

## **CHAPTER 9J-2 RULES OF PROCEDURE AND PRACTICE PERTAINING TO DEVELOPMENTS OF REGIONAL IMPACT**

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### **PART I GENERAL**

### **9J-2.001 Definitions.**

(1) All the terms defined in Section 380.031, Florida Statutes, shall have the meanings enumerated in such statute, whenever used in this chapter.

(2) "Division" means the Division of Community Planning of the Department of Community Affairs, which is the "state land planning agency" referred to in Chapter 380, Florida Statutes.

(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.

*Specific Authority 380.032(2)(a), 380.06(23)(a) FS. Law Implemented 380, 380.031, 380.06(1), (23) FS. History--New 4-12-81, Amended 5-4-83, Formerly 27F-1.01, 9B-16.01, Amended 11-20-90, 2-21-01.*

## **PART II PROCEDURES PERTAINING TO DEVELOPMENTS OF REGIONAL IMPACT**

### **Subpart A General Procedures**

#### **9J-2.010 Forms.**

(1) The following forms are prescribed for use with these rules and are incorporated by reference:

(a) Form Number RPM-BSP-ADA-1, Developments of Regional Impact Application for Development Approval, effective 11-20-90;

(b) Form Number RPM-BSP-ADA-2, Development of Regional Impact Short Form Application for Development Approval, effective 3-23-94;

(c) Form Number RPM-BSP-BLID-1, Application for a Binding Letter of Development of Regional Impact Status, effective 11-20-90;

(d) Form Number RPM-BSP-BLIVR-1, Application for a Binding Letter of Vested Rights, effective 11-20-90;

(e) Form Number RPM-BSP-BLIM-1, Application for a Binding Letter of Modification to a Development of Regional Impact with Vested Rights, effective 11-20-90;

(f) Form Number RPM-BSP-AGENCIES-1, Report of Agency Participation in Development of Regional Impact Preapplication Conferences, effective 11-20-90;

(g) Form Number RPM-BSP-PREAPP INFO-1, specifying the minimum information to be supplied by the applicant at the preapplication conference, effective 11-20-90;

(h) Form Number RPM-BSP-BIENNIAL REPORT-1, Biennial Status Report, effective 6-1-03;

(i) Form Number RPM-BSP-PROPCHANGE-1, Notification of a Proposed Change to a Previously Approved Development of Regional Impact, effective 11-20-90;

(j) Form Number RPM-BSP-ABANDON PDA-1, Notice of Intent to Abandon Preliminary Development Agreement, effective 11-20-90; and

(k) Form Number RPM-BSP-EFFECTIVE RULES-1, Notification to be Bound By Rules Adopted Pursuant to Chapters 403 and 373, Florida Statutes, In Effect When the Development Order Is Issued, effective 11-20-90.

(2) These forms may be obtained without cost from the appropriate regional planning agency or by making written request to: Division of Community Planning, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100.

*Specific 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. History--New 4-12-81, Amended 5-4-83, Formerly 27F-1.31, 9B-16.17, 9J-2.017, Amended 11-20-90, 3-23-94, 2-21-01, 6-1-03.*

#### **9J-2.015 Clearance Letters.**

(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), Florida Statutes, and Rule 9J-2.0275, Florida Administrative Code; or

(b) When a development is below 100 percent of all applicable thresholds contained in Section 380.0651, Florida Statutes, and Chapter 28-24, Florida Administrative Code.

(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.

**9J-2.016 Binding Letters of Interpretation.**

(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 subsection 380.06(20), Florida Statutes, or whether a proposed substantial change to a development of regional impact previously vested pursuant to subsection 380.06(20), Florida Statutes, 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 RPM-BSP-BLID-1 (development of regional impact status), RPM-BSP-BLIVR-1 (vested rights), or RPM-BSP-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, whose address is 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100. The completed form shall be submitted to the Division of Community Planning.

(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 subsection 380.06(8) or 380.032(3), Florida Statutes.

(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, Florida Statutes, and Chapter 28-24, Florida Administrative Code, and applied as indicated in paragraphs 380.06(2)(c) and (d), Florida Statutes, and Rules 28-24.013 and .014, Florida Administrative Code; the information submitted on Form RPM-BSP-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, Florida Statutes, or Chapter 28-24, Florida Administrative Code, 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, Florida Statutes, or Chapter 28-24, Florida Administrative Code, 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, Florida Statutes, or Chapter 28-24, Florida Administrative Code, 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, Florida Statutes, or Chapter 28-24, Florida Administrative Code, is required to undergo DRI review shall be on the Division.

(9) When requested by the submission of Form RPM-BSP-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 subsection 380.06(20), Florida Statutes. 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 subsection 380.06(20), Florida Statutes.

(10) When requested by the submission of Form RPM-BSP-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 paragraphs 380.06(4)(e) and (f) and 380.06(19)(b), Florida Statutes, 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, Florida Statutes.

(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, Florida Statutes, 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 paragraph 380.06(4)(a), Florida Statutes, 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 paragraph 380.06(20)(a), Florida Statutes, and for which the notification requirements of paragraph 380.06(20)(a), Florida Statutes, 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 paragraph 380.06(20)(a), Florida Statutes, have not been met, vested rights authorized by paragraph 380.06(20)(a), Florida Statutes, 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, Florida Statutes. In addition, notice of the issuance of a binding letter shall be given to persons who have requested notice. Pursuant to paragraph 380.06(4)(d), Florida Statutes, Binding Letters of Interpretation issued by the Division shall bind all state, regional and local agencies as well as the developer.

*Specific 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. History—New 4-12-81, Amended 5-4-83, Formerly 27F-1.16, 9B-16.16, Amended 11-20-90, 2-21-01, 6-1-03.*

### **9J-2.0185 Preliminary Development Agreements.**

(1) No development which is subject to DRI review, as defined in Section 380.04, Florida Statutes, 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 subsection 380.06(8), Florida Statutes, or as otherwise authorized by Chapter 380, Florida Statutes.

(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 subsection 380.06(8), Florida Statutes, 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 subsection 380.06(8), Florida Statutes, 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 1/2 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 1/2 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 1/2 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 1/2 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 subsection 380.06(8), Florida Statutes.

(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 subsection 380.06(2) and Section 380.0651, Florida Statutes, 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 subsection 380.06(2), Section 380.0651, Florida Statutes, and Rule Chapter 28-24, Florida Administrative Code, 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 subsection 380.06(25), Florida Statutes, 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 subsection 380.06(22), Florida Statutes, 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, Florida Statutes;

(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 subparagraph 380.06(8)(a)11., Florida Statutes, 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 RPM-BSP-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 subparagraph 380.06(8)(a)11., Florida Statutes, 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 subparagraph 380.06(8)(a)11., Florida Statutes, the notice of abandonment shall be recorded by the developer in accordance with Section 28.222, Florida Statutes, with the clerk of the circuit court for each county in which land covered by the terms of the agreement is located.

*Specific Authority 380.032(2)(a), 380.06(23)(a) FS. Law Implemented 380.032(3), 380.06(8), 380.0651(4) FS. History—New 1-29-86, Amended 7-2-86, 11-20-90, 2-21-01, 6-1-03.*

## **Subpart B Development of Regional Impact Review Procedures**

### **9J-2.021 Preapplication Conferences and Conceptual Agency Review Process.**

(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 subsection 380.06(7), Florida Statutes. Reviewing agencies shall make reasonable efforts to attend these conferences and shall participate when requested to do so pursuant to subsection 380.06(7), Florida Statutes. 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 subsection 380.06(7), Florida Statutes.

(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 RPM-BSP-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 build out 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 paragraph 380.06(7)(b), Florida Statutes, 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 subsection 380.06(7), Florida Statutes, 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 subsection 380.06(9), Florida Statutes, 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.

*Specific Authority 380.032(2)(a), 380.06(23)(a) FS. Law Implemented 380.06(7), (9), (23) FS. History--New 5-4-83, Formerly 9B-16.21, Amended 11-20-90, 2-21-01.*

#### **9J-2.022 Filing the Application for Development Approval.**

(1) In accordance with subsections 380.06(6), (7), and (10), Florida Statutes, the developer shall simultaneously file completed copies of an application for development approval using Form RPM-BSP-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 RPM-BSP-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 paragraph 380.06(21)(a), Florida Statutes.

(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 paragraphs 380.06(21)(b) and (c), Florida Statutes, and Rule 9J-2.028, Florida Administrative Code.

(c) A downtown development authority as defined in Section 380.031, Florida Statutes, may submit a downtown DRI application for development approval pursuant to subsection 380.06(22), Florida Statutes, and Rule 9J-2.029, Florida Administrative Code.

(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 subsection 380.06(25), Florida Statutes, and Chapter 9J-3, Florida Administrative Code.

(e) A developer may submit an application for development designation as a Florida Quality Development pursuant to Section 380.061, Florida Statutes, and Chapter 9J-28, Florida Administrative Code.

(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 subparagraphs 380.06(9)(c)1. and 2., Florida Statutes.

(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 subsection 380.06(10), Florida Statutes, 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 subsection 380.06(12), Florida Statutes, 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 waives 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 subsection 380.06(10)(c), Florida Statutes, stating that the application contains sufficient information for the regional planning agency to begin review pursuant to the criteria of subsection 380.06(12), Florida Statutes, 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 RPM-BSP-AGENCIES-1 and shall contain data about requests for, and the incidence and extent of, agency participation in DRI and optional conceptual reviews.

*Specific Authority 380.032(2)(a), 380.06(23)(a) FS. Law Implemented 380.06(5)-(7), (9), (10), (21), (22), (25), 380.061 FS. History--New 7-7-76, Amended 5-4-83, Formerly 27F-1.20, 9B-16.22, Amended 11-20-90, 2-21-01.*

#### **9J-2.024 Regional Report and Recommendations.**

(1) Upon receipt of the notice of public hearing issued pursuant to subsection 380.06(11), Florida Statutes, 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 subsection 380.06(12), Florida Statutes. 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., Florida Statutes. In addition, Strategic Regional Policy Plans adopted by regional planning councils pursuant to Sections 186.507 and .508, Florida Statutes, 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 paragraph 380.06(12)(b), Florida Statutes. 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 subsection 380.06(12), Florida Statutes. 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.

*Specific Authority 380.032(2)(a), 380.06(23)(a), (b) FS. Law Implemented 380.06(12) FS. History—New 7-7-76, Amended 5-4-83, Formerly 27F-1.22, 9B-16.24, Amended 11-20-90, 2-21-01, 6-1-03.*

#### **9J-2.025 Local Government Development Orders.**

(1) This rule provides the form, manner of rendition and contents for development orders issued by local governments in Florida for DRIs pursuant to subsection 380.06(15), Florida Statutes.

(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 Community Affairs pursuant to subsection 380.032(3) or 380.06(8), Florida Statutes.

(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, Florida Statutes, and Chapter 28-24, Florida Administrative Code; 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 subsection 380.06(12), Florida Statutes;
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 subparagraph 380.06(15)(c)4. and subsection (18), Florida Statutes, including the date of biennial submission, parties to whom the report is to be submitted, and contents of the report as specified by subsection 9J-2.025(7), Florida Administrative Code.

(c) A development order may contain provisions which specify the types of changes to the development, in addition to those listed under subsection 380.06(19), Florida Statutes, 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, Florida Statutes, including any amendments or modifications to previously issued development orders, shall be rendered by the local government to the Division of Community Planning, 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 Community Affairs, Division of Community Planning, 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 subsection 380.07(2), Florida Statutes, 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, Florida Statutes.

(6) Conditions of approval of a development order that require developer exactions shall comply with paragraphs 380.06(15)(d), (e), and subsection 380.06(16), Florida Statutes.

(7) The development order shall specify the requirements for the biennial report as required in subsections 380.06(15) and (18), Florida Statutes. The biennial report shall be submitted to the Division of Community Planning, the appropriate regional planning council and local government on Form RPM-BSP-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 Community Affairs 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 subsections 380.06(15) and (18), Florida Statutes; 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 paragraph 380.06(15)(f), Florida Statutes.

(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 9J-2.029(2)(d), Florida Administrative Code, or Chapter 9J-3, Florida Administrative Code, 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 subsections 380.032(3) and 380.06(8), Florida Statutes.

(9) Pursuant to subsection 380.06(17), Florida Statutes, 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 subsection 380.06(19), Florida Statutes, 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 RPM-BSP-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 subparagraph 380.06(19)(f)1., Florida Statutes, 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 RPM-BSP-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 subparagraph 380.06(19)(f)4., Florida Statutes, the Division or the appropriate regional planning agency shall review the proposed change, and within 45 days of submittal of Form RPM-BSP-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 subparagraphs 380.06(19)(e)1. and 2., Florida Statutes, shall be submitted to the Division, the local government, and the regional planning agency using Form RPM-BSP-PROPCHANGE-1. Such changes are considered cumulatively with all other previous changes to the DRI in determining whether the conditions of subparagraphs 380.06(19)(e)1. and 2., Florida Statutes, 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.

*Specific 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. History—New 7-7-76, Amended 5-4-83, 7-7-85, Formerly 22F-1.23, 27F-1.23, 9B-16.25, 9J-2.25, Amended 11-20-90, 2-21-01, 6-1-03.*

### **9J-2.0251 Abandonment of Development Orders.**

(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 subsection 380.06(26), Florida Statutes, 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 RPM-BSP-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, Florida Statutes, 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, Florida Statutes, 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, Florida Statutes, 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, Florida Statutes, or Chapter 28-24, Florida Administrative Code, 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, Florida Statutes, or Chapter 28-24, Florida Administrative Code, and upon which no development as defined in Section 380.04, Florida Statutes, 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, Florida Statutes, or Chapter 28-24, Florida Administrative Code, and upon which no development as defined in Section 380.04, Florida Statutes, has occurred, is 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), Florida Statutes.

(d) An approved DRI which has commenced development as defined in Section 380.04, Florida Statutes, 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, Florida Statutes, or Chapter 28-24, Florida Administrative Code, shall not be eligible to request abandonment of an approved DRI. Such a development shall be evaluated under the substantial deviation provisions of subsection 380.06(19), Florida Statutes.

(e) The provisions contained in paragraph 380.06(2)(c), Florida Statutes, 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, Florida Statutes.

(b) The issues in any such appeal shall be confined to whether the provisions of subsection 380.06(26), Florida Statutes, and this rule have been satisfied.

*Specific Authority 380.032(2)(a), 380.06(23)(a), (26) FS. Law Implemented 380.06(2), (26) FS. History—New 3-10-91, Amended 2-21-01, 6-1-03.*

**9J-2.0252 Development of Regional Impact Review Fee Rule.**

(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 Community Affairs 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 subsection 380.06(7), Florida Statutes, 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 paragraph 380.061(5)(a), Florida Statutes, 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, Florida Statutes, 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 Community Affairs 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 Community Affairs 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 Community Affairs 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 Community Affairs 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 Community Affairs, 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 Community Affairs' 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 paragraph 380.06(19)(f), Florida Statutes, requests for a substantial change determination pursuant to paragraph 9J-28.024(2)(a), Florida Administrative Code, 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 subsection 380.06(18), Florida Statutes, or subsection 9J-28.023(6), Florida Administrative Code.

(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).

*Specific Authority 380.032(2)(a), 380.06(23)(a), (d) FS. Law Implemented 380.06(23)(d) FS. History—New 11-14-90, Amended 2-21-01, 5-22-05.*

**9J-2.0256 Hurricane Preparedness Policy Rule.**

(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, Florida Statutes, and adopted pursuant to Section 186.508, Florida Statutes.

(b) “Department” means the Florida Department of Community Affairs.

(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 9J-2.0255(4)(d), Florida Administrative Code, 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, Florida Statutes, as amended.

(i) “Mobile home” means a structure as defined in subsection 320.01(2), Florida Statutes.

(j) “Park trailer” or “park model recreational vehicle” means a structure as defined in subparagraph 320.01(1)(b)7., Florida Statutes.

(k) “Local Comprehensive Emergency Management Plan” means those plans developed by a county according to the provisions of Chapters 9G-6 and 9G-7, Florida Administrative Code, under the authority provided in Section 252.38, Florida Statutes.

(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 paragraph 320.01(1)(b), Florida Statutes, 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 in-place 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 subparagraph 380.06(15)(e)2., Florida Statutes. 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 subparagraph 380.06(15)(e)2., Florida Statutes, 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 9J-2.045, Florida Administrative Code, 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 9J-2.0257, Florida Administrative Code. 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.

**9J-2.0257 Special Hurricane Preparedness Districts for Developments of Regional Impact.**

(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 9J-2.0256, Florida Administrative Code. 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 9J-2.0256, Florida Administrative Code.

(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, Florida Statutes, 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 9J-2.0256, Florida Administrative Code. 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, Florida Statutes, 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 9J-2.0256, Florida Administrative Code. 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 9J-2.0256, Florida Administrative Code, the following mitigative criteria must be met:

(a) The DRI development order must incorporate those requirements identified in subsection (4) of Rule 9J-2.0257, Florida Administrative Code.

(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 9J-2.0256, Florida Administrative Code, 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 9J-2.0256(5)(b)1., Florida Administrative Code, 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.

*Specific Authority 380.032(2)(a), 380.06(23)(a), (b), (c)1. FS. Law Implemented 380.06, 380.06(23)(b) FS. History—New 11-30-88, Amended 7-11-90, 2-21-01.*

### **9J-2.027 Monitoring and Enforcement.**

(1) The Department of Community Affairs shall promote the monitoring of existing or potential developments and the enforcement of Chapter 380, Florida Statutes, 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, Florida Administrative Code, which may be at or greater than 100 percent of any applicable numerical threshold in the guidelines and standards in Section 380.0651, Florida Statutes, and Chapter 28-24, Florida Administrative Code. 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, Florida Statutes. This notice shall also include a copy of Chapter 380, Florida Statutes, 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, Florida Statutes, 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 subsections 380.06(15) and (19), Florida Statutes. 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 subsection 380.06(18), Florida Statutes, and other information available to the agency and, when appropriate, notify the local government and the Department of potential violations of Section 380.06, Florida Statutes.

(4) Pursuant to Section 380.11, Florida Statutes, the Department may institute an administrative proceeding against any alleged violator of Chapter 380, Florida Statutes, or any rules, regulations, or orders issued thereunder.

(5) Pursuant to Section 380.11, Florida Statutes, 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, Florida Statutes, or any rules, regulations or orders issued thereunder.

*Specific Authority 380.032(2), 380.06(23) FS. Law Implemented 380.06(15), (17)-(19), 380.11 FS. History—New 5-4-83, Formerly 9B-16.27, Amended 11-20-90, 6-1-03.*

**9J-2.0275 Aggregation Rule.**

(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, Florida Administrative Code, will be aggregated pursuant to subsection 380.0651(4), Florida Statutes.

(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 (1/4) 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 (1/2) 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., Florida Administrative Code, 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, Florida Statutes, 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 use 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 paragraph 380.0651(4)(e), Florida Statutes.

(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, Florida Administrative Code, (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 subsection 380.0651(4), Florida Statutes, 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 RPM-BSP-BLID-1, incorporated herein by reference, along with supporting documentation sufficient to determine the applicability of subsection 380.0651(4), Florida Statutes, to the particular projects, with the Division. This form may be obtained upon request to any regional planning agency or to:

Division of Community Planning  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100; 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 subsection 380.0651(4), Florida Statutes, with the Division of Community Planning. The Division shall, if it feels the issue is debatable, decline to issue a clearance letter.

*Specific Authority 380.032(2)(a), 380.06(23)(a), 380.0651(4)(f) FS. Law Implemented 380.0651(4) FS. History—New 2-2-89, Amended 2-21-01.*

#### **9J-2.028 Master Development Approval Alternative Review Procedure.**

(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 paragraphs 380.06(21)(b)-(c), Florida Statutes. 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 subsection 380.06(9), Florida Statutes. 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 paragraph 380.06(21)(b), Florida Statutes. 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 paragraph 380.06(21)(b), Florida Statutes, 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 paragraph 380.06(21)(b), Florida Statutes. 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, Florida Statutes.

*Specific Authority 380.032(2)(a), 380.06(21)(c), (23)(a) FS. Law Implemented 380.06(21) FS. History—New 7-7-76, Amended 5-4-83, Formerly 27F-1.24, 9B-16.28, Amended 11-20-90.*

#### **9J-2.029 Downtown Development of Regional Impact Alternative Review Procedure.**

(1) A downtown development authority may submit a downtown DRI application for development approval pursuant to subsection 380.06(22), Florida Statutes and paragraph 9J-2.022(1)(c), Florida Administrative Code.

(2) In addition to the requirements specified in subsection 380.06(22), Florida Statutes, 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 subsection 380.06(7), Florida Statutes, and Rule 9J-2.021, Florida Administrative Code;

(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 subsection 380.06(7), Florida Statutes, and adopted rules of the regional planning agency.

(c) In addition to the requirements for a development order specified in subsections 380.06(15) and (22), Florida Statutes, and Rule 9J-2.025, Florida Administrative Code, the development order shall specify a procedure for monitoring:

1. The amount of land use development occurring in each land use category pursuant to paragraph 380.06(22)(b), Florida Statutes.

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 paragraph 380.06(15)(c), Florida Statutes, and subsection 9J-2.025(7), Florida Administrative Code, 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 9J-2.025(7), Florida Administrative Code, which are not appropriate for a downtown DRI application.

*Specific Authority 380.032(2), 380.06(23) FS. Law Implemented 380.06(22) FS. History—New 5-4-83, Formerly 9B-16.29, Amended 11-20-90, 6-1-03.*

### **PART III DEVELOPMENT OF REGIONAL IMPACT UNIFORM STANDARD RULES**

#### **9J-2.040 The Application of State, Regional and Local Plans in DRI Uniform Standard Rules.**

(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, Florida Statutes, 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, Florida Statutes, establish the State Comprehensive Plan as the long-range, state land development policy guide to be considered in the DRI review process, pursuant to subsections 380.06(3), (4), (12), (13), (14), (15), (25), and 380.065(3), Florida Statutes.

(c) Sections 186.503, 186.505, 186.507, and 380.07, Florida Statutes, 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 subsections 380.06(3), (12), (13), (14), (15), (25), and 380.065(3), Florida Statutes.

(d) Sections 163.3177, 163.3194, 380.031, and 380.07, Florida Statutes, establish Local Government Comprehensive Plans as the long-range, local land development policy guides to be considered in the DRI review process, pursuant to subsections 380.06(3), (6), (7), (10), (11), (13), (14), (15), (25), and 380.065(3), Florida Statutes.

(e) The statutory authority to promulgate and establish this rule is derived from subsections 380.032(2) and 380.06(23), Florida Statutes.

(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, Florida Statutes, as amended.

(b) “Applicable Regional Plan” means the Regional Planning Council’s adopted Strategic Regional Policy Plan pursuant to Section 186.508, Florida Statutes.

(c) “Applicable State Plan” means the State Comprehensive Plan.

(d) “Department” means the Florida Department of Community Affairs.

(e) “DRI Uniform Standard Rule” means any one of the rules adopted under Part III of Chapter 9J-2, Florida Administrative Code.

(f) “Regional planning council” means a governmental body created pursuant to Chapter 186, Florida Statutes.

(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 9J-2.0256, F.A.C. (Hurricane Preparedness Policy Rule) and Rule 9J-2.0257, 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, Florida Statutes, 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 subsections 380.06(23) and 186.507(13), Florida Statutes.

(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, Florida Statutes, 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.

*Specific 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. History--New 3-23-94, Amended 2-21-01.*

#### **9J-2.041 Listed Plant and Wildlife Resources Uniform Standard Rule.**

(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, Florida Statutes, 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, Florida Statutes, 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 subsections 380.06(3), (4), (12), (13), (14), (15), (25), and 380.065(3), Florida Statutes.

(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 Section 380.021, paragraphs 380.06(4)(a), (b), (d), (e), and (f), subparagraph 380.06(8)(a)11., subparagraphs 380.06(12)(a)1. and 2., subsection 380.06(13), paragraphs 380.06(14)(a), (c) and (d), paragraph



380.06(15)(c), paragraphs 380.06(19)(a) and (e), subparagraph 380.06(19)(b)16., subsubparagraph 380.06(19)(e)5.b., subparagraph 380.06(19)(f)6., paragraphs 380.06(19)(g) and (h), subsection 380.06(21), subsection 380.06(22), subsection 380.06(25), subsection 380.06(26), paragraph 380.06(27)(d), paragraphs 380.065(3)(b) and (c), and Section 380.07, Florida Statutes.

(c) The statutory authority to promulgate and establish this rule is derived from subsections 380.032(2) and 380.06(23), Florida Statutes.

(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, Florida Statutes, 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, Florida Statutes, 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 paragraph 253.025(15), Florida Statutes, 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 Community Affairs.

(h) “Documented offsite” means the existence of a scientifically credible 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 credible 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 paragraph 253.025(15), Florida Statutes, 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, Florida Administrative Code, a plant species identified as a state endangered or threatened in Rule 5B-40.0055, Florida Administrative Code, 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, Florida Statutes. 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*); 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, Florida Statutes, 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 paragraph 253.025(15), Florida Statutes, 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 or 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, Florida Statutes.

(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 paragraphs 380.06(4)(d) or (10)(b), Florida Statutes.

(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, Florida Statutes. 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, Florida Statutes. 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), Florida Administrative Code.

(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 subparagraph 380.06(19)(f)6., Florida Statutes.

(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, Florida Statutes, 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, Florida Statutes, land use application under review, pursuant to this rule.

3. Other Impacts. In the absence of both a guideline under (b)1. and a determination under (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, Florida Statutes, 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, Florida Statutes, 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 (c)1. and a recommendation under (c)2. above, or when an applicant chooses 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, Florida Statutes. 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, Florida Statutes. 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 biscoyneaum* (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 garberi*] (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)  
*Epidendrum 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)  
*Monotropis 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)  
*Xanthorrhiza 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* (Crane-fly orchid)  
*Lindera melissifolia* (Pondberry; Swamp spicebush)  
*Restrepia ophioccephala* (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. *platylepis* (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 longanioides* (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 basiramaia* (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., Florida Administrative Code, 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., Florida Administrative Code 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 subparagraph 380.06(19)(b)16., Florida Statutes, 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 Community Affairs.

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, Florida Statutes, 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 Community Affairs, 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, Florida Statutes. 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, Florida Statutes, that prohibits all development and all use of the preserved land including those activities described in Sections 704.06(1)(a) through (g), Florida Statutes, 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 Community Affairs 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, Florida Statutes, 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, Florida Statutes, 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 subsection 380.032(3) or 380.06(8), Florida Statutes, 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 subsection 704.06(1)(a) through (g), Florida Statutes, 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 Community Affairs 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, Florida Statutes, 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 subsections 704.06(2) and (4), Florida Administrative Code, 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 subsection 380.06(18), Florida Statutes; 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-recording 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 subsection 380.032(3) or 380.06(8), Florida Statutes, 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 Community Affairs 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 Community Affairs 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, Florida Statutes, 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 Community Affairs; 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 subsection 380.06(18), Florida Statutes; 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 subsection 380.032(3) or 380.06(8), Florida Statutes, 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 paragraph 380.06(15)(f), Florida Statutes, 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 subsection 380.032(3) or 380.06(8), Florida Statutes, 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, Florida Statutes. 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, Florida Statutes.

(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, Florida Statutes, 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.

*Specific Authority 380.032(2), 380.06(23) FS. Law Implemented 380.021, 380.06, 380.065, 380.07 FS. History—New 4-25-94, Amended 6-1-03.*

### **9J-2.043 Archaeological and Historical Resources Uniform Standard Rule.**

(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, Florida Statutes, 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, Florida Statutes, 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 subsections 380.06(3), (4), (12), (13), (14), (15), (25), and 380.065(3) Florida Statutes.

(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 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 subsections 380.032(2) and 380.06(23), Florida Statutes.

(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, Florida Statutes, as amended.

(d) “Applicable Regional Plan” means the Regional Planning Council’s adopted Strategic Regional Policy Plan pursuant to Section 186.508, Florida Statutes.

(e) “Applicable State Plan” means the State Comprehensive Plan.

(f) “Archaeological or Historical Site or Property” means, consistent with subsection 267.021(3), Florida Statutes, 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 Community Affairs.

(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, Florida Statutes, as amended.

(1) “National Register of Historic Places” means, consistent with subsection 267.021(5), Florida Statutes, 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, Florida Statutes.

(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 paragraphs 380.06(4)(d) or (10)(b), Florida Statutes.

(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, Florida Statutes. 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, Florida Statutes. 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), Florida Administrative Code.

(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, Florida Statutes, 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 subparagraph 380.06(19)(b)16., Florida Statutes, 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, Florida Statutes, that prohibits all development and all use of the preserved land including those activities described in Section 704.06(1)(a) through (h), Florida Statutes, 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 Community Affairs 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, Florida Statutes, 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, Florida Statutes, 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 subsection 380.032(3) or 380.06(8), Florida Statutes, 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 subsection 704.06(1)(a) through (h), Florida Statutes, 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 Community Affairs 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, Florida Statutes, 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 subsections 704.06(2) and (4), 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 subsection 380.06(18), Florida Statutes; 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-recording 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 subsection 380.032(3) or 380.06(8), Florida Statutes, 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.

*Specific Authority 380.032(2)(a), 380.06(23)(a), (c)1. FS. Law Implemented 380.021, 380.06, 380.065, 380.07 FS. History—New 3-23-94, Amended 2-21-01, 6-1-03.*

#### **9J-2.044 Hazardous Material Usage, Potable Water, Wastewater, and Solid Waste Facilities Uniform Standard Rule.**

(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, Florida Statutes, 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, Florida Statutes, 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 subsections 380.06(3), (4), (12), (13), (14), (15), (25), and 380.065(3), Florida Statutes.

(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 subsections 380.032(2) and 380.06(23), Florida Statutes.

(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, Florida Statutes, as amended.

(b) “Applicable Regional Plan” means the Regional Planning Council’s adopted Strategic Regional Policy Plan pursuant to Section 186.508, Florida Statutes.

(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 Community Affairs.

(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 Rule 64E-6, Florida Administrative Code, 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, Florida Statutes.

(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, Florida Administrative Code.

(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 paragraphs 380.06(4)(d) or (10)(b), Florida Statutes.

(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, Florida Statutes. 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, Florida Statutes. 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 9J-2.021(1)(h), Florida Administrative Code.

(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 subparagraph 380.06(15)(e)2., Florida Statutes, 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 1/2 mile of any navigable water; or
- b. Within a 100-year floodplain area; or
- c. Within a high-hazard coastal area; or
- d. Within 1/2 mile of an Outstanding Florida Water, designated in Chapter 62-302, Florida Administrative Code; or
- e. Within 1/2 mile of a Class I water body; or
- f. Within 1/2 mile of a Class II water body; or
- g. Within 1/2 mile of an Aquatic Preserve; or
- h. Constituting a high or prime recharge area for, or containing a sinkhole connecting within 1/2 mile to, a potable water aquifer or Class I water body; or
- i. On or within 1/2 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 (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 subsection 380.032(3) or 380.06(8), Florida Statutes, 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 subsection 380.06(18), Florida Statutes; 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 subsection 380.06(18), Florida Statutes; 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, Florida Statutes; 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, Florida Statutes; 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 subsection 380.06(15), Florida Statutes, 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 subsection 380.06(15), Florida Statutes, 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, Florida Statutes.

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 paragraph 163.3180(2)(a), Florida Statutes. 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, Florida Statutes, 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 paragraph 163.3180(2)(a), Florida Statutes; 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 subsection 380.06(19), Florida Statutes.

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, Florida Statutes; 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, Florida Statutes; 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 subsection 380.06(15), Florida Statutes, 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 subsection 380.06(15), Florida Statutes, 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, Florida Statutes. 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 paragraph 163.3180(2)(a), Florida Statutes. 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, Florida Statutes, 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 paragraph 163.3180(2)(a), Florida Statutes;

(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-sub-subparagraph 1.a. above, or is no longer being constructed but remains nonoperational, 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 subsection 380.06(19), Florida Statutes.

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, Florida Statutes; 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, Florida Statutes; 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 subsection 380.06(15), Florida Statutes, 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 subsection 380.06(15), Florida Statutes, 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, Florida Statutes.

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 paragraph 163.3180(2)(a), Florida Statutes. 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, Florida Statutes, 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 paragraph 163.3180(2)(a), Florida Statutes;

(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-subparagraphs 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 subsection 380.06(19), Florida Statutes.

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.

*Specific Authority 380.032(2)(a), 380.06(23)(a), (c)1. FS. Law Implemented 380.021, 380.06, 380.065, 380.07 FS. History--New 4-25-94, Amended 2-21-01, 6-1-03.*

## 9J-2.045 Transportation Uniform Standard Rule.

(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, Florida Statutes, 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, Florida Statutes, 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 subsections 380.06(3), (4), (12), (13), (14), (15), (25), and 380.065(3), Florida Statutes.

(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 subsections 380.032(2) and 380.06(23), Florida Statutes.

(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, Florida Statutes, as amended.

(b) “Applicable Regional Plan” means the Regional Planning Council’s adopted Strategic Regional Policy Plan pursuant to Section 186.508, Florida Statutes.

(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, Florida Statutes, and Chapter 9J-5, Florida Administrative Code.

(e) “Department” means the Florida Department of Community Affairs.

(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, Florida Statutes, 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, Florida Administrative Code, 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:

$$\frac{\text{DRI trips}}{\text{(SV increase)}} = \text{cost}$$

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, Florida Statutes.

(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, Florida Statutes.

(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 paragraphs 380.06(4)(d) or (10)(b), Florida Statutes.

(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, Florida Statutes. 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, Florida Statutes. 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 9J-2.021(1)(h), Florida Administrative Code.

(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 subsection 163.318(10), Florida Statutes. 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, Florida Statutes. 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 subsection 163.3180(10), Florida Statutes. 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 subsection 380.06(15), Florida Statutes, 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, Florida Statutes, 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, Florida Statutes, 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, Florida Statutes, 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 paragraph 163.3180(2)(c), Florida Statutes;

(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 paragraph 9J-5.0055(3)(c), Florida Administrative Code, 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 subsection 380.06(19), Florida Statutes.

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 subsections 163.3180(5), (7), (8) or (9), Florida Statutes, 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 through 163.3243, Florida Statutes; 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 Community Affairs.

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, Florida Statutes.

(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, Florida Administrative Code. 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.

*Specific 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. History--New 3-23-94, Amended 2-21-01, 6-1-03.*

#### **9J-2.046 Air Quality Uniform Standard Rule.**

(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, Florida Statutes, 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, Florida Statutes, 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 subsections 380.06(3), (4), (12), (13), (14), (15), (25) and 380.065(3), Florida Statutes.

(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 subsections 380.032(2) and 380.06(23), Florida Statutes.

(2) Definitions. As used in this rule:

(a) "Ambient Air Quality Standards" means those standards designated as such in Rule 62-272.300, Florida Administrative Code.

(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, Florida Statutes, as amended.

(c) "Applicable Regional Plan" means the Regional Planning Council's adopted Strategic Regional Policy Plan pursuant to Section 186.508, Florida Statutes.

(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), Florida Administrative Code, 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 Community Affairs.

(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, Florida Statutes, 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, Florida Statutes.

(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, Florida Statutes.

(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 paragraphs 380.06(4)(d) or (10)(b), Florida Statutes.

(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, Florida Statutes. 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, Florida Statutes. 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 9J-2.021(1)(h), Florida Administrative Code.

(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, Florida Statutes, 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, Florida Statutes, 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.

*Specific Authority 380.032(2)(a), 380.06(23)(a), (c)1. FS. Law Implemented 380.021, 380.06, 380.065, 380.07 FS. History--New 3-23-94, Amended 2-21-01, 6-1-03.*

#### **9J-2.048 Adequate Housing Uniform Standard Rule.**

(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, Florida Statutes, 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, Florida Statutes, 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 subsections 380.06(3), (4), (12), (13), (14), (15), (25), and 380.065(3), Florida Statutes.

(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 subsections 380.032(2) and 380.06(23), Florida Statutes.

(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, Florida Statutes, as amended.

(g) "Applicable Regional Plan" means the Regional Planning Council's adopted Strategic Regional Policy Plan pursuant to Section 186.508, Florida Statutes.

(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 Community Affairs.

(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, Florida Statutes.

(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 paragraphs 380.06(4)(d) or (10)(b), Florida Statutes.

(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 and 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, Florida Statutes. 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, Florida Statutes. 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 9J-2.021(1)(h), Florida Administrative Code.

(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 9J-2.021(1)(h), Florida Administrative Code.

(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 9J-2.021(1)(h), Florida Administrative Code.

(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 (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 9J-2.021(1)(h), Florida Administrative Code.

(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 9J-2.021(1)(h), Florida Administrative Code. 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, Florida Statutes.

(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 phase's 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.

*Specific Authority 380.032(2)(a), 380.06(23)(a), (c)1. FS. Law Implemented 380.021, 380.06, 380.065, 380.07 FS. History--New 3-23-94, Amended 2-21-01, 6-1-03.*