

Jacquemontia reclinata (Beach jacquemontia)

Leochilus labiatus (Smooth-lipped leochilus)

Lepanthopsis melanantha (Tiny orchid; Harris' tiny orchid)

Lepuropetalon spathulatum (Little-people)

Licaria triandra (Licaria; Gulf licaria)

Linum carteri var. carteri (Everglades flax; Carter's small-flowered flax)

Lupinus aridorum (McFarlin's lupine; Scrub lupine)

Lycopodium dichotomum [Huperzia dichotoma] (Hanging club-moss)

Lythrum curtissii (Curtis' lythrum; Curtiss' loosestrife)

Macbridea alba (White birds-in-a-nest)

Macradenia lutescens (Trinidad macradenia)

Marshallia obovata (Barbara's-buttons)

Marshallia ramosa (Barbara's-buttons; Southern marshallia)

Matelea albamensis (Alabama anglepod; Alabama milkweed)

Matelea baldwyniana (Baldwyn's spiny-pod)

Matela flavidula (Carolina milkvine)

Maxillaria crassifolia (Hidden orchid)

Monotropa hypopithys (Pine-sap)

Monotropsis reynoldsiae (Pygmy-pipes)

Oncidium floridanum (Florida oncidium)

Oncidium luridum (Mule-ear orchid)

Oncidium variegatum [Tolumnia bahamense; Oncidium bahamense] (Dancing-lady orchid)

Opuntia spinosissima (Semaphore cactus)

Pachysandra procumbens (Allegheny-spurge)

Parnassia caroliniana (Carolina grass-of-parnassus)

Paronychia chartacea ssp. minima (Crystal Lake Nailwort)

Peperomia glabella (Cypress peperomia)

Phoradendron rubrum (Mahogany mistletoe)

Physocarpus opulifolius (Ninebark)

Platanthera clavellata (Little club-spur orchid)

Pleopeltis revoluta (Star-scale fern)

Polygala smallii (Tiny polygala)

Ponthieva brittoniae var. brittoniae (Bahama shadow-witch)

Prescottia oligantha (Small-flowered prescotia)

Pseudophoenix sargentii (Buccaneer palm)

Rhipsalis baccifera (Mistletoe cactus)

Ribes echinellum (Miccosukee gooseberry)

Sachsia bahamensis [Sachsia polycephala] (Bahama sachsia)

Salix eriocephala (Heart-leaved willow)

Salvia urticifolia (Nettle-leaved sage)

Schizaea germanii [Actinostachys pennula] (Ray fern; Tropical curly-grass)

Schwalbea americana (Chaff-seed)

Scutellaria floridana (Florida skullcap)

Spigelia gentianoides (Gentian pinkroot)

Spiranthes costaricensis (Reichenbach's orchid)

Spiranthes elata (Tall neottia)

Spiranthes lanceolata var. paludicola (Ladies' tresses)

Spiranthes torta [S. tortilis] (Southern ladies' tresses)

Stachys crenata (Shade betony)

Staphylea trifolia (Bladder-nut)

Strumpfia maritima (Pride-of-Big-Pine)

Tephrosia angustissima (Hoary pea; Coastal hoary pea)

Tetramicra canaliculata (Grooved tetramicra)

Thalictrum cooleyi (Cooley's meadowrue)

Thelypteris sclerophylla (Hard-leaved shield fern)

Tillandsia pruinosa (Fuzzy-wuzzy air plant)

Torreya taxifolia (Florida torreya)

Trichomanes holopterum (Entire-winged bristle fern)

Triphora craigheadii (Craighead's nodding-caps)

Tropidia polystachya (Young-palm orchid)

Vanilla mexicana [Vanilla inodora] (Scentless vanilla)

Verbena tampensis [Glandularia tampensis] (Tampa vervain)

Vicia ocalensis (Ocala vetch)

Viola hastata [Viola tripartita var. glaberrima] (Halberd-leaved yellow violet)

Warea amplexifolia (Clasping warea)

Xanthorhiza simplicissima (Yellow-root)

Xyris scabrifolia (Harper's yellow-eyed grass)

Zanthoxylum flavum (Yellowheart)

Ziziphus celata (Scrub ziziphus)

All rediscovered, previously considered to be extirpated or extinct, ranked listed plant species, including:

Bletia patula (Haitian bletia)

Cranichis muscosa (Cranefly orchid)

Lindera melissifolia (Pondberry; Swamp spicebush)

Restrepiella ophiocephala (Snake orchid)

Tectaria amesiana [Tectaria x amesiana] (Ames' halberd fern)

Tectaria coriandrifolia (Hattie Bauer halberd fern)

Triphora latifolia (Broad-leaved nodding-caps)

4. Imperiled Plant Mitigation.

a. Avoidance or mitigation against a significant impact to an onsite population shall consist of the preservation of the imperiled listed plant species population coupled with the development of a management plan that will avoid the adverse impacts of development on the listed plant species, pursuant to the provisions of subsections (6) and (7) of this rule. This shall be accomplished on a site-by-site basis where it is demonstrated that onsite preservation only, offsite preservation only, or a combination of onsite and offsite preservation, coupled with management, pursuant to the provisions of subsections (6) and (7) of this rule, is unlikely to result in an adverse impact to the viability of the population of an imperiled plant species. This demonstration that such a proposal is unlikely to result in an adverse impact to the viability of the population of an imperiled plant species, shall be made during the application for development approval review process, prior to the approval of any development order that authorizes the development of the imperiled plant species habitat.

b. All state and regionally significant listed plant species documented offsite shall be protected from a significant impact by onsite development through compliance with an onsite management plan that shall avoid adverse impacts of onsite development to the offsite listed plant species, pursuant to the management plan provisions of subsection (8) of this rule.

c. The imperiled listed plant species covered by these provisions are:

Argythamnia blodgettii (Blodgett's wild-mercury)

Asclepias viridula (Apalachicola milkweed)

Asplenium auritum (Auricled Spleenwort)

Asplenium trichomanes-dentatum [Asplenium dentatum] (Slender spleenwort)

Asplenium x heteroresiliens [Asplenium heteroresiliens] (Wagne's spleenwort)

Baptisia hirsuta [Baptisia calycosa var. hirsuta; Baptisia calycosa var. villosa] (Hairy wild-indigo; Pineland wild indigo)

Baptisia megacarpa (Apalachicola wild-indigo)

Brickellia cordifolia (Fly's nemesis; Flyr's brickell-bush)

Bumelia lycioides (Buckthorn)

Cacalia diversifolia [Arnoglossum diversifolium] (Variable-leaved Indian-plantain)

Calamovilfa curtissii (Curtiss' sandgrass)

Callirhoe papaver (Poppy mallow)

Calycanthus floridus var. floridus (Sweet-shrub)

Camplyoneurum costatum (Tailed strap fern)

Carex baltzellii (Baltzell's sedge)

Cassia keyensis (Key cassia)

Catopsis berteroniana (Powdery Catopsis)

Catopsis floribunda (Many-flowered Catopsis)

Cereus gracilis var. aboriginum (Aboriginal prickly apple)

Cereus gracilis var. simpsonii (Simpson's prickly apple)

Chamaesyce porteriana var. porteriana (Porter's hairy-podded spurge)

Chamaesyce porteriana var. scoparia (Porter's broom spurge)

Chrysopsis gossypina ssp. cruiseana (Cruise's golden-aster)

Conradina breviflora (Short-leaved rosemary)

Cornus alternifolia (Pagoda dogwood)

Croomia pauciflora (Few-flowered croomia)

Ctenitis sloanei (Comb fern)

Encyclia cochleata [Encyclia cochleata var. triandra] (Clamshell orchid)

Epidendrum nocturnum (Night-scented orchid)

Epigaea repens (Trailing arbutus)

Eragrostis tracyi (Sanibel lovegrass)

Erythronium umbilicatum (Dimpled dogtooth-violet; Trout lily)

Guaiacum sanctum (Lignum-vitae tree)

Guzmania monostachia (Fuch's bromeliad)

Hartwrightia floridana (Florida hartwrightia)

Hedeoma graveolens (Mock pennyroyal)

Helianthus carnosus (Lakeside sunflower)

Hepatica americana [Hepatica nobilis] (Liverleaf)

Hippomane mancinella (Manchineel)

Hypericum cumulicola (Highlands scrub hypericum)

Hypericum edsonianum (Edison's ascyrum)

Hypericum lissophloeus (Smooth-barked St. John's-Wart)

Ilex amelanchier (Serviceberry holly)

Ilex krugiana (Krug holly)

Ipomoea microdactyla (Wild potato morning-glory)

Ipomoea tenuissima (Rocklands morning-glory)

Jacquemontia curtissii (Pineland jacquemontia)

Justicia cooleyi (Cooley's justicia; Cooley's water willow)

Justicia crassifolia (Thick-leaved water-willow)

Lechea divaricata (Spreading pinweed; Pine pinweed)

Liatris provincialis (Godfrey's blazing-star)

Lilium iridollae (Panhandle lily)

Linum arenicola (Sand flax)

Linum carteri var. smallii (Everglades flax; Carter's large-flowered flax)

Linum westii (West's flax)

Litsea aestivalis (Pond-spice)

Lupinus westianus (Gulfcoast lupine)

Macranthera flammea (Hummingbird flower)

Magnolia acuminata (Cucumber-tree)

Magnolia ashei (Ashe's magnolia)

Magnolia pyramidata (Pyramid magnolia)

Matelea floridana (Florida spiny-pod; Florida milkweed)

Medeola virginiana (Indian cucumber-root)

Nemastylis floridana (Fall-flowering ixia)

Nevrodium lanceolatum (Ribbon fern)

Nolina brittoniana (Britton's bear-grass; Scrub beargrass)

Okenia hypogaea (Burrowing four-o'clock)

Ophioglossum palmatum (Hand adder's tongue fern)

Panicum abscissum (Cut throat grass)

Parnassia grandifolia (Grass-of-Parnassus)

Pellaea atropurpurea (Purple cliff brake fern)

Peperomia humilis (Terrestrial peperomia)

Peperomia obtusifolia [Peperomia floridana] (Blunt-leaved peperomia; Florida peperomia; Everglades peperomia)

Phyllanthus liebmannianus ssp. platylepisp (Pine-wood dainties)

Pinguicula ionantha (Violet-flowered butterwort)

Pinguicula planifolia (Chapman's butterwort)

Pleurothallis gelida (Frost-flower orchid)

Poinsettia pinetorum (Everglades poinsettia)

Polygala lewtonii (Lewton's polygala)

Polygonella macrophylla (Large-leaved jointweed)

Polygonum meisnerianum (Mexican tear-thumb)

Polyrrhiza lindenii (Ghost orchid)

Pteroglossaspis ecristata [Eulophia ecristata] (Wild coco)

Rhexia parviflora (Apalachicola meadow-beauty)

Rhododendron chapmanii (Chapman's rhododendron)

Roystonea elata (Florida royal palm)

Rudbeckia nitida var. nitida (St. John's-Susan)

Ruellia noctiflora (Night-flowering ruellia)

Salix floridana (Florida willow)

Sarracenia rubra (Red-flowered pitcher-plant; sweet pitcher-plant)

Schisandra glabra [Schisandra coccinea] (Schisandra)

Selaginella eatonii (Eaton's spikemoss)

Silene polypetala (Fringed catchfly)

Sphenomeris clavata (Wedgelet fern; Parsley fern)

Sphenostigma coelestinum [Salpingostylis coelestina] (Bartram's ixia)

Spigelia loganioides (Levy pinkroot; Florida pinkroot)

Spiranthes polyantha (Ft. George ladies-tresses)

Swietenia mahagoni (Mahogany; West Indian mahogany)

Taxus floridana (Florida yew)

Tectaria incisa (Incised halberd fern)

Tectaria lobata (Lobed halberd fern)

Thelypteris reptans (Creeping fern)

Tragia saxicola (Rocklands noseburn)

Trichomanes krausii (Kraus' bristle fern)

Trichomanes petersii (Plateau bristle fern)

Trichomanes punctatum (Florida bristle fern)

Trillium lancifolium (Lance-leaved wake-robin)

Triphora rickettii (Rickett's nodding-caps)

Tripsacum floridanum (Florida gamagrass)

Vanilla barbellata (Worm-vine orchid)

Vanilla phaeantha (Leafy vanilla)

Veratrum woodii (False hellebore)

Verbena maritima [Glandularia maritima] (Coastal vervain)

Warea carteri (Carte's warea; Carter's mustard)

Xyris longisepala (Karst pond xyris)

Zanthoxylum americanum (Prickly ash)

5. Rare Plant Mitigation.

a. All state and regionally significant rare listed plant species populations documented onsite shall require avoidance or mitigation against a significant impact through onsite preservation only, offsite preservation only, or a combination of onsite and offsite preservation, coupled with management, pursuant to the provisions of subsections (6) and (7) of this rule, such that the resulting approved development related impacts are unlikely to result in an adverse impact to the viability of the population of a rare plant species. This demonstration that proposed development related impacts are unlikely to result in an adverse impact to the viability of the population of a rare plant species, shall be made during the application for development approval review process, prior to the approval of any development order that authorizes the development of the rare plant species habitat. Exceptions to these mitigation requirements shall be considered on a site-by-site basis and require the demonstration in the ADA review process that the alternatively proposed mitigation mitigates for any significant impact to the rare listed plant species.

b. All state and regionally significant listed plant species documented offsite shall be protected from a significant impact by onsite development through compliance with an onsite management plan that shall avoid significant impacts of onsite development to the offsite rare plant species, pursuant to the management plan provisions of subsection (8) of this rule.

c. The rare listed plant species covered by these provisions are:

Acrosticum aureum (Golden leather fern)

Adiantum tenerum (Brittle maidenhair fern)

Adiantum tetraphyllum (Four-leaved maidenhair fern)

Anemia wrightii (Wright's anemia)

Asclepias curtissii (Curtiss' milkweed)

Baptisia simplicifolia (Scare-weed)

Bonamia grandiflora (Florida bonamia)

Calamintha ashei (Ashe Calamintha; Ashe's savory)

Cheilanthes microphylla (Southern lip fern)

Chionanthus pygmaeus (Pygmy fringe-tree)

Clitoria fragrans (Pigeon-wing)

Conradina grandiflora (Large-flowered rosemary)

Cordia sebestena (Geiger tree)

Cryptotaenia canadensis (Honewort)

Drosera intermedia (Water sundew; Spoon-leaved sundew)

Eriogonum floridanum [E. longifolium var. graphalifolium] (Scrub buckwheat)

Eugenia confusa (Redberry eugenia; Tropical ironwood)

Eugenia simpsonii [Myrcianthes fragrans var. simpsonii] (Simpson eugenia; Twinberry)

Gentiana pennelliana (Wiregrass gentian)

Gossypium hirsutum (Wild cotton)

Hexastylis arifolia (Heartleaf)

Illicium floridanum (Florida anise)

Jacquinia keyensis (Joewood)

Kalmia latifolia (Mountain laurel)

Lechea cernua (Scrub pinweed; Nodding pinweed)

Leitneria floridana (Corkwood)

Liatris ohlingerae (Scrub blazing-star; Florida gayfeather)

Lilium catesbaei (Catesby's lily; Southern red lily)

Lomariopsis kunzeana (Holly vine fern)

Malaxis unifolia (Green adder's-mouth)

Mallotonia gnaphalodes [Tournefortia gnaphalodes] (Sea-lavender)

Microgramma heterophylla (Climbing vine fern)

Nolina atopocarpa (Florida beargrass)

Oxypolis greenmanii (Giant water-dropwort)

Paronychia chartacea ssp. chartacea (Paper-like nailwort)

Pityopsis flexuosa (Panhandle golden aster; bent golden aster)

Polygonella basiramia (Tufted wireweed; Hairy Jointweed)

Polygonella myriophylla (Small's jointweed)

Prunus geniculata (Scrub plum)

Pteris bahamensis (Bahama brake)

Remirea maritima (Beach-star)

Rhododendron austrinum (Orange azalea)

Sarracenia leucophylla (White-top pitcher-plant)

Stewartia malacodendron (Silky camellia)

Tetrazygia bicolor (Tetrazygia)

Tillandsia flexuosa (Banded wild pine; Twisted air plant)

Verbesina chapmanii (Chapman crownbeard)

Zephyranthes simpsonii (Simpson zephyr-lily; Rain lily)

6. Secure/Unranked Plants.

a. Proposed adverse impacts to a listed plant species in this category shall not constitute a significant impact to a state and regionally significant listed plant species.

b. No mitigation of adverse impacts shall be necessary for impacts to a secure/unranked listed plant species.

c. The secure/unranked listed plant species covered by these provisions are all listed plant species not listed in subparagraphs (5)(a)3., 4., or 5., F.A.C., above.

(b) SPECIAL LISTED PLANTS.

1. Certain listed plants shall be excluded from the more general preservation criteria specified in subparagraphs (5)(a)1. through 5., F.A.C. above, for reasons relating to their life history, endangerment, or their inability to be adequately documented onsite or protected through the criteria listed above.

2. The special listed plant species covered by these provisions are: None Currently

(6) Onsite Preservation.

(a) ONSITE PRESERVATION DEVELOPMENT ORDER CONDITIONS. The development order shall specifically identify the location and size of the onsite land to be preserved, and shall restrict use of the preservation land. The development order shall identify any onsite management practices that are necessary to preserve the habitat related attributes of the preserved land, and shall include or require a management plan that ensures the continued fiscal and physical protection of the preservation area from adverse impacts of development. The development order shall also require the protection of the preserved land, coupled with an enforceable management plan, as described in subsection (9).

(b) SITE SELECTION. Where alternative onsite preservation sites exist within a development, the site or sites selected for onsite preservation shall be the best suited and most likely to naturally maintain a reproducing listed species population at a particular site over time, based upon the ability to protect and manage the sites, the size and shape of the sites, the population size of the listed species that exist at the sites, the life history requirements of the listed species involved, the proximity and accessibility of the sites to other occurrences of the same listed species, and the compatibility of preservation of the sites with adjacent land uses.

(c) SUBSEQUENT DEVELOPMENT. Development of an onsite preservation or special protection area previously set aside in an ADA or DRI development order for listed species, or their habitat, designated as endangered, threatened, or species of special concern shall be allowed only under any conditions allowing such development in a previously approved final DRI development order, or if approved after review of a substantial deviation ADA, in compliance with Section 380.06(19)(b) 16., F.S., proposing a change from onsite preservation to any necessary appropriate mitigation, pursuant to the criteria and provisions of this rule.

(7) Offsite Mitigation. The development order shall establish the acreage, location, and type of habitat of offsite mitigation, the cost and timing of any monetary contributions or offsite acquisitions, the ownership and party responsible for management of the offsite mitigation site. The development order shall require all off-site mitigation to meet the following criteria:

(a) HABITAT TYPE MITIGATION. Offsite mitigation sites for specific species shall be biologically manageable and appropriate for the listed plant and wildlife species requiring mitigation. Offsite mitigation shall be type-for-type and acre-for-acre habitat acquisition or preservation, or other acquisition or preservation of mitigation habitat of comparable biological value for the listed species requiring mitigation.

(b) OFFSITE MITIGATION SITE SELECTION.

1. Offsite mitigation sites shall be offsite mitigation land banks; additions of land to existing publicly managed areas, such as state, local and federal parks held for conservation purposes; conservation lands held by non-profit conservation agencies for in perpetuity preservation; or privately held lands acceptable to the Department of Economic Opportunity.

2. Offsite mitigation sites shall be for the purpose of preserving and maintaining the listed species and their habitat in perpetuity. The closest appropriate and available site meeting all other provisions of this rule should generally be investigated first and should be selected and utilized when feasible for the offsite mitigation of state and regionally significant listed plant and wildlife impacts.

3. In determining whether the selection of a particular offsite mitigation site is appropriate, the Department shall consider the overall habitat suitability, listed species population viability, and life history requirements of the listed species being protected, the protectability of the site, the manageability of the site, the size of the site, and other recommendations concerning the site from the regional planning council, local government of jurisdiction, the Fish and Wildlife Conservation Commission, and other appropriate regional, state and federal agencies.

(c) ESTABLISHMENT OF A NEW LAND BANK. In the absence of an appropriate, existing land bank within the regional planning council region where the DRI is located, a developer may elect to contribute funds towards the establishment and acquisition of a new land bank within the region with the combined written approval of the regional planning council, the local government of jurisdiction, and the Department. Such lands shall meet all appropriate provisions of this subsection.

(d) OFFSITE MITIGATION COSTS.

1. A developer's monetary assessment costs for offsite mitigation shall be limited to land acquisition related costs and a one-time, offsite management assessment where such a management assessment is required by the offsite mitigation land owner, except in the circumstances covered by subparagraphs 3. and 4. below. Where required, the offsite management assessment shall be assigned to a separate trust fund, or to a designated portion of an established trust fund or other account, to provide for the long-term land management of the offsite mitigation site for the in perpetuity protection of the resource being mitigated from the funds made available from accrued interest.

2. A developer shall provide the cost of acquisition of any required offsite mitigation acreage in the following circumstances:

a. Contribution to an Existing Land Bank. When the developer's offsite mitigation will be in an established land bank meeting the provisions of this subsection, the developer's contribution shall be based upon the land bank's acquisition costs on an acre for acre basis, plus any carrying costs and, where required, a one-time offsite management assessment; or

b. Contribution to Establish a New Land Bank. The average of the acquisition cost of at least three potential, appropriate offsite mitigation sites, and, where required, a one-time offsite management assessment, shall be the developer's contribution; or

c. Land Acquisition. The developer shall transfer fee simple interest of appropriate offsite mitigation lands, plus, where required, a one-time offsite management assessment, to governmental or non-profit conservation agencies; or

d. Acquisition of a Lesser Interest. The developer shall acquire the conservation easement for appropriate offsite mitigation lands, shall transfer the conservation easement to governmental or non-profit conservation agencies, and shall be solely responsible for the administrative and management costs of the offsite mitigation lands.

3. Where a service charge is required for funds held in certain trust funds, pursuant to Section 215.20, F.S., a developer's monetary assessment costs for offsite mitigation to such a trust fund shall be increased by an amount equal to this service charge.

4. When the offsite mitigation area is to consist of privately held lands acceptable to the Department of Economic Opportunity, then the fiscal and operational provisions ensuring the continuing management and protection of the privately held lands for the listed species requiring protection shall be contained in the management plan prepared under subsection (9).

(e) OFFSITE MITIGATION TIMING.

1. The development order shall require that any state and regionally significant listed animal species and its habitat and state and regionally significant plant species on the DRI project site for which offsite mitigation is being provided shall not be disturbed or adversely impacted prior to completion of all offsite mitigation for the particular phase of development requiring mitigation.

2. The development order shall require that all offsite mitigation be completed for any onsite state and regionally significant listed species lands, for which the offsite mitigation is being provided, prior to the conveyance of any interest in such onsite lands to a third party for the particular phase of development requiring mitigation.

3. Full payment of mitigation costs to an existing land bank, or full payment of the contribution to establish a public land bank, shall satisfy provisions 1. and 2. above, and shall allow the onsite lands to be developed or interest legally transferred, provided that such payment is accepted by the public entity managing the existing land bank or establishing the new land bank, and the land bank site meets all other provisions of this rule.

(f) LAND BANKS.

1. Land banks which are used to comply with this rule and avoid an appeal by the Department on the basis of impacts to listed plant and wildlife species must meet the following criteria:

a. Land banks shall be managed and held in fee simple title or by perpetual conservation easement in favor of local, regional, state or federal public agencies, or designated non-profit conservation agencies, for the in perpetuity preservation of the listed species habitats purchased.

b. Public use of land bank preservation areas shall be allowed only in accordance with real property restrictions governing use of the site when such use is unlikely to result in adverse impacts to the listed species and their habitats being protected.

c. Land banks shall be of a sufficiently large size to be able to establish, maintain, and preserve biologically intact ecological systems for the listed species and their habitats being protected.

d. All land bank sites shall be guaranteed as preserve areas for the listed plant and wildlife species and their habitats through legally binding conservation easements that run with the land in perpetuity.

2. In order to successfully accommodate the land banking approach to offsite mitigation, each regional planning council should coordinate with the Fish and Wildlife Conservation Commission and expeditiously proceed with the identification of potential land bank sites for specific listed species habitat types within their respective regions.

3. Interim holding trust funds (interest bearing account) may be identified or established by the State and utilized by developers to temporarily hold offsite mitigation contributions from DRI developments. In most cases, the appropriate trust fund shall be the Fish and Wildlife Habitat Trust Fund established by the Fish and Wildlife Conservation Commission, pursuant to Section 372.074, F.S. Offsite management assessments shall be assigned to a separate trust fund, or to a designated portion of an established trust fund, to provide for the long-term land management of the land bank site for the in perpetuity protection of the resource being mitigated from the funds made available from accrued interest.

(8) Offsite Resource Protection. Whenever a state and regionally significant listed species or its habitat occurring offsite requires protection from a significant impact by onsite development, the resulting development order approving onsite development shall specifically include the location, type, and conditions of any onsite land use restrictions, onsite activity prohibitions, or onsite management requirements necessary to protect the offsite resources from the potential adverse impacts of onsite development. The development order shall include the means of restrictions upon the use and development of onsite lands, as described in subsection (9). The development order shall require any onsite management practices that are necessary to preserve the natural attributes of the protected land for the offsite listed species requiring protection, and shall include or require a management plan that ensures the continued fiscal and physical onsite protection of the offsite listed species from any adverse impacts of onsite development.

(9) Site Protection and Management Plans. Whenever site protection is required by subsection (6), (7) or (8), the development order shall require site protection by one of the following methods:

(a) TRANSFER OF OWNERSHIP TO A MANAGEMENT ORGANIZATION. The development order shall state that, upon completion of the transfer of ownership to a management organization that complies with this rule, the developer shall have no further responsibility for the proper management of the preserved land. The development order shall require that the fee simple estate in the land to be preserved shall be transferred to a management organization by a Statutory Warranty Deed that meets all of the following criteria:

1. The warranty deed shall be to a local government, governmental agency, or a qualified non-profit conservation organization that has both the commitment and resources to manage and preserve the site in perpetuity, and that is willing to manage the preserved land as required by the development order; and

2. The warranty deed shall clearly designate the preservation area as lands to be managed and retained by the grantee in a natural state in perpetuity for the continued protection and sustainability of the listed species and their habitat requiring preservation, and shall include a conservation easement as authorized by Section 704.06, F.S., that prohibits all development and all use of the preserved land including those activities described in Sections 704.06(1)(a) through (g), F.S., except for specific activities approved by the development order such as appropriate management, passive recreation or the clearing of exotic species, where such activities are consistent with the purpose for which the land is to be preserved; and

3. The warranty deed shall name the State of Florida as a benefiting party, shall allow it and any of its agencies access to the site upon request, and shall provide the State of Florida, and specifically the Department of Economic Opportunity or any successor agency, with the right to require restoration and the right of enforcement, including administrative or judicial relief pursuant to Section 380.11, F.S., or other proceedings in equity or at law, should the conservation easement be violated; and

4. The warranty deed which transfers the fee simple title shall include all owners of the preserved property, shall conform with Sections 689.02 and 689.03, F.S., and shall be free and clear of all reverter clauses and reservations unless a reverter or reservation is approved by the Department; and

5. The grantor of the statutory warranty deed shall provide proof of good title, including release or satisfaction of all mortgages and liens, to ensure that there are no interests in the preserved property superior to the grantees' fee simple estate and the grantees' right to manage and maintain the property in its natural state in perpetuity. Proof of good title shall be in the form of a title insurance commitment issued by a qualified title insurer agreeing to issue to the grantee, upon recording of the warranty deed, an Owner's policy of title insurance insuring title of the grantee to the real property, with the title insurance premium to be paid by the grantor; and

6. The warranty deed shall be recorded by the developer in the Official Records of the county in which the preserved property is located within one year of the issuance of the development order, and prior to the commencement of any development onsite that would impact listed species or their habitat, except for development allowed pursuant to a Section 380.032(3) or 380.06(8), F.S., development agreement with the Department;

OR

(b) TRANSFER OF A CONSERVATION EASEMENT ONLY. The development order shall require the establishment of a conservation easement on the land to be preserved that meets all of the following criteria:

1. The grantee accepting a conservation easement shall be a local government, governmental agency, or a qualified non-profit conservation organization that has both the commitment and resources to enforce the restrictions of the easement, and that is willing to enforce the restrictions of the easement; and

2. The conservation easement shall clearly designate the onsite preservation area as a perpetual easement area to be managed and retained in a natural state for the continued protection and sustainability of the listed species and their habitat requiring preservation, and shall prohibit all development and all use of the preserved land including those activities described in Section 704.06(1)(a) through (g), F.S., except for specific activities approved by the development order such as appropriate management, passive recreation or the clearing of exotic species, where such activities are consistent with the purpose for which the land is to be preserved; and

3. The conservation easement shall name the State of Florida as a benefiting party with a third-party right of enforcement, shall allow it or any of its agencies access to the site upon request, and shall provide the State of Florida, and specifically the Department of Economic Opportunity or any successor agency, with the right to require restoration and the right of enforcement, including administrative or judicial relief pursuant to Section 380.11, F.S., or other proceedings in equity or at law, should the easement be violated; and

4. The real property instrument establishing the conservation easement shall include all owners of the preserved property, shall conform with the requirements of Sections 704.06(2) and (4), F.S., shall be recordable, and shall be free and clear of all reverter clauses and reservations unless a reverter or reservation is approved by the Department; and

5. The grantor of the conservation easement shall provide proof of good title, including release or satisfaction of all mortgages and liens, to ensure that there are no interests in the preserved property superior to the conservation easement and the grantee's right to manage and maintain the property in its natural state. Proof of good title shall be in the form of a title insurance commitment issued by a qualified title insurer agreeing to issue to the grantee, upon recording of the conservation easement, a policy of title insurance insuring title of the grantee in the conservation easement on the real property, with the title insurance premium to be paid by the grantor; and

6. The conservation easement shall state whether the grantee has accepted responsibility for management of the preserved land. If the grantee does not accept site management responsibility, then the grantor shall be solely responsible for onsite management, and the management plan shall be incorporated into the conservation easement; and

7. The conservation easement shall require that the maintenance and management of the preserved area shall be biennially reported by the grantee for inclusion in the grantor's biennial status report required by Section 380.06(18), F.S.; and

8. The real property instrument that establishes the conservation easement shall be recorded by the developer in the Official Records of the county in which the preserved property is located within one year of the issuance of the development order, shall allow re-recordation every twenty-five (25) years by any grantee or benefiting party, and shall be recorded prior to the commencement of any development onsite that would impact listed species or their habitat, except for development allowed pursuant to a Section 380.032(3) or 380.06(8), F.S., development agreement with the Department;

OR

(c) PROTECTION THROUGH DESIGNATION IN LOCAL COMPREHENSIVE PLAN AS CONSERVATION LANDS. The development order shall require that all lands to be preserved meet all of the following criteria:

1. The land owner of the preserved area shall have both the commitment and resources to enforce any restrictions of the use of the preserved area; and

2. The development order shall clearly designate the onsite preservation area as a preservation area to be managed and retained in a natural state for the continued protection and sustainability of the listed species and their habitat requiring preservation, and shall prohibit all development and all use of the preserved land, except for specific activities approved by the development order such as appropriate management, passive recreation or the clearing of exotic species, where such activities are consistent with the purpose for which the land is to be preserved; and

3. The development order shall identify the Department of Economic Opportunity as a third-party with the right of enforcement to ensure the continued protection of the preservation lands for the listed species requiring protection, shall allow it access to the site upon request, and shall provide the Department of Economic Opportunity or any successor agency, with the right to require restoration and the right of enforcement, including administrative or judicial relief pursuant to Section 380.11, F.S., or other proceedings in equity or at law, should the continued protection of the preservation area be violated; and

4. The development order shall include all owners and developers of the preserved property; shall be free and clear of all reverter clauses and reservations unless a reverter or reservation is approved by the Department of Economic Opportunity; and shall require direct written notice, in a form recordable, by any owner or developer of the preservation land to any subsequent owner or developer concerning all plant, animal and habitat-related restrictions on use of the land; and

5. The development order shall include or require the later inclusion of a management plan that indicates who has accepted fiscal and operational responsibility for management of the preserved area, and shall list all restrictions and activities necessary that will ensure the continued protection and maintenance of the land for the listed species requiring protection; and

6. The development order shall require that the maintenance and management of the preserved area shall be biennially reported in the biennial status report required by Section 380.06(18), F.S.; and

7. The development order shall require that all onsite preservation lands be shown on the local government comprehensive plan Future Land Use Map as a conservation land use designation for the protection of the listed species due to a DRI mitigation requirement. This land use designation will be tied directly to associated comprehensive plan policies ensuring the continued site specific protection of the listed species on the preservation lands. The conservation land use designation and the associated site specific protection policies shall be adopted as part of the Future Land Use Element of the local comprehensive plan within one year of the issuance of the development order, and prior to the commencement of any development onsite that would significantly impact listed species or their habitat, except for a Ssection 380.032(3) or 380.06(8), F.S., development agreement with the Department, or except for DRI mining developments complying with subsection (10) of this rule which shall be required to comply with this requirement within one year following release of the reclaimed lands by the Department of Environmental Protection for onsite preservation lands consistent with the provisions of subsection (10); and

8. The notice required, pursuant to Section 380.06(15)(f), F.S., shall identify the specific provisions of the development order addressing the listed species protection requirement and shall identify the project master plan showing all related

protection sites; shall be recorded by the developer in the Official Records of the county in which the preserved property is located within one year of the issuance of the development order; and shall be recorded prior to the commencement of any development onsite that would significantly impact listed species or their habitat, except for development allowed pursuant to subsection (10) of this rule, or to a Section 380.032(3) or 380.06(8), F.S., development agreement with the Department.

(10) Mining Reclamation.

(a) BACKGROUND. Certain types of DRI mining developments are required to undergo mandatory mining reclamation, pursuant to the provisions of Chapter 378, F.S. These DRI mining developments shall be required to provide plans for the mining and reclamation (including revegetation) of the subject lands as part of the ADA. In recognition of these requirements, the following mitigation options shall be available to DRI mining developments that are required to comply with the mandatory mining reclamation provisions of Chapter 378, F.S.

(b) RULE APPLICATION. The species listed in subsections (4) and (5) of this rule pertaining to the identification of state and regionally significant listed plant and wildlife resources shall be the listed species to be considered in all DRI mining developments.

(c) MITIGATION. DRI mining development required to undergo mandatory mining reclamation, pursuant to the provisions of Chapter 378, F.S., shall have the option of mitigating significant impacts to state and regionally significant listed plant and wildlife resources through:

1. The ADA assessing and establishing the baseline status of all species listed in subsections (4) and (5) of this rule;

2. The ADA addressing and establishing potential impacts to each such species during mining and reclamation of the DRI property; and

3. The ADA and development order establishing the sequence of mining, reclamation and the manner in which the applicant shall ensure that the DRI mining development will be unlikely to result in an adverse impact to the viability of the population of a listed species significantly impacted by the DRI mining development, consistent with the provisions of subsection (9) of this rule.

(11) Construction of Rule. This rule shall not be construed to limit the ability of local governments to impose more stringent mitigative measures than those delineated in this rule, where such measures or policies are contained within local land development regulations, or a local government comprehensive plan.

(12) Effect of Areas of Critical State Concern. This rule shall be superseded by more stringent listed plant or wildlife requirements for developments in designated Areas of Critical State Concern.

Credits
Adopted Apr. 25, 1994; Amended June 1, 2003; Transferred from 9J-2.041.

Authority: 380.032(2), 380.06(23) FS. Law Implemented 380.021, 380.06, 380.065, 380.07 FS.

Current with amendments available through January 5, 2015.

Rule 73C-40.041, F.A.C., 73 FL ADC 73C-40.041

End of Document

Florida Administrative Code - 2014

West's Florida Administrative Code
Title 73. Department of Economic Opportunity
Subtitle 73c. Division of Community Development
Chapter 73C-40. Community Planning: Rules of Procedure and Practice Pertaining to Developments of Regional Impact

Rule 73C-40.043, F.A.C.
Fla. Admin. Code r. 73C-40.043

73C-40.043. Archaeological and Historical Resources Uniform Standard Rule.

Currentness

(1) Purpose. This rule establishes how the Department will evaluate archaeological and historical issues in the review of applications for binding letters, local government development orders, and DRI applications for development approval (ADA).

(a) The Legislature established Chapter 380, F.S., to facilitate orderly and well-planned development, and to protect the quality of life of the residents of Florida, by authorizing the state land planning agency to establish land management policies to guide local decisions relating to growth and development. Sections 186.002, 186.007, 186.009, and 187.101, F.S., establish the State Comprehensive Plan as the long-range, state land development policy guide to be considered in the DRI review process in order to ensure orderly growth in Florida, pursuant to Sections 380.06(3), (4), (12), (13), (14), (15), (25) and 380.065(3) F.S.

(b) Consistent with the land management policies delineated in the State Comprehensive Plan, it is the intent of the Department to set forth in this rule Rulemaking archaeological and historical site or property DRI review guideline standards and criteria.

(c) The statutory authority to promulgate and establish this rule is derived from Sections 380.032(2) and 380.06(23), F.S.

(2) Definitions. As used in this rule:

(a) "Acquisition" means the action of transferring fee simple interest in a parcel of land to a governmental or nonprofit conservation agency, land trust or historic preservation organization for the in perpetuity preservation of the land for the protection of a particular archaeological or historical site or property.

(b) "Adverse impact" means any result of a development action that would reduce the quantity or quality of a particular archaeological or historical site or property, or that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling or association for a particular archaeological or historical site or property covered by this rule.

(c) "Applicable Local Plan" or "Local government comprehensive plan" means a plan or element or portion thereof prepared, adopted, or amended pursuant to Part II of Chapter 163, F.S., as amended.

(d) “Applicable Regional Plan” means the Regional Planning Council's adopted Strategic Regional Policy Plan pursuant to Section 186.508, F.S.

(e) “Applicable State Plan” means the State Comprehensive Plan.

(f) “Archaeological or Historical Site or Property” means, consistent with Section 267.021(3), F.S., any prehistoric or historic district, site, building, object or other real or personal property of historical, architectural, or archaeological value; these properties or resources may include, but are not limited to, monuments, memorials, Indian habitations, ceremonial sites, abandoned settlements, sunken or abandoned ships, engineering works, treasure trove, artifacts, or other objects with intrinsic historical or archaeological value, or any part thereof, relating to the history, government and culture of the state.

(g) “Buffer” means an undisturbed or appropriately managed area that surrounds or is adjacent to a particular archaeological or historical resource that is utilized to minimize man-induced disturbances from interfering with the continued preservation and protection of the particular archaeological or historical site or property.

(h) “Department” means the Florida Department of Economic Opportunity.

(i) “Documented offsite” means the existence of a creditable occurrence record for an archaeological or historical site or property at a location outside of a project's boundaries including, surveys, scientific publications, or other information from local, regional, state or federal agencies, but where the provision of such evidence is not the responsibility of the developer undergoing review.

(j) “Division of Historical Resources” means the Division of Historical Resources in the Florida Department of State.

(k) “Local government comprehensive plan” means a plan or element or portion thereof prepared, adopted, or amended pursuant to Part II of Chapter 163, F.S., as amended.

(1) [FN1] “National Register of Historic Places” means, consistent with Section 267.021(5), F.S., the list of historic properties significant in American history, architecture, archaeology, engineering, and culture, maintained by the Secretary of Interior, as established by the National Historic Preservation Act of 1966, as amended.

(m) “Non-profit Conservation Agency, Land Trust or Historic Preservation Organization” means an agency or organization whose purpose is the preservation of archaeological or historical sites or properties, and which is exempt from federal income tax under Section 501(c)(3) of the United States Internal Revenue Code.

(n) “Paleontological Site” means a location containing geological fossil remains of prehistoric plants or animals.

(o) “Preservation” means the protection and maintenance of the integrity of a particular archaeological or historical site or property from the adverse impacts of development.

(p) “Regional planning council” means a governmental body created pursuant to Chapter 186, F.S.

(3) Application.

(a) This rule shall be used by the Department to review archaeological and historical site or property issues in binding letters and applications for development approval (ADA), effective the date of this rule. Any development that meets or exceeds the significant impact thresholds identified in this rule shall be determined by the Department to have a significant impact on a state and regionally significant archaeological or historical site or property. This rule shall not apply to any application submitted to the Department prior to the effective date of this rule, where such an application has continued to remain pending and active, consistent with Sections 380.06(4)(d) or (10)(b), F.S.

(b) This rule shall be used by the Department to review archaeological and historical site or property issues in local government development orders. This rule shall not apply to any development order rendered to the Department after the effective date of this rule that approves, with or without conditions, an application that was submitted prior to the effective date of the rule and has continued to remain pending and active until the development order's approval.

(c) A development order shall be determined by the Department to make adequate provision for the archaeological and historical site or property issues addressed by this rule, and shall not be appealed by the Department on the basis of inadequate protection of archaeological and historical sites or properties, if it contains the applicable protection standards and criteria set forth in this rule.

If a development order does not contain the applicable mitigation standards and criteria set forth in this rule, the Department shall have discretion to appeal the development order, pursuant to the provisions of Section 380.07, F.S. However, nothing in this rule shall require the Department to undertake an appeal of the development order simply because it fails to comply with the provisions of this rule. A development order failing to comply with the provisions of this rule will be addressed on a case-by-case basis by the Department as to whether it otherwise complies with the intent and purposes of Chapter 380, F.S. The Department will take into consideration the balancing of this rule's provisions with the protection of property rights, the encouragement of economic development, the promotion of other state planning goals by the development, the utilization of alternative, innovative solutions in the development order to provide equal or better protection than the rule, and the degree of harm created by non-compliance with this rule's mitigation criteria and standards.

(d) This rule shall apply to the specific archaeological and historical site or property issues delineated herein, and does not limit the ability of the Department to address other related issues, such as the presence of state and regionally significant paleontological sites, or consistency with the local government comprehensive plan. The avoidance of significant adverse impacts to state and regionally significant archaeological and historical sites or properties is the most desirable and first option that should be considered by regional planning councils and local governments in all development review and approvals. However, in some circumstances, adverse impacts to state and regionally significant archaeological and historical sites or properties will need to be addressed through appropriate mitigation.

(e) This rule shall not limit the ability of the Department to make a determination of significant impact or appeal a development order on the basis of inadequate, inappropriate, or inaccurate onsite archaeological or historical surveys carried out by the applicant or his agents, where the findings of such surveys are instrumental to forming the basis of information necessary to evaluate compliance with the application of this rule's criteria and standards. However, if agreement was reached at a DRI preapplication conference regarding archaeological and historical survey assumptions and methodologies to be used in an ADA, then reviewing agencies may not subsequently object to these assumptions and methodologies, consistent with the provisions of paragraph 9J-2.021(1)(h), F.A.C.

(4) Determination of State and Regionally Significant Archaeological and Historical Site and Properties. Any archaeological or historical site or property determined by the Division of Historical Resources to be listed, or to be eligible for listing, in the National Register of Historic Places shall be deemed by the Department to be a state and regionally significant archaeological or historical site or property.

(5) Determination of a Significant Impact to State and Regionally Significant Archaeological or Historical Sites or Properties. A significant impact shall consist of any adverse impact to onsite or documented offsite state and regionally significant archaeological or historical sites or properties.

(6) Mitigation of a Significant Impact to State and Regionally Significant Archaeological or Historical Sites or Properties. It is the intent of the Department to set forth in this rule the archaeological and historical site or property conditions which, if included in a development order, would be deemed by the Department to comply with the requirements of Section 380.06, F.S, and would, therefore, not be the basis for the appeal of the development order by the Department on issues related to onsite or offsite state and regionally significant archaeological or historical sites or properties.

A development order shall be determined by the Department to make adequate provision for state and regionally significant archaeological or historical sites or properties and shall not be appealed by the Department on the basis of inadequate archaeological or historical site or property protection if, at a minimum, it contains the sets of conditions enumerated in paragraphs (a) and (b) below:

(a) ONSITE SITES OR PROPERTIES. All state and regionally significant archaeological or historical sites or properties occurring onsite shall be protected by either:

1. Onsite preservation, pursuant to the provisions of subsection (7) of this rule, coupled with compatible, adjacent onsite land uses and buffers that will ensure the avoidance of all adverse impacts of development on the archaeological or historical site or property; or

2. Mitigation, through any combination of preservation, rehabilitation, restoration, enhancement, data recovery and documentation agreed upon by the developer and the Division of Historical Resources for the protection of a particular archaeological or historical site or property, pursuant to the provisions of subsection (8) of this rule.

(b) OFFSITE SITES OR PROPERTIES. All state and regionally significant archaeological or historical sites or properties documented offsite shall be protected from a significant impact by onsite development through either:

1. Onsite protection, pursuant to the provisions of subsection (7), through compatible adjacent onsite land uses and buffers that will ensure the avoidance of all adverse impacts of development on the offsite archaeological or historical site or property; or

2. Mitigation, through any combination of preservation, rehabilitation, restoration, enhancement, data recovery and documentation agreed upon by the developer and the Division of Historical Resources for the protection of the particular offsite archaeological or historical site or property, pursuant to the provisions of subsection (8) of this rule.

(7) Onsite Preservation.

(a) ONSITE PRESERVATION DEVELOPMENT ORDER CONDITIONS. The development order shall specifically identify the location and size of the onsite land to be preserved, and shall include the means of legal restrictions upon the use of the preservation land. The development order shall state the onsite management practices that are necessary to preserve the particular archaeological or historical site or property, and shall include or require a management plan that ensures the continued management and protection of the preservation area from adverse impacts. The development order shall also require the establishment of a conservation easement on the preserved land, either by transfer of ownership to an appropriate management entity or by transfer of a lesser interest with an enforceable management plan, as described in subsection (9).

(b) SUBSEQUENT DEVELOPMENT. Development of an onsite preservation or special protection area previously set aside in an ADA or DRI development order for state and regionally significant archaeological or historical sites shall be allowed only if approved after review of a substantial deviation ADA, in compliance with Section 380.06(19)(b) 16., F.S., and only if an appropriate change from onsite preservation to mitigation, pursuant to the criteria and provisions of this rule.

(c) REVERSION CLAUSES. The development order shall not include a reversion clause that allows onsite preservation lands to revert back to a developer for development without appropriate mitigation of significant impacts, consistent with subsection (8) of this rule.

(8) Mitigation. The development order shall include as an exhibit enforceable under the terms of the development order, an executed Memorandum of Agreement (MOA) between the Division of Historical Resources and the developer. The MOA may include the local government of jurisdiction, and if offsite lands are involved, should include the offsite landowner when possible. The MOA shall specify the details of the combination of preservation, rehabilitation, restoration, enhancement, data recovery and documentation agreed upon by the parties that will ensure protection of the significant archaeological or historical site or property, prior to the allowance of any adverse impacts from any onsite development. The MOA shall include the location, type, and conditions of any land use restrictions, any land use activity prohibitions, or any management requirements necessary to protect the site or property from adverse impacts, the parties responsible for any monetary costs, the timeframes in which activities are to be undertaken, all study reporting contents and requirements, and any other necessary actions to be undertaken by one or more of the parties. Where there is a need to have a restriction upon the continued use and development of onsite lands to ensure the protection of significant archaeological or historical resources, then the means of these land use or activity restrictions shall be guaranteed legally through a conservation easement pursuant to the provisions of subsection (9) of this rule.

(9) Conservation Easements. Whenever a conservation easement is required by subsections (6), (7) or (8), the development order shall require the establishment of the conservation easement by either of the following methods:

(a) TRANSFER OF OWNERSHIP TO A MANAGEMENT ORGANIZATION. The development order shall state that, upon completion of the transfer of ownership to a management organization that complies with this rule, the developer shall have no further responsibility for the proper management of the preserved land, except for any terms agreed to in the conditions of ownership transfer. The development order shall require that the fee simple estate in the land to be preserved shall be transferred to a management organization by a Statutory Warranty Deed that meets all of the following criteria:

1. The warranty deed shall be to a local government, governmental agency, or a qualified non-profit conservation agency, Land Trust or Historic Preservation organization that has both the commitment and resources to manage and preserve the site in perpetuity, and that is willing to manage the preserved land as required by the development order; and

2. The warranty deed shall clearly designate the preservation area as lands to be managed and retained by the grantee for the continued protection of the archaeological or historical site or property requiring preservation, and shall include a conservation easement as authorized by Section 704.06, F.S., that prohibits all development and all use of the preserved land including those activities described in Section 704.06(1)(a) through (h), F.S., except for specific activities approved by the development order such as appropriate management, use, archaeological or historical interpretation or research, adaptive reuse, passive recreation or the clearing of exotic species, where such activities are consistent with the purpose for which the land is to be preserved; and

3. The warranty deed shall name the State of Florida as a benefiting party, shall allow it and any of its agencies access to the site upon request, and shall provide the State of Florida, and specifically the Department of Economic Opportunity or any successor agency, with the right to require restoration and the right of enforcement, including administrative or judicial relief pursuant to Section 380.11, F.S., or other proceedings in equity or at law, should the conservation easement be violated; and

4. The warranty deed which transfers the fee simple title shall include all owners of the preserved property, shall conform with Sections 689.02 and 689.03, F.S., and shall be free and clear of all reverter clauses and reservations unless a reverter or reservation is approved by the Department; and

5. The grantor of the statutory warranty deed shall provide proof of good title, including release or satisfaction of all mortgages and liens, to ensure that there are no interests in the preserved property superior to the grantees' fee simple estate and the grantees right to manage and maintain the property in its natural state in perpetuity. Proof of good title shall be in the form of a title insurance commitment issued by a qualified title insurer agreeing to issue to the grantee, upon recording of the warranty deed, an Owner's policy of title insurance insuring title of the grantee to the real property, with the title insurance premium to be paid by the grantor; and

6. The warranty deed shall be recorded by the developer in the Official Records of the county in which the preserved property is located within one year of the issuance of the development order, and prior to the commencement of any development onsite, except for development allowed pursuant to a Section 380.032(3) or 380.06(8), F.S., development agreement with the Department;

OR

(b) TRANSFER OF A CONSERVATION EASEMENT ONLY. The development order shall require the establishment of a conservation easement on the land to be preserved that meets all of the following criteria:

1. The grantee accepting a conservation easement shall be a local government, governmental agency, or a qualified non-profit conservation agency, Land Trust or Historic Preservation organization that has both the commitment and resources to enforce the restrictions of the easement, and that is willing to enforce the restrictions of the easement; and

2. The conservation easement shall clearly designate the onsite preservation area as a perpetual easement area to be managed and retained for the continued protection of the archaeological or historical site or property requiring preservation, and shall prohibit all development and all use of the preserved land including those activities described in Sections 704.06(1)(a)-(h), F.S., except for specific activities approved by the development order such as appropriate management, use, archaeological or historical interpretation or research, adaptive reuse, passive recreation or the clearing of exotic species, where such activities are consistent with the purpose for which the land is to be preserved; and

3. The conservation easement shall name the State of Florida as a benefiting party with a third-party right of enforcement, shall allow it or any of its agencies access to the site upon request, and shall provide the State of Florida, and specifically the Department of Economic Opportunity or any successor agency, with the right to require restoration and the right of enforcement, including administrative or judicial relief pursuant to Section 380.11, F.S., or other proceedings in equity or at law, should the easement be violated; and

4. The real property instrument establishing the conservation easement shall include all owners of the preserved property, shall conform with the requirements of Sections 704.06(2) and (4), F.S., shall be recordable, and shall be free and clear of all reverter clauses and reservations unless a reverter or reservation is approved by the Department; and

5. The grantor of the conservation easement shall provide proof of good title, including release or satisfaction of all mortgages and liens, to ensure that there are no interests in the preserved property superior to the conservation easement and the grantee's right to manage and maintain the property in its natural state in perpetuity. Proof of good title shall be in the form of a title insurance commitment issued by a qualified title insurer agreeing to issue to the grantee, upon recording of the conservation easement, a policy of title insurance insuring title of the grantee in the conservation easement on the real property, with the title insurance premium to be paid by the grantor; and

6. The conservation easement shall state whether the grantee has accepted responsibility for management of the preserved land. If the grantee does not accept site management responsibility, then the grantor shall be solely responsible for onsite management, and the management plan shall be incorporated into the conservation easement; and

7. The conservation easement shall require that the maintenance and management of the preserved area shall be biennially reported by the grantee for inclusion in the grantor's biennial status report required by Section 380.06(18), F.S.; and

8. The real property instrument that establishes the conservation easement shall be recorded by the developer in the Official Records of the county in which the preserved property is located within one year of the issuance of the development order, shall allow re-recordation every twenty-five (25) years by any grantee or benefiting party, and shall be recorded prior to the commencement of any development onsite, except for development allowed pursuant to a Section 380.032(3) or 380.06(8), F.S., development agreement with the Department.

(10) Construction of Rule. This rule shall not be construed to limit the ability of local governments to impose more stringent mitigative measures than those delineated in this rule, where such measures or policies are contained within local land development regulations, or a local government comprehensive plan.

(11) Effect of Areas of Critical State Concern. This rule shall be superseded by more stringent archaeological and historical site or property requirements for developments in designated Areas of Critical State Concern.

Credits

Adopted Mar. 23, 1994; Amended Feb. 21, 2001, June 1, 2003; Transferred from 9J-2.043.

Authority: 380.032(2)(a), 380.06(23)(a), (c)1. FS. Law Implemented 380.021, 380.06, 380.065, 380.07 FS.
[FN1]
So in original.

Current with amendments available through January 5, 2015.

Rule 73C-40.043, F.A.C., 73 FL ADC 73C-40.043

End of Document

Florida Administrative Code - 2014

West's Florida Administrative Code
Title 73. Department of Economic Opportunity
Subtitle 73c. Division of Community Development
Chapter 73C-40. Community Planning: Rules of Procedure and Practice Pertaining to Developments of Regional Impact

Rule 73C-40.044, F.A.C.
Fla. Admin. Code r. 73C-40.044

73C-40.044. Hazardous Material Usage, Potable Water, Wastewater, and Solid Waste Facilities Uniform Standard Rule.

Currentness

(1) Purpose. This rule establishes how the Department will evaluate hazardous material usage and potable water, wastewater and solid waste facility issues in the review of applications for binding letters, local government development orders, and DRI applications for development approval (ADA).

(a) The Legislature established Chapter 380, F.S., to protect the natural resources and environment of Florida, facilitate orderly and well-planned development, optimize the utilization of limited water resources, and protect the health, welfare, safety and quality of life of the residents of Florida, by authorizing the state land planning agency to establish land and water management policies to guide local decisions relating to growth and development. Sections 186.002, 186.007, 186.009, and 187.101, F.S., establish the State Comprehensive Plan as the long-range, state land development policy guide to be considered in the DRI review process in order to ensure orderly growth in Florida, pursuant to SEctions 380.06(3), (4), (12), (13), (14), (15), (25) and 380.065(3), F.S.

(b) Consistent with the land and water management policies delineated in the State Comprehensive Plan, it is the intent of the Department to set forth in this rule specific hazardous material usage and potable water, wastewater and solid waste facility DRI review guideline standards and criteria.

(c) The statutory authority to promulgate and establish this rule is derived from Sections 380.032(2) and 380.06(23), F.S.

(2) Definitions. As used in this rule:

(a) “Applicable Local Plan” or “Local government comprehensive plan” means a plan or element or portion thereof prepared, adopted, or amended pursuant to Part II of Chapter 163, F.S., as amended.

(b) “Applicable Regional Plan” means the Regional Planning Council's adopted Strategic Regional Policy Plan pursuant to Section 186.508, F.S.

(c) “Applicable State Plan” means the State Comprehensive Plan.

(d) “Consolidated Chemical List” means the list of chemicals in the United States Environmental Protection Agency (EPA) Publication Title III List of Lists (EPA 550-B-98-017), incorporated herein by reference.

(e) “Department” means the Florida Department of Economic Opportunity.

(f) “Hazardous material”, as used in this rule, means any Extremely Hazardous Substance, Toxic Chemical Substance, or Hazardous Substance listed in the federal Superfund Amendments and Reauthorization Act (SARA) Title III Consolidated Chemical List.

(g) “High recharge” means an area so designated by the appropriate water management district. High recharge areas shall receive a level of protection commensurate with their significance to natural systems or their status as current or future sources of potable water.

(h) “High-hazard Coastal Area” means the areas identified in the most current regional hurricane evacuation study as requiring evacuation during a category one hurricane event.

(i) “Onsite sewage treatment and disposal system” means a septic tank or other system, consistent with Chapter 64E-6, F.A.C., as of the effective date of this rule.

(j) “Potable water facility” means a system of structures designed to collect, treat, or distribute potable water, including single user water wells, public water wells, treatment plants, reservoirs, and distribution mains.

(k) “Prime recharge” means an area so designated by the appropriate water management district governing board. Prime recharge areas shall receive a level of protection commensurate with their significance to natural systems or their status as current or future sources of potable water.

(l) “Project phase” means a discrete, five year or lesser construction timeframe of development, including local government issuance of certificates of occupancy for that construction or its functional occupancy.

(m) “Public facilities” means wastewater facilities, solid waste facilities, or potable water facilities, but excludes onsite sewage treatment and disposal systems and single family residential individual water wells.

(n) “Regional planning council” means a governmental body created pursuant to Chapter 186, F.S.

(o) “Solid waste facility” means structures or systems designed for the collection, processing or disposal of solid wastes, including incinerators but excluding phosphogypsum stacks.

(p) “Stage” means one in a series of approximately equal increments in the development of a proposed development upon which are placed quantified limits for construction that are calculated to ensure that the public facilities affected by the proposed development will not be overburdened by development demands. As used in this rule, a stage is to be a subset of a particular project phase of development planned for a project by a developer. A stage of development includes both a specific type and amount of development and the associated, approved buildout timeframe for that development.

(q) “Wastewater facility” means a structure or system designed to collect, transmit, treat, or dispose of sewage, excluding onsite sewage treatment and disposal systems such as septic tanks and aerobic treatment systems covered by Chapter 64E-6, F.A.C.

(3) Application.

(a) This rule shall be used by the Department to review hazardous material usage and potable water, wastewater and solid waste facility issues in binding letters and applications for development approval (ADA), effective the date of this rule. Any development that meets or exceeds the significant impact thresholds identified in this rule shall be determined by the Department to have a significant impact on state and regionally significant hazardous material usage or on public potable water, wastewater or solid waste facilities. This rule shall not apply to any application submitted to the Department prior to the effective date of this rule, where such an application has continued to remain pending and active, consistent with Section 380.06(4)(d) or (10)(b), F.S.

(b) This rule shall be used by the Department to review hazardous material usage and potable water, wastewater and solid waste facility issues in local government development orders. This rule shall not apply to any development order rendered to the Department after the effective date of this rule that approves, with or without conditions, an application that was submitted prior to the effective date of the rule and has continued to remain pending and active until the development order's approval.

(c) A development order shall be determined by the Department to make adequate provision for the hazardous material usage and potable water, wastewater and solid waste facilities addressed by this rule, and shall not be appealed by the Department on the basis of inadequate mitigation of hazardous material usage and potable water, wastewater and solid waste impacts, if it contains the applicable mitigation standards and criteria set forth in this rule.

If a development order does not contain the applicable mitigation standards and criteria set forth in this rule, the Department shall have discretion to appeal the development order, pursuant to the provisions of Section 380.07, F.S. However, nothing in this rule shall require the Department to undertake an appeal of the development order simply because it fails to comply with the provisions of this rule. A development order failing to comply with the provisions of this rule will be addressed on a case-by-case basis by the Department as to whether it otherwise complies with the intent and purposes of Chapter 380, F.S. The Department will take into consideration the balancing of this rule's provisions with the protection of property rights, the encouragement of economic development, the promotion of other state planning goals by the development, the utilization of alternative, innovative solutions in the development order to provide equal or better protection than the rule, and the degree of harm created by non-compliance with this rule's mitigation criteria and standards.

(d) This rule shall apply to the specific hazardous material usage and potable water, wastewater and solid waste facility issues delineated herein, and shall not limit the ability of the Department to address other related issues, such as air quality, hazardous waste, radioisotope usage, phosphogypsum storage, non-potable water withdrawals, onsite sewage treatment and disposal systems, wellhead protection areas, public facility site locational concerns other than those specifically addressed in this rule, or water quality issues involved with a development.

(e) This rule shall not limit the ability of the Department to make a determination of significant impact or appeal a development order on the basis of inadequate, inappropriate, or inaccurate hazardous material usage and potable water, wastewater and solid waste facility impact analyses carried out by the applicant or his agents, where the findings of such analyses are instrumental to forming the basis of information necessary to evaluate compliance with the application of this rule's criteria and standards. However, if agreement was reached at the DRI preapplication conference regarding hazardous material usage and potable water, wastewater and solid waste facility impact analyses assumptions and methodologies to be used in an ADA, then reviewing agencies may not subsequently object to these assumptions and methodologies, consistent with the provisions of paragraph 73C-40.021(1)(h), F.A.C.

(4) Identification of State and Regionally Significant Hazardous Material Usage, and Identification of Public Potable Water, Wastewater and Solid Waste Facilities. Due to the inherent health, safety, and welfare issues involved with hazardous material usage by DRI-sized developments, all onsite hazardous material usage by a DRI-sized development shall be considered to be state and regionally significant. Consistent with Section 380.06(15)(e) 2., F.S., the provision of adequate public facilities to a DRI-sized development shall be considered a state and regionally significant issue in DRI reviews.

(5) Hazardous Material Usage.

(a) SIGNIFICANT IMPACT. A development shall be considered to have a significant hazardous material usage impact when the total onsite amount of any particular hazardous material present at the development site, regardless of location, number of containers, or method of storage, but excluding materials temporarily stored onsite under active shipping papers, is either unknown and unrestricted, or is known and likely to equal or exceed:

1. The Threshold Planning Quantity (TPQ) of an Extremely Hazardous Substance listed in the Consolidated Chemical List; or

2. One or more of the following amounts during any calendar year:

a. The manufacturing, importing, or processing of 25,000 pounds of a Toxic Chemical listed in the Consolidated Chemical List; or

b. The use of 10,000 pounds of a Toxic Chemical listed in the Consolidated Chemical List, without incorporating it into any product or producing it at the development site.

AND

3. The onsite hazardous material usage or onsite transport is to be located on a site:

a. Within ½ mile of any navigable water; or

b. Within a 100-year floodplain area; or

c. Within a high-hazard coastal area; or

d. Within ½ mile of an Outstanding Florida Water, designated in Chapter 62-302, F.A.C.; or

e. Within ½ mile of a Class I water body; or

f. Within ½ mile of a Class II water body; or

g. Within ½ mile of an Aquatic Preserve; or

h. Constituting a high or prime recharge area for, or containing a sinkhole connecting within ½ mile to, a potable water aquifer or Class I water body; or

i. On or within ½ mile of public lands held for water supply purposes.

(b) MITIGATION OF SIGNIFICANT IMPACT. It is the intent of the Department to set forth in this rule onsite hazardous material usage conditions which, if included in a development order, would be deemed by the Department not to be the basis for the appeal of the development order by the Department on issues related to onsite hazardous material usage. Therefore, a development order shall be determined by the Department to make adequate provision for hazardous material usage and shall not be appealed by the Department on the basis of inadequate hazardous material usage conditions if it contains either set of conditions enumerated in subparagraph 1. or 2. below:

1. Restricted Hazardous Material Usage. The onsite usage of any hazardous material shall be restricted through legally binding instruments to amounts totaling less than those specified in subparagraphs (5)(a)1. and 2. above. The legally binding instrument shall be in the form of a restrictive covenant recorded with the land title for the development that meets all of the following criteria:

a. Recordation in the public records and inclusion in the development order shall occur within one year of the issuance of the development order, shall be prior to the occupancy of any development onsite that would use hazardous materials, except for development occupancy allowed pursuant to a Section 380.032(3) or 380.06(8), F.S., development agreement with the Department, and shall be prior to any fee simple or lesser interest transfer of real property, involving the onsite lands associated with hazardous material usage, after the date of issuance of the development order; and

b. The restrictive covenant shall run with the land, shall be part of any subsequent fee simple or lesser interest transfer of real property involving the onsite lands, and shall be specifically referred to by reference to book and page of record in any such real property transfer; and

c. The restrictive covenant shall designate the onsite hazardous material usage restrictions for the development consistent with the requirements of this paragraph; and

d. The restrictive covenant shall designate the developer, or his assignees, as the party responsible for the onsite monitoring and enforcement of the restrictive covenant's provisions; and

e. The restrictive covenant shall contain a condition that the monitoring and continuance of the restrictive covenants shall be biennially reported by the party responsible for enforcement to the local government of jurisdiction, the applicable regional planning council, the Department, and any other affected state agency in the biennial report required pursuant to Section 380.06(18), F.S.; and

f. The restrictive covenant shall contain a condition naming the State of Florida as a benefiting party, allowing it access to the site upon request, requiring notice to it of any proposed changes to the restrictive covenants, and providing it with full enforcement rights should the restrictive covenant be violated;

OR

2. Hazardous Material Management Plan (HMMP). The development order shall incorporate a Hazardous Material Management Plan (HMMP) to be followed by all onsite development and development activities associated with hazardous material usage which was reviewed as part of the project approval application and contains all of the following provisions:

a. Legal Requirements:

(I) A legally binding enforcement provision requiring and ensuring monitoring, inspection, and compliance by all onsite development and development activities associated with hazardous material usage with the provisions of the HMMP; and

(II) The notice recordation of the HMMP as a restrictive covenant running with the land, required to be part of any subsequent fee simple or lesser interest transfer of real property, involving the onsite lands associated with hazardous material usage, and required to be specifically referred to by reference to book and page of record in any real property transfer; and

(III) The designation of the person or job title of the party responsible for the onsite monitoring and enforcement of the provisions of the HMMP; and

(IV) A condition requiring that the monitoring of compliance with the HMMP shall be biennially reported by the party responsible for enforcement to the local government of jurisdiction, the applicable regional planning council, the Department, and any other affected state agency in the biennial report required pursuant to Section 380.06(18), F.S.; and

(V) A condition naming the State of Florida as a party with the right to enforce the HMMP, allowing the State of Florida access to the site upon request, requiring notice to it of any proposed changes to the HMMP, and providing it with full enforcement rights, should the provisions of the HMMP be violated; and

(VI) Where deemed necessary during the ADA review for the specific site proposed for development, additional land use controls to provide protection to onsite or offsite environmentally sensitive areas from the potential impacts of onsite hazardous material usage.

b. Content Requirements:

(I) Development of the HMMP by personnel with expertise in the appropriate transport, storage, handling, disposal, regulation and spill prevention and emergency response management of the hazardous materials to be used onsite; and

(II) A yearly education and orientation program for all onsite occupants utilizing hazardous materials to familiarize them with the provisions of the HMMP; and

(III) A central coordinating inventory and tracking system monitoring, listing, inspecting and reconciling discrepancies between incoming, stored, manufactured, disposed, spilled and outgoing hazardous materials from each major development occupant on no less than a yearly basis; and

(IV) Specific site and facility construction performance standards for the development's stormwater, and hazardous material unloading, use, manufacture, disposal and storage areas ensuring that accidentally released hazardous materials will be totally contained onsite until emergency response cleanup without reaching listed species or their habitats, groundwater, onsite navigable waters or offsite surface waters; and

(V) An overall project hazardous material spill prevention and emergency spill response plan ensuring minimum hazardous material release during storm or flood events, minimum exposure to humans, agriculture, public lands, soils, and floodplains, and additionally addressing adequate fire suppression, needed site evacuation, full financial responsibility for implementation of the HMMP, any prohibited hazardous or other materials, proper hazardous material and waste storage and segregation, ongoing site monitoring for hazardous material releases, any prohibited development and development activities, individual occupant hazardous spill prevention and emergency spill response plans, and procedures and requirements for full notification to employees and to local, regional, state and federal agencies regarding releases of hazardous materials; and

(VI) When applicable, an overall project wastewater industrial treatment and pretreatment plan; and

(VII) When applicable, an overall project air emissions control plan.

(VIII) Any of the above requirements may be modified if such modification is required in order to comply with any applicable federal, state, regional or local regulations concerning hazardous materials usage.

(6) Potable Water.

(a) CONSISTENCY WITH THE LOCAL COMPREHENSIVE PLAN. A development order shall make adequate provision for the public potable water facilities needed to accommodate the impacts of the proposed development unless the local government includes in the development order a commitment by the local government to provide these facilities consistently with the development schedule approved in the development order. Where the potable water facilities needed to accommodate the proposed development are to be located within the same local government jurisdiction as the development, the development order's potable water provisions shall be reviewed by the Department to ensure consistency with the adopted local comprehensive plan. The development order shall be subject to appeal by the Department if it is inconsistent with the adopted local government comprehensive plan.

(b) SIGNIFICANT IMPACT. A development shall be considered to have a significant potable water usage impact when the projected cumulative potable water withdrawal for the development from a single potable water facility, or a combination of multiple potable water facilities, will be equal to or exceed 100,000 gallons of water per day on an average annual basis, or will be equal to or exceed 1,000,000 gallons of water in a single day, and the following conditions exist:

The public potable water facility, or the facility's capacity, to be utilized for the development is to be located:

1. Within a local government jurisdiction different than the development; and

2. The facility or its needed capacity is:

a. Not currently existing; and

b. Not permitted for consumptive use and operation of a public water system pursuant to Chapters 373 and 403, F.S.; and

c. Not scheduled for construction within an in-compliance local government comprehensive plan's Capital Improvements Element so as to be in place and available to serve the development concurrently with the development's occupancy schedule; and

d. Not guaranteed for construction through a local government development agreement to be in place and available to serve the development concurrently with the development's occupancy schedule, consistent with the provisions of Sections 163.-.3243, F.S.; and

e. Not guaranteed to be constructed and supplied by the developer or a third party as an enforceable, binding requirement of a land use permit, approval or other legal agreement.

(c) MITIGATION OF SIGNIFICANT IMPACT. Pursuant to Section 380.06(15), F.S., a development order issued by a local government must make adequate provision for the public potable water facilities needed to accommodate the impacts of the development. Consistent with that mandate, it is the intent of the Department to set forth in this rule potable water facility conditions which, if included in a development order, would be deemed by the Department to comply with the requirements of Section 380.06(15), F.S., and would, therefore, not be the basis for the appeal of the development order by the Department on issues related to potable water facilities. Where the public potable water facility impacts of the DRI-sized development are determined to occur in more than one local government jurisdiction, the development order shall ensure that any significant multi-jurisdictional potable water impacts are mitigated pursuant to the requirements of Section 380.06, F.S.

A development order shall be determined by the Department to make adequate provision for potable water facilities and shall not be appealed by the Department on the basis of inadequate potable water facility conditions if, at a minimum, it contains all appropriate sets of conditions enumerated in subparagraphs 1. thru 2. below.

1. Potable Water Facility Availability.

When the development involves an impact identified in paragraph (6)(b) above, then the development order shall contain all of the following:

a. A schedule which specifically provides for the mitigation of impacts from the development to each significantly impacted potable water facility. The schedule shall ensure that each and every potable water facility improvement which is necessary to supply capacity for that project stage or phase shall be guaranteed to be in place and available to serve the development, consistent with Section 163.3180(2)(a), F.S. This guarantee shall be in the form of one of the following:

(I) A clearly identified, executed and recorded local government development agreement, consistent with Sections 163.3220-.3243, F.S., that is attached as an exhibit to the development order, and which ensures, at a minimum, that all needed potable water facility improvements will be available concurrent with the impacts of development, consistent with Section 163.3180(2)(a), F.S.; or

(II) A binding and enforceable commitment or legal agreement in the development order by the developer or third party to provide all needed potable water facility improvements concurrently with the development schedule approved in the development order; or

(III) Any combination of guarantees sub-sub-subparagraphs (I) through (II) above that ensures that all needed potable water facility improvements will be provided concurrently with the development schedule approved in the development order.

b. A provision which states that on no less than a biennial basis the status of the guaranteed improvements shall be assessed and reported in the required biennial status report, and the local government shall cause further issuance of building permits to cease immediately at the time the biennial monitoring reveals that any needed potable water facility improvements guaranteed by development commitments sub-sub-subparagraph 1.a.(I) through 1.a.(III) above is no longer scheduled or guaranteed, has been delayed in schedule such that it is no longer consistent with the timing criteria of sub-subparagraph 1.a. above, or is no longer being constructed and remains unoperational, unless the applicant is able to unequivocally demonstrate as part of the biennial status report that the needed potable water supply is either existing or is permitted and ensured to be supplied both to all existing permitted project development and to all project development likely to be permitted during the next year. The periodic assessment contemplated by this rule is a review of the actual status of guaranteed improvements scheduled for construction and operation. A change to the approved development schedule for the project, as opposed to a change to the schedule of needed improvements, will need to be addressed through the notification of proposed change provisions of Section 380.06(19), F.S.

c. In addressing the construction and operation of the needed facility improvements, the schedule described in sub-subparagraph 1.a. above shall list all needed potable water facility improvements needed to be constructed by stage or phase, the guaranteed date of completion for the construction and operation of each needed improvement, the party responsible for the guaranteed construction and operation of each improvement, and the form of the binding commitment that guarantees construction and operation of each improvement.

2. State Funding Restrictions.

a. The development order shall ensure both:

(I) That there will be no expenditure of state or federal funds for potable water facilities involved with the servicing of the development when it is located within a coastal barrier resource unit designated pursuant to 16 U.S.C. 3501; and

(II) That the developer or the local government has guaranteed their independent financial ability to construct, operate and maintain the potable water facilities to serve the development throughout the lifetime of the development, when the development is located within a coastal barrier resource unit designated pursuant to 16 U.S.C. 3501.

b. The development order shall ensure that either:

(I) There will be no expenditure of state funds for potable water facilities involved with the servicing of the development located within the high-hazard coastal area, and the developer or the local government has guaranteed their independent financial ability to construct, operate and maintain the potable water facilities throughout the lifetime of the development; or

(II) An amendment to each involved local government's comprehensive plan Coastal Management Element has been found to be in-compliance by the Department, so that expenditure of state funds for the potable water facilities to serve development in the high-hazard coastal area will be consistent with the amended local plan.

(7) Wastewater.

(a) CONSISTENCY WITH THE LOCAL COMPREHENSIVE PLAN. A development order shall make adequate provision for the public wastewater facilities needed to accommodate the impacts of the proposed development unless the local government includes in the development order a commitment by the local government to provide these facilities consistently with the development schedule approved in the development order. Where the wastewater facilities needed to accommodate the proposed development are to be located within the same local government jurisdiction as the development, the wastewater development order provisions shall be reviewed by the Department to ensure consistency with the adopted local comprehensive plan. The development order shall be subject to appeal by the Department if it is inconsistent with the adopted local government comprehensive plan.

(b) SIGNIFICANT IMPACT. A development shall be considered to have a significant public wastewater usage impact when the projected cumulative wastewater treatment for the development from a single wastewater facility, or a combination of multiple wastewater facilities, excluding onsite sewage treatment and disposal systems, will be equal to or exceed 100,000 gallons of wastewater per day, and the following conditions exist:

The public wastewater facility, or the facility's capacity, to be utilized for the development is to be located:

1. Within a local government jurisdiction different than the development; and

2. The facility or its needed capacity is:

a. Not currently existing; and

b. Not permitted for treatment pursuant to Chapter 403, F.S.; and

c. Not scheduled for construction within an in-compliance local government comprehensive plan's Capital Improvements Element so as to be in place and available to serve the development concurrently with the development's occupancy schedule; and

d. Not guaranteed for construction through a local government development agreement to be in place and available to serve the development concurrently with the development's occupancy schedule, consistent with the provisions of Sections 163.3220-.3243, F.S.; and

e. Not guaranteed to be constructed and supplied by the developer or a third party as an enforceable, binding condition of approval in the development order.

(c) MITIGATION OF SIGNIFICANT IMPACT. Pursuant to Section 380.06(15), F.S., a development order issued by a local government must make adequate provision for the public wastewater facilities needed to accommodate the impacts of the development. Consistent with that mandate, it is the intent of the Department to set forth in this rule wastewater facility conditions which, if included in a development order, would be deemed by the Department to comply with the requirements of Section 380.06(15), F.S., and would, therefore, not be the basis for the appeal of the development order by the Department on issues related to wastewater facilities. Where the wastewater facility impacts of the DRI-sized development are determined to occur in more than one local government jurisdiction, the development order shall ensure that any significant multi-jurisdictional wastewater impacts are adequately mitigated pursuant to the requirements of Section 380.06, F.S.

A development order shall be determined by the Department to make adequate provision for wastewater facilities and shall not be appealed by the Department on the basis of inadequate wastewater facility conditions if, at a minimum, it contains all appropriate sets of conditions enumerated in subparagraphs 1. thru 2. below.

1. Wastewater Facility Availability.

When the development involves an impact identified in paragraph (7)(b) above, then the development order shall contain:

a. A schedule which specifically provides for the mitigation of impacts from the development to each significantly impacted wastewater facility. The schedule shall ensure that each and every wastewater facility improvement which is necessary to supply capacity for that project stage or phase shall be guaranteed to be in place and available to serve the development, consistent with Section 163.3180(2), F.S. This guarantee shall be in the form of one of the following:

(I) A clearly identified, executed and recorded local government development agreement, consistent with Sections 163.3220-.3243, F.S., that is attached as an exhibit to the development order, and which ensures, at a minimum, that all needed wastewater facility improvements will be available concurrent with the impacts of development, consistent with Section 163.3180(2)(a), F.S.;

(II) A binding and enforceable commitment in the development order by the developer or a third party to provide all needed wastewater facility improvements concurrently with the development schedule approved in the development order; or

(III) Any combination of guarantees sub-sub-subparagraphs (I) through (II) above that ensures that all needed wastewater facility improvements will be provided concurrently with the development schedule approved in the development order.

b. A provision which states that on no less than a biennial basis the status of the guaranteed improvements shall be assessed and reported in the required biennial status report, and local government shall cause further issuance of building permits to cease immediately at the time the biennial monitoring reveals that any needed wastewater facility improvements guaranteed by development commitments sub-sub-subparagraph 1.a.(I) through 1.a.(III) above is no longer scheduled or guaranteed, has been delayed in schedule such that it is no longer consistent with the timing criteria of sub-subparagraph 1.a. above, or is no longer being constructed but remains unoperational, unless the applicant is able to unequivocally demonstrate as part of the biennial status report that the needed wastewater supply is either existing or is permitted and ensured to be supplied both to all existing permitted project development and to all project development likely to be permitted during the next year. The periodic assessment contemplated by this rule is a review of the actual status of guaranteed improvements scheduled for construction and operation. A change to the approved development schedule for the project, as opposed to a change to the schedule of needed improvements, will need to be addressed through the notification of proposed change provisions of Section 380.06(19), F.S.

c. In addressing the construction and operation of the needed facility improvements, the schedule described in sub-subparagraph 1.a. above shall list all needed facility improvements needed to be constructed by stage or phase, the guaranteed date of completion for the construction and operation of each needed improvement, the party responsible for the guaranteed construction and operation of each improvement, and the form of the binding commitment that guarantees construction and operation of each improvement.

2. State Funding Restrictions.

a. The development order shall ensure both:

(I) That there will be no expenditure of state or federal funds for wastewater facilities involved with the servicing of the development when it is located within a coastal barrier resource unit designated pursuant to 16 U.S.C. 3501; and

(II) That the developer or the local government has guaranteed their independent financial ability to construct, operate and maintain the wastewater facilities to serve the development throughout the lifetime of the development, when the development is located within a coastal barrier resource unit designated pursuant to 16 U.S.C. 3501.

b. The development order shall ensure that either:

(I) There will be no expenditure of state funds for wastewater facilities involved with the servicing of the development located within the high-hazard coastal area, and the developer or the local government has guaranteed their independent financial ability to construct, operate and maintain the wastewater facilities throughout the lifetime of the development; or

(II) An amendment to each involved local government's comprehensive plan Coastal Management Element has been found to be in-compliance by the Department, so that expenditure of state funds for the wastewater facilities to serve development in the high-hazard coastal area will be consistent with the amended local plan.

(8) Solid Waste Facilities.

(a) CONSISTENCY WITH THE LOCAL COMPREHENSIVE PLAN. A development order shall make adequate provision for the public solid waste facilities needed to accommodate the impacts of the proposed development unless the local government includes in the development order a commitment by the local government to provide these facilities consistently with the development schedule approved in the development order. Where the solid waste facilities needed to accommodate the proposed development are to be located within the same local government jurisdiction as the development, the development order solid waste provisions shall be reviewed by the Department to ensure consistency with the adopted local comprehensive plan. The development order shall be subject to appeal by the Department if it is inconsistent with the adopted local government comprehensive plan.

(b) SIGNIFICANT IMPACT. A development shall be considered to have a significant solid waste impact when the projected cumulative solid waste disposal for the development from a single solid waste facility, or a combination of multiple solid waste facilities, involves the following conditions:

The solid waste facility, or the facility's capacity, to be utilized for the development is to be located:

1. Within a local government jurisdiction different than the development; and

2. The facility or its needed capacity is:

a. Not currently existing; and

b. Not permitted for disposal pursuant to Chapter 403, F.S.; and

c. Not scheduled for construction within an in-compliance local government comprehensive plan's Capital Improvements Element so as to be in place and available to serve the development concurrently with the development's occupancy schedule; and

d. Not guaranteed for construction through a local government development agreement to be in place and available to serve the development concurrently with the development's occupancy schedule, consistent with the provisions of Sections 163.3220 through 163.3243, F.S.; and

e. Not guaranteed to be constructed and supplied by the developer or a third party as an enforceable, binding condition of approval in the development order.

(c) MITIGATION OF SIGNIFICANT IMPACT. Pursuant to Section 380.06(15), F.S., a development order issued by a local government must make adequate provision for the public solid waste facilities needed to accommodate the impacts of the development. Consistent with that mandate, it is the intent of the Department to set forth in this rule solid waste facility conditions which, if included in a development order, would be deemed by the Department to comply with the requirements of Section 380.06(15), F.S., and would, therefore, not be the basis for the appeal of the development order by the Department on issues related to solid waste facilities. Where the solid waste facility impacts of the DRI-sized development are determined to occur in more than one local government jurisdiction, the development order shall ensure that any significant multi-jurisdictional solid waste impacts are mitigated pursuant to the requirements of Section 380.06, F.S.

A development order shall be determined by the Department to make adequate provision for solid waste facilities and shall not be appealed by the Department on the basis of inadequate solid waste facility conditions if, at a minimum, it contains all appropriate sets of conditions enumerated in subparagraphs 1. thru 2. below.

1. Solid Waste Facility Availability.

When the development involves an impact identified in paragraph (8)(b) above, then the development order shall contain:

a. A schedule which specifically provides for the mitigation of impacts from the development to each significantly impacted solid waste facility. The schedule shall ensure that each and every solid waste facility improvement which is necessary to supply capacity for that project stage or phase shall be guaranteed to be in place and available to serve the development, consistent with Section 163.3180(2)(a), F.S. This guarantee shall be in the form of one of the following:

(I) A clearly identified, executed and recorded local government development agreement, consistent with Sections 163.3220 through 163.3243, F.S., that is attached as an exhibit to the development order, and which ensures, at a minimum, that all needed solid waste facility improvements will be available concurrent with the impacts of development, consistent with Section 163.3180(2)(a), F.S.;

(II) A binding and enforceable commitment in the development order by the developer or a third party to provide all needed solid waste facility improvements concurrently with the development schedule approved in the development order; or

(III) Any combination of guarantees sub-sub-subparagraphs (I) through (II) above, or other regional or jurisdiction-wide solid waste capacity initiative guarantees, that ensures that all needed solid waste facility improvements will be provided concurrently with the development schedule approved in the development order.

b. A provision which states that on no less than a biennial basis the status of the guaranteed improvements shall be assessed and reported in the required biennial status report, and local government shall cause further issuance of building permits to cease immediately at the time the biennial monitoring reveals that any needed facility improvements guaranteed by development commitments sub-sub-subparagraph 1.a.(I) through 1.a.(III) above is no longer scheduled or guaranteed, has been delayed in schedule such that it is no longer consistent with the timing criteria of sub-subparagraph 1.a. above, or is no longer being constructed but remains unoperational, unless the applicant is able to unequivocally demonstrate as part of the biennial status report that the needed solid waste capacity is either existing or is permitted and ensured to be supplied both to all existing permitted project development and to all project development likely to be permitted during the next year. The periodic assessment contemplated by this rule is a review of the actual status of guaranteed improvements scheduled for construction and operation. A change to the approved development schedule for the project, as opposed to a change to the schedule of needed improvements, will need to be addressed through the notification of proposed change provisions of Section 380.06(19), F.S.

c. In addressing the construction and operation of the needed facility improvements, the schedule described in sub-subparagraph 1.a. above shall list all needed facility improvements needed to be constructed by stage or phase, the guaranteed date of completion for the construction and operation of each needed improvement, the party responsible for the guaranteed construction and operation of each improvement, and the form of the binding commitment that guarantees construction and operation of each improvement.

2. State Funding Restrictions.

a. The development order shall ensure both:

(I) That there will be no expenditure of state or federal funds for solid waste facilities involved with the servicing of the development when it is located within a coastal barrier resource unit designated pursuant to 16 U.S.C. 3501; and

(II) That the developer or the local government has guaranteed their independent financial ability to construct, operate and maintain the solid waste facilities to serve the development throughout the lifetime of the development, when the development is located within a coastal barrier resource unit designated pursuant to 16 U.S.C. 3501.

b. The development order shall ensure that either:

(I) There will be no expenditure of state funds for solid waste facilities involved with the servicing of the development located within the high-hazard coastal area, and the developer or the local government has guaranteed their independent financial ability to construct, operate and maintain the solid waste facilities throughout the lifetime of the development; or

(II) An amendment to each involved local government's comprehensive plan Coastal Management Element has been found to be in-compliance by the Department, so that expenditure of state funds for the solid waste facilities to serve development in the high-hazard coastal area will be consistent with the amended local plan.

(9) Construction of Rule. This rule shall not be construed to limit the ability of local governments to impose more stringent mitigative measures than those delineated in this rule, where such measures or policies are contained within local land development regulations, or a local government comprehensive plan.

(10) Effect of Areas of Critical State Concern. This rule shall be superseded by more stringent potable water, wastewater, solid waste, or hazardous material usage requirements for developments in designated Areas of Critical State Concern.

Credits

Adopted Apr. 25, 1994; Amended Feb. 21, 2001, June 1, 2003; Transferred from 9J-2.044.

Authority: 380.032(2)(a), 380.06(23)(a), (c)1. FS. Law Implemented 380.021, 380.06, 380.065, 380.07 FS.

Current with amendments available through January 5, 2015.

Rule 73C-40.044, F.A.C., 73 FL ADC 73C-40.044

Florida Administrative Code - 2014

West's Florida Administrative Code
Title 73. Department of Economic Opportunity
Subtitle 73c. Division of Community Development
Chapter 73C-40. Community Planning: Rules of Procedure and Practice Pertaining to Developments of Regional Impact

Rule 73C-40.045, F.A.C.
Fla. Admin. Code r. 73C-40.045

73C-40.045. Transportation Uniform Standard Rule.

Currentness

(1) Purpose. This rule establishes how the Department will evaluate transportation facility issues in the review of applications for binding letters, local government development orders, and DRI applications for development approval (ADA).

(a) The Legislature established Chapter 380, F.S., to facilitate orderly and well-planned development, by authorizing the state land planning agency to establish land management policies to guide local decisions relating to growth and development. Sections 186.002, 186.007, 186.009, and 187.101, F.S., establish the State Comprehensive Plan as the long-range, state land development policy guide to be considered in the DRI review process in order to ensure orderly growth in Florida, pursuant to Sections 380.06(3), (4), (12), (13), (14), (15), (25), and 380.065(3), F.S.

(b) Consistent with the land management policies delineated in the State Comprehensive Plan, it is the intent of the Department to set forth in this rule specific transportation facility DRI review guideline standards and criteria.

(c) The statutory authority to promulgate and establish this rule is derived from Sections 380.032(2) and 380.06(23), F.S.

(2) Definitions. As used in this rule:

(a) "Applicable Local Plan" or "Local government comprehensive plan" means a plan or element or portion thereof prepared, adopted, or amended pursuant to Part II of Chapter 163, F.S., as amended.

(b) "Applicable Regional Plan" means the Regional Planning Council's adopted Strategic Regional Policy Plan pursuant to Section 186.508, F.S.

(c) "Applicable State Plan" means the State Comprehensive Plan.

(d) "Concurrency Management System" means the adopted procedures and/or process that the local government of jurisdiction for the development utilizes to assure that development orders and permits are not issued unless the necessary transportation facilities and services are available concurrent with the impacts of development, consistent with Chapter 163, F.S.

(e) “Department” means the Florida Department of Economic Opportunity.

(f) “Florida Intrastate Highway System” means an interconnected network of limited access and controlled access highways designed to accommodate Florida's high speed and high volume roadway traffic as required by Section 338.001, F.S., and adopted by the Legislature.

(g) “Level of service” means a qualitative assessment of a roadway's operating conditions or the average driver's perception of the quality of traffic flow that is represented by the letters A through F: A representing the freest flow and F representing the least free flow. Quantitative criteria for the different levels of service are provided in the Highway Capacity Manual (1985 Special Report 209) as published by the Transportation Research Board, National Research Council, Washington, D.C., and Chapter 14-94, F.A.C., Level of Service Standards.

(h) “Proportionate share contribution” means, only in the context of this rule, a contribution from a developer or owner of a DRI to the local government or the governmental agency having maintenance responsibility for those facilities, which makes adequate financial provision for the public transportation facilities needed to accommodate the impacts of the proposed development on roadways outside the local government of jurisdiction's Concurrency Management System area. The proportionate share contribution shall be deemed to make adequate financial provision for such facilities if it is equal to or greater than the sum of the costs of improvements attributable to the proposed development derived from the application of the following formula. The costs of improvements attributable to the proposed development are based upon the sum of the cost of improving each significantly impacted state and regional roadway which will operate at worse than the level of service standard in the local government's approved comprehensive plan or the Florida Department of Transportation level of service standards for roads on the Florida Intrastate Highway System at each project stage or project phase and at project buildout. The proportionate share of the cost of improvements of each such roadway is calculated according to the following formula:

DRI trips

.... = cost

(SV increase)

1. DRI trips = cumulative number of the trips from the proposed development expected to reach the roadway during the peak hour from the complete buildout of a stage or phase being approved.

2. SV increase = the change in peak hour maximum service volume of the roadway resulting from construction of the improvement necessary to maintain the adopted level of service.

3. Cost = cost of construction, at the time of developer payment, of an improvement necessary to maintain the adopted level of service. Construction cost includes all improvement associated costs, including engineering design, right-of-way acquisition, planning, engineering, inspection, and other associated physical development costs directly required and associated with the construction of the improvement, as determined by the governmental agency having maintenance authority over the roadway.

(i) “Project phase” means a discrete, five year or lesser construction timeframe of development, including the local government issuance of certificates of occupancy for that construction or its functional occupancy.

(j) “Regional center” means a major retail, service, public, recreational, entertainment or other type of facility or development area that regularly attracts use by citizens from more than one county, including regional hospitals, civic centers, universities, professional sports stadiums, regional malls, regional airports, regional, state or federal governmental centers, state parks, nationally advertised resorts or amusement parks, or designated regional activity centers.

(k) “Regional Planning Council” means a governmental body created pursuant to Chapter 186, F.S.

(l) “Roadway” means an existing or planned road segment in its entirety or any portion thereof, including intersections and interchanges.

(m) “Stage” means one in a series of approximately equal increments in the development of a proposed development upon which are placed quantified limits for construction that are reasonably calculated to ensure that the state and regional roadway network affected by the proposed development will not be overburdened by development traffic. As used in this rule, a stage is to be a subset of a particular project phase of development planned for a project by a developer. A stage of development includes both a specific type and amount of development and the associated, approved buildout timeframe for that development.

(n) “State Highway System” means all streets, road, highways, and other public ways open to travel by the public generally and dedicated to the public use according to law or by prescription and designated by the Florida Department of Transportation, consistent with Chapters 334 and 335, F.S.

(3) Application.

(a) This rule shall be used by the Department to review transportation facility issues in binding letters and applications for development approval, effective the date of this rule. Any proposed development that meets or exceeds the significant impact thresholds identified in this rule shall be determined by the Department to have a significant impact on state and regionally significant transportation facilities. This rule shall not apply to any application submitted to the Department prior to the effective date of this rule, where such an application has continued to remain pending and active, consistent with Sections 380.06(4)(d) or (10)(b), F.S.

(b) This rule shall be used by the Department to review transportation facility issues in local government development orders. This rule shall not apply to any development order rendered to the Department after the effective date of this rule that approves, with or without conditions, an application that was submitted prior to the effective date of the rule and has continued to remain pending and active until the development order's approval.

(c) A development order shall be determined by the Department to make adequate provision for the transportation facilities addressed by this rule, and shall not be appealed by the Department on the basis of inadequate mitigation of transportation impacts, if it contains the applicable mitigation standards and criteria set forth in this rule.

If a development order does not contain the applicable mitigation standards and criteria set forth in this rule, the Department shall have discretion to appeal the development order, pursuant to the provisions of Section 380.07, F.S. However, nothing in this rule shall require the Department to undertake an appeal of the development order simply because it fails to comply with the provisions of this rule. A development order failing to comply with the provisions of this rule will be addressed on a case-by-case basis by the Department as to whether it otherwise complies with the intent and purposes of Chapter 380, F.S. The Department will take into consideration the balancing of this rule's provisions with the protection of property rights, the encouragement of economic development, the promotion of other state planning goals by the development, the utilization of alternative, innovative solutions in the development order to provide equal or better protection than the rule, and the degree of harm created by non-compliance with this rule's mitigation criteria and standards.

(d) This rule shall apply to the specific transportation facility issues delineated herein, and shall not limit the ability of the Department to address other transportation related issues, such as air quality, right-of-way protection, railroad crossing safety, hurricane preparedness, project access to state highways, state subsidies in high-hazard coastal and barrier island areas, or consistency with a local government comprehensive plan.

(e) This rule shall not limit the ability of the Department to make a determination of significant impact or appeal a development order on the basis of inadequate, inappropriate, or inaccurate transportation impact analyses carried out by the applicant or his agents, where the findings of such analyses are instrumental to forming the basis of information necessary to evaluate compliance with the application of this rule's criteria and standards. However, if agreement was reached at the DRI preapplication conference regarding transportation impact analyses assumptions and methodologies to be used in an ADA, then reviewing agencies may not subsequently object to these assumptions and methodologies, consistent with the provisions of paragraph 73C-40.021(1)(h), F.A.C.

(4) Identification of State and Regionally Significant Roadways. For the purpose of evaluating the state and regional significance of a roadway, the Department shall consider the extent, location and configuration of the roadway, and the number and type of trips which occur or could occur on the roadway. Under no circumstances shall the Department consider a roadway to be state and regionally significant unless it is a paved roadway which crosses local government jurisdictional boundaries, is a component of the state highway system, connects components of the state highway system, provides access to a regional center, or is a hurricane evacuation route. Nothing contained herein shall be construed to automatically result in a determination that a roadway is state and regionally significant simply because it is a component of the state highway system or otherwise falls within the categories of roadways enumerated above, unless it is a segment of the Florida Intrastate Highway System.

(5) Determination of the Adopted Level of Service.

(a) For state and regional roadways that are part of the Florida Intrastate Highway System, the Department will evaluate transportation issues in accordance with the Florida Department of Transportation level of service standards for the Florida Intrastate Highway System consistent with Section 163.3180(10), F.S. For all other state and regional roadways, the Department will evaluate transportation issues in accordance with the adopted transportation level of service standards of the applicable local government comprehensive plan.

(b) Where the transportation impacts of the DRI are determined to occur in more than one local government jurisdiction, the development order shall ensure that the multi-jurisdictional impacts are mitigated pursuant to the requirements of Chapter 380, F.S. For a state and regional roadway that is part of the Florida Intrastate Highway System and occurs in a different local government jurisdiction than the one in which the development is being granted approval, the Department will evaluate transportation issues in accordance with the Florida Department of Transportation level of service standards for the Florida Intrastate Highway System consistent with Section 163.3180(10), F.S. For any other state and regional roadway that occurs in a different local government jurisdiction than the one in which the development is being granted approval, the Department will evaluate transportation issues in accordance with the adopted transportation level of service standards of the applicable local government comprehensive plan for the jurisdiction in which the roadway occurs.

(6) Determination of Significant Impacts on State and Regionally Significant Roadways. A state and regionally significant roadway segment shall be determined by the Department to be significantly impacted by the proposed development if, at a minimum, the traffic projected to be generated at the end of any stage or phase of the proposed development, cumulatively with previous stages or phases, will utilize five percent or more of the adopted peak hour level of service maximum service volume of the roadway, pursuant to (5) above, and the roadway is projected to be operating below the adopted level of service standard at buildout of that stage or phase. If a transportation facility significant impact threshold of less than five percent is specifically adopted in an in-compliance local government comprehensive plan, then this lower significant impact threshold shall be utilized by the Department as its significant impact threshold for those state and regional roadways within that local government's jurisdiction.

(7) Mitigation of Transportation Facility Impacts.

(a) Pursuant to Section 380.06(15), F.S., a development order issued by a local government must make adequate provision for the public transportation facilities needed to accommodate the impacts of the proposed development. Consistent with that mandate, it is the intent of the Department to set forth in this rule transportation conditions which, if included in a development order, would be deemed by the department to comply with the requirements of Section 380.06, F.S., and would, therefore, not be the basis for the appeal of the development order by the Department on issues related to transportation facilities. Where the transportation impacts of the development are determined to occur in more than one local government jurisdiction, the development order shall ensure that any significant multi-jurisdictional facility impacts are mitigated pursuant to the requirements of Section 380.06, F.S., and the applicable level of service standards of the jurisdiction in which the impacts occur. A development order shall be determined by the Department to make adequate provision for transportation roadway facilities and shall not be appealed by the Department on the basis of inadequate transportation conditions if, at a minimum, it contains one of the sets of conditions enumerated in subparagraphs 1., 2., 3., 4. or 5. below, and, when applicable, complies with paragraph (b) below.

1. SCHEDULING OF FACILITY IMPROVEMENTS.

a. A schedule which specifically provides for the mitigation of impacts from the proposed development on each significantly impacted roadway which will operate below the adopted level of service standard at the end of each project phase's buildout, or, alternatively, a subset stage of that phase. The schedule shall ensure that each and every roadway improvement which is necessary to achieve the adopted level of service standard for that project stage or phase shall be guaranteed to be in place and operational, or under actual construction for the entire improvement, at buildout of each project stage or phase that creates the significant impact. This guarantee shall be in the form of:

(I) A clearly identified, executed and recorded local government development agreement, consistent with Sections 163.3220 through 163.3243, F.S., that is attached as an exhibit to the development order, and which ensures, at a minimum, that all needed roadway improvements will be available concurrent with the impacts of development, consistent with Section 163.3180(2), F.S.;

(II) A binding and enforceable commitment in the development order by the local government to provide all needed roadway improvements concurrently with the development schedule approved in the development order;

(III) A local government commitment in the current year of their local government comprehensive plan Capital Improvement Element (CIE) to provide all needed roadway improvements, or a local government commitment in the current three years of their CIE to provide all needed roadway improvements when the local government has specifically adopted an in-compliance concurrency management system in their plan; or

(IV) A Florida Department of Transportation commitment in the current five years of the Adopted Work Program for Florida Intrastate Highway System (FIHS) facilities or in the first three years of the Adopted Work Program for all other facilities to provide all needed roadway improvements;

(V) A binding and enforceable commitment in the development order by the developer to provide all needed roadway improvements concurrently with the development schedule approved in the development order; or

(VI) Any combination of guarantees (I) thru (V) above that ensures that all needed roadway improvements will be provided concurrently with the development schedule approved in the development order.

b. A provision which states that on no less than a biennial basis the status of the guaranteed improvements shall be assessed and reported in a required biennial status report. The local government shall cause further issuance of building permits to cease immediately at the time the biennial monitoring reveals that any needed transportation improvements guaranteed by development commitments 1.a.(I) thru 1.a.(VI) above is no longer scheduled or guaranteed, or has been delayed in schedule such that it is no longer consistent with the timing criteria of sub-subparagraph 1.a. above. The periodic assessment contemplated by this rule is not a monitoring of the actual level of service on a roadway, but is a review of the actual status of guaranteed improvements scheduled for construction. A change to the approved development schedule for the project, as opposed to a change to the schedule of needed improvements, will need to be addressed through the notification of proposed change provisions of Section 380.06(19), F.S.

c. In addressing the construction of the needed roadway improvements, the schedule described in sub-subparagraph 1.a. above shall list all needed roadway improvements needed to be constructed by phase or stage, the guaranteed date of completion for the construction of each needed improvement, the party responsible for the guaranteed construction of each improvement, and the form of the binding commitment that guarantees construction of each improvement.

2. ALTERNATIVE CONCURRENCY PROVISIONS. A schedule as set forth in sub-subparagraphs 1.a., b., and c. above, that appropriately addresses each significantly impacted state and regional roadway segment through compliance with that jurisdiction's specific alternative concurrency provision of Section 163.3180(5), (7), (8) or (9), F.S., where such mitigative measures are specifically adopted in an in-compliance local government comprehensive plan and are fully explained and applied in the development order.

3. PROPORTIONATE SHARE PAYMENTS.

a. This option shall only be available to the extent that any affected extra-jurisdictional local government, or the Florida Department of Transportation for facilities on the State Highway System, agrees to accept proportionate share payments as adequately mitigating the extra-jurisdictional impacts of the development on the significantly impacted state and regional roadways within their jurisdiction. If an affected extra-jurisdictional roadway is under the maintenance authority of the Florida Department of Transportation, then agreement to accept proportionate share payments shall be obtained only from that agency for that roadway. Such an agreement shall be attached as an exhibit to the development order and shall be in the form of either a clearly identified, executed and recorded local government development agreement, consistent with Sections 163.3220-.3243, F.S.; an interlocal agreement; a FDOT joint participation agreement; or a written acceptance by the affected local government governing board or the Florida Department of Transportation, as appropriate.

b. This option is also available to the local government of jurisdiction over the development for those significantly impacted state and regional roadways within their jurisdiction which are not addressed for concurrency by their local Concurrency Management System.

c. The development order shall contain a schedule as set forth in sub-subparagraphs 1.a., b., and c. above, that appropriately addresses each significantly impacted state and regional roadway segment. For significantly impacted state and regional roadways within the area around the development site that are specifically covered by the local government of jurisdiction's Concurrency Management System (CMS), the development order shall ensure that appropriate mitigative measures are clearly and specifically delineated in the development order for each roadway segment, consistent with the concurrency provisions of the in-compliance, adopted local government comprehensive plan and implementing land development regulations of that local government.

d. For each significantly impacted state and regional roadway outside the specified Concurrency Management System area, the development order shall additionally include:

(I) A schedule of the list of the improvements that are needed to be constructed to ensure maintenance of the adopted level of service, an identification of the governmental agency with maintenance responsibility over the improvement, the cost of each needed improvement including right-of-way and other costs for the improvement, the developer's proportional share contribution for the improvement, and any proposed staging of the development.

(II) A date-certain payment provision which requires that, at a minimum, the developer pay his proportionate share contribution to the agency that has maintenance responsibility over the impacted roadway prior to the issuance of any building permits for the stage or phase which will cause or increase the significant impact to that roadway.

(III) A provision which requires that as a condition of accepting the payment of the proportionate share contribution that the receiving governmental agency with maintenance responsibility over the impacted roadway agrees in writing as an exhibit to the development order that the contributed monies shall only be applied towards the construction of one or more of the significantly impacted improvements which are under their jurisdiction and listed in the schedule. If the contributed money to that agency is sufficient to fully construct one or more of the roadway improvements under its jurisdiction that is on the schedule in (I) above, then the receiving governmental agency shall agree, as a condition of acceptance, to expeditiously apply the received monies for the improvement construction.

(IV) A provision which requires that development activities and issue of permits therefor immediately cease if the proportionate share contribution is not paid in a timely manner.

(V) A requirement that any proposed delay or change of the proportionate share payment due to a change in the approved development schedule shall require a reanalysis of the proportionate payment amount as part of any schedule approval amendment.

4. LEVEL OF SERVICE MONITORING.

a. A modeling and monitoring schedule for the mitigation of impacts from the proposed development on each significantly impacted roadway which will operate below the adopted level of service standard at the end of each project phase's buildout, or, alternatively, a subset stage of that phase. The schedule shall identify each roadway improvement which is necessary to achieve the adopted level of service standard, and indicate the amount of development and the timing of that development which will cause a roadway to operate below the adopted level of service. In the circumstance where the schedule does not identify the necessity and timing of improvements for a particular phase or substage, the development order shall require that building permits for that phase or substage will not be issued until the appropriate written approvals are obtained and any needed mitigation requirements are complied with, pursuant to sub-subparagraphs 4.b. and 4.c. below.

b. An annual, or alternatively a study period to consist of the next stage of development, traffic study to monitor the existing peak hour level of service, and to project the likely peak hour level of service for the next year or stage of development, for all roadways listed in the schedule of a. above that have been identified as potentially operating below the adopted level of service for the current plus next year, or alternatively next stage, of development. The traffic study may be used to either confirm the necessity and timing of improvements identified in the development order schedule, or to identify the necessity and timing for improvements for phases or stages not addressed by the schedule. The traffic study shall include a projection of background and project traffic for the next study period and the resulting projection of the level of service for those roadways at the end of the study period. Project traffic shall include the impacts of all existing project development, all permitted project development, and all project development likely to receive building permits during the next study period. At a minimum, the traffic study methodology and the study results shall be supplied to the regional planning council and the Florida Department of Transportation for review, and shall be subject to written approval by the local government of jurisdiction and the Department of Economic Opportunity.

c. If the traffic study indicates a level of service such that a regional roadway is, or is likely to be during the next study period, significantly impacted by project traffic, then the local government shall cease all further issuance of building permits for the project, unless:

(I) The development order already contains a binding commitment to provide the needed roadway improvement consistent with subparagraphs 1., 2., or 3. above; or

(II) Until the development order is amended to contain a binding commitment to provide the needed roadway improvement consistent with subparagraphs 1., 2., or 3. above.

5. COMBINATION OF MITIGATION MEASURES. A combination of the mitigative measures contained in subparagraphs 1., 2., 3., or 4. above that mitigates for each significantly impacted state and regional roadway, or other mitigative measures which are proposed and reviewed in the ADA, including the provision for capital facilities for mass transportation, or the provision for programs that provide alternatives to single occupancy vehicle travel, which reasonably assure that public transportation facilities shall be constructed and made available when needed to accommodate the impacts of the proposed development, consistent with the provisions of Chapters 163 and 380, F.S.

(b) Interchange Protection. If a developer proposes the need for the construction of a new or modified access to a state or federal limited access facility to serve the development, such access shall be coordinated with the Florida Department of Transportation, pursuant to Chapter 14-97, F.A.C. The traffic impact analysis methodology and the study area shall be professionally, consistently and uniformly applied by an applicant in both the local government land use approval application and any federal and state submissions required for new or modified access to limited access facilities. Any specific stage or phase of the development that proposes the need for the construction of a new or modified access to a state or federal limited access facility shall not be allowed to initiate development for that stage or phase of development by a local government until the new or modified access has been authorized by the Federal Highway Administration and/or the Florida Department of Transportation, as applicable. When such authorization is not forthcoming, the developer may request to amend his land use approval, based upon the submittal of a revised transportation analysis not utilizing the new or modified access to the limited access facility and any needed additional transportation mitigation, as appropriate.

(8) Construction of Rule. This rule shall not be construed to limit the ability of local governments to impose more stringent mitigative measures than those delineated in this rule, where such measures or policies are contained within local land development regulations, or a local government comprehensive plan.

(9) Effect of Areas of Critical State Concern. This rule shall be superseded by more stringent transportation facility requirements for developments in designated Areas of Critical State Concern.

Credits

Adopted Mar. 23, 1994; Amended Feb. 21, 2001, June 1, 2003; Transferred from 9J-2.045.

Authority: 380.032(2)(a), 380.06(23)(a), (c)1. FS. Law Implemented 380.021, 380.06, 380.061, 380.065, 380.07 FS.

Current with amendments available through January 5, 2015.

Rule 73C-40.045, F.A.C., 73 FL ADC 73C-40.045

End of Document

Florida Administrative Code - 2014

West's Florida Administrative Code
Title 73. Department of Economic Opportunity
Subtitle 73c. Division of Community Development
Chapter 73C-40. Community Planning: Rules of Procedure and Practice Pertaining to Developments of Regional Impact

Rule 73C-40.046, F.A.C.
Fla. Admin. Code r. 73C-40.046

73C-40.046. Air Quality Uniform Standard Rule.

Currentness

(1) Purpose. This rule establishes how the Department will evaluate mobile source-related air quality issues in the review of applications for binding letters, local government development orders, and DRI applications for development approval (ADA).

(a) The Legislature established Chapter 380, F.S., to protect the natural resources and environment of this state and to protect the health, welfare, safety and quality of life of its citizens, by authorizing the state land planning agency to establish land management policies to guide local decisions relating to growth and development. Sections 186.002, 186.007, 186.009, and 187.101, F.S., establish the State Comprehensive Plan as the long-range, state land development policy guides to be considered in the DRI review process in order to ensure orderly growth in Florida, pursuant to Sections 380.06(3), (4), (12), (13), (14), (15), (25) and 380.065(3), F.S.

(b) Consistent with the land management policies delineated in the State Comprehensive Plan, it is the intent of the Department to set forth in this rule specific mobile source-related air quality DRI review guideline standards and criteria.

(c) The statutory authority to promulgate and establish this rule is derived from Sections 380.032(2) and 380.06(23), F.S.

(2) Definitions. As used in this rule:

(a) “Ambient Air Quality Standards” means those standards designated as such in Rule 62-272.300, F.A.C.

(b) “Applicable Local Plan” or “Local government comprehensive plan” means a plan or element or portion thereof prepared, adopted, or amended pursuant to Part II of Chapter 163, F.S., as amended.

(c) “Applicable Regional Plan” means the Regional Planning Council's adopted Strategic Regional Policy Plan pursuant to Section 186.508, F.S.

(d) “Applicable State Plan” means the State Comprehensive Plan.

(e) “Class I Area” means the areas designated as such under paragraph 62-275.800(1)(b), F.A.C., including the Everglades National Park, Chassahowitzka National Wilderness Area, St. Marks National Wilderness Area and Bradwell Bay National Wilderness Area.

(f) “Department” means the Florida Department of Economic Opportunity.

(g) “Guaranteed roadway improvement” means a roadway construction or flow improvement that is ensured of being completed and operational when needed through:

1. A clearly identified, executed and recorded local government development agreement, consistent with Sections 163.3220 through 163.3243, F.S., that is attached as an exhibit to the development order; or

2. A binding and enforceable local government commitment in the development order; or

3. A local government commitment in the first year of a local government comprehensive plan's Capital Improvement Element; or

4. A Florida Department of Transportation commitment in the current five years of their Florida Transportation Improvement Program for FIHS facilities or in the first three years of their Florida Transportation Improvement Program for all other facilities; or

5. A binding and enforceable developer commitment in the development order.

(h) “Level of Service” means a qualitative assessment of a roadway's operating conditions or the average driver's perception of the quality of traffic flow that is represented by the letters A through F: A representing the freest flow and F representing the least free flow. Quantitative criteria for the different levels of service are provided in the Highway Capacity Manual (1985 Special Report 209) as published by the Transportation Research Board, National Research Council, Washington, D.C.

(i) “Major Stationary Source” means a major source of air pollution as defined by Section 403.031, F.S.

(j) “Mobile Source” means an automobile, truck, bus and other transportation vehicle, vessel or aircraft that is attracted to or associated with a development, causing the development to be an indirect source of air pollutant emissions.

(k) “Regional planning council” means a governmental body created pursuant to Chapter 186, F.S.

(l) “Roadway” means an existing or planned road segment in its entirety or any portion thereof, including intersections and interchanges.

(m) "State Implementation Plan (SIP)" means documents prepared by states and subject to the Federal Environmental Protection Agency approval that identify the actions and programs committed to by states to control and/or reduce air pollutant emissions, pursuant to 42 U.S.C. 7401, 40CFR part 51, 40CFR part 52 Subpart K, and 40CFR part 81. These multi-volumed documents are available in the Division of Air Resources Management, Florida Department of Environmental Protection.

(3) Application.

(a) This rule shall be used by the Department to review mobile source-related air quality issues in binding letters and applications for development approval, effective the date of this rule. Any proposed development that meets or exceeds the significant impact thresholds identified in this rule shall be determined by the Department to have a significant impact on state and regionally significant air quality. This rule shall not apply to any application submitted to the Department prior to the effective date of this rule, where such an application has continued to remain pending and active, consistent with Sections 380.06(4)(d) or (10)(b), F.S.

(b) This rule shall be used by the Department to review mobile source-related air quality issues in local government development orders. This rule shall not apply to any development order rendered to the Department after the effective date of this rule that approves, with or without conditions, an application that was submitted prior to the effective date of the rule and has continued to remain pending and active until the development order's approval.

(c) A local government development order shall be determined by the Department to make adequate provision for the air quality addressed by this rule, and shall not be appealed by the Department on the basis of inadequate mitigation of mobile source-related air quality impacts, if it contains the applicable mitigation standards and criteria set forth in this rule.

If a development order does not contain the applicable mitigation standards and criteria set forth in this rule, the Department shall have discretion to appeal the development order, pursuant to the provisions of Section 380.07, F.S. However, nothing in this rule shall require the Department to undertake an appeal of the development order simply because it fails to comply with the provisions of this rule. A development order failing to comply with the provisions of this rule will be addressed on a case-by-case basis by the Department as to whether it otherwise complies with the intent and purposes of Chapter 380, F.S. The Department will take into consideration the balancing of this rule's provisions with the protection of property rights, the encouragement of economic development, the promotion of other state planning goals by the development, the utilization of alternative, innovative solutions in the development order to provide equal or better protection than the rule, and the degree of harm created by non-compliance with this rule's mitigation criteria and standards.

(d) This rule shall apply to the specific mobile source-related air quality issues delineated herein, and shall not limit the ability of the Department to address other related issues involved with a proposed development, such as radon or hazardous materials exposure, major stationary source impacts to state or regional resources such as Class I areas, or consistency with a local government comprehensive plan.

(e) This rule shall not limit the ability of the Department to make a determination of significant impact or appeal a local government development order on the basis of inadequate, inappropriate, or inaccurate mobile source-related air quality impact analyses carried out by the applicant or his agents, where the findings of such analyses are instrumental to forming the basis of information necessary to evaluate compliance with the application of this rule's criteria and standards. However, if agreement was reached at a DRI preapplication conference regarding air quality impact analyses assumptions and methodologies to be used in an ADA, then reviewing agencies may not subsequently object to these assumptions and methodologies, consistent with the provisions of Rule 73C-40.021(1)(h), F.A.C.

(4) Identification of State and Regionally Significant Air Quality. Due to the inherent health, safety, and welfare issues involved, all air quality within the State shall be considered to be state and regionally significant.

(5) Determination and Mitigation of Significant Impacts on State and Regionally Significant Air Quality by Mobile Sources.

(a) SIGNIFICANT IMPACT. Air quality shall be considered to be significantly impacted when a development's mobile sources are known or predicted to cause or further an exceedance of a carbon monoxide ambient air quality standard, and the development will result in:

1. A degradation of the peak hour level of service (LOS) of any roadway or intersection to LOS E or F in any future year; or

2. A 5-percent or larger increase in peak hour traffic volume on any existing, or future, LOS E or F roadway or intersection while not actually degrading the level of service itself; or

3. A peak hour traffic flow inside any surface parking lot equal to or greater than 1500 vehicles per hour; or

4. A peak hour traffic flow inside any multilevel parking garage equal to or greater than 750 vehicles per hour.

(b) MITIGATION. A development order shall be determined by the Department to make adequate provision for the protection of state and regionally significant air quality areas and shall not be appealed by the Department on the basis of inadequate air quality protection from mobile sources if, at a minimum, it is consistent with any applicable Metropolitan Planning Organization (MPO) plan pursuant to Sections 339.155 and 339.175, F.S., the State Implementation Plan, and the development order contains one of the sets of conditions enumerated in subparagraphs 1. thru 3. below:

1. Any combination of governmental and developer guaranteed roadway improvements sufficient to ensure non-exceedance of ambient air quality standards throughout the buildout schedule of the development; or

2. Any combination of governmental and developer guaranteed measures, such as mass transit or non-polluting alternative transportation, sufficient to ensure non-exceedance of ambient air quality standards throughout the buildout schedule of the development; or

3. Project-special air quality mitigative measures approved in writing by the Division of Air Resources Management, Department of Environmental Protection, for this development's Chapter 380, F.S., local government approval.

(6) Construction of Rule. This rule shall not be construed to limit the ability of local governments to impose more stringent mitigative measures than those delineated in this rule, where such measures or policies are contained within local land development regulations, or a local government comprehensive plan.

(7) Effect of Areas of Critical State Concern. This rule shall be superseded by more stringent air quality requirements for developments in designated Areas of Critical State Concern.

Credits

Adopted Mar. 23, 1994; Amended Feb. 21, 2001, June 1, 2003; Transferred from 9J-2.046.

Authority: 380.032(2)(a), 380.06(23)(a), (c)1. FS. Law Implemented 380.021, 380.06, 380.065, 380.07 FS.

Current with amendments available through January 5, 2015.

Rule 73C-40.046, F.A.C., 73 FL ADC 73C-40.046

End of Document

Florida Administrative Code - 2014

West's Florida Administrative Code
Title 73. Department of Economic Opportunity
Subtitle 73c. Division of Community Development
Chapter 73C-40. Community Planning: Rules of Procedure and Practice Pertaining to Developments of Regional Impact

Rule 73C-40.048, F.A.C.
Fla. Admin. Code r. 73C-40.048

73C-40.048. Adequate Housing Uniform Standard Rule.

Currentness

(1) Purpose. This rule establishes how the Department will evaluate adequate housing issues in the review of applications for binding letters, local government development orders, and DRI applications for development approval (ADA).

(a) The Legislature established Chapter 380, F.S., to facilitate orderly and well-planned development and protect the health, welfare and quality of life of the residents of this state, by authorizing the state land planning agency to establish land management policies to guide local decisions relating to growth and development. Sections 186.002, 186.007, 186.009 and 187.101, F.S., establish the State Comprehensive Plan as the long-range, state land development policy guide to be considered in the DRI review process in order to ensure orderly growth in Florida, pursuant to Sections 380.06(3), (4), (12), (13), (14), (15), (25) and 380.065(3), F.S.

(b) Consistent with the land management policies delineated in the State Comprehensive Plan, it is the intent of the Department to set forth in this rule specific adequate housing DRI review guideline standards and criteria.

(c) The statutory authority to promulgate and establish this rule is derived from Sections 380.032(2) and 380.06(23), F.S.

(2) Definitions. As used in this rule:

(a) “Adequate Housing” means housing that is available for occupancy and that is not substandard.

(b) “Adequate Housing Demand” means the projected number of adequate housing units necessary to accommodate the development's very low, low, and moderate income employee households.

(c) “Adequate Housing Need” means the projected number of adequate housing units necessary to accommodate the development's very low, low and moderate income households which will not be provided in a timely manner on the development site, or which will be unavailable within a reasonably accessible distance of the development site.

(d) “Adequate Housing Supply” means the existing number of adequate housing units affordable to the development's very low, low, and moderate income employee households that are currently available for occupancy, not substandard and which are reasonably accessible to the development site.

(e) “Affordable housing” means a situation where monthly rents or monthly mortgage payments for housing, including taxes, insurance and utilities, do not exceed 30 percent of the gross annual income of the development's very low, low, and moderate income employee households.

(f) “Applicable Local Plan” or “Local Government Comprehensive Plan” means a plan or element or portion thereof prepared, adopted, or amended pursuant to Part II of Chapter 163, F.S., as amended.

(g) “Applicable Regional Plan” means the Regional Planning Council's adopted Strategic Regional Policy Plan pursuant to Section 186.508, F.S.

(h) “Applicable State Plan” means the State Comprehensive Plan.

(i) “Available for occupancy housing” means housing that is either for sale or for rent on an annual basis, includes a kitchen and bathroom within the unit, and that can accommodate and be affordable to the people seeking to inhabit it.

(j) “Department” means the Florida Department of Economic Opportunity.

(k) “Direct Mass Transit” means mass transit affording the development's employees the ability to travel directly from the project site to a regularly scheduled stop located within one-quarter mile of their housing.

(l) “Florida Statistical Abstract” means the publication by that title which is prepared by the Bureau of Economic and Business Research, College of Business Administration, University of Florida, and which is published by University Press of Florida, Gainesville, Florida.

(m) “Low Income Household” means one or more persons, related or unrelated, residing together whose combined annual adjusted gross income is greater than 50 percent but does not exceed 80 percent of the median annual adjusted gross household income, as reported by the U.S. Department of Housing and Urban Development (HUD) for the metropolitan statistical area (MSA) or county within which they reside, whichever is greater.

(n) “Mass Transit” means daily operating, fixed route and fixed schedule passenger services provided by public, private, or non-profit entities such as the following surface transit modes: computer rail, rail rapid transit, light rail transit, automated guideway transit, express bus, and local bus.

(o) “Moderate Income Household” means one or more persons, related or unrelated, residing together whose combined annual adjusted gross household income is greater than 80 percent but does not exceed 120 percent of the median annual adjusted household gross income, as reported by the U.S. Department of Housing and Urban Development (HUD) for the metropolitan statistical area (MAS) or county within which they reside, whichever is greater.

(p) “Owner Occupied Affordable Housing” means for-sale housing for which the total monthly mortgage payments for the unit, including principal, interest, utilities, taxes and insurance, do not exceed 30 percent of the gross monthly income for the development's very low, low, or moderate income households.

(q) “Project phase” means a discrete, five year or lesser construction timeframe of development, including local government issuance of certificates of occupancy for that construction or its functional occupancy.

(r) “Reasonably Accessible” means a commute time from the principal access point of the place of employment in the development to the location of adequate housing by private or public conveyance of twenty minutes (during peak hour) or a commute distance of ten miles, whichever is less. In areas having an established Metropolitan Planning Organization, this distance and time determination is established from use of appropriate traffic analysis zones.

(s) “Regional Planning Council” means a governmental body created pursuant to Chapter 186, F.S.

(t) “Rental Affordable Housing” means rental housing for which monthly rents, including utilities, do not exceed 30 percent of the gross monthly income for very low, low, or moderate income households.

(u) “Stage” means one in a series of approximately equal increments in the development of a proposed development upon which are placed quantified limits for construction that are calculated to ensure that adequate housing affected by the proposed development will not be overburdened by development demands. As used in this rule, a stage is to be a subset of a particular project phase of development planned for a project by a developer. A state of development includes both a specific type and amount of development and the associated approved buildout timeframe for that development.

(v) “Student” means any person not living with that person's parent or guardian who is eligible to be claimed by that person's parent or guardian as a dependent under the federal Income Tax Code and who is enrolled on at least a half-time basis in a secondary school, vocational-technical center, community college, college, or university.

(w) “Substandard housing” means any housing unit lacking complete plumbing or sanitary facilities for the exclusive use of the occupants; or any housing unit which has been found by an appropriate local authority to have one or more violations of an applicable housing code that poses a material threat to the health or safety of the occupant; or any housing unit that has been declared unfit for human habitation; or any housing unit that has been found to be substandard in the most recent housing conditions survey conducted by the local government, done in conjunction with the local comprehensive plan or otherwise, provided that there is no evidence that this dwelling has since been rehabilitated.

(x) “Very Low Income Household” means one or more persons, related or unrelated, residing together, not including students, whose combined annual adjusted gross income does not exceed 50 percent of the median annual adjusted gross household income, as reported by the U.S. Department of Housing and Urban Development (HUD) for the metropolitan statistical area (MSA) or county within which they reside, whichever is greater.

(3) Application.

(a) This rule shall be used by the Department to review adequate housing issues in binding letters and applications for development approval (ADA), effective the date of this rule. Any development that meets or exceeds the significant impact thresholds identified in this rule shall be determined by the Department to have a significant impact on the ability of people to find adequate housing reasonably accessible to their places of employment. This rule shall not apply to any application submitted to the Department prior to the effective date of this rule, where such an application has continued to remain pending and active, consistent with Sections 380.06(4)(d) or (10)(b), F.S.

(b) This rule shall be used by the Department to review adequate housing issues in local government development orders. This rule shall not apply to any development order rendered to the Department after the effective date of this rule that approves, with or without conditions, an application that was submitted prior to the effective date of the rule and has continued to remain pending and active until the development order's approval.

(c) A development order shall be determined by the Department to make adequate provision for the adequate housing issues addressed by this rule, and shall not be appealed by the Department on the basis of inadequate mitigation of adequate housing impacts, if it contains the applicable mitigation standards and criteria set forth in this rule or if it is reviewed and provides applicable mitigation consistent with the East Central Florida Housing Methodology, developed April, 1996 an revised June, 1999. If a development order does not contain the applicable mitigation standards and criteria set forth in this rule, the Department shall have discretion to appeal the development order, pursuant to the provisions of Section 380.07, F.S. However, nothing in this rule shall require the Department to undertake an appeal of the development order simply because it fails to comply with the provisions of this rule. A development order failing to comply with the provisions of this rule will be addressed on a case-by-case basis by the Department as to whether it otherwise complies with the intent and purposes of Chapter 380, F.S. The Department will take into consideration the balancing of this rule's provisions with the protection of property rights, the encouragement of economic development, the promotion of other state planning goals by the development, the utilization of alternative, innovative solutions in the development order to provide equal or better protection than the rule, and the degree of harm created by non-compliance with this rule's mitigation criteria and standards.

(d) This rule shall not limit the ability of the Department to make a determination of significant impact or appeal a development order on the basis of inadequate, inappropriate, or inaccurate adequate housing impact analyses carried out by the applicant or his agents, where the findings of such analyses are instrumental to forming the basis of information necessary to evaluate compliance with the application of this rule's criteria and standards. However, if agreement was reached at the DRI preapplication conference regarding adequate housing impact analyses assumptions and methodologies to be used in an ADA, then reviewing agencies may not subsequently object to these assumptions and methodologies, consistent with the provisions of paragraph 73C-40.021(1)(h), F.A.C.

(4) Determination of Adequate Housing Demand. Adequate housing demand is the number of housing units needed to accommodate the development's projected very low, low, and moderate income employee households.

(a) NUMBER OF EMPLOYEES. The number of employees to be generated by each project phase or stage of the development under consideration shall be based upon either:

1. The actual number of full-time equivalent, permanent employment opportunities to be provided by the development by salary income range, if known; or

2. An appropriate estimate of full-time equivalent, permanent employees by salary income range generated by the proposed DRI from an existing, comparable development; or

3. An estimate derived by applying standard planning ratios of employee per amount of development by salary income range agreed upon at the pre-application conference, pursuant to paragraph 73C-40.021(1)(h), F.A.C.

(b) DISTRIBUTION OF EMPLOYEES BY INCOME. The distribution of employees by salary income range for each project phase or stage of the development shall be based upon either:

1. The actual salary income range distribution of full-time equivalent, permanent employees by annual income for the development, if known; or

2. An appropriate estimate derived from the actual distribution, in equivalent dollars, from an existing, similar development; or

3. An estimate derived by applying average Standard Industrial Classification (SIC) wages reported by the Florida Department of Labor and Employment Security for the projected employment types to occur at the development, as agreed upon at the pre-application conference, pursuant to paragraph 73C-40.021(1)(h), F.A.C.

(c) NUMBER OF EMPLOYEE HOUSEHOLDS AND ADEQUATE HOUSING DEMAND.

1. The number of employee households within each salary income range for each project phase or stage of the development that will have an adequate housing demand shall be determined by multiplying the number of employees in a salary income range from paragraph (b) above by a fraction, the numerator being the number of Households in the county, and the denominator being the amount of Employment in the county, from the most recent year in Tables 2.05 and 6.10, respectively, of the current Florida Statistical Abstract.

2. The applicant shall have the option to demonstrate that an alternative method is appropriate, when this alternative is agreed upon at the pre-application conference, pursuant to paragraph 73C-40.021(1)(h), F.A.C.

(5) Determination of Adequate Housing Supply. Adequate housing supply is the existing number of adequate housing units affordable to each salary income range within the development's very low, low, and moderate income employee households that are currently available for occupancy, not substandard and which are reasonably accessible to the development site.

(a) The adequate housing supply that is reasonably accessible to each salary income range within the development's very low, low, and moderate income employee households shall be determined for each project phase or stage of development from either:

1. A survey of existing rental complexes for rental affordable housing and of local real estate listings for owner occupied affordable housing; or

2. An estimated survey derived from published sources of information that provide current estimates of available rental affordable housing and owner occupied affordable housing units by price range, as agreed upon at the pre-application conference, pursuant to paragraph 73C-40.021(1)(h), F.A.C. When specifically agreed upon, such an estimate of adequate housing supply may be derived from appropriate use of an updated housing inventory from the data base for very low, low and moderate income housing developments maintained by the Florida Housing Finance Agency as described in its market studies conducted pursuant to Section 420.507, F.S.

(b) An adequate housing supply survey shall include:

1. The name and address of each rental complex, housing subdivision, or census tract in which the available housing unit(s) is located; and

2. The number of units currently available for occupancy by cost and the number of bedrooms for each complex; and

3. A map showing the locations of the adequate housing supply units and the reasonably accessible contour in relation to the development site.

(c) An adequate housing supply survey shall not include:

1. Substandard housing units; or

2. Housing units available only on a seasonal basis; or

3. Hotel or motel units; or

4. Housing units which are proposed for construction, but for which building permits have not been issued; or

5. Housing units which have been previously included in an adequate housing supply survey of another proximate DRI approved during the preceding 5 years and which occur within the reasonably accessible contour for this development; or

6. One-room efficiency housing units which comprise more than 25 percent of the adequate housing supply or which exceed the percentage of single-person households for the county in which the development is located, whichever is less; or

7. Single bedroom housing units which comprise more than 50 percent of the adequate housing supply or which exceed the percentage of two and three-person households for the county in which the development is located, whichever is less; or

8. Vacant adequate housing dwelling units that are needed to maintain a vacancy rate of five percent.

(6) Determination of Adequate Housing Need. Adequate housing need is the projected number of adequate housing units necessary to accommodate each salary income range category within the development's very low, low, and moderate income employee households for each project phase or stage of development, and which are projected either not to be able to be provided in a timely manner on the development site or which will be unavailable within a reasonably accessible distance of the development site. The adequate housing need for a project is equal to the difference of the adequate housing demand minus the demand which can be met by the adequate housing supply in each salary income range category, plus any existing very low, low and moderate housing to be displaced by the development.

(7) Determination of Significant Impact. A development shall be considered to have a significant impact on the ability of the development's very low, low, and moderate income employee households to find adequate housing reasonably accessible to their place of employment when, for any phase or stage of development, the development's cumulative adequate housing need is projected to exceed 5 percent of the applicable DRI residential threshold for the affected local government, or 50 units, whichever is larger,

(8) Mitigation of Significant Adequate Housing Impacts. A development order shall be determined by the Department to make adequate provision for the adequate housing issues addressed by this rule, and shall not be appealed by the Department on the basis of inadequate mitigation of adequate housing impacts if, at a minimum, it contains as binding conditions the provisions enumerated below:

(a) Mitigation of a development's significant impact on adequate housing through development order mechanisms that ensure the provision of units guaranteed to be affordable initially, in the case of owner-occupied housing, or remain affordable for a minimum period of fifteen years, in the case of rental housing, in one of the following ways:

1. Construction of adequate housing units onsite, or reasonably accessible to the development site, sufficient to equal in number the adequate housing need identified for each salary income range within that stage or phas's [FN1] very low, low, and moderate income employee households; or

2. Payment to an appropriate affordable housing trust fund of funds dedicated to, and sufficient in amount to result in, the rehabilitation of unoccupied substandard housing or construction of reasonably accessible adequate housing units equal in number to the adequate housing need identified for each salary income range within that stage or phase's very low, low, and moderate income employee households; or

3. Dedicated direct rent or ownership subsidies to the development's very low, low, and moderate income employees sufficient in amount to satisfy the adequate housing need identified for each salary income range within that stage or phase's very low, low, and moderate income employee households from available, non-affordable, but otherwise adequate housing units reasonably accessible to the development site.

(b) The development order shall ensure that:

1. Prior to the initiation of a project phase or stage of development which will create an adequate housing need, that the adequate housing need mitigation for that project phase or stage of development is ensured of being provided when needed; and

2. The housing mitigation provided is affordable housing that specifically matches the projected adequate housing need to be created by the development.

(c) As an incentive to promote the co-location of adequate housing in close proximity with employment, and in recognition that such co-location also reduces impacts to transportation, air quality, and energy usage, the following credits against the mitigation requirements for the adequate housing need of this section shall be given for the developer provision of adequate housing units based on the distance of these units from the development site and the availability of direct mass transit facilities:

1. Onsite Provision. Each very low, low, or moderate income adequate housing unit provided onsite shall be counted as mitigation for 1.5 units of that stage or phase's applicable very low, low, or moderate income adequate housing need within the same salary income range.

2. Direct Mass Transit Within Reasonably Accessible Area Provision. Each very low, low, or moderate income adequate housing unit provided within a reasonably accessible distance of the development site that is connected to the development site by a daily operating direct mass transit system shall be counted as mitigation for 1.25 units of that stage or phase's applicable very low, low, or moderate income adequate housing need within the same salary income range.

3. Outside of Reasonably Accessible Area Provision.

a. No more than 50 percent of a development's adequate housing need may be cumulatively satisfied by the provision of units outside of the reasonably accessible area under provisions b. and c., below.

b. No Direct Mass Transit Provision. Each very low, low, or moderate income adequate housing unit provided within a zone between a commute time by private or public conveyance of twenty minutes (during peak hour) or a commute distance of ten miles, whichever is less, and a commute time of twenty five minutes (during peak hour) or a commute distance of fifteen miles, whichever is less, shall be counted as mitigation for 0.30 units of that stage or phase's applicable very low, low, or moderate income adequate housing need within the same salary income range.

c. Direct Mass Transit Outside of Reasonably Accessible Area Provision. Each very low, low, or moderate income adequate housing unit provided within a zone between a commute time by private or public conveyance of twenty minutes (during peak hour) or a commute distance of ten miles, whichever is less, and a commute time of twenty five minutes (during peak hour) or a commute distance of fifteen miles, whichever is less, and which is connected to the development site by a daily operating direct mass transit system shall be counted as mitigation for 0.50 units of that stage or phase's applicable very low, low, or moderate income adequate housing need within the same salary income range.

(9) Construction of Rule. This rule shall not be construed to limit the ability of local governments to impose more stringent mitigative measures than those delineated in this rule, where such measures or policies are contained within local land development regulations, or a local government comprehensive plan.

(10) Effect of Areas of Critical State Concern. This rule shall be superseded by more stringent housing requirements for developments in designated Areas of Critical State Concern.

Credits
Adopted Mar. 23, 1994; Amended Feb. 21, 2001, June 1, 2003; Transferred from 9J-2.048.

Authority: 380.032(2)(a), 380.06(23)(a), (c)1. FS. Law Implemented 380.021, 380.06, 380.065, 380.07 FS.
[FN1]
So in original.

Current with amendments available through January 5, 2015.

Rule 73C-40.048, F.A.C., 73 FL ADC 73C-40.048

Florida Administrative Code - 2014

West's Florida Administrative Code
Title 73. Department of Economic Opportunity
Subtitle 73c. Division of Community Development
Chapter 73C-42. Community Planning; Rules of Procedure and Practice Pertaining to Florida Quality Developments

Rule 73C-42.006, F.A.C.
Fla. Admin. Code r. 73C-42.006

73C-42.006. Application Forms.

Currentness

Applications for designation of a development as an FQD shall be made on Form DEO-BCP-ADA-1, "Development of Regional Impact Application for Development Approval," effective date: 11/90, as incorporated by reference in Rule 73C-40.010, F.A.C., and in addition thereto those items specified in Rule 73C-42 .008, F.A.C., "General Requirements," and Rule 73C-40 .010, F.A.C., "Requirements for Designation as a Florida Quality Development." The form may be obtained by submitting a request to: State of Florida Department of Economic Opportunity, Division of Economic Opportunity, Division of Community Development, 107 East Madison Street, Caldwell Building, Tallahassee, Florida 32399-6545.

Credits

Adopted Jan. 23, 1990; Amended Mar. 1, 2001; Transferred from 9J-28.006.

Authority: 380.032(2)(a), 380.061(4), (8)(b) FS. Law Implemented 380.061, 380.061(4) FS.

Current with amendments available through January 5, 2015.

Rule 73C-42.006, F.A.C., 73 FL ADC 73C-42.006

Florida Administrative Code - 2014

West's Florida Administrative Code
Title 73. Department of Economic Opportunity
Subtitle 73c. Division of Community Development
Chapter 73C-42. Community Planning; Rules of Procedure and Practice Pertaining to Florida Quality Developments

Rule 73C-42.007, F.A.C.
Fla. Admin. Code r. 73C-42.007

73C-42.007. Preliminary Development Agreements.

Currentness

No development, as defined in Section 380.04, F.S., shall be undertaken on a project seeking designation as an FQD prior to the issuance of an FQD development order except as authorized by a Preliminary Development Agreement (PDA) as provided in Subsection 380.06(8), F.S., Rule 73C-40.0185, F.A.C., or as otherwise authorized by Chapter 380, F.S.

Credits
Adopted Jan. 23, 1990; Transferred from 9J-28.007.

Authority: 380.061(8)(b) FS. Law Implemented 380.06(8)(c), 380.061 FS.

Current with amendments available through January 5, 2015.

Rule 73C-42.007, F.A.C., 73 FL ADC 73C-42.007

Florida Administrative Code - 2014

West's Florida Administrative Code
Title 73. Department of Economic Opportunity
Subtitle 73c. Division of Community Development
Chapter 73C-42. Community Planning; Rules of Procedure and Practice Pertaining to Florida Quality Developments

Rule 73C-42.009, F.A.C.
Fla. Admin. Code r. 73C-42.009

73C-42.009. Requirements for Designation as a Florida Quality Development.

Currentness

To be eligible for designation under this alternative DRI review program, the developer shall comply with each of the following requirements which is applicable to the site of a proposed FQD. The intent of establishing these minimum FQD development standards is to assist, promote, and advance the timely and expeditious review of FQD projects and, unless otherwise specified, such mitigative requirements shall be in addition to the mitigation standards and criteria for developments of regional impact.

(1)(a) The developer is required to preserve, through donations or binding commitments, the following types of lands to protect in perpetuity the natural attributes of these lands.

1. Wetlands and Water Bodies Within the Jurisdiction of the Florida Department of Environmental Protection. The developer shall preserve all wetlands and waterbodies within the jurisdiction of the Florida Department of Environmental Protection (DEP). In order to facilitate review, the developer should obtain a binding Jurisdictional Declaratory Statement from DEP for all wetlands within the project boundaries.

a. The developer may alter such wetlands and water bodies for the purpose of site access provided other routes of access are unavailable or impractical. However, such use shall be subject to approval by the DEP, pursuant to its authority under Chapter 403, F.S.

b. The developer may use such wetlands and water bodies for the purpose of stormwater management or domestic wastewater management and other necessary utilities to the extent that such uses are permitted pursuant to Chapter 403, F.S. The developer shall indicate any such proposed use in the application for development designation.

c. The developer may enhance wetlands and water bodies which have been artificially created to produce a more naturally functioning system. Man-made wetlands, created for mitigative purposes, may not be altered unless the redesign or alteration enhances the functionality of the system and is performed in accordance with the approval of the appropriate agencies which required or permitted the mitigation site. Such use is subject to approval by the DEP, pursuant to its authority under Chapter 403, F.S. The developer shall indicate any such proposed use in the application for development designation.

2. Dunes and Beaches. The developer shall preserve active beach and primary dunes seaward of the coastal construction control line established pursuant to Section 161.053, F.S. The developer shall also preserve secondary dunes seaward of the coastal construction control line except for those sites where the developer obtains a permit from the Florida Department of Environmental Protection to alter, excavate, or construct structures pursuant to Section 161.053, F.S. The developer shall set aside adequate public accessways to the beach. The developer may construct and maintain elevated walkways over the dunes to provide access to the beach as permitted pursuant to Section 161.053, F.S. These walkways shall be designed and built to protect the dunes and their associated vegetation.

3. Significant Archaeological Sites. The developer shall set aside archaeological sites, or portions of such sites, determined to be of significance by the Department of State, Division of Historical Resources.

a. Prior to submittal of the application, the developer shall contact the Division of Historical Resources and receive a determination from the Division of Historical Resources concerning the presence or likelihood of the presence of significant archaeological site(s) on the development property.

b. If the Division of Historical Resources determines that such resources are present or are likely to be present on the development property, the developer shall undertake or cause to be undertaken a professionally conducted archaeological survey, including all appropriate testing and a report of the results of the survey. The results of the survey shall be submitted to the Division of Historical Resources with a request for a determination of significance.

c. If the Division of Historical Resources determines that a significant site is present, the developer shall preserve the site as recommended by the Division of Historical Resources in a manner as specified by this rule section.

d. Documentation of all contacts with and determinations made by the Division of Historical Resources, including proposals for the preservation of identified significant sites, shall be submitted with the application for development designation.

4. Areas Important to Endangered or Threatened Animal Species. The developer shall preserve the habitat areas necessary to ensure the survival of the animal species designated as endangered or threatened by the United States Fish and Wildlife Service hereby referenced as Chapter 50, Code of the Federal Regulations, Section 17.11-12, Subpart B -- List, “Title 50 Wildlife and Fisheries Part 17 -- Endangered and Threatened Wildlife and Plants,” and the Florida Fish and Wildlife Conservation Commission hereby referenced as published in Rules 68A-27.003 -- .005, F.A.C., “Official List of Endangered and Potentially Endangered Fauna and Flora in Florida.”

a. Prior to submittal of the application for development designation, the developer shall undertake or cause to be undertaken a professionally conducted survey to determine the presence of habitat and areas important for endangered and threatened animal species for purposes of reproduction, feeding, nesting or securing shelter from predation or for traveling between such areas. The survey should be conducted at the necessary times of the year for proper identification of endangered and threatened animal species.

b. The survey should be conducted according to guidelines for such surveys as recommended by the Fish and Wildlife Conservation Commission (Commission). The survey should include, at a minimum: (1) a description of the survey methodology, including dates and times; and (2) a list and map of threatened and endangered animal species observed onsite and presumed to use the site based on the vegetative community and species range. The Department may consult with the Commission on the results of the survey and receive comments and recommendations from the Commission.

c. Proposals for the preservation of identified important habitat shall be submitted with the application for development designation. This shall include, but not be limited to, a description of the anticipated impacts on the identified species and communities and an explanation of how these species and their habitat will be protected and preserved in perpetuity.

5. Areas Known to Contain Endangered Plant Species. The developer shall preserve areas known to contain plant species designated as endangered plant species in Rule 73C-40.041, F.A.C.

a. The developer shall request the Florida Natural Areas Inventory (FNAI) or an appropriate state or federal agency for a preliminary determination as to the possible presence of endangered plant species. In addition, the developer shall undertake or cause to be undertaken a professionally conducted survey to determine the presence of endangered plant species. The survey should be conducted at the necessary times of the year for proper field-identification of the plant species.

b. The survey shall include at a minimum: (1) a map of endangered plant species that exist or are presumed to exist onsite based on species range and site characteristics; (2) a description of the survey methodology, including dates and times; (3) a description of the anticipated impacts on the endangered plant species; and (4) an explanation of how these species will be protected and preserved in perpetuity.

c. Documentation of all contacts with the FNAI and any other professional sources, including proposals for the preservation of areas containing endangered plant species, shall be submitted with the application for development designation. This shall include, but not be limited to, a description of the anticipated impacts on the identified species and an explanation of how these species and the areas in which they occur will be protected and preserved in perpetuity.

(b) Donations of land by the developer as required by Section 380.061(3)(a) 1., F.S., may be made by conveying the property in fee simple title or lesser interest to the state or to a federal agency, water management district, local government, or other organization approved by the Department. The designated agency or organization receiving the conveyance of property shall display the willingness, ability, and resources to maintain and protect in perpetuity the preservation areas of plant and animal species. All such donations are subject to approval by the Department prior to issuance of the development order or recordation of the conveyance in the public records.

(c) Binding commitments pursuant to Section 380.061(3), F.S., may be entered into by the developer as an alternative to the donation process described in paragraph (b) of this section. The binding commitment shall designate certain areas on the site of the FQD as open space to be retained in a natural condition or to be used for passive recreation for the protection of natural values for which the land is to be preserved. All such binding commitments shall be approved by the Department prior to issuance of the development order or recordation of the binding commitment in the public records. In its evaluation of a proposed binding commitment, the Department shall also determine whether a proposed use of the land for passive recreation is consistent with the purposes for which the land is to be preserved. The document establishing the binding commitment shall contain a condition naming the State of Florida as the benefiting party and providing it with enforcement rights should the binding commitment ever be violated. Binding commitments may be established through the following types of instruments:

1. Conservation easements, created in accordance with Section 704.06, F.S. The maintenance of any such conservation easements shall be confirmed in the annual report issued pursuant to subsection 73C-42.023(6), F.A.C., of this rule.

2. Restrictive covenants running with the land, which accomplish the preservation of the land areas as specified in the development order and pursuant to Section 380.061, F.S. The maintenance and continuance of the restrictive covenants shall be confirmed in the annual report issued pursuant to paragraph 73C-42.023(6)(j), F.A.C., of this rule.

(2) Hazardous and Toxic Substances. Individual business activity within an FQD shall not generate or dispose of hazardous substances in amounts that exceed the small quantity generator upper limit as defined in Rule 17-730.160, F.A.C., and Chapter 40, Code of Federal Regulations, Section 262.44, F.S. Amounts below this upper limit shall, for purposes of this rule, be considered generation and disposal of nonsignificant amounts as would occur through household use or incidental use by businesses.

(3) Participation in a Downtown Reuse or Redevelopment Program. If the site of the proposed FQD is located within a redevelopment district the developer shall participate in the planned reuse or redevelopment program established for the redevelopment area.

(4) Dredge and Fill; Stormwater Discharge. There shall be no dredge and fill activities in, and no stormwater discharge into, waters designated as Class II, aquatic preserves, or Outstanding Florida Waters; except as activities in those waters are permitted pursuant to Section 403.813(2), F.S., and the developer demonstrates that those activities meet the standards under Class II waters, Outstanding Florida Waters, or aquatic preserves, as applicable.

(5) Open Space, Recreation, Energy Conservation, and Impermeable Surfaces. These issues shall be addressed by the developer when designing the development as an FQD.

(a) Open space should be used to differentiate, integrate or buffer different land uses and activities. Open space should be located around existing natural features as well as planned development to provide a sense of identity and unity within the development.

(b) Planning of recreational facilities and parks should take into account special population groups and the need for barrier-free accessibility to the elderly and handicapped. Barrier-free facilities may include: ramps; railings; appropriate restroom fixtures and design features; and other facilities constructed to allow safe use by all, especially very young children. Recreation needs therefore may vary from one development or neighborhood to the next. Site design for recreational facilities should be flexible in order to meet particular needs appropriate to the development. Site design should consider incorporation of compatible elements of both passive and active types of recreation. Typical facilities may include: play apparatus; multi-purpose courts; sports fields; picnic areas; urban office courtyard areas; nature study and hiking trails; and free play areas.

(c) The developer shall prepare an energy conservation plan for the design, construction and operation of the development. The plan shall outline and describe energy conservation standards and features, and design criteria expected to be used in the architectural design, construction, and operation of the structures. The plan should be included in the application for development designation. The plan shall consider, but not be limited to, the following energy conservation features:

1. Non-motorized paths for means of transportation and recreational use between all points of access between the FQD and the surrounding area that minimize distances between points of destination;

2. Provide connecting routes and designated shelter bus stops for mass transportation systems within the development that are easily accessible and aesthetically pleasing to encourage bus ridership;

3. Orient building design and street layout to reduce glass exposure to the east and west;

4. Locate buildings such that they do not block solar access to adjacent buildings and provide building space that permits natural ventilation of adjacent units;

5. Landscape design that shades buildings, parked cars and pedestrian areas from summer sun;

6. Water reuse for landscape irrigation;

7. The use of solar water heaters or waste heat recovery units to preheat water for cooking, drinking, and washing, if appropriate;

8. Maximum water temperature settings for hot-water heaters of 110 degrees Fahrenheit unless otherwise required by health codes;

9. High-efficiency or conditioning systems with a Seasonal Energy Efficiency Ratio of greater than or equal to 12.0;

10. Use of non-electric energy sources for cooking, water heating, and space heating, where feasible;

11. Minimum use of incandescent lighting;

12. Light-colored wall and roof surfaces, with solar absorption coefficients less than or equal to .50, or the use of self-ventilating or barreled roof tiles if appropriate;

13. Maximum flexibility of air conditioning systems to cool only occupied areas and the precooling of outside air and heat recovery wheels; and

14. Design and installation of computerized energy management systems, suitable for the scale and character of the buildings within the development.

(d) Permeable surfaces shall be constructed or installed where appropriate within the development. Impermeable surfaces should be installed on a limited basis as consistent with local government ordinances, codes and land development regulations. Examples of techniques and materials to increase permeable surfaces may include, but are not limited to: turf blocks; retention areas; xeriscape landscaping techniques; and pervious concrete.

(6) Infrastructure. The developer will provide for construction and maintenance of all onsite infrastructure necessary to support the project. The developer shall enter into a binding commitment with the local government to provide an appropriate fair-share contribution toward offsite impacts which the development will impose on publicly funded facilities and services and condition or phase the commencement of development to ensure that public facilities and services will be available concurrent with the impacts of the development. This commitment does not include offsite transportation facilities. For the purposes of offsite transportation impacts, the developer shall comply, at a minimum, with the following standards: the state land planning agency's development of regional impact transportation rule, if in effect; the approved strategic regional policy plan; any applicable regional planning council transportation rule; and the approved local government comprehensive plan and land development regulations adopted pursuant to Part II of Chapter 163, F.S.

(7) Consistency with Plans. The design and construction of the development shall be consistent with the adopted state comprehensive plan, the applicable strategic regional policy plan, and the applicable adopted local government comprehensive plan.

(8)(a) Planning and Design Features. In order to encourage innovative and quality design features the Florida Legislature intended that additional features be considered in determining whether a development qualifies for designation as an FQD that address the quality of life of the people who will live and work in or near the development.

(b) In order to implement the intent of the Legislature to ensure the inclusion of planning and design features that address the needs of the people in the state and further the goals and policies of the State Comprehensive Plan as it provides for orderly, social, economic and physical growth of the state, this rule section identifies primary and secondary planning features and assigns points to those features. To qualify for designation under this rule section, the development plan shall have a minimum total of 15 points and shall include at least one of the primary design features. These planning and design features include, but are not limited to:

DESIGN FEATURE	**POINTS ASSIGNED**
Primary Design Features	
1. Promotion of compact urban growth through complementary mixes of residential and non-residential uses of onsite or offsite adjacent or proximate parcels, including measures for affordable housing; or, establishment of a New Town or New Community, incorporating, where appropriate, features from the Traditional Neighborhood Development code, including measures for affordable housing	5
2. Urban renewal, downtown redevelopment, urban infill, or project location in a designated local or regional activity center as identified in an adopted local government comprehensive plan found to be in compliance purusant to Part II of Chapter 163, F.S.,	5

or a comprehensive regional policy plan, including measures for affordable housing	
Secondary Planning and Design Features	
3. Comprehensive Transportation System Management features such as: mass transit, access management, Transportation Demand Management, and the facilitation of pedestrian movement or the nonautomotive-based conveyance of people between land uses	3
4. Preservation of areas that are primary habitat for significant populations of animal species of special concern designated by the Florida Fish and Wildlife Conservation Commission or protection and preservation of uplands as wildlife habitat with special consideration given to prime recharge areas, areas designated by the Florida Department of Environmental Protection to be significant value to the state park system, or other environmentally sensitive property included on the Conservation and Recreation Lands or the Land Acquisition Trust Fund priority list or included as a priority for acquisition by a water management district through the Save Our River program	3
5. Water conservation; reuse of treated effluent where such uses are appropriate; use of water saving devices; xeriscaping	3
6. Household, office, or commercial hazardous waste collection	2
7. Recycling of solid waste	2
8. Promotion of cultural or educational activities	2
9. Care for the elderly	2
10. Development location in Florida Enterprise Zones or Community Development Block Grant target areas linked with project programs such as job training for unskilled workers, or the creation of full-time employment opportunities in areas, or for groups characterized by, high unemployment	1
11. Enhancement of emergency management capabilities	1
12. Onsite childcare	1
13. Other planning and design features addressing areas such as locally identified social concerns, urban amenities, or aesthetic design considerations	1

Credits

Adopted Jan. 23, 1990; Amended Mar. 1, 2001; Transferred from 9J-28.009.

Authority: 380.032(2)(a), 380.061(3), (8)(b) FS. Law Implemented 380.061, 380.061(3) FS.

Current with amendments available through January 5, 2015.

Rule 73C-42.009, F.A.C., 73 FL ADC 73C-42.009

End of Document

EXHIBIT D – Form DEO-BCP-PREAPP INFO-1

FORM DEO-BCP-PREAPP INFO-1
Rule 73C-40.010, FAC. Effective 11-20-90
(Renumbered 10-01-11)

STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY
DIVISION OF COMMUNITY PLANNING & DEVELOPMENT
The Caldwell Building, MSC 160
107 East Madison Street
Tallahassee, Florida 32399

PREAPPLICATION CONFERENCE DOCUMENT AND INFORMATION

One of the initial steps in the development of regional impact (DRI) review process is the preapplication conference. The preapplication conference is a meeting between various governmental agencies and representatives of the developer that establishes the parameters of the Application for Development Approval (ADA). Pursuant to Paragraph 380.06(7), Florida Statutes, and Rule 73C-40.021, Florida Administrative Code, the information required to conduct the preapplication conference must be made available to the participants in the conference at least ten working days prior to meeting. Note that the following information lists the minimum information for a preapplication conference. The regional planning council may have more stringent information requirements for a preapplication conference, and council staff should be consulted prior to the preparation of a preapplication document.

Provide the following information about the proposed development.

A. General Information

1) Name of the development.

2) Name, address, and telephone number of the applicant.

3) Name, address, and telephone number of the authorized agent.

B. Project Description

1) A general description of the project, including proposed land uses and amounts pursuant to the guidelines and standards in Chapter 28-24, F.A.C. If a preliminary master plan has been developed, please provide.

2) Proposed phasing of the project, including proposed preliminary phasing dates

and buildout dates.

C. Site Information

1) Describe the existing land uses and vegetative associations. Provide an aerial photograph of the site.

2) Provide a brief environmental assessment of the site, encompassing such topics as the probable occurrence of wetlands and listed plant and animal species.

3) Indicate which portions of the site, if any, are within the 100 year floodplain.

4) Provide a letter from the Division of Historical Resources indicating if there are potentially regionally significant historical or archaeological sites on the property.

D. Impact Area Information

1) Provide a general location map. Indicate on this map adjacent land uses, the existence of public facilities, regional activity centers, and any existing urban service area boundary. Also indicate on this map any other lands owned or leased by the applicant within two miles.

2) Using a map, indicate the proximity of this site to regionally significant resources identified in the Regional Policy Plan such as significant bodies of water, wetlands, or wildlife corridors.

3) Provide a map of the proposed study area for Question 21 (Transportation) in the ADA. Indicate the functional classification and number of lanes of all roadways in the study area except residential streets.

E. Permitting and Approval Information

1) Indicate if a comprehensive plan amendment will be required for this development.

2) Provide a list of all permits already applied for or received, specifying the date of application, issuing agency, and function of the permit.

F. Provide a summary of each of the proposed methodologies, assumptions, models, criteria, etc., that will be used to answer ADA questions, particularly Question 12 (Vegetation and Wildlife) and Question 21 (Transportation). The methodologies, assumptions, etc., should be specific enough so that once agreement is reached among parties regarding these, everyone involved will have a clear understanding of what will be provided in the ADA. The intent of this agreement is to streamline the review period and decrease the number of insufficiency findings wherever possible. The regional planning council should be consulted prior to the preapplication conference to explain the methodologies acceptable to the region for ADA review.

G. Provide a list (or formal written request if required by the regional planning council) of ADA questions which you wish to have deleted or exempted. Provide a discussion or explanation of why you believe it is appropriate to delete from the ADA for your project.

EXHIBIT E – Form DEO-BCP-ADA-1

FORM DEO-BCP-ADA-1
Rule 73C-40.010, FAC. Effective 11-20-90
(Renumbered 10-01-11)

DEVELOPMENT OF REGIONAL IMPACT

APPLICATION FOR DEVELOPMENT APPROVAL

UNDER SECTION 380.06, FLORIDA STATUTES

STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY
DIVISION OF COMMUNITY PLANNING & DEVELOPMENT
The Caldwell Building, MSC 160
107 East Madison Street
Tallahassee, Florida 32399

STATEMENT OF PURPOSE

The Development of Regional Impact (DRI) Application for Development Approval (ADA) is intended to provide information to local governments to assist them in making decisions concerning developments having a greater than local impact. Just as the DRI process is not intended to supplant local, state, or federal permitting procedures, neither is the ADA meant to be a substitute for substantive or technical reports required pursuant to such permits. Rather, the ADA provides a comprehensive look at a proposed development and serves as the basic data source for the preparation of the regional planning council's report and recommendations to the local government on the regional impact of the proposed development. The regional planning council, in fulfilling its responsibilities as the regional planning agency under Chapter 380, Florida Statutes (F.S.), will use this base information provided by a developer to consider whether, and the extent to which:

(a) The development will have a favorable or unfavorable impact on the environment and natural and historical resources of the region;

(b) The development will have a favorable or unfavorable impact on the economy of the region;

(c) The development will efficiently use or unduly burden water, sewer, solid waste disposal, or other necessary public facilities;

(d) The development will efficiently use or unduly burden public transportation facilities;

(e) The development will favorably or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment; and

(f) The development complies or does not comply with such other criteria for determining regional impact as the regional planning agency shall deem appropriate.

When a developer believes that his proposed development may be a DRI, he should contact the appropriate regional planning council as soon as possible. The regional planning council can determine if a proposed development meets or exceeds mandatory DRI review thresholds, or if a binding letter needs to be obtained from the Florida Department of Economic Opportunity to determine the DRI status of the proposed development.

Once a proposed development is determined to require DRI review, the regional planning council will assist the developer in determining the necessary information needed for a preapplication conference. The preapplication conference is a meeting between various governmental agencies to establish the parameters of the DRI. It is the initial step in the DRI process which establishes the framework for a cooperative planning effort between the developer, the local government, regional agency, and federal and state agencies

After the preapplication conference establishes the scope of the DRI review, the developer can begin the preparation of the Application for Development Approval. The developer should continue to work closely with the appropriate local government and regional planning council during the preparation of this application and its subsequent review.

INSTRUCTIONS FOR THE COMPLETION OF THE APPLICATION FOR DEVELOPMENT APPROVAL

A. Applicants proposing residential Developments of Regional Impact must complete Parts I through V of this Application. Applicants proposing non-residential DRIs must complete all applicable questions in Part I through V, as well as appropriate portions of Part VI dealing with specific types of Developments of Regional Impact.

B. As provided for in Section 380.04, F.S., a DRI includes all other development customarily associated with it. Therefore, an applicant proposing a DRI with some individual land uses that are not of DRI magnitude (for example, a 100,000 square foot neighborhood shopping center within a predominantly residential DRI) must include information regarding those land uses in the appropriate portions of this application.

C. All information supplied must be accurate, up-to-date, and complete. Where a format and units of measure for information are specified, these must be followed. If the specified format requires the provision of information by development phases, each phase indicated must relate to those designated in Question 10, and the final entries must relate to development completion and full operation or utilization as designated in Question 10.

D. All responses to questions are to be contained in the body of the application.

E. Any information pertinent to the development which has not been specifically requested in this form may be incorporated by the applicant within an appropriate section of this application.

F. All narrative responses should be in a 8 1/2" x 11" format and should begin with the appropriate question from the application. Include a table of contents.

G. Include a bibliography of the information sources utilized in answering this application, along with the names, addresses and telephone numbers of any consultants, agencies, or other persons who contributed to or completed sections of this application.

H. Identify all methodologies, models, assumptions, and standards used in obtaining or evaluating any information proved in this application.

I. Applicants should be prepared to supply, upon request, relevant background data used to obtain any information contained in this application.

J. "Region" is defined as those state sub-districts which have been designated by the Executive Office of the Governor.

K. Please note when answering the questions in the ADA that the various reviewing agencies are required to assess the proposed plan of development pursuant to the State Comprehensive Plan (SCP) contained in Chapter 187 of the Florida Statues. Starting at Question 11 of the ADA, there is a box at the beginning of each question that lists various goals and policies from the SCP. The goals and policies contained in these boxes are intended to provide general guidance as to specific policies in the SCP that pertain to a given ADA question. The information in the SCP boxes may not contain all policies in the State Comprehensive Plan that would apply to a specific situation. Elimination of ADA questions must be consistent with the legislative intent of Subsection 380.06(7), F.S., and does not preclude consideration of, recommendations regarding, or appeal on those issue areas. The elimination of questions in the ADA does not eliminate the applicability of any SCP goal or policy to the proposed development. In addition, because the SCP is a legislative statute, it is subject to change both in content and format. Therefore, the SCP should be reviewed in its entirety prior to completing the ADA to ensure that the proposed development is in compliance with the SCP.

L. Below the SCP box in Question 17: Water Supply; Question 18: Wastewater Management; Question 19: Stormwater Management; Question 20: Solid Waste/Hazardous Waste/Medical Waste; Question 21: Transportation; and Question 26: Recreation and Open Space there is a box for level of service information. The "adopted level of service standard" should be the level of service standard adopted in the comprehensive plan for the jurisdiction(s) in which the proposed development will impact the given public facility.

M. At least one copy of the competed application must be submitted to each of the following: (1) the appropriate local government(s); (2) the appropriate regional planning agency, and (3) the Department of Economic Opportunity. Contact the appropriate local and regional agencies for the exact number of copies required by each agency.

**DEVELOPMENT OF REGIONAL IMPACT
APPLICATION FOR DEVELOPMENT APPROVAL
UNDER SECTION 380.06, FLORIDA STATUTES**

TABLE OF CONTENTS

PART VI. SPECIFIC DRI INFORMATION

RPM-BSP-ADA-1

STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY
DIVISION OF COMMUNITY PLANNING & DEVELOPMENT
The Caldwell Building, MSC 160
107 East Madison Street
Tallahassee, Florida 32399

DEVELOPMENT OF REGIONAL IMPACT
APPLICATION FOR DEVELOPMENT APPROVAL
UNDER SECTION 380.06, FLORIDA STATUTES

PART I. APPLICATION INFORMATION

QUESTION 1 - STATEMENT OF INTENT

1. I,______________________________, the undersigned owner/authorized agent of
(authorized agent)

______________________________, hereby propose to undertake a Development of
(name of development)

Regional Impact as defined in Section 380.06, Florida Statutes (F.S.), and Chapter

28-24.____, Florida Administrative Code (F.A.C.). In support thereof I submit the

Following information concerning ______________________, which information
(name of development)

is true and correct to the best of my knowledge.

______________________ ______________________________
Date Signature of Owner or Authorized Agent

QUESTIONS 2,3 - APPLICANT INFORMATION

2. Owner/Developer (name, address, phone). State whether or not the owner or developer is authorized to do business in the State of Florida pursuant to the provisions of Chapter 407, F.S.

3. Authorized Agent and Consultants (name, address, phone).

QUESTIONS 4-7 - DEVELOPMENT INFORMATION

4. Attach a notarized authorization from all persons or corporations (or authorized agents of said persons or corporations) having fee simple or lessor estate in the site indicating that each of these parties is aware of, and concurs with, the development of this property as described in this Application for Development Approval. Include the names and addresses of all parties with an interest in the property. In addition, include descriptions of any other properties within one-half mile radius of the DRI site in which any of the parties with an interest in the DRI site hold a fee simple or lessor interest.

5. Attach a legal description of the development site. Include section, township and range.

6. Have you requested a binding letter of interpretation of DRI status or vested rights, clearance letter, agreement or preliminary development agreement from the Department of Economic Opportunity? If so, what is the current status of this determination?

7. List all local governments with jurisdiction over the proposed development.

QUESTION 8 - PERMIT INFORMATION

8. List all agencies (local, state and federal) from which approval and/or a permit must be obtained prior to initiation of development. Indicate the permit or approval for each agency and its status. Indicate whether the development is registered or whether registration will be required with the Division of Florida Land Sales, Condominiums and Mobile Homes under Chapter 498, Florida Statutes. Indicate whether the development will be registered with the H.U.D., Division of Interstate Land Sales Registration or with other states.

PART II. GENERAL SECTION

QUESTION 9 - MAPS

The following maps must be provided as a part of the ADA. The appropriate scale for each map should be determined at the preapplication conference.

Map A. A general location map. Indicate the location of any urban service area boundaries and regional activity centers in relation to the project site.

Map B. A recent vertical aerial photo of the site showing project boundaries which reasonably reflects current conditions. Specify the date the photo was taken.

Map C. A topographic map with project boundaries identified (contour intervals from one to five feet should be determined in consultation with the appropriate regional planning council and other reviewing agencies at the preapplication conference). Delineate 100-year flood prone areas (including hurricane flood zones) and indicate major land surface features. If applicable, delineate the coastal construction control line.

Map D. A land use map showing existing and approved uses on and abutting the site. The uses shown should include existing on-site land uses, recreational areas, utility and drainage easements, wells, right-of-way, and historic, archaeological, scientific and architecturally significant resources and lands held for conservation purposes.

Map E. A soils map of the site, with an identification of the source of the information. The use of a source other than the most recently published U.S.D.A. Soil Conservation Service (SCS) soil surveys should be determined in consultation with the appropriate regional planning council and other reviewing agencies at the preapplication conference.

Map F. A vegetation associations map indicating the total acreage of each association, based on the Level III vegetation types described in The Florida Land Use and Cover Classification System: A Technical Report, available from each regional planning council.

Map G. A location map of all transects, trap grids, or other sampling stations used to determine the on-site status of significant wildlife and plant resources. Show location of all observed significant wildlife and plant resources, and show location of suitable habitat for all significant resources expected to be on-site.

Map H. A master development plan for the site. Indicate proposed land uses and locations, development phasing, major public facilities, utilities, preservation areas, easements, right-of-way, roads, and other significant elements such as transit stops, pedestrian ways, etc. This plan will provide the basis for discussion in Question 10-A as well as other questions in the ADA.

Map I. A master drainage plan for the site. Delineate existing and proposed: drainage basins, flow direction, water retention areas, drainage structures, flow route offsite, drainage easements, waterways, and other major drainage features. (This information may be presented on two separate maps (existing and proposed), if desired.)

Map J. A map of the existing highway and transportation network within the study area. The study area includes the site, and locations of all transportation facilities which are substantially impacted. This area should be finally defined on the basis of the findings of the traffic impact analysis, including determinations of where the criteria for a substantial impact are met. Map J will become the base for the maps requested in Question 21.

QUESTION 10 - GENERAL PROJECT DESCRIPTION

Part 1 Specific Project Description

A. Describe and discuss in general terms all major elements of the proposed development in its completed form. Include in this discussion the proposed phases (or stages) of development (not to exceed five years), magnitude in the appropriate units from Chapter 28-24, F.A.C., where applicable, and expected beginning and completion dates for construction.

B. Provide a breakdown of the existing and proposed land uses on the site for each phase of development through completion of the project. The developed land uses should be those identified in Section 380.0651, F.S. and Chapter 28-24, F.A.C. Use Level III of The Florida Land Use and Cover Classification System: A Technical Report (September 1985), available from each regional planning council. Refer to Maps D (Existing Land Use) and H (Master Plan). Use the format below and treat each land use category as mutually exclusive unless otherwise agreed to at the preapplication conference.

C. Briefly describe previous and existing activities on site. Identify any constraints or special planning considerations that these previous activities have with respect to the proposed development.

D. If the development is proposed to contain a shopping center, describe the primary and secondary trade areas which the proposed shopping center will serve.

E. Describe, in general terms, how the demand for this project was determined.

EXISTING AND PROPOSED LAND USES
(Expand as necessary to accommodate additional land uses)

PHASE	NON-RESIDENTIAL (Specify by CH 28-24 F.A.C. Land Use Type)		RESIDENTIAL				OTHER (Separate column for ROW, Open Space, Drainage, etc.	TOTAL	
	ACRES	GSF/UNITS	ACRES	D.U.	NET (1) DENSITY	GROSS(1) DENSITY	ACRES	ACRES	D.U./GSF
Existing Phase 1 . . . n TOTAL									

(1) Definitions of net and gross densities to be provided at the preapplication conference

Part 2 Consistency with Comprehensive Plans

A. Demonstrate how the proposed project is consistent with the local comprehensive plan and land development regulations. Indicate whether the proposed project will require an amendment to the adopted local comprehensive plan, including the capital improvements element. If so, please describe the necessary changes.

B. Describe how the proposed development will meet goals and policies contained in the appropriate Regional Comprehensive Policy Plan.

C. Describe how the proposed development will meet goals and policies contained in the State Comprehensive Plan (Chapter 187, F.S.), including, but not limited to, the goals addressing the following issues: housing, water resources, natural systems and recreational lands, land use, public facilities, transportation, and agriculture.

Part 3 Demographic and Employment Information

A. Complete the following Demographic and Employment Information tables.

Part 4 Impact Summary

A. Summarize the impacts this project will have on natural resources.

B. Summarize public facility capital costs associated with project impacts using the following table:

Demographic Information Related to the Project's Population

PHASE	TOTAL DWELLING UNITS		PERSONS PER HOUSEHOLD	TOTAL POPULATION	CHILDREN PER HOUSEHOLD	TOTAL SCHOOL AGE CHILDREN	ELDERLY PER HOUSEHOLD	TOTAL ELDERLY
	MF	SF						
Existing Phase 1 . . . n TOTAL								

Estimated Employment Generated by Project by Income Range(1)

PHASE	UNDER $10,000		$10,000-$14,999		$15,000-$19,999		$20,000-$24,999		$25,000-$29,999		$30,000-$34,999		$35,000-39,999		Over $40,000	
	CONST R	NON-CONST R	CONST R	NON-CONST R	CONST R	NON-CONST R	CONST R	NON-CONSTR	CONST R	NON-CONST R	CONST R	NON-CONST R	CONST R	NON-CONST R	CONST R	NON-CONSTR
Phase 1 . . . n TOTAL																

(1) Construction employment in terms of Full-time equivalents (FTE)
Non-construction employment in terms of permanent employees

PUBLIC FACILITY IMPACTS(1)

FACILITY	PHASE	TOTAL CAPITAL COST	RESPONSIBLE ENTITY
	Phase 1 . . . n TOTAL		

(1) At a minimum, this table should include transportation, wastewater, potable water, recreation and open space, and education.

QUESTION 11 - REVENUE GENERATION SUMMARY

See State Comprehensive Plan (Chapter 187, F.S.)

GOAL (18); POLICIES (8), (9)
GOAL (20); POLICY (7)

A. Project the funds anticipated to be generated by the project. This projection should include any source or use of funds which could have any reasonable connection to the proposed development.

1. Make the following projections by year, including the first and last year in which any construction and/or development takes place:

   (a) Yearly ad valorem tax receipts
   (b) Yearly impact fees collected
   (c) Yearly sales tax received by local government
   (d) Yearly gasoline tax received by local government
   (e) Yearly projections of any other funds by any other sources generated as a result of development of the proposed project within the region

2. List all assumptions used to derive the above projections and estimates, show the methodologies used and describe the generally accepted accounting principles used in all assumptions, estimates and projections.

PART III. ENVIRONMENTAL RESOURCES IMPACTS

QUESTION 12 - VEGETATION AND WILDLIFE

See State Comprehensive Plan (Chapter 187, F.S.)

GOAL(9); POLICY (7)
GOAL (10); POLICIES (1),(3),(4),(6)
GOAL (16); POLICY (2)

A. Identify the dominant species and other unusual or unique features of the plant communities on Map F. Identify and describe the amount of all plant communities that will be preserved in a natural state following development as shown on Map H.

B. Discuss what survey methods were used to determine the absence or presence of state or federally listed wildlife and plants. (Sampling methodology should be agreed to by the regional planning council and other reviewing agencies at preapplication conference stage.) State actual sampling times and dates, and discuss any factors that may have influenced the results of the sampling effort. Show on Map G the location of all transects, trap grids, or other sampling stations used to determine the on-site status of state or federally listed wildlife and plant resources.

C. List all state or federally listed wildlife and plant resources that were observed on the site and show location on Map G. Given the plant communities on-site, list any additional state or federally listed wildlife and plant resources expected to occur on the site and show the location of suitable habitat on Map G. Additionally, address any unique wildlife and plant resources, such as colonial bird nesting sites and migrating bird concentration areas. For species that are either observed or expected to utilize the site, discuss the known or expected location and population size on-site, existence (and extent, if known) of adjacent, contiguous habitat off-site, and any special habitat requirements of the species.

D. Indicate what impact development of the site will pose to affected state or federally listed wildlife and plant resources.

E. Discuss what measures are proposed to be taken to mitigate impacts to state and federally listed wildlife and plant resources. If protection is proposed to occur on-site, describe what legal instrument will be used to protect the site, and what management actions will be taken to maintain habitat value. If protection is proposed to occur off-site, identify the proposed amount and type of lands to be mitigated as well as whether mitigation would be through a regional mitigation land bank, by acquisition of lands that adjoin existing public holdings, or by other means.

QUESTION 13 - WETLANDS

See State Comprehensive Plan (Chapter 187, F.S.) GOAL (8); POLICY (6) GOAL (10); POLICIES (1),(7),(8) GOAL (16); POLICY (2)

A. If there are wetlands on the site, discuss and specify the following:

1. Acreage and percentage of property which is currently wetlands. These wetlands should be shown on Map F, Vegetation Associations and identified by individual reference numbers. (There numbers should be utilized in responding to the other sub questions.)

2. Historic hydroperiods and seasonal water elevations of on-site wetlands.

3. Acreage and location of wetlands which are to be preserved in their natural or existing state, including proposed hydroperiods, seasonal water elevations and methods for preservation.

4. Acreage and location of areas to be enhanced, including proposed hydroperiods, seasonal water elevations and methods of enhancement.

5. Actions taken to minimize or mitigate impacts on wetland areas, including maintaining the hydroperiod and providing buffers.

6. Acreage and location of wetlands which will be disturbed or altered, including a discussion of the specific alterations and disturbances.

7. Precautions to be taken during construction to protect wetland areas.

8. If available, provide jurisdictional determinations.

B. Provide any proposed plans (conceptual or specific) for created or enhanced wetland areas, including littoral lake slopes, buffers, vegetative species to be planted, etc.

QUESTION 14 - WATER

See State Comprehensive Plan (Chapter 187, F.S.)
GOAL (6); POLICY (19) GOAL (8); POLICIES (2),(4),(6),(7),(8),(10),(12) GOAL (10); POLICIES (1),(8) GOAL (16); POLICY (6) GOAL (22); POLICY (3)

A. Describe the existing hydrologic conditions (both ground and surface water) on and abutting the site, including identification and discussion of any potential aquifer recharge areas. Please identify and describe any Outstanding Florida Waters, Wild and Scenic Rivers, Florida Aquatic Preserves or Florida Class I or II Waters that occur within, abutting or downstream of the site.

B. Describe, in terms of appropriate water quality parameters, the existing ground and surface water quality conditions on and abutting the site. (The appropriate parameters and methodology should be agreed to by the regional planning council and other reviewing agencies at the preapplication conference stage.)

C. Describe the measures which will be used to mitigate (or avoid where possible) potential adverse effects upon ground and surface water quality, including any resources identified in Sub question A.

QUESTION 15 - SOILS

See State Comprehensive Plan (Chapter 187, F.S.)
GOAL (9); POLICIES (6),(9) GOAL (16); POLICIES (6)

A. 1. Provide a description of each of the soils indicated on Map E utilizing the following format:

Soil Description and Interpretations

SOIL NAME AND MAP SYMBOL	BRIEF SOIL DESCRIPTION	SEASONAL HIGH WATER TABLE DEPTH DURATION	PERMEABILITY RATE (in/hour)	DEGREE & KIND OF LIMITATION FOR PROPOSED USES	DEGREE & KIND OF LIMITATION FOR POND EMBANKMENTS
				*	*

* appropriate responses include slight, moderate, severe, and very severe.

2. Describe the potential for subsidence and any unique geologic features (such as sand dunes, bluffs, sinkholes, springs, steepheads, etc.) on the site. Discuss what aspects of the site plan will be used to compensate for or take advantage of these features.

B. Where a soil presents a limitation to the type of use proposed in the development, state how the limitation will be overcome. Specify construction methods that would be used for building, road and parking lot foundations, and for lake or canal bank stabilization as relevant.

C. What steps will be taken during site preparation and construction to prevent or control wind and water soil erosion? Include a description of proposed plans for clearing and grading as related to erosion control.

D. To what degree and in what location(s) will the development site be altered by fill material? If known, specify the source location and composition of the fill. Also identify the disposal location for any overburden or spoil.

QUESTION 16 - FLOODPLAINS

See State Comprehensive Plan (Chapter 187, F.S.) GOAL (8); POLICY (8) GOAL (16); POLICY (6)

A. Identify any pre- and post development flood prone areas.

B. Is any development proposed within a 100-year flood prone area as identified by the Federal Emergency Management Agency? If so, indicate the appropriate Flood Insurance Rate Map (FIRM) zone designations and their locations, etc.

C. If any structures, roadways or utilities are proposed within the post development 100-year flood prone area, identify their location and indicate what measures will be taken to mitigate the potential flood hazard and to maintain the 100-year floodplain storage volume.

D. Discuss any potential increases in the off-site flooding due to the development of this project.

QUESTION 17 - WATER SUPPLY

See State Comprehensive Plan (Chapter 187, F.S.) GOAL (8); POLICIES (1),(5),(11) GOAL (16); POLICIES (1),(2),(6) GOAL (18); POLICIES (1),(2),(3),(4),(6)
ADOPTED LEVEL OF SERVICE STANDARD: EXISTING LEVEL OF SERVICE: LEVEL OF SERVICE AFTER PROJECT BUILDOUT:

A. 1. Provide a projection of the average daily potable and non-potable water demands at the end of each phase of development. If significant seasonal demand variations will occur, discuss anticipated peaks and duration. Use the format below:

2. Describe how this demand information was generated, including the identification of the consumption rates assumed in the analysis.

B. Provide a breakdown of sources of water supply, both potable and non-potable, by development phase through project completion. Use the format below.

C. If water wells exist on-site, locate them on Map H and specify those that will continue to be used. Also locate on Map H all proposed on-site wells. (For residential developments, if individual wells for each lot are proposed, simply indicate the number of units to be served, general locations, and any plans for eventual phase-out.) Indicate the diameter, depth, and pumping rates (average and maximum) for each of the existing wells and project this information for the proposed wells (for lots served by individual dual wells, this information may be grouped for projection purposes). Also provide a breakdown of the wells with regard to potable and non-potable sources.

D. If on-site water wells are used, will this result in interference with other water wells or result in adverse impacts to underlying or overlying aquifers? Document the assumptions underlying this response.

POTABLE/NON-POTABLE WATER DEMAND

PHASE/ LAND USE	POTABLE WATER DEMAND (MGD)	NON-POTABLE WATER DEMAND (MGD)		TOTAL WATER DEMAND (MGD)
		IRRIGATION	OTHER	
Existing Phase 1 Land Use A Land Use B . . n Phase 2 Land Use A Land Use B . . n Phase N				

POTABLE/NON-POTABLE WATER SUPPLY (MGD)

PHASE	ON-SITE SUPPLY				OFF-SITE SUPPLY
	GROUNDWATER	SURFACE WATER	OTHER (SPECIFY)	TOTAL	
Existing Phase 1 Potable Non-Potable Irrigation Other Phase 2 Potable Non-Potable Irrigation Other Phase N					

E. Who will operate and maintain the internal water supply system after completion of the development?

F. 1. If an off-site water supply is planned, attach a letter from the agency or firm providing service outlining:

(a) the projected excess capacities of the water supply facilities to which connection will be made at present and for each phase through completion of the project,

(b) any other commitments that have been made for this excess capacity,

(c) a statement of the agency or firm's ability to provide services at all times during and after development. (This agency must be supplied with the water demand and supply tables in paragraphs A and B above).

2. If service cannot be provided at all times during and after development, identify the required capital improvements, timing, cost, and proposed responsible entity for each phase in which service is unavailable.

G. Please describe any water conservation methods or devices incorporated into the plan of development. What percentage of reduction is anticipated over conventional plans?

H. Indicate whether proposed water service will be provided within an established service area boundary.

QUESTION 18 - WASTEWATER MANAGEMENT

See State Comprehensive Plan (Chapter 187, F.S.) GOAL (8); POLICIES (12),(13) GOAL (13); POLICY (11) GOAL (16); POLICY (1) GOAL (18); POLICIES (1),(2),(3),(4),(6),(10)
EXISTING LEVEL OF SERVICE: ADOPTED LEVEL OF SERVICE STANDARD: LEVEL OF SERVICE AFTER PROJECT BUILDOUT:

A. Provide, in the table given below, the projected wastewater generation at the end of each phase of development and proposed wastewater treatment. Identify the assumptions used to project this demand.

B. If applicable; generally describe the volumes, characteristics and pre-treatment techniques of any industrial or other effluents prior to discharge from proposed industrial related use(s).

C. 1. If off-site treatment is planned, identify the treatment facility and attach a letter from the agency or firm providing the treatment outlining present and projected excess capacity of the treatment and transmission facilities through buildout, any other commitments that have been made for this excess and a statement of ability to provide service at all times during or after development.

2. If service cannot be provided, identify the required capital improvements, cost, timing, and proposed responsible entity necessary to provide service at all times during and after development.

D. If septic tanks will be used on site, indicate the number of units to be served, general locations and any plans for eventual phase-out.

E. Indicate whether proposed wastewater service will be provided within an established service area boundary.

PHASE	WASTEWATER GENERATION (MGD)	ON-SITE WASTEWATER TREATMENT (MGD)	OFF-SITE WASTEWATER TREATMENT (MGD)
Existing Phase 1 . . . n TOTAL			

QUESTION 19 - STORMWATER MANAGEMENT

See State Comprehensive Plan (Chapter 187, F.S.) GOAL (8); POLICY (12) GOAL (16); POLICY (1) GOAL (18); POLICIES (1),(2),(3),(4),(6)
EXISTING LEVEL OF SERVICE: ADOPTED LEVEL OF SERVICE STANDARD: LEVEL OF SERVICE AFTER PROJECT BUILDOUT:

A. Describe the existing drainage patterns on-site as shown on Map I, including any potential flooding and erosion problems.

B. Describe the various elements of the proposed drainage system shown on Map I, including any wetlands to be used as part of the system, and discuss the design criteria (including stage-storage/stage discharge assumption) to be used for the various elements. Provide typical cross-sections (showing dimensions, slopes and control elevations) for any proposed lakes or swales. Identify the control elevation for all drainage structures. Include information as to what design storm will be used for what portions of the system.

C. From Map I, indicate the total number of acres in each drainage area and specify the acreage of any portions of drainage areas outside the site boundaries. Complete the following table for on-site drainage areas.

D. Specify and compare the volume and quality of run-off from the site in its existing condition to the anticipated run- off at the end of each phase of development. (The parameters to be used to define "quality" and methodology should be agreed to by the regional planning council and other reviewing agencies at the preapplication conference stage.) Identify any changes in timing or pattern of waterflows between pre- and post-development conditions. Indicate major points of discharge and ultimate receiving water body(ies). Indicate what provisions will be incorporated in the design of the drainage system, including a summary description of any Best Management Practices to be utilized, to minimize any increase in run-off from the site and to minimize any degradation of water quality in the ultimate receiving body over that occurring in its pre-development state.

Drainage Areas

PHASING	IMPERVIOUS SURFACES (ACRES)	SURFACE RETENTION (ACRES)[1]	OPEN SPACE (ACRES)	TOTAL (ACRES)
Existing Phase 1 . . . n TOTAL				

[1] Category includes lakes, ponds, storage areas, etc.

E. Who will operate and maintain the drainage system after completion of the development?

QUESTION 20 - SOLID WASTE/HAZARDOUS WASTE/MEDICAL WASTE

See State Comprehensive Plan (Chapter 187, F.S.) GOAL (13); POLICIES (4),(7),(8),(12) GOAL (16); POLICY (1) GOAL (18); POLICIES (1),(3),(4),(6)
EXISTING LEVEL OF SERVICE: ADOPTED LEVEL OF SERVICE STANDARD: LEVEL OF SERVICE AFTER PROJECT BUILDOUT:

A. Provide a projection of the average daily volumes of solid waste generated at the completion of each phase of development. Use the format below and identify the assumptions used in the projection.

B. 1. Please specify the extent to which this project will contain laboratories, storage facilities, and warehouse space where hazardous materials may be generated or utilized. What types of hazardous waste or toxic materials are likely to be generated? Will a hazardous materials management plan be prepared covering all uses of hazardous materials on-site? If so, please discuss contents and enforcement provisions.

2. Please discuss what measures will be taken to separate hazardous waste from the solid waste stream. What plans and facilities will be developed for hazardous or toxic waste handling, generation, and emergencies?

3. Please identify off-site disposal plans for hazardous waste generated by this development and provide assurance of proper disposal by a qualified contractor.

4. What local and state regulations, permits and plans will regulate the generation and handling of hazardous waste at this development?

C. For all waste disposal planned (on or off site), attach a copy of the letter from the developer describing the types and volumes of waste and waste disposal areas requested, and attach a letter from the agencies or firms providing services outlining:

SOLID WASTE GENERATION

PHASING	DOMESTIC SOLID WASTE		INDUSTRIAL, HAZARDOUS, MEDICAL, OR OTHER SPECIAL WASTES (Specify by appropriate units/Day)
	CUBIC YARDS/DAY	TONS/DAY	
Existing Phase 1 . . . n TOTAL			

1. the projected excess capacity of the facilities serving the development at present

and for each phase through completion of the project,

2. any other commitments that have been made for this excess capacity,

3. a statement of the agency's or firm's ability to provide service at all times during and after development (the agency or firm must be supplied with the solid waste generation table in (A) above).

PART IV. TRANSPORTATION RESOURCE IMPACTS

QUESTION 21 - TRANSPORTATION

See State Comprehensive Plan (Chapter 187, F.S.) GOAL (11); POLICY (2) GOAL (12); POLICIES (3),(4) GOAL (16); POLICIES (1) GOAL (18); POLICIES (1),(3)(4),(6) GOAL (20); POLICIES (2),(3),(8),(9),(10),(12),(13),(15) GOAL (25); POLICY (5)
ROAD LINK/INTERSECTION: EXISTING LEVEL OF SERVICE: ADOPTED LEVEL OF SERVICE STANDARD: LEVEL OF SERVICE AFTER PROJECT BUILDOUT:

A. Using Map J or a table as a base, indicate existing conditions on the highway network within the study area (as previously defined on Map J), including AADT, peak-hour trips directional, traffic split, levels of service and maximum service volumes for the adopted level of service (LOS). Identify the assumptions used in this analysis, including "K" factor, directional "D" factor, facility type, number of lanes and existing signal locations. (If levels of service are based on some methodology other than the most recent procedures of the Transportation Research Board and FDOT, this should be agreed upon at the preapplication conference stage.) Identify the adopted LOS standards of the FDOT, appropriate regional planning council, and local government for roadways within the identified study area. Identify what improvements or new facilities within this study area are planned, programmed, or committed for improvement. Attach appropriate excerpts from published capital improvements plans, budgets and programs showing schedules and types of work and letters from the appropriate agencies stating the current status of the planned, programmed and committed improvements.

B. Provide a projection of vehicle trips expected to be generated by this development. State all standards and assumptions used, including trip end generation rates by land use types, sources of data, modal split, persons per vehicle, etc., as appropriate. The acceptable methodology to be used for projecting trip generation (including the Florida Standard Urban Model Structure or the Institute of Transportation Engineers trip generation rates) shall be determined at the preapplication conference stage.

C. Estimate the internal/external split for the generated trips at the end of each phase of development as identified in (B) above. Use the format below and include a discussion of what aspects of the development (i.e., provision of on-site shopping and recreation facilities, on-site employment opportunities, etc.) will account for this internal/external split. Provide supporting documentation showing how splits were estimated, such as the results of the Florida Standard Urban Transportation Model Structure (FSUTMS) model application. Describe the extent to which the proposed design and land use mix will foster a more cohesive, internally supported project.

INTERNAL/EXTERNAL SPLIT - VEHICLE TRIPS

	VEHICLE TRIPS (ADT)		PEAK HOUR VEHICLE TRIPS	
PHASING	INTERNAL	EXTERNAL	INTERNAL	EXTERNAL
Existing Phase 1 . . . n				

D. Provide a projection of total peak hour directional traffic, with the DRI, on the highway network within the study area at the end of each phase of development. If these projections are based on a validated FSUTMS, state the source, date and network of the model and of the TAZ projections. If no standard model is available or some other model or procedure is used, describe it in detail and include documentation showing its validity. Describe the procedure used to estimate and distribute traffic with full DRI development in subzones at buildout and at interim phase-end years. These assignments may reflect the effects of any new road or improvements which are programmed in adopted capital improvements programs and/or comprehensive plans to be constructed during DRI construction; however, the inclusion of such roads should be clearly identified. Show these link projections on maps or tables of the study area network, one map or table for each phase-end year. Describe how these conclusions were reached.

E. Assign the trips generated by this development as shown in (B) and (C) above and show, on separate maps or tables for each phase-end year, the DRI traffic on each link of the thenexisting network within the study area. Include peak-hour directional trips. If local data is available, compare average trip lengths by purpose for the project and local jurisdiction. For the year of buildout and at the end of each phase estimate the percent impact, in terms of peak hour directional DRI trips/ total peak hour directional trips and in terms of peak hour directional DRI trips/ existing peak hour service volume for desired LOS, on each regionally significant roadway in the study area. Identify facility type, number of lanes and projected signal locations for the regionally significant roads.

F. Based on the assignment of trips as shown in (D) and (E) above, what modifications in the highway network (including intersections) will be necessary at the end of each phase of development, to attain and maintain local and regional level of service standards? Identify which of the above improvements are required by traffic not associated with the DRI at the end of each phase. For those improvements which will be needed earlier as a result of the DRI, indicate how much earlier. Where applicable, identify Transportation System Management (TSM) alternatives (e.g., signalization, one-way pairs, ridesharing, etc.) that will be used and any other measures necessary to mitigate other impacts such as increased maintenance due to a large number of truck movements.

G. Identify the anticipated number and general location of access points for driveways, median openings and roadways necessary to accommodate the proposed development. Describe how the applicant's access plan will minimize the impacts of the proposed development and preserve or enhance traffic flow on the existing and proposed transportation system. This information will assist the applicant and governmental agencies in reaching conceptual agreement regarding the anticipated access points. While the ADA may constitute a conceptual review for access points, it is not a permit application and, therefore, the applicant is not required to include specific design requirements (geometry) until the time of permit application.

H. If applicable, describe how the project will complement the protection of existing, or development of proposed, transportation corridors designated by local governments in their comprehensive plans. In addition, identify what commitments will be made to protect the designated corridors such as interlocal agreements, right-of-way dedication, building set-backs, etc.

I. What provisions, including but not limited to sidewalks, bicycle paths, internal shuttles, ridesharing and public transit, will be made for the movement of people by means other than private automobile? Refer to internal design, site planning, parking provisions, location, etc.

QUESTION 22 - AIR

See State Comprehensive Plan (Chapter 187, F.S.) GOAL (6); POLICY (19) GOAL (11); POLICIES (1),(2),(3),(4) GOAL (22); POLICY (3)

A. Document the steps which will be taken to contain fugitive dust during site preparation and construction of the project. If site preparation includes demolition activities, provide a copy of any notice of demolition sent to the Florida Department of Environmental Regulation (FDER) as required by the National Emission Standards for Asbestos, 40 CFR Part 61, Subpart M.

B. Specify structural or operational measures that will be implemented by the development to minimize air quality impacts (e.g., road widening and other traffic flow improvements on existing roadways, etc.). Any roadway improvements identified here should be consistent with those utilized in Question 21, Transportation.

C. Complete Table 22-1 for all substantially impacted intersections within the study area, as defined in Map J, and all parking facilities associated with the project. Using the guidance supplied or approved by the Florida Department of Environmental Regulation, determine if detailed air quality modeling for carbon monoxide (CO) is to be completed for any of the facilities listed in the table.

TABLE 22-1
PHASE: ______(One table for each phase)
YEAR OF PHASE: ___ COMPLETION: ________________

	PEAK HOUR TRAFFIC		MAXIMUM HOURLY SERVICE VOLUME (2)	
SOURCE TYPE(1)	PROJECTED	EXISTING	PROJECTED	EXISTING

(1) Specify source type as either intersection, surface parking area, or parking deck. For each intersection provide an approach volume for each link. For each parking facility provide the total (incoming and outgoing) volume.

(2) These should be compatible with maximum service volumes utilized in Question 21, Transportation.

D. If detailed modeling is required, estimate the worst case one-hour and eight-hour CO concentrations expected for each phase through buildout for comparison with the state and federal ambient air quality standards. Utilize methodology supplied or approved by the Florida Department of Environmental Regulation for making such estimates. Submit all air quality modeling input and output data along with associated calculations to support the modeling and explain any deviations from guidance. Provide drawings of site geometry and coordinate information for each area modeled. Show the location of the sources and receptor sites. Modeling assumptions should consider federal, state, and local government programmed link and intersection improvements with respect to project phasing. Any roadway improvements utilized in the model should be consistent with those used in Question 21, Transportation. Provide verification of any assumptions in the modeling which consider such programmed improvements. It is recommended that air quality analyses be completed concurrently and in conjunction with the traffic analyses for the project.

E. If initial detailed modeling shows projected exceedance(s) of ambient air quality standards, identify appropriate mitigation measures and provide assurances that appropriate mitigating measures will be employed so as to maintain compliance with air quality standards. Submit further modeling demonstrating the adequacy of such measures.

QUESTION 23 - HURRICANE PREPAREDNESS

See State Comprehensive Plan (Chapter 187, F.S.)
GOAL (7); POLICY (24),(25) GOAL (9); POLICIES (3),(4)

A.

1. Identify any residential development proposed within the hurricane vulnerability zone delineated in the applicable regional hurricane evacuation study, regional public hurricane shelter study or adopted county peacetime emergency plan. If so, delineate the proposed development's location on the appropriate county and/or regional hurricane evacuation map and respond to questions B.(1) and B.(2) below. Proposed mobile home and park trailer developments should answer question B.(1), regardless of location, or answer questions B.(1) and B.(2) below, if proposed within the hurricane vulnerability zone or the high hazard hurricane evacuation area.

2. Identify any hotel/motel or recreational vehicle/travel trailer development proposed within the high hazard hurricane evacuation area delineated in the applicable regional hurricane evacuation study, regional public hurricane shelter study, or adopted county peacetime emergency plan. If present, delineate the proposed development's location on the appropriate county or regional hurricane evacuation map and answer questions B.(1) and B.(2) below.

3. Identify whether the proposed development is location in a designated special hurricane preparedness district.

B.

1. For each phase of the development, determine the development's public hurricane shelter space requirements based on the behavioral assumptions identified in the applicable regional study or county plan. Identify the existing public hurricane shelter space capacity during the one hundred year or category three hurricane event within the county where the development is being proposed and indicate whether the county has a deficit or surplus of public hurricane shelter space during the one hundred year or category three hurricane event.

2. For each phase of the development, determine the number of evacuating vehicles the development would generate during a hurricane evacuation event based on the transportation and behavioral assumptions identified in the applicable regional study or county plan. Identify the nearest designated hurricane evacuation route and determine what percentage of level of service E hourly directional and maximum service volume the project will utilize.

C. Identify and describe any action(s) or provisions that will be undertaken to mitigate impacts on hurricane preparedness.

PART V. HUMAN RESOURCE IMPACTS

QUESTION 24 - HOUSING

See State Comprehensive Plan (Chapter 187, F.S.) GOAL (5); POLICY (3) GOAL (16); POLICY (3)

A.

1. If the proposed development contains residential development, provide the following information on Table 1 for each phase of the development.

2. What number and percent of lots will be sold without constructed dwelling units? What is the extent of improvements to be made on these lots prior to sale?

3. What will be the target market for the residential development (break down by number, percent and type the number of dwelling units to be marketed for retirees, families, etc.) What portion will be marketed as second or vacation homes?

B. Indicate and discuss the availability or projected availability of adequate housing and employment opportunities reasonably accessible to the development site. Housing opportunities should be described in terms of type, tenure, and cost range and location within the following circumscribed areas: adjacent, two miles, five miles, ten miles, and within the local jurisdiction or county. Employment opportunities should be described in terms of two digit SIC code numbers located within the local jurisdiction with estimated distances or transit times to the development site.

Table 1.
Dwelling Units within Development

	NUMBER OF DWELLING UNITS					
HOUSING COSTS(1)	SINGLE FAMIL Y	APARTMENT	CONDOMINIUM	MOBILE HOME	OTHER	TOTAL
Rental-Occupied D.U.s (Gross $ Rent) Range Owner-Occupied D.U.s (Dollar Value) Range						

(1) Rental and cost ranges to be determined at the preapplication conference

C. If displacement or relocation of existing residents will occur due to the proposed development, identify the number of people that will be affected, any special needs of these people, and any provisions for addressing the effects of the relocation or displacement of these people, particularly in regards to their ability to find suitable replacement housing.

QUESTION 25 - POLICE AND FIRE PROTECTION

See State Comprehensive Plan (Chapter 187, F.S.) GOAL (16); POLICY (1) GOAL (18); POLICIES (1),(3),(4),(6)

A. If police/fire services, facilities or sites will be dedicated or otherwise provided on-site, describe them, specify any conditions of dedication and locate on Map H.

B. Provide correspondence from the appropriate providers acknowledging notice of the proposed development and phasing, and indicating whether present facilities and manpower are capable of serving the project or specifying the additional manpower/equipment necessary to serve the development. If the provider is from another jurisdiction, the letter should also identify any non-facility-related problems in providing said service.

QUESTION 26 - RECREATION AND OPEN SPACE

See State Comprehensive Plan (Chapter 187, F.S.) GOAL (10); POLICIES (11),(12),(13) GOAL (16); POLICY (1) GOAL (18); POLICIES (1),(3),(4),(6)
EXISTING LEVEL OF SERVICE: ADOPTED LEVEL OF SERVICE STANDARD: LEVEL OF SERVICE AFTER PROJECT BUILDOUT:

A. Describe the recreational facilities and open space (including acreage) which will be provided on-site. Locate on Map H. Identify which of these areas or facilities will be open to the general public.

B. Will the development remove from public access lands or waters previously used by residents of the region for hunting, fishing, boating or other recreation uses? Specify.

C. Will parks and open space be dedicated to the city or county? If not, who will maintain the facilities?

D. Please describe how the proposed recreation and open space plan is consistent with local and regional policies.

E. Does the project have the potential for impacting a recreation trail designated pursuant to Chapter 260, F.S., and Chapter 16D-7, F.A.C.? If so, describe the potential impact.

QUESTION 27 - EDUCATION

See State Comprehensive Plan (Chapter 187, F.S.) GOAL (16); POLICY (1) GOAL (18); POLICIES (1),(3),(4),(6)

A. If the development contains residential units, estimate the number of school age children expected to reside in the development. Use class breakdowns appropriate to the area in which the development is located (specify on chart below):

SCHOOL AGE CHILDREN BY LEVEL

PHASE	ELEMENTARY	MIDDLE	HIGH	TOTAL
Existing Phase 1 . . n				

B. Will school facilities or sites be dedicated or otherwise provided on the site?

C. Attach a letter from the appropriate school board, acknowledging receipt of the estimated school age population information in (A) above, and providing a statement of what capital improvement adjustments would be necessary to accommodate these students.

QUESTION 28 - HEALTH CARE

See State Comprehensive Plan (Chapter 187, F.S.) GOAL (6); POLICY (2) GOAL (16); POLICY (1)

A. Describe the health care services and facilities that will be required to meet the health needs generated by this project. Please provide a letter from the various providers acknowledging notice of the proposed development and ability to serve the project.

QUESTION 29 - ENERGY

See State Comprehensive Plan (Chapter 187, F.S.) GOAL (11); POLICY (4) GOAL (12); POLICIES (1),(5),(6)

A. Provide a projection of the average daily energy demands at the end of each development phase for each of the following: electrical power, gas, oil, coal, etc. For electrical power, also provide the peak hour demand at the end of each phase.

B. If there is to be an on-site electrical generating facility (post-construction) describe its proposed capacity and use.

C. If energy (electrical power, natural gas, etc.) is to be obtained from an off-site source, attach a letter from the firms or agencies providing service outlining:

1. the projected excess capacities of the facilities and transmission line to which connection will be made at present and for each phase through completion of the project,

2. any other commitments that have been made for this excess capacity,

3. a statement of the supplier's ability to provide service at all times during and after development. (The supplier must be provided with demand information in (A) above.)

D. Describe any energy conservation methods or devices incorporated into the plan of development. What considerations relative to energy conservation will be incorporated into the site planning, landscape, and building design, and equipment and lighting selection for this project?

QUESTION 30 - HISTORICAL AND ARCHAEOLOGICAL SITES

See State Comprehensive Plan (Chapter 187, F.S.)

GOAL (19); POLICIES (3),(4),(5),(6)
GOAL (22); POLICY (3)
GOAL (24); POLICY (3)

A. 1. Describe any known historical or archaeological sites on the development site. Provide a letter from the Department of State, Division of Historical Resources (DHR) which includes a list of known sites within the development site, the likelihood of historical or archaeological sites occurring within the development site, whether a site survey is needed, and whether any known sites are significant.

2. If DHR recommends that a site survey be done, the results of such a survey, conducted for the development site by an acceptable professional, should be provided.

B. If significant historical or archaeological sites exist on-site, indicate what measures would be taken to protect them, or to minimize or mitigate impacts to them. Where appropriate, describe the measures for providing public access to the sites.

PART VI. SPECIFIC DRI INFORMATION

QUESTION 31 - AIRPORTS

See State Comprehensive Plan (Chapter 187, F.S.)

GOAL (20); POLICY (5)

A. Airports

Existing Conditions

1. Describe any existing airport operations within the project site which includes the following information:
- airport classification;
- size (square feet) of the existing terminal;
- number of runways and length;
- location and size of clear zones;

- types of aircraft which presently use the facility;
- location and size of fuel storage facilities;
- type and annual tons of cargo;
- number of annual enplaned passengers; and
- if available, historical trends of number of enplaned passengers for each five-year interval of past airport operation.

2. Provide a map showing the locations of the present flight patterns, the existing aircraft noise contours (65, 70, and 75 Ldn), and the existing land uses within these contours.

3. Describe the proposed airport facilities and services within the project site (e.g., new structures, runways).

4. Provide projections for each five-year interval through the useful life of the project as follows:

   - airport classification;
   - size (square feet) of the proposed terminal;
   - number of runways and lengths;
   - size and location of clear zones;
   - types of aircraft which would use the facilities;
   - size and location of fuel storage facilities;
   - type and annual tons of cargo; and
   - annual number of enplaned passengers.

B. Provide a copy of any proposed or approved Airport Layout Plan.

C. If FAA authorization has been requested attach a copy of the application and FAA action, if any.

D. Provide a map showing the locations of the projected flight patterns, the projected (through the useful life of the project) aircraft noise contours (65, 70 and 75 Ldn), and the existing and future land uses within these contours. Indicate on this map the authorities and/or jurisdictions which exercise land development controls over land uses encompassed within all projected noise contours. Specify steps that will be taken to mitigate noise impacts exceeding 65+ Ldn in the surrounding community.

E. Project subsidiary development on site, adjacent to the site, or on sites over which any airport agency or authority exercises land development controls. Include cargo authority handling facilities, warehouses, aircraft maintenance and overhaul facilities, industrial parks, etc.

F. Describe the existing and proposed ground passenger circulation system. What are the existing and proposed linkages to other transportation systems in the region? Specify extensions or improvements to those systems that will be required to serve the proposed facility. Identify what efforts will be made to promote public transit.

QUESTION 32 - ATTRACTIONS AND RECREATION FACILITIES

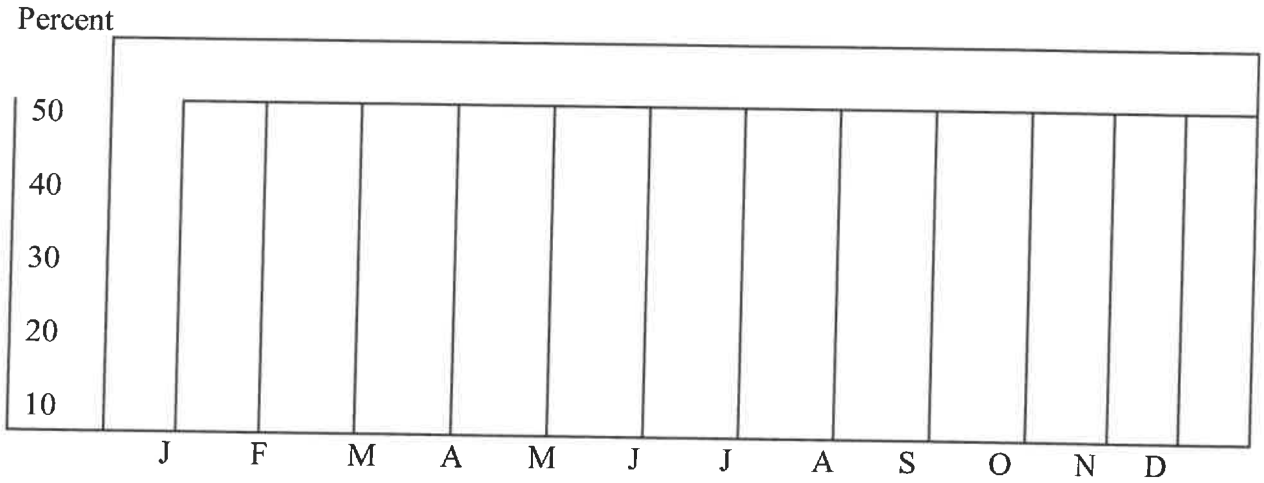
See State Comprehensive Plan (Chapter 187, F.S.) GOAL (24); POLICY (1)

A. What is the projected high, low, and average daily attendance at the facility? Specify the season if applicable. Complete Figures 32.1 - 32.3.

B. Estimate the number of customers utilizing transportation other than automobile to reach the region and the site. Specify the transportation systems and facilities to be utilized, their location, present and planned capacities.

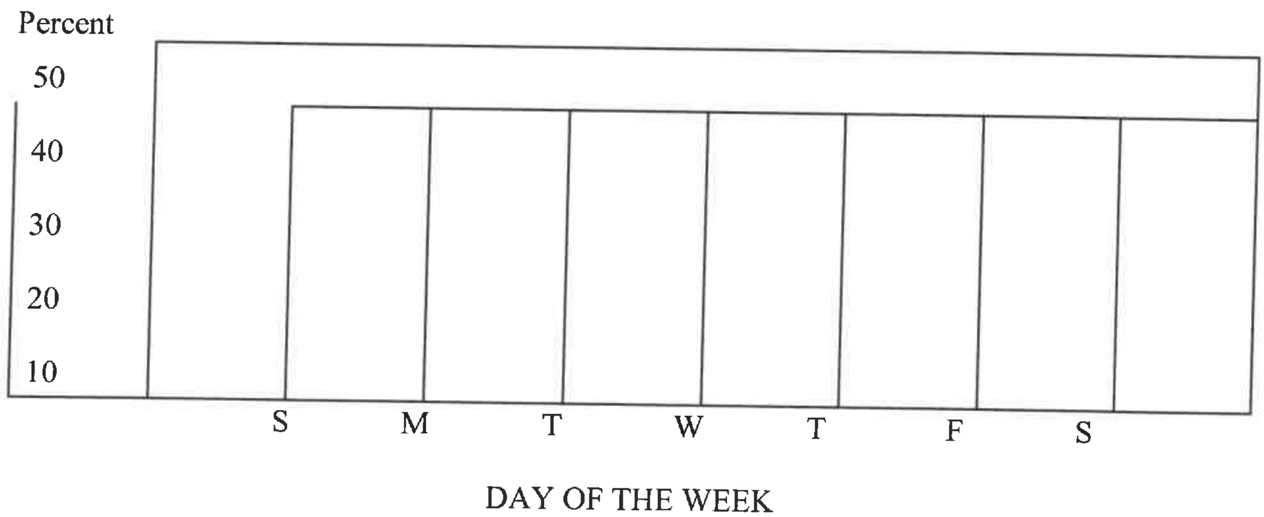
C. If any transportation systems and facilities are to be owned, operated, or managed by the applicant, specify how these interface with other systems and facilities in the region.

Figure 32.1: Monthly Distribution of Attendance *



* Complete for all project phases

Figure 32.2: Daily Distribution of Attendance *,**

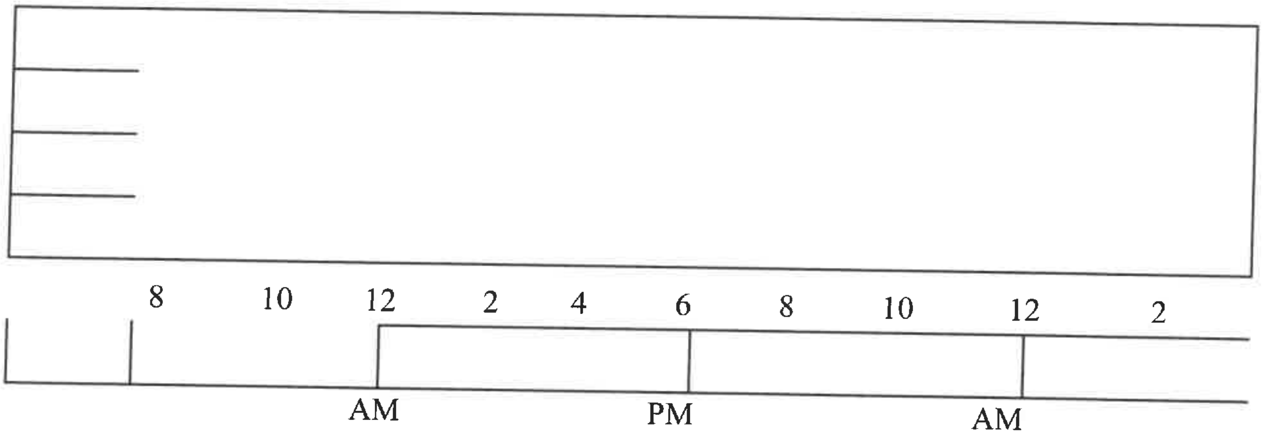


* Complete for all project phases.

** Plot separate curves for both peak and off-peak season.

Figure 32.3: Peak Day Hourly Distribution of Attendance by Arrival and Departure *, **

Number
(Indicate scale)



* Complete figure for all project phases.
** Plot separate curves for arrivals and for departures by peak and off-peak season (4 graphs).

QUESTION 33 - HOSPITALS

See State Comprehensive Plan (Chapter 187, F.S.)
GOAL (6); POLICY (2)

A. For the proposed development, indicate:

1. design capacity by development phase;
2. service area;
3. types of medical services to be provided: i.e., outpatient, emergency, etc.;
4. projected number of licensed beds by development phase;
5. projected utilization rate by development phase; and
6. schedule of cost per unit of service.

B. If the proposed facility is to be a part of a medical complex, specify the related facilities to be provided. Describe the functional relationship between these facilities and the hospital.

C. If an application for a certificate of need under Chapter 381.494, F.S., has been prepared, provide a copy of the completed application along with comments by the Department of

Health and Rehabilitative Services, if any.

QUESTION 34 - INDUSTRIAL PLANTS AND INDUSTRIAL PARKS

See State Comprehensive Plan (Chapter 187, F.S.) GOAL (16); POLICY (3)

A. Indicate the types of operations that will occupy the site using appropriate Division and two-digit Standard Industrial Classifications.

B. What supplier and other supporting industry are required within the region by the proposed development? Estimate to what degree these linkages will require the location in the region of supporting industrial and commercial activity.

C. Will the proposed operations require the expansion of any transportation systems and facilities in the region (rail, truck terminals, etc.)?

D. How many shifts per day are expected and what will be the average number of employees per shift? Specify approximate hours of shift. Will this vary through the project life?

QUESTION 35 - MINING OPERATION

See State Comprehensive Plan (Chapter 187, F.S.) GOAL (9); POLICY (8) GOAL (14); POLICIES (2),(3),(5),(6),(7),(8),(9)

A. For the proposed development, indicate:

1. type of mining operation;
2. mineral being mined;
3. proposed annual area in acres to be mined and total annual area disturbed by mining, roads, overburden deposit, processing, etc. (Specify total ultimate area to be mined or disturbed.);
4. estimated annual extraction of minerals, thickness of the ore zone, amount of material spoiled, thickness of overburden being spoiled, and spoil location; and
5. Amount and composition of waste material.

B. Discuss the proposed water use plans in terms of daily withdrawal, consumptive use, source of supply, recycling, type of use, quality and method of treatment, and point and amount of discharge.

C. Discuss the effects of the water withdrawals on adjacent aquifers in terms of quantity, quality and pressure. Are test wells or monitoring wells planned to evaluate drawdown effects?

D. What provisions, if any, will be made for periodic inspection and maintenance of retaining dikes?

E. Indicate whether on-site processing of ore or minerals is planned. If so, describe the type and location of the processing operation.

F. Identify the potential for the release of radioactive materials into ground water, surface water or into the air. Discuss in detail what measures will be taken to prevent or minimize any such releases.

G. Reclamation - Provide a proposed reclamation program which includes the following:

1. a map showing what mined and disturbed areas are to be reclaimed;
2. estimated acreage of the total mined and disturbed areas that would be reclaimed;
3. an annual reclamation schedule which includes reclaimed acreage;
4. the proposed uses for the reclaimed land;
5. methods for reclaiming waste storage areas;
6. description of the impacts to surface drainage within reclaimed areas;
7. vegetative types to be used for reclamation; and
8. the general topography and slopes that will be created by reclamation.

H. To what location(s) will the minerals being mined on the site be shipped? Include all trans-shipment points. Will further processing occur at these locations?

I. By what transportation mode will the minerals be shipped? Specify all carriers, and provide a percentage breakdown by mode.

J. Will the proposed mining operations require any expansion of transportation facilities in the region (rail, port, etc.)?

QUESTION 36 - PETROLEUM STORAGE FACILITIES

See State Comprehensive Plan (Chapter 187, F.S.)

GOAL (8); POLICY (10)
GOAL (16); POLICY (6)

A. Describe any existing petroleum storage facilities within the project site.

B. For the proposed development, provide the following information:

- total storage capacity (in barrels);
- number of tanks;
- proximity of development to navigable waters (in feet);
- amount of space between tanks;
- type and purpose of facilities (i.e., refinery, storage trans-shipment point, pumping station, etc.);
- kinds of petroleum to be stored, and amounts (in barrels) of each kind;
- number and name of companies maintaining installations in the facility; and
- total service area (cities, counties, consumer points, etc.).

C. Identify how these petroleum products would be transported to and from the proposed storage facilities.

D. Identify what measures during transport, transfer, and storage would be implemented to prevent and control vapor emissions and petroleum discharges/spillages into adjoining property and/or waterways.

QUESTION 37 - PORT AND MARINA FACILITIES

See State Comprehensive Plan (Chapter 187, F.S.) GOAL (9); POLICIES (6),(10) GOAL (20); POLICY (5) GOAL (22); POLICY (13)

A. Provide the following information regarding existing conditions:

1. Provide on a recent aerial photo a bathymetric survey of the immediate area around the proposed marina and/or boat storage facilities including any existing navigable channels. Identify distance to the nearest inlet.

2. Describe any existing boating facilities within the project site (e.g., number of berths or slips, types and drafts of boats using the on-site facilities). Indicate the number of transient and permanent berths or slips.

3. Identify submerged vegetative communities present (dominant species and estimated bottom cover).

4. Identify known local commercial and/or recreational fisheries.

5. In estuarine habitats, identify shellfish beds.

B.

1. Provide a conceptual layout and description of the proposed port or marina which includes the following:
- location and arrangement of docks;
- linear feet of shoreline owned by applicant;
- number of wet storage facilities (e.g., berths, slips);
- number of dry storage facilities (e.g., dry docks);
- any supplemental anchorage areas to be designated beyond the moorings provided in slips and dry storage;
- types and drafts of boats which would use the proposed facilities;
- number of permanent and transient boats;
- widths and depths of turning basins;
- widths and depths of navigable channels to and from the proposed boating facilities;
- location and number of linear feet proposed for any shoreline stabilization;
- number of boat ramps/boat lifts and trailer spaces; and
- any proposed support facilities or other development.

2. Identify whether bottom land leases are necessary and if they have been obtained.
3. Describe the proposed basin's flushing system and address the extent to which it would provide adequate circulation for cleaning and periodic change of water.

4. Discuss how domestic waste disposal from boats using the proposed facilities would be handled.

5. Discuss the potential for adverse impacts of shellfish beds or commercial and/or recreational fisheries from the proposed development and identify what measures will be implemented to reduce or mitigate these impacts.

6. Discuss any potential impacts to the West Indian manatee caused by increased boat traffic from the proposed project. Describe the measures which would be taken to reduce these impacts. This discussion should cover an area to the nearest

inlet or approximately a 10-mile radius. Are caution signs, standard construction conditions, conservation easement(s) and/or informational displays proposed?

C. If applicable, what is the estimated annual amount and type of cargo shipped through the proposed facility? If passenger service is included, provide appropriate data.

D. To what extent will the proposed facility require the expansion of any transportation system and facilities in the region (rail, truck terminal, etc.)? Specify.

E. Discuss the requirements of the proposed project for any dredging or filling during construction and any subsequent maintenance dredging and identify the location of these activities. Specify plans for disposal of spoil, including amount and location of disposal sites. Attach copies of applications or permits, if any, from local, state or federal agencies which allow the proposed dredge and fill activities.

F. Indicate whether petroleum products would be handled on-site and what measures would be taken to reduce the risk of spills. If spills should occur (e.g., leakage from boats), explain what procedures would be used for clean-up. List spill containment, clean-up, and removal equipment to be located on the project site, and specify the location where this equipment will be stored.

G. Project and describe subsidiary development on site, adjacent to the site, or on sites over which any port agency or authority exercises land development controls.

H. If shipping is involved, will frequency or numbers of vessels using the site or maneuvering be increased? Are wharf bumpers for manatee protection proposed?

QUESTION 38 - SCHOOLS

See State Comprehensive Plan (Chapter 187, F.S.) GOAL (1); POLICIES (17),(18)

A. For the proposed development, indicate:

1. existing and proposed enrollment by phase, in Full Time Equivalents,
2. type of support or management (public, private or proprietary),
3. all governmental revenue sources and the level of their contributions,
4. schedule of facility utilization, and

5. academic organization and programs.

B. From what counties will students be drawn? Estimate by number and percentage.

C. Identify the design population of the proposed facility, and describe the methodology and assumptions used to derive it.

EXHIBIT F

Notice of Agreement Pursuant to Section 380.032(3), Florida Statutes

PLEASE TAKE NOTICE that a section 380.032(3), Florida Statutes, Agreement covering the property more particularly described on Exhibit "A" attached hereto was entered into on (insert date of execution) pursuant to Subsection 380.032(3), Florida Statutes, among the State of Florida, Department of Economic Opportunity, the South Florida Regional Planning Council, and Parkland West, LLC, the Krome Groves Land Trust, Edward W. Easton, Trustee and Guherqui International, S.A.. The Agreement may be examined at the office of the Department of Economic Opportunity Bureau of Community Planning and Growth, 107 East Madison Street Caldwell Building Tallahassee, Florida 32399-4120

[EXECUTION PAGES ATTACHED]