

HB 7207 and its Implications for Planning for Captiva

By Max Forgey, AICP for the Captiva Community Panel

Overview of this Report

On June 2, 2011, Governor Scott signed the *Community Planning Act* into law, making major changes to the manner in which local government planning will be conducted in the state of Florida. The adoption of this statute will be followed on the local level by major revisions to the Lee County comprehensive plan, following the adoption of the County's Evaluation and Appraisal Report (EAR) which identified four issues to guide forthcoming revisions to the County's plan. The purpose of this report is to inform Captiva residents about the contents of the Community Planning Act and its implications for future planning efforts. This report is unusually detailed because Captiva residents' interests are unusually far-reaching, so I have chosen to err on the side of too much, rather than too little, information. *For those who don't want to read through all this material—and I don't blame them—but have questions about the contents, please feel free to call me and I'll be happy to help.*

Part A, '*Background*,' summarizes the evolution and current status of growth management in Florida and briefly reviews the changes to concurrency and levels of service (LOS) standards, Rule 9J-5 and the contents of a local government comprehensive plan, and discusses the Lee County planning tradition and how it will be affected by this legislation. Part B, '*HB 7207 Summary*,' provides a detailed review of the entire document with a discussion of possible effects upon Lee County. References to page numbers and section numbers are keyed to the conference committee version (dated 5/5/2011), a 349-page document in strikethrough and underline format. This document has been cited because deleted statutory language is as significant as new language. **Boldfaced** items, such as subheads at the beginning of the paragraph or key words in some other part of the paragraph, are employed to guide the reader through the text. These brief subheadings are not necessarily taken verbatim from the text.

A. Background

Legislative history. HB 7207, the Community Planning Act of 2011, is the latest in a long string of planning, environmental policy, property rights, and growth management legislation and rule-making adopted by the Florida Legislature or promulgated by state agencies, particularly the Department of Community Affairs (DCA), since the early 1970s. These include the 1972 *Environmental Land and Water Management Act* (Ch. 380, *Florida Statutes*), which created the Development of Regional Impact (DRI) process; the 1975 *Local Government Comprehensive Planning Act (LGCPA)*, which required every local government governing body in the state to adopt by resolution a comprehensive plan with multiple elements; and the 1985 '*Growth Management Act*,' which mandated that local government plans be adopted by ordinance, subject to extensive state and regional review, containing levels of service standards (LOS) and a Future Land Use Map (FLUM) to guide the land use decision making process.

The Community Planning Act sharply reverses the historic trend toward state involvement in the comprehensive planning process, neutralizing many of the concurrency requirements that appeared in the 1985 legislation, eliminates Rule 9J-5, and returns the business of land development regulation to the local governments. Lee County will retain most of the tools needed to plan for the County's future, and may even provide an opportunity for better planning if the County chooses to embrace these changes to the community's benefit.

Concurrency and LOS. The idea that LOS (an objective measurement to be maintained for a specific class of infrastructure or service, e.g. roads or potable water) must be maintained in order to keep up with new development in the fast-paced Florida economy of the 1970s and '80s was a guiding principle of the 1985 act. Local governments in coastal and high-growth parts of Florida, such as Lee County, implemented the Growth Management Act by instituting revenue measures, including impact fees, to maintain LOS.

Since the mid-1980s, the Legislature has imposed a number of exemptions to the concurrency requirement, particularly for 'backlogged' roads, and in 2005 added public schools to the classes of infrastructure and services for which concurrency was mandated. All local governments within each county were required to adopt their own Public Schools Facilities Elements (PSFEs) with LOS for schools. These PSFEs were carefully reviewed by DCA, which expected near-uniformity between the plans of neighboring jurisdictions. Each local government within a county was expected to be a signatory to an interlocal agreement (ILA) that addressed LOS, school siting, and concurrency protocols. The 2011 act makes concurrency optional for transportation, public schools, and parks.

Rule 9J-5 and the contents of a local government plan. In 1986, DCA promulgated Rule 9J-5, a 60-plus page administrative rule which prescribed the contents of each element of the local government comprehensive plan in elaborate detail.

Rule 9J-5, which was subsequently endorsed by the Florida Legislature, caused two long-term effects: (1) it imposed consistency and uniformity between and among the comprehensive plans of all jurisdictions throughout the state, counties and cities, large and small, coastal and interior; and (2) it forced planners and local government officials to pursue a rational-comprehensive model of local government planning that tended to be visionless and unimaginative. Even local governments with strong planning traditions, such as Lee County, tended to adopt and expand via the amendment process, comprehensive plans that were too long to be consulted regularly by ordinary citizens.

The Community Planning Act of 2011 abrogates Rule 9J-5. It does not end the requirement to adopt comprehensive plans. Lee County must address land use, transportation, and other topics in its comprehensive plan. The Public School Facilities Element is no longer mandated, however; and the old elements may be combined or restructured to suit community needs and preferences.

The Lee County tradition. Lee County adopted its first zoning ordinance in 1963. The Lee Plan, one of the first growth management plans in the state, was adopted in 1984. Lee County has historically insisted upon a high level of citizen participation in the comprehensive planning

process. Compared with most parts of Florida, Lee County residents have historically valued their cultural, recreational, and natural resources, and the comprehensive plan and the land development regulations which have evolved since the 1980s reflect these community values. Unfortunately, the Lee County comprehensive plan and its subordinate land development regulations have become so complex that the core values cannot be easily identified due to the tedious recitations of data and analysis and the overabundance of repetitive, and sometimes pointless, policies. The recent Lee County Evaluation and Appraisal Report (EAR) attempts to refocus County attention on redevelopment and urban form in ways that the old Lee Plan did not. Local government plans have had a tendency to morph into super-LDRs with long regulatory policies. The 2011 Community Planning Act extends the latitude needed to adopt and maintain a vigorous comprehensive plan for the people of Lee County, but the responsibility for assuring that the Lee Plan satisfies community needs is now exclusively the responsibility of local residents and their elected officials.

B. HB 7207 Contents

The 1985 Local Government Comprehensive Planning and Land Development Act has been renamed the *Community Planning Act* (pp. 3-6, ll. 60-148. Sec. 163.3161.)

‘Important state resources and facilities.’ In Sec. 163.3161(3) the Legislature declares that the state’s role in managing growth will be to protect ‘important state resources and facilities.’ At their June 21 workshop in Sarasota, DCA provided very little guidance to local governments as to what should be considered ‘important state resources and facilities.’ We may assume that a state highway in the state’s strategic intermodal system, state parks, state universities qualify, but there is no indication that DCA will promulgate an official list, or what impacts they will be looking for.

New definitions. (Sec. 163.3164.) There are 17 new definitions, including ‘antiquated subdivision’ which does not appear to apply to Cape Coral or Lehigh, and ‘capital improvement;’ four major changes (‘public facilities,’ ‘regional planning agency,’ ‘sector plans,’ and ‘urban service area;’ and two deletions—‘financial feasibility’ and ‘dense urban land use (DULA).’ The urban service area definition eliminates the longstanding first three-year funding rule in the Capital Improvement Element’s Five Year Schedule of Capital Improvement. This will remove the sense of urgency which the old language imposed upon local governments to make concurrency effective, but should have no negative impact on Lee County.

Powers of local governments. Per Sec. 163.3167(2), local governments are no longer required to ‘prepare’ a comprehensive plan, but must ‘maintain’ same.

Regional planning council role in comprehensive plan revisions. The statute deletes the language (Sec. 163.3167(6)) relating to regional planning councils’ role in revising comprehensive plans. This applied only to small local governments and those which were recalcitrant in preparing their plan documents. This is certainly not a problem for Lee County.

Referenda. 163.3167(8): Per Sec. 163.3167(8), local governments may not conduct land use referenda. This is a big change, and it may remove one of the potential arrows in the County’s

quiver. This is the Legislature's over-response to the failed and misguided Amendment 4. Nevertheless, it is unambiguous—no land use referenda, period. If Lee County was contemplating this approach under any circumstances, forget about it. This should not be taken as a discouragement against a robust level of citizen participation.

Planning innovations and technical assistance. Sec. 163.3168 recognizes the need for ‘innovative planning and development strategies’ but is unclear as to how the state will influence innovation or what level of technical assistance (except for the informative website mandated in 163.3168(4)) it will provide. DCA has never been a helping agency, and the number of planning positions budgeted for future assistance has been cut in the current budget from 62 to 31.

Authority of local governments to enter into interlocal agreements (ILAs). Per Sec. 163.3171, DCA has been completely eliminated from the developer agreement process, and the state has no authority to abrogate an existing joint planning agreement (JPA). It is unclear whether the state ever had this power.

Local planning agencies (LPAs). Per Sec. 163.3174, LPAs are still charged with the preparation of Evaluation and Appraisal Reports (EARs), but local governments are no longer charged with informing the state as to which body has been designated the LPA.

Elements of comprehensive plan. Per Sec. 163.3177, the new buzz word is ‘**principles and strategies.**’ It doesn’t say what a principle or a strategy looks like, in comparison to something straightforward like a measurable objective or an LOS. Also ‘**meaningful and predictable standards,**’ which is even more vague—meaningful to whom; predictable by whom? Local governments shouldn’t be too concerned as it appears that state agencies have little authority to determine what actions were properly based upon these two pairs of buzz words, but they could loom large if a local government action is challenged in circuit court.

The comprehensive plan’s **format and contents** are addressed in the following three provisions of the new statute:

- The statute refers to the chapters of the plan as elements, but we have latitude in what we call those elements, and need not be bound by the old silos of future land use, transportation, etc. (p. 34, l. 905, Sec. 163.3177(1)).
- Section 163.3177(1)(b) allows local governments to adopt planning documents by reference. A bicycle/pedestrian plan, for example, could be adopted by reference, but its salient features could be summarized for public information, and hyperlinked to provide access for readers who are looking for more depth.
- Per 163.3177(3)a.5.(b), there will be major changes in the contents of the *Capital Improvement Element*. The local government must continue to review every five years. DCA has been taken out of the review loop for the Five Year CIE schedule. Good! It never worked, anyway.

Coordination with other jurisdictions and agencies. Per Sec. 163.3177(4), coordination with the state comprehensive plan is no longer “a major objective of the local comprehensive planning process.” It never was, and the failure of the state comprehensive plan is 100% the state's fault.

‘Permanent and seasonal projections’ are now required by 163.3177(6)(a)2.b. Seasonal projections aren't necessarily appropriate for all classes and infrastructure, but there does not appear to be a downside in this for Lee County. There is a central fallacy here that all infrastructure and services are somehow population-driven.

Urban sprawl. 163.3177(6)(a)8: It appears that the statutory checklist for **future land use map amendments** may be much more detailed than it has been in the past.

Contents of Recreation & Open Space Element are essentially unchanged per Sec. 163.3177(6)(a)11(d)3.e.

Housing Element. 163.3177(6)(a)11(d)3.(f)3: “[A]ll current and anticipated future residents” is an ambitious statement but way too encompassing to be meaningful, especially considering that Lee County is not a lender or homebuilder.

Rule 9J-5 has been written out of the statute (see p. 79, ll. 2153-4), effectively delegating the determination of minimum criteria to local governments.

The old **Public School Facilities Element (PSFE)**, which was mandated in 2005, containing LOS for schools and enabling concurrency for school facilities, is now optional; *but the ILA continues.* (pp. 95-8, ll. 2614-2700.) It is now optional.

An amendment to designate a “**rural agricultural industrial center**” is presumed not to be urban sprawl (p. 106, ll. 2913-7.)

Public schools interlocal agreement (ILA) is still required, although there are many changes to this section. (p. 107, ll. 2932-7. Sec. 163.3177(1)).

“Concurrency” (and proportionate fair-share; pp. 116-158, ll. 3176-4362, Sec. 163.3180) Per Sec. 163.3180(1), statewide concurrency is still required for sanitary sewer, solid waste, drainage, and potable water; but not for parks, schools, or transportation (surface or mass transit). This is a major change. According to Sec. 163.3180(1)(a), the rescission of any non-mandatory level of service requires an amendment to the local government comprehensive plan, so it isn't automatic. Sec. 163.3180(1)(b) provides that the local government must demonstrate that the LOS “can be reasonably met,” but does not say to whom this should be demonstrated. The old Sec. 163.3180(1)(c) has been deleted, eliminating the old three-year rule for transportation improvements.

Transportation concurrency. Per Sec. 163.3180(5)(a), pp. 119-20, ll. 3282-5: “If concurrency is applied to transportation facilities, the local government comprehensive plan must provide the principles, guidelines, standards, and strategies, including adopted levels of service to guide its application.” *This is a mandate for Lee County.* Assuming

that the County wishes to maintain transportation concurrency in some form, *it is incumbent upon the County to assure that the next version of the comprehensive plan provides the "principles, guidelines, standards, and strategies, including adopted levels of services to guide its application."*

‘Professionally accepted studies’ and ‘professionally accepted techniques.’ Per Sec. 163.3180(5)(b), (p. 120, ll. 3286-92), concurrency LOS must be based upon “...professionally accepted studies.” It does not say who does the accepting. Similarly, Sec. 163.3180(5)(c) provides that local governments will use ‘professionally accepted techniques for measuring LOS.’ This should go without saying, but it appears that the Legislature thought it important to insist that transportation development and funding, one of a local government’s biggest capital costs, be based upon sound engineering and accounting. Sec. 163.3180(5)(e)4.f.5 allows local government to adopt a ‘multimodal LOS.’

Proportionate share (Sec.163.3180(5)(h)3.a, p. 123, l. 3366, is still in the statute, but its possibilities have been severely curtailed. A major change appears at Sec. 163.3180(5)(h)3.c(II)(B) P. 124, ll. 3399-3402: “If any road is determined to be transportation deficient without the project traffic under review, the costs of correcting that deficiency shall be removed from the project’s proportionate share calculation...” *This is a major change, which we interpret as extending down to the intersection level.*

Concurrency for public schools. (Sec. 163.3180(6), pp. 134-43, ll. 3678-3939, significant portions have been deleted. These are major changes:

- *If a local government wants to have schools concurrency, it must be based on principles, guidelines, etc. and LOS, which would presumably be nested in the non-mandatory PSFE, the ICE, and CIE (ll. 3834-6.)*
- *If the county and the municipalities which cover 80% or more of the county’s population want concurrency, they can force concurrency on the municipalities that don’t want it. (ll. 3839-45.)*
- *There is no more mandatory LOS for public schools. It appears that public education belongs to a class of infrastructure that is non-essential, unlike say, sewers or drainage. This is not a problem for Lee County, and may make life simpler for all, but it is a virtual admission on the Legislature’s part that schools don’t matter as much as some other things. (ll. 3858-61, ~~Sec. 163.3180(13)(b).~~)*
- *Per Sec. 163.3180(f)1, local governments which ‘elect’ to adopt school concurrency are now ‘encouraged’ to make their LOS apply districtwide. In the past, the districtwide option was available for a maximum of five years. There is no apparent reward for keeping things districtwide. (ll. 3899-90.)*

Backlogged transportation facilities. Per Sec. 163.3182 (pp. 158-167, ll. 4363-4601) the old transportation concurrency backlog area has been designated as *the ‘transportation*

deficiency area. Local governments may still establish trust funds to address the erstwhile backlogs. All the old exemptions still apply.

The process for adopting a comprehensive plan or amendment (Sec.163.3184, pp. 167-209, ll.4604-5752 et seq.):

- **The expedited state review process.** Per Sec.163.3184 (2)(a), nearly everything is now expedited. State agencies “shall only comment on important state resources and facilities that will be adversely impacted by the amendment if adopted.” This is open-ended. We should assume that the state’s participation in the review process will be seriously circumscribed.
- **The regional planning council role.** Per Sec. 163.3184(3)(b)3.a, the RPC’s comments shall be limited to those identified in the strategic regional policy plan. As of July 1, 2011, the SRPP is being reviewed by the agency formerly known as DCA. It is a 50-page document updated from earlier versions.
- **State coordinated review process.** (Sec. 163.3184(4), pp. 174-183, l. 4786 et seq.):
 - Pp. 181-2, ll. 4992-5010, 163.3184(4)(b)1: *Re adoption of amendment.* There is now a **180-day window to adopt the previously transmitted amendment**, which is now presumed dead unless the local government and state agree to an extension.
 - P. 182, ll. 5011-6, 163.3184(4)(b)2: Transmit amended text to state within **ten days** of adoption hearing. Copies to all agencies that commented.
 - P. 182, ll. 5017-29, 163.3184(4)(b)3: State has **five days** to determine *completeness* and respond to adopted amendment. Specific criteria for transmittal. This is what most local governments have been doing for decades.
 - P. 183, ll. 5030-47, 163.3184(4)(b)4: **45 day compliance** review limited to issues previously identified in ORC report. Notice of intent published on DCA website. Newspaper of general circulation publication no longer required.
 - P. 183, ll. 5048-54, 163.3184(4)(b)5: Plans and plan amendments are now **effective upon issuance of notice of intent** unless timely challenged, in which case the amendment is effective upon issuance of final order.
- **Administrative challenges**, pp. 183-7, ll. 5055-5154, 163.3184(5):
 - P. 184, ll. 5057-65, 163.3184(5)(a): Any affected party may challenge adopted amendment; petition must be filed within **30 days**.
 - P. 184, ll. 5066-80, 163.3184(5)(b): Agency formerly known as DCA may challenge within **45 days**.

- Pp. 184-5, ll. 5081-94, 163.3184(5)(b)1: **DCA challenges must be based upon ‘important state resource or facility.’**
- Pp. 185-6, ll. 5095-5134, 163.3184(5)(b)2: *Rules for challenges within the administrative hearing.* Basically, the burden falls squarely upon the agency formerly known as DCA to prove that an important state resource or facility will be adversely affected.
- P. 186, ll. 5135-9, 163.3184(5)(d): Issuance of *final order* by Administration Commission.
- P. 187, ll. 5140-51, 163.3184(5)(e): Procedures if administrative law judge recommends amendment to be found in compliance.
- **Compliance agreement procedures**, pp. 187-191, ll. 5155-5252, 163.3184(6): Actual administrative hearings are rare. This is the way that most conflicts will be resolved. Most of this material appeared in the original statute and has been rearranged. New language: ll. 5221-31: petitions by affected persons not parties to a realigned proceeding; (2) ll. 5198-5203 re cumulative notice of intent. These appear to be editorial and not substantive.
- **Mediation and expeditious resolution**, pp. 191-7, ll. 5253-5430, 163.3184(7):
 - P. 191, ll. 5255-6: Local government may *demand* formal mediation. This could be useful for SC.
 - P. 191, ll. 5263-72: Administrative judge sets a **30 day** clock ticking. No continuances allowed.
 - P. 191, ll. 5273-7, 163.3184(7)(c): Recommended order issued within **30 days** of issuance of transcript.
- **Administration Commission**, pp. 197-9, ll. 5341-5473, 163.3184(8): Sanctions may still be imposed by the Administration Commission, although the state’s route appears to be long and arduous.
- **Charges borne by applicants**, pp. 200-1, ll. 5525-8, 163.3184(11)(c): Local governments may charge applicants for amendments for the cost of public notice. Most local governments expect applicants to bear that cost, so this is not a significant change.
- **Concurrent zoning**, p. 201, ll. 5529-35, 163.3184(12): *This is new, and will probably have an effect on Lee County.* If the applicant requests (i.e. even if it’s County policy to keep them separate) *the County must conduct a zoning hearing concurrent with the amendment hearing.* If granted, the rezoning becomes effective when the amendment becomes effective.

- **Small scale amendments to comprehensive plan.** Sec. 163.3187 (pp. 209-219; ll. 5755-6047) *is one of the most substantial changes from the original statute, and it is much simplified and improved.* **It's now a ten acre maximum per site and 120 acres per jurisdiction per year.** Text changes may be made, if directly related to a FLUM amendment and made concurrently with the FLUM amendment.

Evaluation and appraisal report. Per 163.3191 (pp. 219-232, ll. 6403) the EAR is still the central event in the comprehensive planning cycle, and it is still due every **seven years** (p. 219, Ch. 163.3191(1), l. 6053); DCA is still charged with setting the timetable for compliance (p. 231, Ch. 163.3191(5), ll. 6372-5); and the local planning agency is still charged with its preparation (p. 233, ll. 6435-8, 163.3221(11)). This section deletes nearly all of the old statutory requirements, thereby placing the responsibility for review of the local government plan squarely upon the local government and its LPA.

☞ *The following three brief paragraphs (163.3191(2), (3), and (4) (p. 220, ll. 6059-63) now constitute the entire regulatory expectation for the EARs:*

- According to paragraph (2), the local government is required to amend its comprehensive plan in order to **'reflect changes in state requirements'** (a minimal standard) and must transmit those amendments within one year of that determination.
- Paragraph (3) encourages local governments to amend comprehensive plans to reflect **'changes in local conditions.'**
- Paragraph (4) places emphasis on the **letter to DCA.** If the local government fails to notify the state by the due date for EARs, or fails to amend the comprehensive plan to reflect state changes, the local government may not amend its comprehensive plan until the local government is in compliance with the section. There may be a contradiction here—a local government which fails to amend its comprehensive plan (to reflect state changes) will be sanctioned by a prohibition against amending the comprehensive plan until such time as the plan has been amended to reflect the state changes. The good news for all local governments is that amending the comprehensive plan is so simple now—no twice-per-year restriction, for example—that repairing this breach will not be difficult.

Sector plans. (Sec. 163.3245, pp. 235-253, ll. 6498-6978) Sector plans have appeared in the statutes for a number of years, but they have never been popular with local governments because the requirements have been exceptionally burdensome. The sector plan appears to be the new DRI.

- Pp. 236-7, ll. 6499-6532, 163.3245(1): Emphasizes the protection of "regionally significant resources," and increases the minimum size for sector-planned areas from 5000 acres to **15,000 acres.**
- Pp. 237-8, ll. 6533-6575, 163.3245(2): Eliminates the authority of the agency formerly known as DCA to authorize sector plans between local governments, and authorizes the

regional planning council, when requested by the local government, to conduct a *scoping meeting* between the affected agencies.

- Pp. 238-245, ll. 6576-6775, 163.3245(3): This is a very long, and frequently confusing, subsection.. In sum, there will be a long-term master plan (*which is **not** required to "demonstrate need based upon projected population growth or any other basis"!* per ll. 6652-3), and two or more detailed specific area plans. The statute now requires a framework map (hardly different from the old maps required in DRIs) specifying land uses with minimum and maximum densities and intensities; water resources; transportation facilities; and regional facilities and utilities; and natural resources.
- P. 250, ll. 6980-90, 163.3245(8): If there are multiple property owners who are co-applicants for a sector plan approval, any one of them may withdraw prior to adoption of the master plan. This could prove difficult for local governments and the other property owners, resulting in developments with doughnut holes.

Rural Land Stewardship, Sec. 163.3248 (pp. 253-261, ll. 6988-7209):

- **No demonstration of need**, p. 254, ll. 7007-9, 163.3248(2): The keywords in this section are: "The future land use overlay may not require a demonstration of need based on population projections or any other factors." Lee County does not have to approve Rural Land Stewardship projects, but will doubtless have opportunities to do so.
- **Statement of intent**, p. 254, ll. 7010-21, 163.3248(3): This is a severely flawed statement. For example: how do large scale subdivisions in previously all-rural areas "control urban sprawl?"
- **Minimum 10,000 acres**, p. 255, ll. 7030, 163.3248(5)(a).
- **Land conservation**, pp. 256-61, ll. 7059-7194, 163.3248(6)(10): Everything in the RLS depends upon land conservation through the transfer of development rights into developable areas.

Developments of Regional Impact (DRI) ; Ch. 380, pp. 275-309, ll. 7604-8542). There are surprisingly few changes to this chapter.

- **Substantial deviations**, p. 281, ll.7763-8, 380.06(19)(b)1: The threshold has been liberalized—from 10 to **15%** (or from 330 spaces to **500**) for additional parking for an attraction or recreational facility, from 1100 spectator seats to **1500**.
- **Industrial developments exempt**, pp. 281, ll. 7772-3, 380.06(19)(b)3: Removes industrial development areas from the substantial deviation list outright.
- **Mining areas exempt**, p. 282, ll. 7774-85, 380.06(19)(b)4: Removes mining areas from the substantial deviation list outright.

- **Substantial deviation thresholds**, pp. 282 et seq., ll. 7786 et seq.: Generally increases substantial deviation thresholds for other types of uses.
- **Hotel, motel units exempt**, p. 283, ll. 7817-8, 380.06(19)(b)9: Removes hotel and motel units from the substantial deviation list outright.
- **Automatic four year extension of DRI development orders**, pp. 285-6, ll. 7872-90, 380.06(19)(c)2: “[i]n recognition of 2011 real estate market conditions.” This does not count as a substantial deviation. *This will remove some regulatory discretion from the County to close down underperforming DRIs*, although this may not be an issue, given market conditions.
- **Substantial deviation exemptions**, p. 290, ll. 8009-17, 380.06(19)(e)6: Proposed changes, when agreed upon by the local government, do not constitute substantial deviations. This also applies to changes to the proportionate share calculation and mitigation plan.
- **Statutory exemptions**, pp. 293-299, ll. 8084-8258, 380.06(24).
- **RLS exemption**, p. 297, ll. 8192-8200, 380.06(24)(m)2: Approved RLSes are exempt under all circumstances.
- **Solid mineral mines exempt**, pp. 297-8, ll. 8216-36, 380.06(24)(t): Exempts solid mineral mines from DRI process.
- **DRI exemptions supersede agreements**, p. 298, ll. 8237-42, 380.06(24)(u): If a development is exempt from the DRI process, it is exempt, notwithstanding agreements to the contrary.

Exemptions for DULAs, p. 298-302, ll. 8264-8342, 380.06(29): There are some major changes here. DULAs are automatic if the municipality has at least **5000 population and 1000 per square mile**. (380.06(29)(a)1). Municipalities within the county count for the county ((380.06(29)(a)2). On June 2, 2011, Governor Scott signed the *Community Planning Act* into law, making major changes to the manner in which local government planning will be conducted in the state of Florida. The adoption of this statute will be followed on the local level by major revisions to the Lee County comprehensive plan, following the adoption of the County’s Evaluation and Appraisal Report (EAR) which identified four issues to guide forthcoming revisions to the County’s plan. The purpose of this report is to inform Captiva residents about the contents of the Community Planning Act and its implications for future planning efforts. This report is unusually detailed because Captiva residents’ interests are unusually far-reaching, so I have chosen to err on the side of too much, rather than too little, information. *For those who don’t want to read through all this material—and I don’t blame them—but have questions about the contents, please feel free to call me and I’ll be happy to help.*

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The Community Planning Act sharply reverses the historic trend toward state involvement in the comprehensive planning process, neutralizing many of the concurrency requirements that appeared in the 1985 legislation, eliminates Rule 9J-5, and returns the business of land development regulation to the local governments. Lee County will retain most of the tools needed to plan for the County's future, and may even provide an opportunity for better planning if the County chooses to embrace these changes to the community's benefit.

Concurrency and LOS. The idea that LOS (an objective measurement to be maintained for a specific class of infrastructure or service, e.g. roads or potable water) must be maintained in order to keep up with new development in the fast-paced Florida economy of the 1970s and '80s was a guiding principle of the 1985 act. Local governments in coastal and high-growth parts of Florida, such as Lee County, implemented the Growth Management Act by instituting revenue measures, including impact fees, to maintain LOS.

Since the mid-1980s, the Legislature has imposed a number of exemptions to the concurrency requirement, particularly for 'backlogged' roads, and in 2005 added public schools to the classes of infrastructure and services for which concurrency was mandated. All local governments within each county were required to adopt their own Public Schools Facilities Elements (PSFEs) with LOS for schools. These PSFEs were carefully reviewed by DCA, which expected near-uniformity between the plans of neighboring jurisdictions. Each local government within a county was expected to be a signatory to an interlocal agreement (ILA) that addressed LOS,

school siting, and concurrency protocols. The 2011 act makes concurrency optional for transportation, public schools, and parks.

Rule 9J-5 and the contents of a local government plan. In 1986, DCA promulgated Rule 9J-5, a 60-plus page administrative rule which prescribed the contents of each element of the local government comprehensive plan in elaborate detail.

Rule 9J-5, which was subsequently endorsed by the Florida Legislature, caused two long-term effects: (1) it imposed consistency and uniformity between and among the comprehensive plans of all jurisdictions throughout the state, counties and cities, large and small, coastal and interior; and (2) it forced planners and local government officials to pursue a rational-comprehensive model of local government planning that tended to be visionless and unimaginative. Even local governments with strong planning traditions, such as Lee County, tended to adopt and expand via the amendment process, comprehensive plans that were too long to be consulted regularly by ordinary citizens.

The Community Planning Act of 2011 abrogates Rule 9J-5. It does not end the requirement to adopt comprehensive plans. Lee County must address land use, transportation, and other topics in its comprehensive plan. The Public School Facilities Element is no longer mandated, however; and the old elements may be combined or restructured to suit community needs and preferences.

The Lee County tradition. Lee County adopted its first zoning ordinance in 1963. The Lee Plan, one of the first growth management plans in the state, was adopted in 1984. Lee County has historically insisted upon a high level of citizen participation in the comprehensive planning process. Compared with most parts of Florida, Lee County residents have historically valued their cultural, recreational, and natural resources, and the comprehensive plan and the land development regulations which have evolved since the 1980s reflect these community values. Unfortunately, the Lee County comprehensive plan and its subordinate land development regulations have become so complex that the core values cannot be easily identified due to the tedious recitations of data and analysis and the overabundance of repetitive, and sometimes pointless, policies. The recent Lee County Evaluation and Appraisal Report (EAR) attempts to refocus County attention on redevelopment and urban form in ways that the old Lee Plan did not. Local government plans have had a tendency to morph into super-LDRs with long regulatory policies. The 2011 Community Planning Act extends the latitude needed to adopt and maintain a vigorous comprehensive plan for the people of Lee County, but the responsibility for assuring that the Lee Plan satisfies community needs is now exclusively the responsibility of local residents and their elected officials.

D. HB 7207 Contents

The 1985 Local Government Comprehensive Planning and Land Development Act has been renamed the *Community Planning Act* (pp. 3-6, ll. 60-148. Sec. 163.3161.)

‘Important state resources and facilities.’ In Sec. 163.3161(3) the Legislature declares that the state’s role in managing growth will be to protect ‘important state resources and facilities.’

At their June 21 workshop in Sarasota, DCA provided very little guidance to local governments as to what should be considered ‘important state resources and facilities.’ We may assume that a state highway in the state's strategic intermodal system, state parks, state universities qualify, but there is no indication that DCA will promulgate an official list, or what impacts they will be looking for.

New definitions. (Sec. 163.3164.) There are 17 new definitions, including ‘antiquated subdivison’ which does not appear to apply to Cape Coral or Lehigh, and ‘capital improvement;’ four major changes (‘public facilities,’ ‘regional planning agency,’ ‘sector plans,’ and ‘urban service area;’ and two deletions—‘financial feasibility’ and ‘dense urban land use (DULA).’ The urban service area definition eliminates the longstanding first three-year funding rule in the Capital Improvement Element’s Five Year Schedule of Capital Improvement. This will remove the sense of urgency which the old language imposed upon local governments to make concurrency effective, but should have no negative impact on Lee County.

Powers of local governments. Per Sec. 163.3167(2), local governments are no longer required to ‘prepare’ a comprehensive plan, but must ‘maintain’ same.

Regional planning council role in comprehensive plan revisions. The statute deletes the language (Sec. 163.3167(6)) relating to regional planning councils’ role in revising comprehensive plans. This applied only to small local governments and those which were recalcitrant in preparing their plan documents. This is certainly not a problem for Lee County.

Referenda. 163.3167(8): Per Sec. 163.3167(8), local governments may not conduct land use referenda. This is a big change, and it may remove one of the potential arrows in the County’s quiver. This is the Legislature's over-response to the failed and misguided Amendment 4. Nevertheless, it is unambiguous—no land use referenda, period. If Lee County was contemplating this approach under any circumstances, forget about it. This should not be taken as a discouragement against a robust level of citizen participation.

Planning innovations and technical assistance. Sec. 163.3168 recognizes the need for ‘innovative planning and development strategies’ but is unclear as to how the state will influence innovation or what level of technical assistance (except for the informative website mandated in 163.3168(4)) it will provide. DCA has never been a helping agency, and the number of planning positions budgeted for future assistance has been cut in the current budget from 62 to 31.

Authority of local governments to enter into interlocal agreements (ILAs). Per Sec. 163.3171, DCA has been completely eliminated from the developer agreement process, and the state has no authority to abrogate an existing joint planning agreement (JPA). It is unclear whether the state ever had this power.

Local planning agencies (LPAs). Per Sec. 163.3174, LPAs are still charged with the preparation of Evaluation and Appraisal Reports (EARs), but local governments are no longer charged with informing the state as to which body has been designated the LPA.

Elements of comprehensive plan. Per Sec. 163.3177, the new buzz word is ‘**principles and strategies.**’ It doesn’t say what a principle or a strategy looks like, in comparison to something straightforward like a measurable objective or an LOS. Also ‘**meaningful and predictable standards,**’ which is even more vague—meaningful to whom; predictable by whom? Local governments shouldn’t be too concerned as it appears that state agencies have little authority to determine what actions were properly based upon these two pairs of buzz words, but they could loom large if a local government action is challenged in circuit court.

The comprehensive plan’s **format and contents** are addressed in the following three provisions of the new statute:

- The statute refers to the chapters of the plan as elements, but we have latitude in what we call those elements, and need not be bound by the old silos of future land use, transportation, etc. (p. 34, l. 905, Sec. 163.3177(1)).
- Section 163.3177(1)(b) allows local governments to adopt planning documents by reference. A bicycle/pedestrian plan, for example, could be adopted by reference, but its salient features could be summarized for public information, and hyperlinked to provide access for readers who are looking for more depth.
- Per 163.3177(3)a.5.(b), there will be major changes in the contents of the *Capital Improvement Element*. The local government must continue to review every five years. DCA has been taken out of the review loop for the Five Year CIE schedule. Good! It never worked, anyway.

Coordination with other jurisdictions and agencies. Per Sec. 163.3177(4), coordination with the state comprehensive plan is no longer “a major objective of the local comprehensive planning process.” It never was, and the failure of the state comprehensive plan is 100% the state’s fault.

‘**Permanent and seasonal projections**’ are now required by 163.3177(6)(a)2.b. Seasonal projections aren’t necessarily appropriate for all classes and infrastructure, but there does not appear to be a downside in this for Lee County. There is a central fallacy here that all infrastructure and services are somehow population-driven.

Urban sprawl. 163.3177(6)(a)8: It appears that the statutory checklist for **future land use map amendments** may be much more detailed than it has been in the past.

Contents of Recreation & Open Space Element are essentially unchanged per Sec. 163.3177(6)(a)11(d)3.e.

Housing Element. 163.3177(6)(a)11(d)3.(f)3: “...[A]ll current and anticipated future residents” is an ambitious statement but way too encompassing to be meaningful, especially considering that Lee County is not a lender or homebuilder.

Rule 9J-5 has been written out of the statute (see p. 79, ll. 2153-4), effectively delegating the determination of minimum criteria to local governments.

The old **Public School Facilities Element (PSFE)**, which was mandated in 2005, containing LOS for schools and enabling concurrency for school facilities, is now optional; *but the ILA continues.* (pp. 95-8, ll. 2614-2700.) It is now optional.

An amendment to designate a **“rural agricultural industrial center”** is presumed not to be urban sprawl (p. 106, ll. 2913-7.)

Public schools interlocal agreement (ILA) is still required, although there are many changes to this section. (p. 107, ll. 2932-7. Sec. 163.31777(1)).

“Concurrency” (and proportionate fair-share; pp. 116-158, ll. 3176-4362, Sec. 163.3180) Per Sec. 163.3180(1), statewide concurrency is still required for sanitary sewer, solid waste, drainage, and potable water; but not for parks, schools, or transportation (surface or mass transit). This is a major change. According to Sec. 163.3180(1)(a), the rescission of any non-mandatory level of service requires an amendment to the local government comprehensive plan, so it isn’t automatic. Sec. 163.3180(1)(b) provides that the local government must demonstrate that the LOS “can be reasonably met,” but does not say to whom this should be demonstrated. The old Sec. 163.3180(1)(c) has been deleted, eliminating the old three-year rule for transportation improvements.

Transportation concurrency. Per Sec. 163.3180(5)(a), pp. 119-20, ll. 3282-5: “If concurrency is applied to transportation facilities, the local government comprehensive plan must provide the principles, guidelines, standards, and strategies, including adopted levels of service to guide its application.” *This is a mandate for Lee County.* Assuming that the County wishes to maintain transportation concurrency in some form, *it is incumbent upon the County to assure that the next version of the comprehensive plan provides the "principles, guidelines, standards, and strategies, including adopted levels of services to guide its application."*

‘Professionally accepted studies’ and ‘professionally accepted techniques.’ Per Sec. 163.3180(5)(b), (p. 120, ll. 3286-92), concurrency LOS must be based upon “...professionally accepted studies.” It does not say who does the accepting. Similarly, Sec. 163.3180(5)(c) provides that local governments will use ‘professionally accepted techniques for measuring LOS.’ This should go without saying, but it appears that the Legislature thought it important to insist that transportation development and funding, one of a local government’s biggest capital costs, be based upon sound engineering and accounting. Sec. 163.3180(5)(e)4.f.5 allows local government to adopt a ‘multimodal LOS.’

Proportionate share (Sec.163.3180(5)(h)3.a, p. 123, l. 3366, is still in the statute, but its possibilities have been severely curtailed. A major change appears at Sec. 163.3180(5)(h)3.c(II)(B) P. 124, ll. 3399-3402: “If any road is determined to be transportation deficient without the project traffic under review, the costs of correcting that deficiency shall be removed from the project’s proportionate share calculation...” *This is a major change, which we interpret as extending down to the intersection level.*

Concurrency for public schools. (Sec. 163.3180(6), pp. 134-43, ll. 3678-3939, significant portions have been deleted. These are major changes:

- *If* a local government wants to have schools concurrency, it must be based on principles, guidelines, etc. and LOS, which would presumably be nested in the non-mandatory PSFE, the ICE, and CIE (ll. 3834-6.)
- *If* the county and the municipalities which cover 80% or more of the county's population want concurrency, they can force concurrency on the municipalities that don't want it. (ll. 3839-45.)
- There is no more mandatory LOS for public schools. It appears that public education belongs to a class of infrastructure that is non-essential, unlike say, sewers or drainage. This is not a problem for Sarasota County, and may make life simpler for all, but it is a virtual admission on the Legislature's part that schools don't matter as much as some other things. (ll. 3858-61, ~~Sec. 163.3180(13)(b).~~)
- Per Sec. 163.3180(f)1, local governments which 'elect' to adopt school concurrency are now 'encouraged' to make their LOS apply districtwide. In the past, the districtwide option was available for a maximum of five years. There is no apparent reward for keeping things districtwide. (ll. 3899-90.)

Backlogged transportation facilities. Per Sec. 163.3182 (pp. 158-167, ll. 4363-4601) the old transportation concurrency backlog area has been designated as *the 'transportation deficiency area.'* Local governments may still establish trust funds to address the erstwhile backlogs. All the old exemptions still apply.

The process for adopting a comprehensive plan or amendment (Sec.163.3184, pp. 167-209, ll.4604-5752 et seq.):

- **The expedited state review process.** Per Sec.163.3184 (2)(a), nearly everything is now expedited. State agencies "shall only comment on important state resources and facilities that will be adversely impacted by the amendment if adopted." This is open-ended. We should assume that the state's participation in the review process will be seriously circumscribed.
- **The regional planning council role.** Per Sec. 163.3184(3)(b)3.a, the RPC's comments shall be limited to those identified in the strategic regional policy plan. As of July 1, 2011, the SRPP is being reviewed by the agency formerly known as DCA. It is a 50-page document updated from earlier versions.
- **State coordinated review process.** (Sec. 163.3184(4), pp. 174-183, l. 4786 et seq.):
 - Pp. 181-2, ll. 4992-5010, 163.3184(4)(b)1: *Re adoption of amendment.* There is now a **180-day window to adopt the previously transmitted amendment,**

which is now presumed dead unless the local government and state agree to an extension.

- P. 182, ll. 5011-6, 163.3184(4)(b)2: Transmit amended text to state within **ten days** of adoption hearing. Copies to all agencies that commented.
- P. 182, ll. 5017-29, 163.3184(4)(b)3: State has **five days** to determine *completeness* and respond to adopted amendment. Specific criteria for transmittal. This is what most local governments have been doing for decades.
- P. 183, ll. 5030-47, 163.3184(4)(b)4: **45 day compliance** review limited to issues previously identified in ORC report. Notice of intent published on DCA website. Newspaper of general circulation publication no longer required.
- P. 183, ll. 5048-54, 163.3184(4)(b)5: Plans and plan amendments are now **effective upon issuance of notice of intent** unless timely challenged, in which case the amendment is effective upon issuance of final order.
- **Administrative challenges**, pp. 183-7, ll. 5055-5154, 163.3184(5):
 - P. 184, ll. 5057-65, 163.3184(5)(a): Any affected party may challenge adopted amendment; petition must be filed within **30 days**.
 - P. 184, ll. 5066-80, 163.3184(5)(b): Agency formerly known as DCA may challenge within **45 days**.
 - Pp. 184-5, ll. 5081-94, 163.3184(5)(b)1: **DCA challenges must be based upon ‘important state resource or facility.’**
 - Pp. 185-6, ll. 5095-5134, 163.3184(5)(b)2: *Rules for challenges within the administrative hearing*. Basically, the burden falls squarely upon the agency formerly known as DCA to prove that an important state resource or facility will be adversely affected.
 - P. 186, ll. 5135-9, 163.3184(5)(d): Issuance of *final order* by Administration Commission.
 - P. 187, ll. 5140-51, 163.3184(5)(e): Procedures if administrative law judge recommends amendment to be found in compliance.
- **Compliance agreement procedures**, pp. 187-191, ll. 5155-5252, 163.3184(6): Actual administrative hearings are rare. This is the way that most conflicts will be resolved. Most of this material appeared in the original statute and has been rearranged. New language: ll. 5221-31: petitions by affected persons not parties to a realigned proceeding; (2) ll. 5198-5203 re cumulative notice of intent. These appear to be editorial and not substantive.

- **Mediation and expeditious resolution**, pp. 191-7, ll. 5253-5430, 163.3184(7):
 - P. 191, ll. 5255-6: Local government may *demand* formal mediation. This could be useful for SC.
 - P. 191, ll. 5263-72: Administrative judge sets a **30 day** clock ticking. No continuances allowed.
 - P. 191, ll. 5273-7, 163.3184(7)(c): Recommended order issued within **30 days** of issuance of transcript.
- **Administration Commission**, pp. 197-9, ll. 5341-5473, 163.3184(8): Sanctions may still be imposed by the Administration Commission, although the state’s route appears to be long and arduous.
- **Charges borne by applicants**, pp. 200-1, ll. 5525-8, 163.3184(11)(c): Local governments may charge applicants for amendments for the cost of public notice. Most local governments expect applicants to bear that cost, so this is not a significant change.
- **Concurrent zoning**, p. 201, ll. 5529-35, 163.3184(12): *This is new, and will probably have an effect on Lee County.* If the applicant requests (i.e. even if it’s County policy to keep them separate) *the County must conduct a zoning hearing concurrent with the amendment hearing.* If granted, the rezoning becomes effective when the amendment becomes effective.
- **Small scale amendments to comprehensive plan.** Sec. 163.3187 (pp. 209-219; ll. 5755-6047) *is one of the most substantial changes from the original statute, and it is much simplified and improved.* **It’s now a ten acre maximum per site and 120 acres per jurisdiction per year.** Text changes may be made, if directly related to a FLUM amendment and made concurrently with the FLUM amendment.

Evaluation and appraisal report. Per 163.3191 (pp. 219-232, ll. 6403) the EAR is still the central event in the comprehensive planning cycle, and it is still due every **seven years** (p. 219, Ch. 163.3191(1), l. 6053); DCA is still charged with setting the timetable for compliance (p. 231, Ch. 163.3191(5), ll. 6372-5); and the local planning agency is still charged with its preparation (p. 233, ll. 6435-8, 163.3221(11)). This section deletes nearly all of the old statutory requirements, thereby placing the responsibility for review of the local government plan squarely upon the local government and its LPA.

☞ *The following three brief paragraphs (163.3191(2), (3), and (4) (p. 220, ll. 6059-63) now constitute the entire regulatory expectation for the EARs:*

- According to paragraph (2), the local government is required to amend its comprehensive plan in order to ‘**reflect changes in state requirements**’ (a minimal standard) and must transmit those amendments within one year of that determination.

- Paragraph (3) encourages local governments to amend comprehensive plans to reflect **‘changes in local conditions.’**
- Paragraph (4) places emphasis on the **letter to DCA**. If the local government fails to notify the state by the due date for EARs, or fails to amend the comprehensive plan to reflect state changes, the local government may not amend its comprehensive plan until the local government is in compliance with the section. There may be a contradiction here—a local government which fails to amend its comprehensive plan (to reflect state changes) will be sanctioned by a prohibition against amending the comprehensive plan until such time as the plan has been amended to reflect the state changes. The good news for all local governments is that amending the comprehensive plan is so simple now—no twice-per-year restriction, for example—that repairing this breach will not be difficult.

Sector plans. (Sec. 163.3245, pp. 235-253, ll. 6498-6978) Sector plans have appeared in the statutes for a number of years, but they have never been popular with local governments because the requirements have been exceptionally burdensome. The sector plan appears to be the new DRI.

- Pp. 236-7, ll. 6499-6532, 163.3245(1): Emphasizes the protection of “regionally significant resources,” and increases the minimum size for sector-planned areas from 5000 acres to **15,000 acres**.
- Pp. 237-8, ll. 6533-6575, 163.3245(2): Eliminates the authority of the agency formerly known as DCA to authorize sector plans between local governments, and authorizes the regional planning council, when requested by the local government, to conduct a *scoping meeting* between the affected agencies.
- Pp. 238-245, ll. 6576-6775, 163.3245(3): This is a very long, and frequently confusing, subsection.. In sum, there will be a long-term master plan (*which is **not** required to “demonstrate need based upon projected population growth or any other basis”!* per ll. 6652-3), and two or more detailed specific area plans. The statute now requires a framework map (hardly different from the old maps required in DRIs) specifying land uses with minimum and maximum densities and intensities; water resources; transportation facilities; and regional facilities and utilities; and natural resources.
- P. 250, ll. 6980-90, 163.3245(8): If there are multiple property owners who are co-applicants for a sector plan approval, any one of them may withdraw prior to adoption of the master plan. This could prove difficult for local governments and the other property owners, resulting in developments with doughnut holes.

Rural Land Stewardship, Sec. 163.3248 (pp. 253-261, ll. 6988-7209):

- **No demonstration of need**, p. 254, ll. 7007-9, 163.3248(2): The keywords in this section are: “The future land use overlay may not require a demonstration of need based on

population projections or any other factors." Lee County does not have to approve Rural Land Stewardship projects, but will doubtless have opportunities to do so.

- **Statement of intent**, p. 254, ll. 7010-21, 163.3248(3): This is a severely flawed statement. For example: how do large scale subdivisions in previously all-rural areas "control urban sprawl?"
- **Minimum 10,000 acres**, p. 255, ll. 7030, 163.3248(5)(a).
- **Land conservation**, pp. 256-61, ll. 7059-7194, 163.3248(6)(10): Everything in the RLS depends upon land conservation through the transfer of development rights into developable areas.

Developments of Regional Impact (DRI); Ch. 380, pp. 275-309, ll. 7604-8542). There are surprisingly few changes to this chapter.

- **Substantial deviations**, p. 281, ll.7763-8, 380.06(19)(b)1: The threshold has been liberalized—from 10 to **15%** (or from 330 spaces to **500**) for additional parking for an attraction or recreational facility, from 1100 spectator seats to **1500**.
- **Industrial developments exempt**, pp. 281, ll. 7772-3, 380.06(19)(b)3: Removes industrial development areas from the substantial deviation list outright.
- **Mining areas exempt**, p. 282, ll. 7774-85, 380.06(19)(b)4: Removes mining areas from the substantial deviation list outright.
- **Substantial deviation thresholds**, pp. 282 et seq., ll. 7786 et seq.: Generally increases substantial deviation thresholds for other types of uses.
- **Hotel, motel units exempt**, p. 283, ll. 7817-8, 380.06(19)(b)9: Removes hotel and motel units from the substantial deviation list outright.
- **Automatic four year extension of DRI development orders**, pp. 285-6, ll.7872-90, 380.06(19)(c)2: “[i]n recognition of 2011 real estate market conditions." This does not count as a substantial deviation. *This will remove some regulatory discretion from the County to close down underperforming DRIs*, although this may not be an issue, given market conditions.
- **Substantial deviation exemptions**, p. 290, ll.8009-17, 380.06(19)(e)6: Proposed changes, when agreed upon by the local government, do not constitute substantial deviations. This also applies to changes to the proportionate share calculation and mitigation plan.
- **Statutory exemptions**, pp. 293-299, ll. 8084-8258, 380.06(24).

- **RLS exemption**, p. 297, ll. 8192-8200, 380.06(24)(m)2: Approved RLSes are exempt under all circumstances.
- **Solid mineral mines exempt**, pp. 297-8, ll. 8216-36, 380.06(24)(t): Exempts solid mineral mines from DRI process.
- **DRI exemptions supersede agreements**, p. 298, ll. 8237-42, 380.06(24)(u): If a development is exempt from the DRI process, it is exempt, notwithstanding agreements to the contrary.
- **Exemptions for DULAs**, p. 298-302, ll.8264-8342, 380.06(29): There are some major changes here. DULAs are automatic if the municipality has at least **5000 population** and **1000 per square mile**. (380.06(29)(a)1). Municipalities within the county count for the county ((380.06(29)(a)2).
- vvv