

# DEVELOPMENTS OF REGIONAL IMPACT (DRI) INFORMATION GUIDE

## A. What is a DRI?

A DRI is a 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. The DRI process is governed by Chapter 380.06, Florida Statutes ("F.S.") and Rules 9J-2.001 through 9J-2.0256, Florida Administrative Code ("F.A.C."). There are 14 types of development which may be DRIs if they exceed certain numerical thresholds. The types of development include airports, hospitals, mines, hotels, marinas, industrial, office and retail uses, residential projects and multi-use developments. The types and numerical thresholds are identified in Section 380.0651, F.S., and Chapter 28-24, F.A.C.

The statute and administrative rule operate together to set both presumptive "bands," which are ranges of development size based on various factors within which there is a rebuttable presumption that a development either is or is not a DRI; and, at either end of the presumptive bands, specific size thresholds at and above or below which a development conclusively is or is not a DRI.

### 1. Operation of Thresholds

A developer determines whether he is subject to DRI review: (1) by virtue of the type of development proposed, and (2) by reference to the size of the development. Using F.A.C. Rule 28-24, the developer checks the size of his proposed development with the numerical threshold criteria for that particular type of development. The thresholds are based on project magnitude. For example, a proposed airport passenger terminal facility is presumed to be a DRI regardless of its size, but a recreational vehicle development is only considered a DRI if it is planned to create 500 or more spaces.

### 2. Presumptive Bands

After determining the applicable threshold criteria in F.A.C. Rule 28.24, the developer must then review F.S. Section 380.06(2)(d). This section sets forth percentage thresholds which are applied to the guidelines and standards as follows:

Fixed thresholds:

If a development is at or below 80% of all the numerical thresholds in the guidelines, it is not required to undergo DRI review. If a development is at or above 120% of the numerical threshold it shall be required to undergo DRI review.

Rebuttable presumptions:

A development between 80% and 100% of a numerical threshold is presumed not to require DRI review, but such review may be required if the facts and circumstances support a finding that the development will be a DRI. A development at 100% or between 100% and 120% of a numerical threshold is presumed to require DRI review, although the developer may present evidence to the contrary.

It is important to note that exceeding any one of the fixed thresholds (square footage, acreage, or parking) can render the development a DRI, even though the development falls within the presumptive range on other numerical thresholds.

### 3. Multi-use Developments

Section 380.0651(3)(I) contains numerical thresholds for multi-use developments, which are defined as any proposed developments with two or more land uses. The DRI threshold for a multi-use development is calculated differently than that for a single-use development. The threshold applies where the sum of the percentages of the applicable threshold for

each land use in the development is equal to or greater than 145%. In the case of multi-use developments with three or more land uses, one of which is residential and contains at least 100 dwelling units or 15% of the applicable residential threshold, the multi-use numerical threshold is 160%.

For example:

If a developer proposes a complex with 225,000 sq. Ft. office space and 280 hotel rooms, he/she must check the thresholds for both uses and add those together. The proposed office use is 75% of the office threshold (from Section 380.0651 -- 300,000 sq. Ft.) and the proposed hotel is approximately 80% of the hotel threshold (from Section 380.0651 -- 350 rooms). Together, the sum of the percentages (75% + 80%) equals 155%, which exceeds the multi-use development threshold of 145%.

The developer must also look to the fixed thresholds and presumptive bands established in Section 380.06(2) to determine the development will be subject to DRI review. These apply to multi-use developments as well as single-use developments:

Fixed thresholds:

If the sum of the percentages for a multi-use development is at or below 116% (80 % of the 145% threshold), the development is not subject to DRI review. If the sum of the percentages is greater than or equal to 174% (120% of the 145% threshold), the development is subject to DRI review.

*Rebuttable presumptions:*

If the sum of the percentages is between 116% and 145% (80% and 100% of the 145% threshold), the development is presumed not to require DRI review, but this presumption can be rebutted if the facts and circumstances support a finding that the development will be a DRI. If the sum of the percentages is between 145% and 174% (100% to 120% of the 145% threshold), the project is presumed to require DRI review, but this presumption can also be rebutted if the developer can show evidence to the contrary.

Similarly, fixed thresholds for multi-use developments subject to the 160% threshold (3 or more land uses) are at or below 128%, not a DRI; at or above 192%, a DRI.

The statute also notes that in any multi-use calculation, the threshold is in addition to and does not preclude a development from being required to undergo DRI review under any other threshold that might be met. Therefore, in calculating the appropriate percentage, all of the applicable thresholds must be examined, and the greatest percentage should be used.

#### 4. Aggregation

Anticipating that developers might subdivide a large development project into two or more smaller projects to avoid the DRI process, the Legislature included an aggregation provision. Section 380.0651 (4), F.S., provides that "two or more developments, represented by their owners or developers to be separate developments, may be aggregated and treated as a single development when they are determined to be part of a unified plan of development and are physically proximate to one another."

In determining whether there has been "a unified plan of development," the Department of Community Affairs ("Department") considers the factors set out in F.A.C. Rule 28-11 and

Rule 9J-2.0275. The provisions require that only two of the following five factors be present to constitute "a unified plan of development":

1. common control, ownership or a significant legal or equitable interest, or management of the developments;
2. reasonable closeness in time between the completion of up to 80% of one development and the submission to a governmental agency of a plan for the other, which is indicative of a common development effort;
3. a master plan or series of plans or drawings covering the developments sought to be aggregated which have been submitted for authorization to commence development;
4. the voluntary sharing of infrastructure; or
5. a common advertising scheme or promotional plan.

It is important to note that common ownership or majority interest is not dispositive of aggregation; rather, it is only one factor to be considered in identifying a unified plan of development. Rule 9J-2.0275, F.A.C., further clarifies the aggregation criteria by defining the following terms:

- a. "Physically proximate" developments 2/ are those which, in urban areas, are no more than one-fourth of a mile apart. In non-urban areas, the developments must be no more than one-half mile apart. The Rule adopts the 1980 U.S. Department of Commerce, Bureau of Census definitions of urban and non-urban areas.
- b. "Significant legal or equitable interest" means that the same person has an interest or an option to obtain more than 25% interest in each development by fee simple estate, leasehold estate of more than 30 years, life estate, mineral rights (in mining developments), or similar equitable beneficial or real property interests in the development.
- c. "Reasonable closeness in time" means within five years.
- d. "Completion of 80 percent" of residential development means when 80% of all improved lots or parcels have completed construction, received certificates of occupancy ("COs"), or been sold, or when 80% of all dwelling units have received COs. For all other types of development, when 80% of improved lots or parcels have been sold or when 80% of development has received COs. Or, when no COs are required for use, when 80% of physical development activity is complete.
- e. "Sharing of infrastructure" may include internal roadways, recreation facilities, parks or other amenities; or water, sewage or drainage facilities specially constructed to accommodate the developments. The Rule specifically exempts sharing of public facilities and some private facilities.
- 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.

A master plan can be found to exist either on the basis of a graphic depiction of an integrally planned project, or, where local government does not require submission of a plan in graphic form, on the basis of any legally binding written representation used to establish the form of physical development or to dispose of parcels of an integrally planned proposed project.

## 5. Vested Rights

Section 380.06(20), F.S., exempts developers from the DRI process if their rights to develop a particular parcel of land have become "vested." The statute defines vested developments to include the following: Those which were registered as subdivisions pursuant to Chapter

498, F.S., or recorded as plats pursuant to local laws or ordinances prior to July 1, 1973; and developments with building permits or other authorization to commence development issued prior to July 1, 1973, upon which the developer has relied and changed his position.

According to Section 380.06(20)(a), F.S., the developer does not have to show reliance or change of position if the proposed development was platted between August 1, 1967, and July 1, 1973 and the following conditions are met: First, the claim of vested rights should have been made by notifying the Department prior to January 1, 1986; second, in order for the vested rights claims to remain valid after June 30, 1990, development of the vested plan must have been commenced prior to that date upon the property that the State Land Planning Agency (Florida Department of Community Affairs) has determined to have acquired vested rights following the notification or in a binding letter or interpretation. A binding letter explains the developer's rights to the proposed development, and binds the Department as well as the developer.

For the purposes of the Aggregation Rule, vested development is not aggregated with new development when determining size in applying the DRI threshold. Further, impacts from vested development are not considered when reviewing a DRI which includes additions to a vested development.

#### 6. Binding Letters of Interpretation

Before entering the DRI process, a developer will want to know whether a project is subject to the DRI review procedures set out in Chapter 380, F.S. A developer may request a Binding Letter of Interpretation from the Department of Community Affairs. Florida Statutes Section 380.06(4) allows a developer to obtain a Binding Letter from the Department for any of the following reasons:

**To determine whether a proposed development is a DRI;**

To determine whether a proposed development has obtained vested rights under Section 380.06(20), F.S., to complete the development without undergoing DRI review; or

To determine whether a proposed substantial change to a DRI previously vested under Section 380.06(20), F.S., would divest such rights.

Section 380.06(4)(d), F.S., sets out the procedural requirements for application and issuance of a binding letter of interpretation. A developer's request must be in writing and conform to other guidelines set by the Department. Within 15 days of receiving such a request, the Department must inform the developer whether the application is sufficient. Within 35 days of receiving a sufficient application from the developer, the Department shall issue a binding letter of interpretation with respect to the proposed development. However, if a developer does not respond to the Department's request for more information within 120 days, the application for a binding letter of interpretation is withdrawn. The letter is binding upon the Department and local government for the particular project summarized in the application. The developer always can change his plans, but a "substantial deviation" from the plan subjects the development to further DRI review.

Section 380.06(4)(b), F.S., provides that the local government or the Department can require a developer to obtain a binding letter of interpretation for any proposed development falling within the presumptive bands as to any numerical threshold. Further, Section 380.06(4)(c) extends this authority to local governments in jurisdictions adjacent to one in which a developer has a proposed DRI.

Participation in the process of obtaining binding letters is essentially restricted to the

developer and the Department.

## 7. Preliminary Development Agreements

Florida Statute Section 380.06(8) allows developers to enter into written agreements with the Department to commence development of a limited amount of the proposed development prior to the issuance of a final DRI development order. Historically, the Department has permitted developers to commence development of up to 80% of any applicable threshold prior to the issuance of a final development order by the local government if the developer can demonstrate the following:

That preliminary development is limited to lands that the Department agrees are "suitable" for development, that is, lands which are outside of any agency's jurisdiction;

That preliminary development is limited to areas where adequate public infrastructure exists to accommodate that development; and

That preliminary development will not result in material adverse impacts to existing resources or existing planned facilities.

Under most circumstances, a developer may not obtain a preliminary development agreement ("PDA") permitting more than 80% of any applicable threshold; however, Rule 9J-2.0185(4), F.A.C., sets forth certain exceptions to the 80% threshold.

Before initiating a PDA, the developer should meet with the appropriate Regional Planning Council ("RPC"), the local government, and the Department to informally present the proposed plan of development for the complete DRI with particular attention given to the PDA request.

The PDA process is formally initiated when the developer submits the proposed PDA to the Department. The application must demonstrate compliance with the conditions listed above, contain detailed plans, other descriptive information, and information regarding the ownership by the developer or owner of all properties within a 5 mile radius of the proposed development. Within 15 days of receiving the PDA application, the Department must notify the developer of the sufficiency of the application. Within 45 days of receipt of a sufficient application and the proposed PDA, the Department shall grant, deny or propose modifications to the proposed PDA. Once an agreement is reached, the PDA must be filed with the clerk of the court in the county in which the subject property is located.

Entering into a PDA binds the developer to enter into the DRI process. The developer must meet with the agencies in a pre-application conference within 45 days of the execution of the PDA, and file an application for development approval (ADA)<sup>3/</sup> within three months after the execution of the agreement.

Section 380.06(8)(a)(11), F.S., provides requirements and procedures for abandonment of PDAs executed after January 1, 1985, other than PDAs authorizing substantial deviations under Section 380.06(19), F.S. The developer must notify the Department in writing of intent to abandon the PDA and provide adequate documentation that either of the following conditions has been met:

A final development order has been rendered approving all of the development actually constructed; or

The amount of development is less than 80% of all numerical thresholds, and

the Department has determined in writing that the development complies with all local regulations and the PDA, and otherwise adequately mitigates for the impacts of development to date.

Within 30 days of receipt of such notice from the developer, the Department must determine whether the developer has met the criteria for abandonment of a PDA. If the criteria have been met, the Department must issue a notice of abandonment to be recorded, at the developer's expense, in all counties in which the subject property is located.

## **B. Application Procedures**

After a proposed development has been determined to be a DRI it is subject to DRI review, which can be a lengthy process involving many state and local agencies. The process involves a preapplication conference, an application for development approval ("ADA"), a sufficiency determination by the RPC, a public hearing, and a regional report see the flow chart.

### **DRI REVIEW PROCEDURES FLOW CHART**

1. Initial Information Meeting (optional).
2. Binding Letter of Interpretation (BLI Procedure if requested by applicant).
3. TBRPC staff/applicant meeting to arrange formal pre-application conference (if requested by applicant).
4. Traffic methodology meeting between applicant and reviewing agencies (Portion of DRI review fee due at this time).
5. Submittal of project summary narrative by applicant to TBRPC (20 days prior to pre-application meeting) for inclusion with meeting notification.
6. Notification of pre-application meeting to reviewing agencies - 10 days before meeting.
7. Formal pre-application meeting conducted by the TBRPC Clearinghouse Review Committee (CRC). (Portion of DRI review fee due at this time).
8. Submittal of CRC approved Regional Issues List and agency comments to applicant - 20 days following pre-application meeting.
9. Receipt of Application for Development Approval (ADA) by local government, TBRPC and reviewing agencies. Remainder of DRI review fee payable at this time.
10. Preliminary review of ADA by TBRPC staff, local government, and other reviewing agencies.
11. Site inspection - during preliminary review.
12. Preliminary assessment letter submitted to applicant by TBRPC.
13. Applicant provides written intention either to respond or not to respond to the preliminary assessment letter.
14. Applicant's additional information received by TBRPC.
15. Determination of sufficiency for final review of additional information by TBRPC staff, local government and other reviewing agencies. (Steps 14 & 15 may be repeated once).
16. TBRPC staff notified local government to set public hearing if information is adequate to conduct final review.
17. Local government advertises public hearing date and submits copy to TBRPC and other required agencies.
18. Notice of published hearing date received by TBRPC.
19. Final review of ADA and additional information by TBRPC staff and reviewing agencies.
20. Distribution of TBRPC staff final review report - 10 days in advance of Council meeting.
21. TBRPC acts on final review report.
22. Adopted review report submitted to local government and applicant - at least 10 days in advance of the public hearing.
23. Local government holds public hearing.
24. Local government issues Development Order.

25. Development Order review by TBRPC/Applicant/State Land Planning Agency.
26. Annual Report submitted on date stipulated in Development Order to the local government, the state land planning agency, all affected permit agencies and TBRPC.

## 1. Pre-Application Procedure

The developer initiates the review process by contacting the appropriate RPC to arrange for a preapplication conference. Section 380.06(7)(a), F.S., sets forth the purposes of the conference which include: identifying regional issues, coordinating relevant requirements of state and local agencies, and promoting a proper and efficient review of the proposed development. At the request of the developer or RPC, other affected state and regional agencies may participate in the conference to identify the types of permits issued by those agencies, the level of information required, and the permit issuance procedures as they apply to the proposed development. To eliminate unnecessary questions from the ADA, the RPC must provide by rule for a procedure through which the developer may enter into binding written agreements with the RPC.

It is recommended for projects that may have transportation impacts to arrange a separate Traffic Methodology meeting. This will enable the RPC, FDOT, DCA, the local government, others and the applicant to decide on the acceptable methodology for identifying a project's transportation impacts, thus saving time and simplifying the process.

## 2. ADA Timetable

After the preapplication conference, the developer files an application for development approval ("ADA") with the local government having jurisdiction over the proposed development. Sections 380.06(6) and (10), F.S., provide that the developer must provide copies of the application to the appropriate RPC and to the Department. Any local government comprehensive plan amendments relating to the proposed DRI may be initiated by the local planning agency and considered by the local government at the same time as the ADA. The biannual limit on the frequency of plan amendments does not apply to amendments proposed in conjunction with a DRI application.

Within 30 days of receipt of the ADA, the RPC must determine whether it requires additional information to complete its DRI report and notify the developer and the local government of the information needed. The developer has five working days to notify the RPC of intent to provide such information. The applicant then has 120 days, or a period of time agreed upon by the RPC, to supply the requested information or the application will be withdrawn. Within 30 days of receipt of the additional information, the RPC may request further additional information, but only as needed to clarify the originally requested information or to answer questions raised by that information. In actual practice RPCs will append all agency comments to the original sufficiency request and only considered the ADA sufficient when all of the comments have been adequately addressed by the developer. However, this sufficiency response phase is now limited by statute to two repetitions. When the RPC determines that the application is sufficient, the RPC sends a sufficiency letter to the local government notifying it that the public hearing date may be set.

Pursuant to Section 380.06(11), F.S. and F.A.C. Rule 9J-2.023, the local government is then required to set a date for a public hearing on the project, allowing for publication of notice at least 60 days in advance of the hearing. Notice must be provided to the Department, the RPC and to any state or regional permitting agency participating in a conceptual agency review process pursuant to Section 380.06(9), F.S., and to other persons designated by the Department as entitled to receive notice. If the proposed DRI falls within the jurisdiction of more than one local government, the developer may request a joint public hearing.

Within 50 days after the receipt of the notice of public hearing, the RPC must prepare and

submit to the local government a report and recommendations on the regional impact of the proposed development. Section 380.06(12)(a), F.S., sets out the following review criteria to be considered by the RPC:

1. The development will have a favorable or unfavorable impact on the environment and natural and historical resources of the region;
2. The development will have a favorable or unfavorable impact on the economy of the region;
3. The development will efficiently use or unduly burden water, sewer, solid waste disposal, or other necessary public facilities;
4. The development will efficiently use or unduly burden public transportation facilities;
5. The development will favorably or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment; and
6. The development complies with such other criteria for determining regional impact as the regional planning agency deems appropriate, including, but not limited to, the extent to which the development would create an additional demand for, or additional use of, energy, provided such criteria and related policies have been adopted by the regional planning agency pursuant to Section 120.54, F.S.

Often, a draft development order is included in the RPC's report.

In the course of preparing its report, the RPC may request other appropriate agencies to review the proposed development and prepare reports and recommendations on the issues within the jurisdiction of those agencies. These reports must be incorporated into the RPC report; although, the RPC may attach dissenting views. Additionally, pursuant to Section 380.06(12)(c), F.S., the RPC must allow the developer or any substantially affected parties reasonable opportunity to present evidence as to the regional effects of the DRI.

### **C. Development Orders & Appeals**

Unless an extension is requested by the developer, the local government must render a decision on the application within 30 days after the public hearing. This section outlines the contents of development orders and the appeals process.

#### 1. Contents

The ADA process Culminates in the local development order issued by the local government with jurisdiction over the affected property. Guidelines for the issuance and content of development orders are provided by Section 380.06(15), F.S. When possible, local governments should issue development orders concurrently with any other local permits or development approvals applicable to the project. The local government order should contain findings of fact and conclusions of law including the following:

1. Specify the monitoring procedures and the local officials responsible for assuring compliance with the development order;
2. Establish compliance dates including a deadline for commencing physical development, complying with conditions of approval, and a termination date;
3. Establish a date that the DRI will not be subject to down-zoning, density or intensity reduction;
4. Specify changes which shall constitute the necessity for submission of a substantial deviation determination;
5. Include a legal description of the property; and
6. Specify the requirements for an annual report to be submitted to the local government.

If a local government intends to require a developer to contribute land for a public

facility, or otherwise pay for the consideration, expansion or acquisition of a public facility, the conditions of the development order must meet the following criteria: (1) the need for such facility must be linked to the development; (2) the contribution requested from the developer shall be comparable to that which the state or local government would reasonably expect to provide; and (3) any funds or lands contributed must be expressly designated and used to mitigate impacts attributable to the proposed development. Additionally, no development order shall issue which requires the developer to contribute funds or land for public facilities unless the local government has enacted a local ordinance requiring similar contributions by developments not subject to the DRI process. In the final step in the development order process, pursuant to Section 380.06(15)(f), F.S., the developer must record notice of the development order with the Clerk of court in the county in which the project is located.

## 2. Appeals Process

In order to limit or eliminate the necessity for an appeal, the Department should attempt to resolve any dispute prior to the issuance of the development order or filing of the notice of appeal. If the matter of dispute arises after the development order has been issued, the resolution of such a dispute may be in the form of a Settlement Agreement entered into by the developer, the local government and the Department. However, the Statutes do contain procedures for filing a formal appeal as described below.

Section 380.07, F.S., governs the procedures of the DRI appeals process. Within 45 days after the development order is rendered (i.e., transmitted by the local government to the Department), the owner, the developer, or the Department may appeal the development order to the Florida Land and Water Adjudicatory Commission ("Commission") by filing a Notice of Appeal. The filing of this notice shall stay the effectiveness of the development order and any judicial proceedings in relation to that order until completion of the appeals process. The Commission shall hold a hearing, pursuant to the Administrative Procedure Act (Chapter 120, F.S.) prior to issuing any order in such appeals.

Standing to appeal is limited by Section 380.07, F.S., to the owner, the developer, or the Department. However, rules adopted by the Commission permit "materially affected parties" to intervene in such proceedings upon "motion and good cause shown" when an appeal has already been taken by a party with standing.

### **D. Amending the Development Order**

Under Section 380.06(19), F.S., any proposed change to a previously approved DRI which "creates a substantial likelihood of additional regional impact, or any type of regional impact" constitutes a "substantial deviation" which requires further DRI review and will require a new or amended local development order. The statute sets out criteria for determining when certain changes are to be considered substantial deviations without need for a hearing, and provides that all such changes will be considered cumulatively.

The first step in considering any proposed change to an approved DRI should be an examination of the substantial deviation criteria set forth in the statute in terms of increases in acres, square feet, parking spaces or residential units. For example, the criteria for a proposed change to an airport DRI are described as a new runway, a new terminal facility, a 10% expansion to an existing runway, or a 20% increase in the floor area of an existing terminal.

A substantial deviation to a multi-use DRI is defined as "a proposed increase ... where the sum of the increases of each land use as a percentage of the applicable substantial deviation criteria is equal to or exceeds 100%". An industrial/office DRI consists of 400 acres of industrial and 500,000 square feet of office uses. An addition of 31.5 acres of industrial (99% of the industrial substantial deviation criteria) or 59,000 square feet of office space (99% of the office

substantial deviation criteria) would not exceed the multi-use substantial deviation criteria. However, any addition to both industrial and office would require a balancing between the two additional uses such that the sum of the additional uses as a percentage of the applicable criteria does not equal or exceed 100%. Thus, an addition of 15 acres of industrial (47% of 32 acres) and 25,000 square feet of office space (42% of 60,000 square feet) would not exceed the criteria; whereas, an addition of 17 acres of industrial (53% of 32 acres) and 35,000 square feet of office space (58% of 60,000 square feet) would exceed the criteria.

Any proposed change can amount to a substantial deviation if any of the following apply:

The change results in a 15% increase in the number of external vehicle trips generated by the development above that which was projected during the original review process.

The proposed development of any area which was originally set aside for preservation; special protection endangered or threatened plants or animals designated as endangered, threatened, or of special concern and their habitat; primary dunes; or archaeological sites designated as significant by the Division of Historical Resources of the Department of State will be presumed to create a substantial deviation.

Any change proposed for 15% or more of the acreage covered by the existing development order to a land use not previously approved in the order will be presumed to create a substantial deviation; however, changes of less than 15% will be presumed not to create a substantial deviation.

Simultaneous increases and decreases of at least two of the uses within a multi-use DRI with three or more of the following uses: Industrial; office; retail, service and wholesale; hotel or motel, and residential use, will be presumed to create a substantial deviation.

Any addition of land not previously reviewed or any change not specified in the statute is presumptively a substantial deviation which may be rebutted.

The numerical criteria set forth in the statute create only the presumption that a proposed change which does not meet or exceed the criteria does not constitute a substantial deviation. This presumption may be rebutted by "clear and convincing evidence" presented by the agencies. The local government must make a determination, after a public hearing, at which evidence is presented as to whether the proposed change is a substantial deviation. At that hearing, the Department or the appropriate RPC may present evidence rebutting that presumption. If such evidence is not presented, then neither the Department nor the RPC may appeal a determination by the local government that the proposed change does not constitute a substantial deviation. Pursuant to Section 380.06(19)(e), F.S., changes of less than 40% of the numerical criteria, which do not exceed any other criterion or an extension of the buildout date by more than three years, do not constitute a substantial deviation, are not subject to a hearing for a substantial deviation determination, and therefore are not subject to further DRI review.

Due to practical considerations, developments often must undergo changes in the proposed plan. Pursuant to Section 380.06(19)(f), F.S., all these changes will require notice of a public hearing, as well as participation by the RPC and the Department if the changes proposed might constitute a substantial deviation from the development order.

A developer also can obtain a binding letter of interpretation for modification under Section 380.064(4)(e), F.S.. Using the criteria for substantial deviations set forth in Section 380.06(19)(b), F.S., and several other factors, the Department may determine whether the proposed changes will constitute a substantial deviation. The binding letter of interpretation for modification remains effective three years after issuance.

## **E. Florida Quality Developments**

The Florida Quality Development ("FQD") program encourages developers to create projects that are compatible with the environment and surpass certain criteria for DRI approval. The incentive to meet such higher standards is a reduction in the length of the review process.

### 1. What is an FQD?

Sections 380.061(2) and (3) set forth the criteria for establishing an FQD. Described as developments "which [have] been thoughtfully planned to take into consideration [the] protection of Florida's natural amenities, the cost to local government of providing services to a growing community, and the high quality of life Floridians desire," FQDs have a more streamlined application process. The Department and local government must approve FQDs pursuant to the guidelines set forth in the statute.

### 2. Program Requirements

An FQD is a top quality development that is environmentally sound and assumes responsibility for its fiscal impact on public facilities and services. Eligible developments for designation as an FQD are those above 80% of any numerical thresholds in the guidelines and standards for DRI review. To ensure a project's environmental, cultural and historical integrity, a developer must agree to comply with each of the following site-related requirements:

- Include no dredge and fill activities or stormwater discharge into Florida's specially protected waters (Class II waters, aquatic preserves or Outstanding Florida Waters);
- Minimize development features that block rainwater absorption into the ground;
- Donate or protect the following natural resources:
  - all DEP jurisdictional wetlands or water bodies,
  - all active beaches and primary dunes,
  - all habitats of endangered or threatened animal species,
  - all habitats of endangered plant species; and
- Donate or protect all significant archaeological and historical sites.

The program was revised by the Legislature in 1988 to establish guidelines for the nature, type and extent of activities permitted on protected and environmentally sensitive lands. This amendment also broadened the scope of the program to consider various other developments features as criteria for designation, such as affordable housing, care for the elderly, urban renewal, mass transit, protection of non-DEP jurisdiction wetlands, provision for recycling of solid waste, and others.

To ensure a development's fiscal accountability, the developer of an FQD must agree to alleviate development pressures from public infrastructure by providing the following:

- Constructing and maintaining all on-site infrastructure, such as roads, bridges, sewers and other public facilities;
- Ensuring that all utility infrastructure is in place when needed;
- Making fair-share contributions for off-site impacts through a binding commitment with local government;

Finally, FQDs should be carefully planned to be consistent with the three layers of the State

Comprehensive Planning program, which include state, regional and local comprehensive plans. Such developments should contain ample open space, recreation areas, and xeriscape, as well as innovative energy conservation measures.

### 3. Designation Process

Designation procedures are governed by Section 380.061 (5)-(8), F.S., and Chapter 9J-28, F.A.C. To be designated under this program, the local government with jurisdiction over the proposed project, the appropriate RPC, and the Department must agree that a proposed development meets the statutory criteria outlined above. A developer seeking designation must submit copies of the application to each of the governmental entities with jurisdiction. Once a developer's application is complete, the entities have 90 days to determine whether to designate the project as an FQD. Any time prior to issuance of a development order, the developer may withdraw his or her application or elect to convert the project to a proposed DRI.

If all three entities agree that a development should be designated as an FQD, the Department shall issue a development order incorporating the proposed development plan, any modifications or conditions agreed upon by the developer, and the project's FQD status. If there is disagreement among the entities, the Department shall resolve these conflicts. Once designated, the development is exempt from DRI review.

Developers denied FQD designation may appeal to the Quality Developments Review Board, which consists of the Secretaries of the Department, DEP and DOT, and the Executive Directors of the Florida Game and Freshwater Fish Commission, the appropriate water management district and the local government.

### 4. Amending an FQD

The process of amending an FQD is similar to amending a DRI, except DCA issues the amendment, not the local government.

### **Footnotes**

1/ Some of this material was excerpted from the 4th Annual Growth Management Short Course Manual, DCA, 1993.

2/ The definition of "physically proximate" is particularly important because it is one of two mandatory criteria set out in section 380.0651 (4), F.S. The other mandatory criteria is "unified plan of development," which is demonstrated when any two of the five factors set out in Chapter 28-11, F.A.C. are met.

3/ See Section C for a complete discussion of the Application for Development Approval process.