



# **RULEMAKING & REGULATION SUBCOMMITTEE**

**Wednesday, February 09, 2011**

**9:00 A.M – 12:00 NOON**

**306 House Office Building**

**COMMITTEE MEETING**

Dean Cannon  
Speaker

Chris Dorworth  
Chair

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Rulemaking & Regulation Subcommittee

**Start Date and Time:** Wednesday, February 09, 2011 09:00 am

**End Date and Time:** Wednesday, February 09, 2011 12:00 pm

**Location:** 306 HOB

**Duration:** 3.00 hrs

Presentation by S. Curtis Kiser, General Counsel , Public Service Commission, and former Florida State Legislator, reflecting on development of Florida APA and the oversight responsibilities of state legislators and committees.

Presentations on the regulatory environment affecting real estate development in Florida. Presenters will include state and local regulators and private sector representatives.

**NOTICE FINALIZED on 02/02/2011 15:43 by Thompson.Sonja**



# FLORIDA HOUSE OF REPRESENTATIVES

*Dean Cannon, Speaker*

## Rules & Calendar Committee Rulemaking & Regulation Subcommittee

Chris Dorworth  
*Chair*

317 The Capitol  
(850) 488-0608

### AGENDA

Wednesday, February 09, 2011  
9:00 A.M. – 12:00 Noon  
Room 306 House Office Building

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- I. Opening Remarks by Chair Dorworth
  - II. Roll Call: Sonja Thompson, CAA
  - III. Presentation by S. Curtis Kiser, General Counsel, Public Service Commission, and former Florida State Legislator, reflecting on development of Florida APA and the oversight responsibilities of state legislators and committees.
  - IV. Governmental perspective of regulatory environment affecting property development in Florida.
    - Florida League of Cities, Inc.  
Rebecca O'Hara, Legislative Director
    - Florida Association of Counties  
John W. Smith, Legislative Director
    - Florida Department of Community Affairs  
Secretary Billy Buzzett
  - V. Private sector perspective of regulatory environment affecting property development in Florida.
    - Florida Chamber of Commerce  
Adam Babington, Vice President, Government Affairs
    - Florida Association of Community Developers  
Linda Shelley, General Counsel
    - Florida Home Builders Association  
Douglas Buck, Director, Governmental Affairs
    - American Dream Coalition  
Ed Braddy, Executive Director
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Secretary Billy Buzzett**

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**TAB 7.....Florida Home Builders Association  
Douglas Buck, Director, Governmental Affairs**

**TAB 8.....American Dream Coalition  
Ed Braddy, Executive Director**





**Curt Kiser, General Counsel  
Florida Public Service Commission**

Curt Kiser is the General Counsel for the Florida Public Service Commission. He is a 1967 graduate of the University of Iowa, and a 1970 graduate of the Florida State University College of Law.

Senator Kiser has a long and distinguished career in public service to the State of Florida.

His public service included State Representative 1972-1982, Senator 1984-1994. Of specific interest to the Public Service Commission and the utilities it regulates, Senator Kiser sponsored legislation to create the Office of Public Counsel. He also, either sponsored or helped pass legislation on issues relating to The Florida Public Service Commission, including: the "fuel adjustment clause," the electric energy grid, development of nuclear energy, the appointed Public Service Commission and creation of the PSC Nominating Council, and implementing the 1992 grand jury recommendation to limit PSC Commissioners for a period of 2 years from leaving their Commission seat and going to work for a regulated entity.

During his legislative service, Curt was the prime sponsor of legislation that established Chapter 120, F.S., the "Administrative Procedures Act" and Chapter 90, F.S., the "Florida Evidence Code." His knowledge of those statutes is quite beneficial in his current position as General Counsel.

Senator Kiser served on the Public Service Commission Nominating Council for 16 years, 1978-1994, with several terms as chairman.

In addition, Senator Kiser has been a champion of protecting Florida's environment and served on the Florida Wildlife Federation Board of Directors. He served as Chairman of the Collins Institute, a public policy agency of the state university system. He continues to serve on the Capitol Historic Foundation and the Florida Legislative Research Center and Museum.

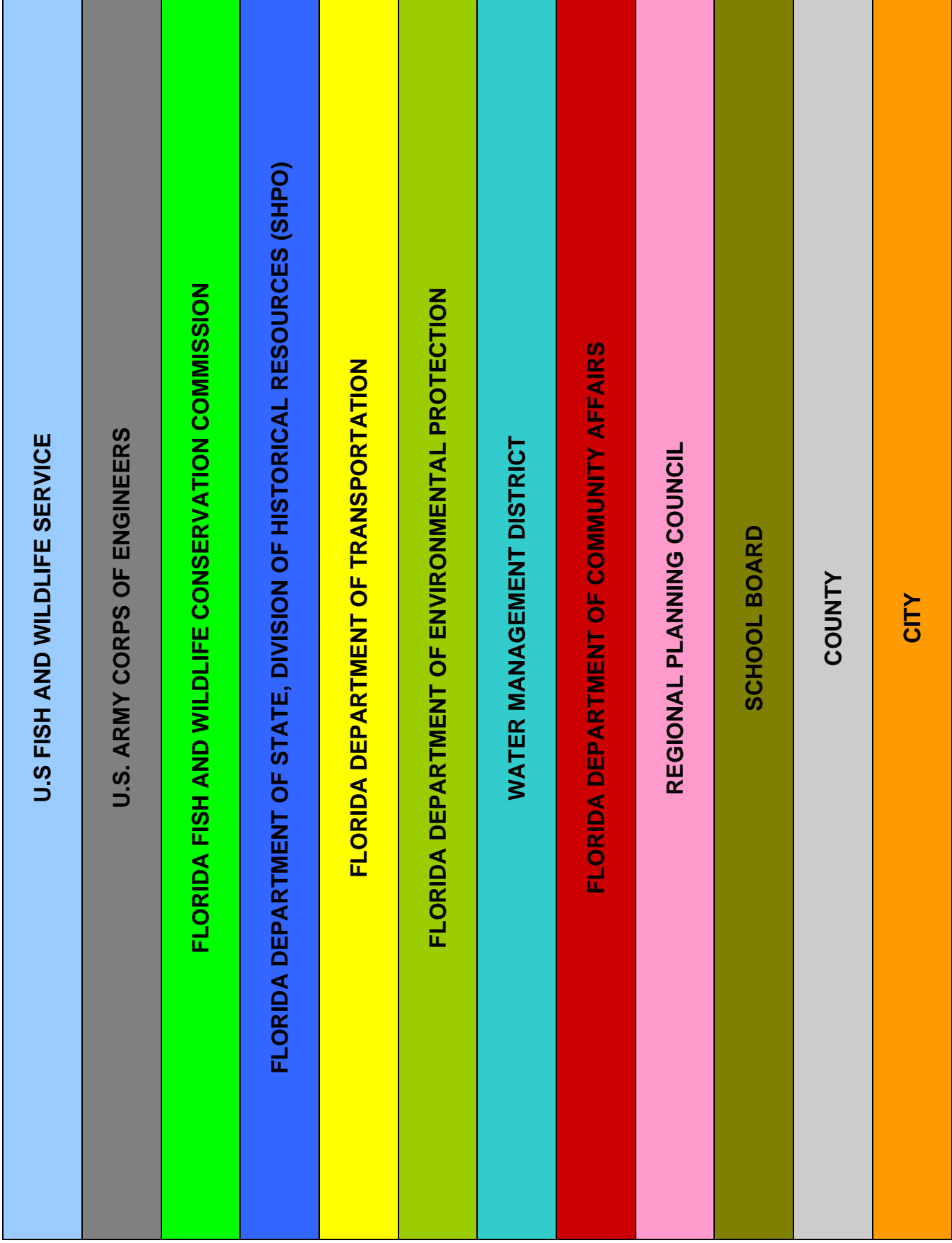
He also served on the Board of Directors of 1,000 Friends of Florida which advocates for smarter growth for Florida communities by fighting sprawl, saving special places, and promoting affordable housing.



**Rebecca O'Hara, Director of Legislative Affairs & Communication  
The Florida League of Cities**

Rebecca O'Hara is the Director of Legislative Affairs & Communication for the Florida League of Cities, a statewide association representing the interests of Florida's 410 municipal governments. She represents the League on a variety of municipal matters before state agencies, the Florida Legislature, and courts. Prior to joining the League in 1999, Rebecca practiced law in the private sector, where she represented clients in areas relating to environmental, administrative, land use and growth management law. Rebecca received both her undergraduate and law degrees from Florida State University. She lives in Tallahassee, Florida, with her husband Ron Greenstein and their two children, Riley and Noah.

REGULATORY LAYERS THAT CAN APPLY TO A TYPICAL MIXED-USE PROJECT



**CITY AS REGULATOR**

- Local Comprehensive Plan or Land Use Amendment (if project is inconsistent with adopted plan)
- Re-zoning (if project is inconsistent with adopted zoning code)
- Development Approval (DRI or other local development order)
- Development Agreement (to make infrastructure commitments)
- Certificate of Concurrence (water, wastewater, solid waste, drainage, parks, roads, mass transit and schools)
- Plat or Site Plan Approval
- Engineering Plan Approval
- Site Clearing, Environmental and Other Permits
- Building Permit
- Impact Fees (may include road, school, water, wastewater, solid waste, drainage, parks or other facilities)
- Certificate of Occupancy

**CITY AS UTILITY PROVIDER**

- Permits for Drinking Water and Wastewater System
- Driveway Permit

**COUNTY**

- Review and comment on any comprehensive plan amendment, land use change or DRI application
- Driveway Permit to connect to County Road System (if applicable)
- Requirements imposed by County Charter (if applicable)

**SCHOOL BOARD**

- Review and comment on any comprehensive plan amendment or land use change
- School Concurrence Impact Analysis (for residential uses)
- Development Agreement (if school site dedication or school construction is required as mitigation)

### **REGIONAL PLANNING COUNCIL**

- Review and comment on any comprehensive plan amendment or land use change
- DRI Regional Review (if the project meets or exceeds DRI thresholds for multi-use projects)

### **FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS**

- Comprehensive Plan or Future Land Use Map amendment (DCA must review and approve)
- DRI development order (DCA must review and may appeal to the Governor and Cabinet)
- Administers Florida Building Code (includes requirements from Americans for Disability Act)

### **WATER MANAGEMENT DISTRICT**

- Review and comment on any comprehensive plan amendment, land use change or DRI application
- Environmental Resource Permit (if state jurisdictional wetlands would be impacted)

### **FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION**

- Review and comment on any comprehensive plan amendment, land use change or DRI application
- NPDES Notice of Intent to Use General Stormwater Discharge Permit for Large and Small Construction Activities
- NPDES Notice of Intent to Use General Permit for Discharge of Produced Groundwater from Non-contaminated Site Activity

### **FLORIDA DEPARTMENT OF TRANSPORTATION**

- Review and comment on any comprehensive plan amendment, land use change or DRI application
- Driveway Permit
- Drainage Permit
- Utility Permit

**FLORIDA DEPARTMENT OF STATE, DIVISION OF HISTORICAL RESOURCES (SHPO)**

- Review and comment on any comprehensive plan amendment, land use change or DRI application
- Clearance Letter (if cultural resources assessment survey is required for the site)
- Approval of Mitigation for Impacts to Historic Resources (if protected historic resources would be impacted)

**FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION**

- Review and comment on any comprehensive plan amendment, land use change or DRI application
- Incidental Take Permit or other Wildlife Impact Approval (if state-listed species would be impacted)

**U.S. ARMY CORPS OF ENGINEERS**

- Section 404 Dredge and Fill Permit (if federal jurisdictional wetlands would be impacted)
- Nationwide Permit for Temporary Wetland Impacts in Right of Way (if federal jurisdictional wetlands are impacted)

**U.S. FISH AND WILDLIFE SERVICE**

- Biological Opinion (if federally listed species would be impacted by federally permitted activity)
- Incidental Take Permit or Habitat Conservation Plan approval (if federally listed species would be impacted)

**Prepared by:**

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# Hopping Green & Sams

Attorneys and Counselors

## MEMORANDUM

**To:** Florida League of Cities Annual Meeting Workshop Participants

**From:** David L. Powell  
Gary K. Hunter, Jr.  
Sarah Meyer Doar

**Re:** Regulatory Layers That May Apply to a Typical Mixed-Use Project

**Date:** Monday, August 16, 2010

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This memorandum includes a brief summary of various regulatory requirements that may apply to a mixed-use project proposed within a Florida city, along with citations to pertinent Florida statutes or state agency rules.

The applicability of such requirements is highly situational; some regulatory requirements identified here may not apply to a particular project due to local government policy decisions, site characteristics or project design. Other requirements not identified here may apply.

Consult your city attorney or land development regulatory staff for particular requirements in your city.

### **CITY AS REGULATOR**

#### **■ *Local Comprehensive Plan or Land Use Amendment (if project is inconsistent with adopted plan)***

The Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Part II, F.S. ("Growth Management Act"), requires cities to adopt comprehensive plans to guide future development and growth within their jurisdictions. The plan must include a land use designation on the Future Land Use Map for all land within the jurisdiction, and policies regarding land development in such designated areas. Generally, all development must be consistent with the comprehensive plan. § 163.3194(1), F.S.

■ ***Re-zoning (if project is inconsistent with adopted zoning code)***

Local comprehensive plans must be implemented by land development regulations in a unified code. At a minimum, the code must regulate the subdivision of land, the use of land and water for those land use categories included in the land use element of the comprehensive plan, drainage and stormwater management, and signage. § 163.3202(2), F.S. The code must provide for the protection of potable water fields, environmentally sensitive lands, the provision of public facilities, and safe onsite parking. Id. These regulations may include – but are not required to include – zoning. One alternative to zoning is performance based-land development regulations. § 163.3201, F.S. A local government’s land development code must be consistent with the adopted comprehensive plan. § 163.3201, F.S.

■ ***Development Approval (DRI or other local development order)***

All development projects must receive some sort of development approval in the form of a “development order” addressing a specific application for a “development permit,” such as a subdivision plat, site plan, building permit or other local government authorization allowing the development of land. All local development orders and approvals must be consistent with the local comprehensive plan. §163.3194(1), F.S. Development orders for projects that meet certain minimum “thresholds” based on their densities and intensities of use may only be approved after coordinated multi-agency review through the development-of-regional-impact (“DRI”) process. § 380.06, F.S.

■ ***Development Agreement (to make infrastructure commitments)***

A local government may adopt by ordinance a process by which it will consider entering into a development agreement with a developer such that the developer may rely on the then-existing comprehensive plan and zoning, setting the densities and intensities of land and other requirements for development, in exchange for the developer’s commitment to provide infrastructure needed for the development. §163.3220, F.S., et. seq.

■ ***Certificate of Concurrency***

Generally, a local government is required to ensure that adequate public facilities will be available to accommodate the impacts of development on a reasonably timely basis. In doing so, the local government must determine that the development would not result in impacts that would cause the adopted level-of-service standard adopted in the comprehensive plan for a particular type of public facility to be exceeded. Generally, the public facilities covered by the concurrency requirement include water, wastewater, drainage, solid waste, parks and recreation, transportation (including mass transit in certain jurisdictions) and schools (in certain jurisdictions). §163.3180, F.S.

■ ***Subdivision Plat or Site Plan Approval***

Chapter 177, F.S., provides the minimum requirements for the subdivision and platting of land. Generally, site plan requirements are not addressed by State law and are therefore a reflection of local planning decisions.

■ ***Engineering Plan Approval***

To comply with Chapter 553, Part IV, F.S., the Florida Building Code and other local government initiated requirements, an engineering plan must be fully vetted prior to building permit approval.

■ ***Site Clearing, Environmental and Other Permits***

To the extent these activities are not preempted by state and federal regulation, local governments may exercise their home rule power to require local permits for these activities. Other than the minimum regulations required by section 163.3202, F.S., these regulations typically implement comprehensive plan policies regarding resource protection and other issues in the state's minimum criteria for comprehensive plans. In some respects, they may duplicate state or federal permitting programs.

■ ***Building Permit***

Local governments are required to enforce the standards of the Florida Building Code when issuing a building permit. §553.79, F.S. The Florida Building Code is adopted by the Florida Building Code Commission as a minimum requirement for all buildings in Florida. A local government may adopt more stringent technical and procedural requirements. § 553.73(4), F.S.

■ ***Impact Fees (may include road, school, water, wastewater, solid waste, drainage, parks or other facilities)***

The Florida Impact Fee Act, §163.31801, F.S., while recognizing the history of local impact fees developed pursuant to the local home rule power, requires impact fees to meet the state legal precedent for the imposition of fees. These include the "dual rational nexus" requirement based on Constitutional law. The Florida Impact Fee Act also includes procedural requirements and puts the burden on a local government to establish the reasonableness for an impact fee.

■ ***Certificate of Occupancy***

Once a structure is completed in accordance with the building permit issued by a city, Florida law requires the city to issue a certificate of occupancy if all code requirements have been met. § 553.79(7), F.S. The issues which a building inspector must evaluate for compliance under most local codes includes a combination of local, state and federal requirements.

## CITY AS UTILITY PROVIDER

### ■ *Permits for Drinking Water and Wastewater System*

Permits to tie into existing central water and wastewater systems are typically part of the building permit process. The construction of an extension of local drinking water and wastewater services is subject to regulation under Chapters 62-555 and 62-604, F.A.C.

### ■ *Driveway Permit*

As the owner of public streets, a city may regulate the connection to public right-of-way by means of a driveway permit. Typically, a city will include required standards for the construction of local streets by a developer as part of a land development project.

## COUNTY

### ■ *Review and comment on any comprehensive plan amendment, land use change or DRI application*

The Growth Management Act requires a city to transmit a copy of any proposed comprehensive plan amendment, including amendments to the Future Land Use Map, to the county within which the city is located. § 163.3184(3)(a), F.S. The county has 30 days from the date DCA receives the proposed amendment to provide comments on the proposed amendment. § 163.3184(4), F.S. The county is limited to reviewing the amendment in the context of its relationship to any county plan element. § 163.3184(5), F.S. Additional coordination with the county may be required pursuant to the county charter, interlocal agreements, or the intergovernmental coordination element of a city's local comprehensive plan. A county is authorized to challenge a plan amendment adopted by an adjacent city on grounds that it is not "in compliance" with state law, but the county must identify certain types of public facility or natural resource impacts in order to bring a challenge. § 163.3184(1)(a), F.S.

A county also may be a commenting agency for a proposed DRI project to be located within a city. Rule 9J-2.021(1)(c), F.A.C.

### ■ *Driveway Permit to connect to County Road System (if applicable)*

As the superintendent of county roads, a county may regulate the connection to the County Road System by means of a driveway permit. §336.02, F.S.

### ■ *Requirements Imposed by County Charter (if any)*

Article VIII, section 1(g) of the Florida Constitution provides that a county which is established by charter shall provide in its charter which shall prevail in the event of a

conflict between county and municipal ordinances. In addition, the Growth Management Act provides that a city's comprehensive plan must comply with requirements of a county charter. § 163.3171(2), F.S.

## **SCHOOL BOARD**

- ***Review and comment on any comprehensive plan amendment or land use change***

The Growth Management Act requires many cities to enter into an interlocal agreement with the local school board to establish a process by which the school board can inform the local government of the effect of comprehensive plan amendments with residential development on school capacity. § 163.3177(2), F.S. Each city subject to the requirement must adopt the process into its comprehensive plan. § 163.3177(12), F.S.

- ***School Concurrency Impact Analysis (for residential uses)***

As part of an interlocal agreement and as adopted in a city's comprehensive plan, the school board, the county and the cities within that county must establish a process to coordinate each local government's residential development with school capacity planning. That process must then be adopted into the city's comprehensive plan. §§ 163.3177(12), 163.31777(2), F.S. Such processes typically require the school board to evaluate impacts on school capacity from proposed land use amendments or proposed developments.

- ***Development Agreement (if school site dedication or school construction is required as mitigation)***

The school board may require the developer of a project with residential dwelling units to enter into a development agreement to provide a school site, pay for or undertake school construction or otherwise mitigate project impacts that would cause adopted level-of-service standards to be exceeded for any public school that would serve the project. Such agreements may include a reservation of capacity for the developer's project.

## **REGIONAL PLANNING COUNCIL**

- ***Review and comment on any comprehensive plan amendment or land use change***

The Growth Management Act requires a city to transmit a copy of any proposed comprehensive plan amendment, including amendments to the Future Land Use Map, to the regional planning council whose planning area includes the city. § 163.3184(3)(a), F.S. The council has 30 days from the date DCA receives the proposed amendment to provide objections, recommendations, and comments on the

proposed amendment from itself or any other regional council it may have referred the amendment. § 163.3184(4), F.S. The review is limited to the amendment's effects on regional resources or facilities identified in the regional plan or extra-jurisdictional impacts inconsistent with the plan of the affected local government. § 163.3184(5), F.S.

■ ***DRI Regional Review (if the project meets or exceeds DRI thresholds for multi-use projects)***

The regional planning council in whose planning region a city is located is required by law to coordinate the multi-agency development-of-regional-impact ("DRI") review for projects that meet certain minimum "thresholds" based on their densities and intensities of use. § 380.06, F.S. The regional planning council manages the pre-application procedures, determines whether DRI applications are sufficient for the formal impact review to commence and issues a regional report addressing the development's impacts on state and regionally significant resources and facilities. § 380.06(10), (12), F.S. The report must be issued in advance of a city's consideration of a proposed DRI project.

## **FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS**

■ ***Comprehensive Plan or Future Land Use Map amendment (DCA must review and approve)***

Generally, the Growth Management Act requires a city to transmit a copy of any proposed text or Future Land Use Map amendment to DCA for review prior to adoption. § 163.3184(6)(a), F.S. DCA has 60 days from the date it receives the complete proposed amendment package to provide objections, recommendations, and comments on the proposed amendment. § 163.3184(6)(a), F.S. After a city adopts the amendment, with or without changes to respond to any DCA objections, DCA reviews the adopted amendment for compliance with the minimum requirements of state law. § 163.3184(8)(b), F.S. Generally, the amendment will not become legally effective unless it is determined to be in compliance with state law. § 163.3189(2), F.S.

■ ***DRI development order (DCA must review and may appeal to the Governor and Cabinet)***

DCA reviews proposed DRI projects, along with other state, regional and local governmental entities, prior to a city's issuance of the DRI development order. § 380.06, F.S. DCA also adopts uniform standard rules that govern the identification, quantification and mitigation of impacts to certain state and regionally significant facilities and resources. § 380.06(23), F.S. The uniform standard rules are intended to guide regional planning councils and cities during DRI review, and are used by DCA when deciding whether to appeal a DRI development order on grounds that it does not adequately address regional impacts.

■ ***Administers Florida Building Code (which may include requirements from the American with Disabilities Act)***

DCA provides the staff and support for the Florida Building Code Commission, which adopts the Florida Building Code. §553.75(3), F.S. DCA is responsible for the implementation of the commission's decisions. Each local board or agency bears the responsibility for enforcement and interpretation of the Florida Building Code. § 553.73(1)(e), F.S.

**WATER MANAGEMENT DISTRICT**

■ ***Review and comment on any comprehensive plan amendment, land use change or DRI application***

The Growth Management Act requires a city to transmit a copy of any proposed comprehensive plan amendment, including amendments to the Future Land Use Map, to the water management district within which the city is located. § 163.3184(3)(a), F.S. The district has 30 days from the date DCA receives the proposed amendment to provide comments on the amendment's impacts on water resources. § 163.3184(4), F.S.

The water management district also may participate in the review of DRI applications and may issue a report regarding project impacts to water resources. §380.06, F.S.

■ ***Environmental Resource Permit (if state jurisdictional wetlands would be impacted)***

An ERP is required for new projects or changes to existing projects that impact surface waters of the state, including wetlands. Construction of any "works," must be permitted prior to commencement. §§ 373.413(1), 373.403(5), F.S. In its broadest terms, the purpose of the ERP program is to ensure that no harm is done to the water resources of the state, including wetlands. This includes an evaluation of the impacts to water quality, and proposed mitigation to offset those impacts, and impacts to listed aquatic wildlife and plant species.

Generally, an ERP application will be reviewed by either the water management district or the Florida Department of Environmental Protection ("DEP"), based on the division of responsibilities specified in various operating agreements entered into between DEP and the districts. Generally, the districts are responsible for reviewing ERP applications for projects that are part of larger commercial or residential developments, where DEP is responsible for other projects. However, the operating agreements authorize DEP and the districts to agree on which agency will process a permit based on other factors.

## FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

- ***Review and comment on any comprehensive plan amendment, land use change or DRI application***

The Growth Management Act requires a city to transmit a copy of any proposed comprehensive plan amendment, including amendments to the Future Land Use Map, to DEP. § 163.3184(3)(a), F.S. DEP has 30 days from the date DCA receives the proposed amendment to provide comments on the amendment's impacts on water resources, air resources and other environmental issues. § 163.3184(4), F.S.

DEP participates in the review of DRI applications and may issue a report on project impacts to water resources, air resources or other environmental issues. §380.06, F.S.

- ***NPDES Notice of Intent to Use General Stormwater Discharge Permit for Large and Small Construction Activities or NOI to Use General Permit for Discharge of Produced Groundwater from Non-contaminated Site Activity***

DEP implements section 402 of the Federal Clean Water Act through delegated administration of the National Pollution Discharge Elimination System ("NPDES") for permitting discharges into waters of the United States. § 403.0885, F.S.; 40 C.F.R. § 122.28.

## FLORIDA DEPARTMENT OF TRANSPORTATION

- ***Review and comment on any comprehensive plan amendment, land use change or DRI application***

The Growth Management Act requires a city to transmit a copy of any proposed comprehensive plan amendment, including amendments to the Future Land Use Map, to DOT. § 163.3184(3)(a), F.S. DOT has 30 days from the date DCA receives the proposed amendment to provide comments on impacts to the State Highway System. § 163.3184(4), F.S.

DOT may participate in the review of DRI applications and may issue a report regarding impacts to the State Highway System. § 380.06, F.S.

- ***Driveway Permit***

Pursuant to section 334.044(14), F.S., DOT has the authority to control access to the roads on the State Highway System and does so through the system for issuance of driveway permits in Chapters 14-96 and 14-97, F.A.C. This program is by law intended to be "safety-based"; analyses for transportation concurrency as administered by cities and the DRI program are intended to be "capacity-based." However, the DOT driveway



permit procedures take into account impacts from a proposed development project that would result in the adopted level-of-service standard for a particular road segment or intersection to be exceeded.

■ ***Drainage Permit***

Pursuant to section 334.004(15), F.S., DOT has the authority to control the discharge of stormwater to the rights-of-way for the State Highway System and does so through the system for issuance of permits in Chapter 14-86, F.A.C.

■ ***Utility Permit***

Pursuant to section 337.401, F.S., applicants must obtain a utility permit from DOT for the placement of any electrical transmission, telephone, telegraph, or other communications services lines; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps along, across, or on any road or publicly owned rail corridors under its jurisdiction. This DOT permitting program is implemented by Chapter 14-46, F.A.C.

**FLORIDA DEPARTMENT OF STATE, DIVISION OF HISTORICAL RESOURCES (SHPO)**

■ ***Review and comment on any comprehensive plan amendment, land use change or DRI application***

The Growth Management Act requires a city to transmit a copy of any proposed comprehensive plan amendment, including amendments to the Future Land Use Map, to the Florida Department of State's Division of Historical Resources ("DHR"). § 163.3184(3)(a), F.S. DHR has 30 days from the date DCA receives the proposed amendment to provide comments on the proposed amendment. § 163.3184(4), F.S. DHR reviews potential development represented by the plan amendment for impacts to historic buildings and archaeological sites.

DHR may participate in the review of DRI applications and may issue a report regarding impacts to historic buildings or archaeological sites. § 380.06, F.S.

■ ***Clearance Letter (if cultural resources assessment survey is required for the site)***

DHR also serves as the State Historic Preservation Officer (SHPO), which each state is required to appoint pursuant to the National Historic Preservation Act of 1966. DHR administers the Florida Master Site Plan of registered historic buildings and archaeological sites at least 50 years old. § 267.031(5), F.S. DHR has adopted official standards for the professional evaluation of historic buildings and archaeological sites. Chapter 1A-46, F.A.C. A city may require that DHR provide confirmation that a

proposed project would not impact historic buildings or archaeological sites, based on a professional evaluation.

■ ***Approval of Mitigation for Impacts to Historic Resources (if protected historic resources would be impacted)***

If a proposed development would impact an historic building or archaeological site, a city may require that DHR review and approve of proposed mitigation.

**FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION (“FWCC”)**

■ ***Review and comment on any comprehensive plan amendment, land use change or DRI application***

The Growth Management Act requires a city to transmit a copy of any proposed comprehensive plan amendment, including amendments to the Future Land Use Map, to FWCC. § 163.3184(3)(a), F.S. FWCC has 30 days from the date DCA receives the proposed amendment to provide comments on impacts to state-listed wildlife species. § 163.3184(4), F.S.

FWCC may participate in the review of DRI applications and may issue a report regarding project impacts on state-listed wildlife species. § 380.06, F.S.

■ ***Incidental Take Permit or other Wildlife Impact Approval (if state-listed species would be impacted)***

Article IV, section 9 of the Florida Constitution authorizes FWCC to regulate wildlife and freshwater aquatic life. FWCC’s authority extends to protecting the species, their nests and eggs, but not their habitat. § 372.001(17), F.S. FWCC’s regulations can be found in Chapter 68A–27, F.A.C. Incidental take and nest disturbance permits are typically issued for osprey, burrowing owls, bald eagles, and migratory birds. Other permits are issued for the gopher tortoise and other state-listed species.

**U.S. FISH AND WILDLIFE SERVICE (“FWS”)**

■ ***Biological Opinion (if federally listed species would be impacted)***

The Endangered Species Act (“ESA”) prohibits the taking of any federally listed threatened or endangered species. 16 U.S.C. §§ 1531-1544. Taking a listed species during the course of development can result in criminal and civil penalties. FWS or the National Marine Fisheries Service consult with other federal agencies regarding federally funded or authorized projects under the ESA and under the National Environmental Protection Act. The applicable service has 90 days after referral to issue an opinion with a statement on the incidental number of specimens that may be taken without penalty. This incidental take statement is then incorporated into the final permit of the referring agency.

■ ***Incidental Take Permit or Habitat Conservation Plan Approval (if federally listed species would be impacted)***

Where a non-federally funded or authorized project that is otherwise lawful would result in an excessive but incidental take of a listed wildlife species, FWS or the National Marine Fisheries Service may issue an incidental take permit. The permit may require mitigation to offset the incidental take, and this mitigation may be in the form of a long-term Habitat Conservation Plan that is intended to include remedial measures that are calculated to enhance the survival of the species. There is no time frame that the services must comply with in reaching its decision on the permit.

**U.S. ARMY CORPS OF ENGINEERS (“COE”)**

■ ***Section 404 Dredge and Fill Permit (if federal jurisdictional wetlands would be impacted)***

COE has jurisdiction over waters of the United States pursuant to Section 404 of the Federal Clean Water Act and navigable waters pursuant to section 10 of the Rivers and Harbors Act. Applications for permits, including dredge and fill permits, are initially processed by means of a joint application submitted to DEP.

■ ***Nationwide Permit for Temporary Construction, Access, and Dewatering (if federal jurisdictional wetlands are impacted)***

Authorized under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, applicants can apply to the Corps for temporary impacts.

320294.4

#



## **John Wayne Smith**

John or John Wayne lives in Tallahassee with his wife Elise, and their four children; Carter, Cale, Montgomery, and Camille.

John is a graduate of Florida State University. He has Bachelor of Science degrees in Economics and Political Science.

John has worked for the past twenty years in the role of lobbyist and researcher for local governments. Most of his attention has been concentrated in the areas of public finance; state and local tax policy, state appropriations, transportation and economic development.

John rejoined the Florida Association of Counties in August 2007 as its Legislative Director. In this capacity, John manages the lobbying operation of the Association before the Legislature and state agencies, and serves as the liaison with Congress and federal agencies.

During the past four years, John has coordinated FAC's legislative strategy regarding property tax reform; growth management reform, including the infamous SB 360 redo; and defeating TABOR as part of the Tax & Budget Reform Commission agenda. This past Session, FAC was successful in getting the Legislature to pass several of their key Local Savings Act initiatives, which in tough economic times, provided counties with over \$500 million in cost savings and budget flexibility.



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January 10, 2011

The Honorable Rick Scott  
Governor  
The Capitol PL 05  
400 S. Monroe Street  
Tallahassee, FL 32399

**Re: Executive Order No. 11-01 - Agency Rulemaking and Local Government Financial Impacts**

Dear Governor Scott:

On behalf of Florida's 410 municipalities and 67 counties, the Florida League of Cities (FLC) and the Florida Association of Counties (FAC) respectfully request your favorable consideration to expand Section 3 of Executive Order 11-01 to include a requirement that the new Office of Fiscal Accountability and Regulatory Reform review economic and financial impacts on local governments in your administration's fiscal analysis of agency rulemakings. Last year, both the FLC and the FAC participated in a broad coalition to help pass CS/CS/HB 1565 by Rep. Chris Dorworth requiring each state agency to evaluate rulemaking policies as to their financial impact on individuals, businesses and local governments.

In many instances there is not an appropriate amount of attention given to impacts of state agency rules on cities, counties and special districts. Local governments are adversely impacted on a routine basis by agency rules that pass costs along to local governments. There is often no consideration or analysis of the resulting fiscal impact, which can be substantial. At the end of the day, it is Florida's taxpayers who must pick up the tab for these state regulatory requirements.

Local governments provide a variety of essential services. In that capacity, they are often regulated entities as well. For example, local governments are wastewater and stormwater utilities. These local governments that supply drinking water for their citizens must obtain a consumptive use permit. All too often, the water management districts require local governments to promulgate ordinances or impose other requirements as a condition to receiving a permit. As long as the current permitting scheme remains in place, agencies will be free to continue requiring local ordinances in lieu of adopting and enforcing their own. Counties are also statutorily charged with providing solid waste services, and county landfills and recycling facilities which must be permitted. Additionally, counties must obtain permits to conduct beach nourishment. These are just a few examples of the ways in which local governments can be affected by state agency rules.

In short, the only way to conduct a complete fiscal analysis of a proposed regulation is to include local government impacts.

Page 2  
January 10, 2011

The FLC and the FAC appreciate your attention to the impact agency rulemaking can have on our economy and job creation. Your favorable consideration to include an evaluation of impacts to local governments is greatly appreciated. We look forward to working with you on this and other important issues.

Sincerely,



Commissioner Doug Smith  
President-Elect



Joy F. Cooper, President  
Mayor, City of Hallandale Beach

cc: FAC Executive Committee  
Mike Sittig, Executive Director  
Florida League of Cities





**Billy Buzzett**  
**Secretary of the Florida Department of Community Affairs**

Governor Rick Scott appointed Billy Buzzett as Secretary of the Florida Department of Community Affairs on January 5, 2011. In his appointment of Buzzett, Governor Scott recognized Buzzett's deep appreciation for Florida, its resources, people and the unique character of its communities.

Secretary Buzzett is a fifth generation Floridian from Apalachicola with more than 25 years experience in engineering, law and development. He has been a private attorney, public servant and judge, and is the author of numerous professional publications in the areas of land use and construction. Buzzett understands the large scale planning process and has shown an ability to develop a win-win situation for both landowners and communities.

As Vice President of Strategic Planning for the St. Joe Company, Buzzett helped lead the development of the new international airport in West Bay, Florida, along with the largest master planned community in the United States. During his involvement in St. Joe's West Bay Sector Plan development, Buzzett assisted in implementing the strategy for the mitigation and conservation program associated with the development. The Sector Plan was recognized for excellence by both the Urban Land Institute and Sustainable Florida Inc., reflecting Buzzett's ability to balance both development and community interests. Equally important, Buzzett led the creation of the West Bay Preservation Area - a 41,000 acre preserve designed to protect an entire watershed at no expense to the taxpayer.

Buzzett has a wealth of knowledge relating to Florida and its government. He served as Associate General Counsel for Governor Bob Martinez and was appointed the Executive Director to the Construction Lien Law Study Commission. Later, he was appointed Executive Director to the Constitution Revision Commission and also helped create Florida's first charter school.

Billy Buzzett graduated from Tulane University with a bachelor's degree in civil engineering and practiced for several years in New Orleans before advancing to law school at Florida State University. After graduating from law school, Buzzett worked in private practice and then worked for the Florida Legislature.

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# ***Department of Community Affairs***

## ***Secretary Billy Buzzett***

FLORIDA DEPARTMENT OF



**Community  
Affairs**

### **Overview of the Impact of Growth Management on Development in Florida**

*Presented to the House Rulemaking and  
Regulation Subcommittee*

February 9, 2011

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# ***Growth Management - The Regulatory Environment***



**Comprehensive Planning  
Developments of Regional Impact  
Areas of Critical State Concern**

# ***Growth Management - Regulatory Environment***

## ***Comprehensive Planning***

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- Encourages the most appropriate use of land, water, and resources consistent with the public interest
- Facilitates the adequate and efficient provision of transportation, water, schools, parks, housing, and other services
- Encourages coordination among local governments and state and regional agencies to plan effectively for the future
- Ensures opportunities for public participation in the comprehensive planning process

# ***Growth Management - Regulatory Environment***

## ***Developments of Regional Impact***

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- Provides for state, regional, and local review of large scale development proposals, which due to their
  - Character
  - Magnitude or
  - Location

would have a substantial effect upon the health, safety, or welfare of citizens of more than one county.

Requires mitigation to off-set the impacts to regional resources and facilities



# ***Growth Management - Regulatory Environment***

## ***Areas of Critical State Concern***

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- Adopted by the Legislature to coordinate land development in areas possessing resources of state significance
- Currently 5 areas:
  - Florida Keys
  - City of Key West
  - Green Swamp
  - Big Cypress
  - City of Apalachicola
- In addition to comprehensive plan amendments, DCA reviews land development regulations and development permits within these areas

# ***Growth Management – Impact on Economic Development***



**Economic Growth**

# ***Impact on Economic Development***

## ***Economic Growth***

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- While the current Growth Management System has problems, it has always enabled significant new development opportunities
- Approved Statewide Large Scale Future Land Use Map Amendments: January 1, 2007 – December 28, 2010
  - Number of Map Amendments: 2,553
  - Number of Amended Acres: 1,905,500
  - Residential Development Potential: 1,049,800
  - Non-Residential Development Potential: 2,711,059,400
- Available development capacity leads to job growth



# ***Impact on Economic Development***

## ***Economic Growth***

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- Protection of the natural environment boosts Florida's economy
  - Tourism and agriculture depend on Florida's rich and abundant natural resources
- Protection of the military's investment in Florida creates jobs and generates revenues
  - Compatibility of adjacent lands or lands in close proximity to military installations ensures a continued military presence
- Compact, mixed-use development reduces the cost of infrastructure, reduces transportation costs, and reduces taxpayers' burden

# ***Impact on Economic Development***

## ***Economic Growth***

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- Sprawl is the antithesis of compact mixed-use development
  - Sprawl leads to urban decline and impacts local and regional economic competitiveness
  - Sprawl leads to the loss of productive farmland
  - Sprawl leads to higher household costs
  - Sprawl leads to higher public sector costs especially in regard to the provision of services
  - Sprawl compromises “Quality of Life”
- Florida can’t compete in a global market if it doesn’t offer a quality product

# ***Growth Management – Impact on Economic Development***



**Economic Constraints**

# ***Impact on Economic Development***

## ***Economic Constraints***

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- Agencies/Jurisdictions should be re-focused to respond to today's realities
  - Department of Community Affairs
  - Department of Environmental Protection
  - Department of Transportation
  - Florida Wildlife Conservation Commission
  - Florida Department of Agriculture & Consumer Services
  - Regional Planning Councils
  - Water Management Districts



# ***Impact on Economic Development***

## ***Economic Constraints***

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- Chapter 163 and Chapter 380 address a wide range of issues, some of which are no longer Florida's most critical concerns
  - Intensive, lengthy processes
  - Planning is not well coordinated with permitting
  - Both state and local issues are subject to oversight, resulting in duplicative regulations
  - Large-scale planning is discouraged
  - The concept of "need" is inconsistent with long-term planning

# ***Impact on Economic Development***

## ***Economic Constraints***

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- Deficiencies, inconsistencies, and uncertainty associated with concurrency
- One size doesn't fit all – rural vs. urban
- Over-reaching interpretations of rules and regulations
- Inadequate emphasis on
  - economic development
  - job creation
  - mobility for freight and goods
  - public safety
  - quality education

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***Growth Management –  
Where do we go from here?***



**Old Paradigm vs. New Paradigm**

# Old Paradigm vs. New Paradigm

## From:

## To:

growth management



growth leadership

infrastructure to accommodate growth



infrastructure to compete in a global economy

regulatory policy objective to stop bad development



regulatory policy objective to help make good development happen

planning framework to fill up the state with people



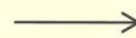
planning framework to create high quality places for people

protecting individual natural areas



protecting ecosystems as part of our global identity and vision for higher quality of life

layers of redundant regulation



coordinated regulations focused on achieving a common outcome

each agency with its own mission



one common mission

old paradigm

new paradigm



## ***Questions?***

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Secretary Billy Buzzett  
Florida Department of Community Affairs  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100  
[www.dca.state.fl.us](http://www.dca.state.fl.us)  
(850) 488-8466

***Thank You***

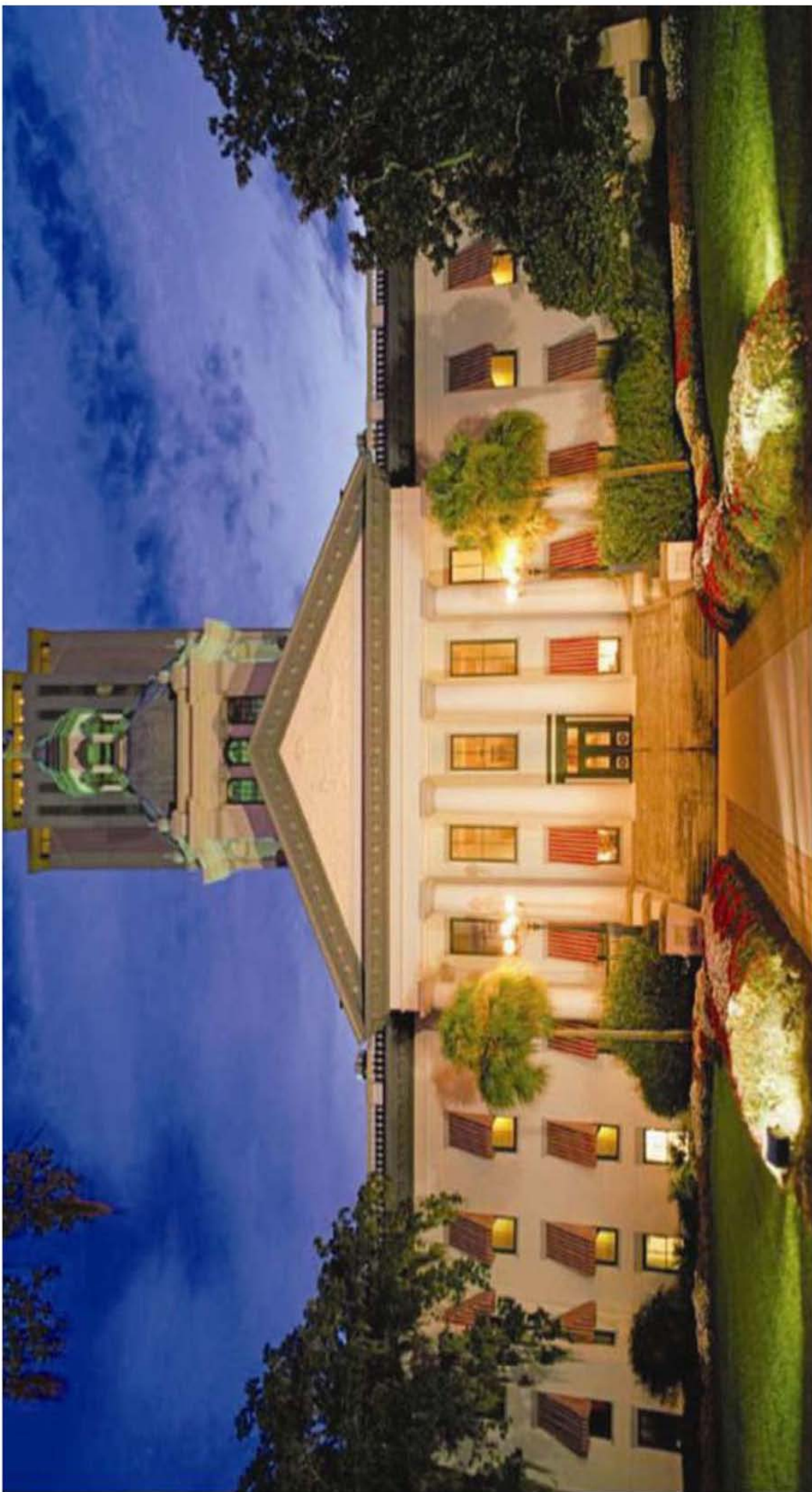


**Adam Babington**  
**Vice President of Governmental Affairs**

Adam Babington is Vice President of Governmental Affairs for the Florida Chamber of Commerce, the state's largest business association. He manages the Chamber's 20 member lobby team and is responsible for the development and passage of the annual Florida Business Agenda. He also coordinates the Chamber's efforts relating to statewide constitutional amendments. Prior to joining the Chamber, Babington worked as a legislative analyst in the Senate Committee on Ethics & Elections. He has also worked for both the House and Senate Majority Offices. Over the past decade, he has participated and played active roles in numerous local, state, and national political campaigns.

Babington received his law degree from the University of Florida, and received his B.S. degree in Political Science from Florida State University. He is a member of The Florida Bar, and is a graduate of College Leadership Florida, Class V.

Babington grew up in Orlando, and now lives in Tallahassee with his wife and three daughters. Established in 1916 as Florida's first statewide business advocacy organization, the Florida Chamber of Commerce is the state's most powerful federation of employers, chambers of commerce and associations, representing more than 139,000 grassroots members with more than 3 million employees. The Florida Chamber unites Florida's business community with its combination of legislative, grassroots, and political tools.



# *Eliminating Burdensome Regulations*

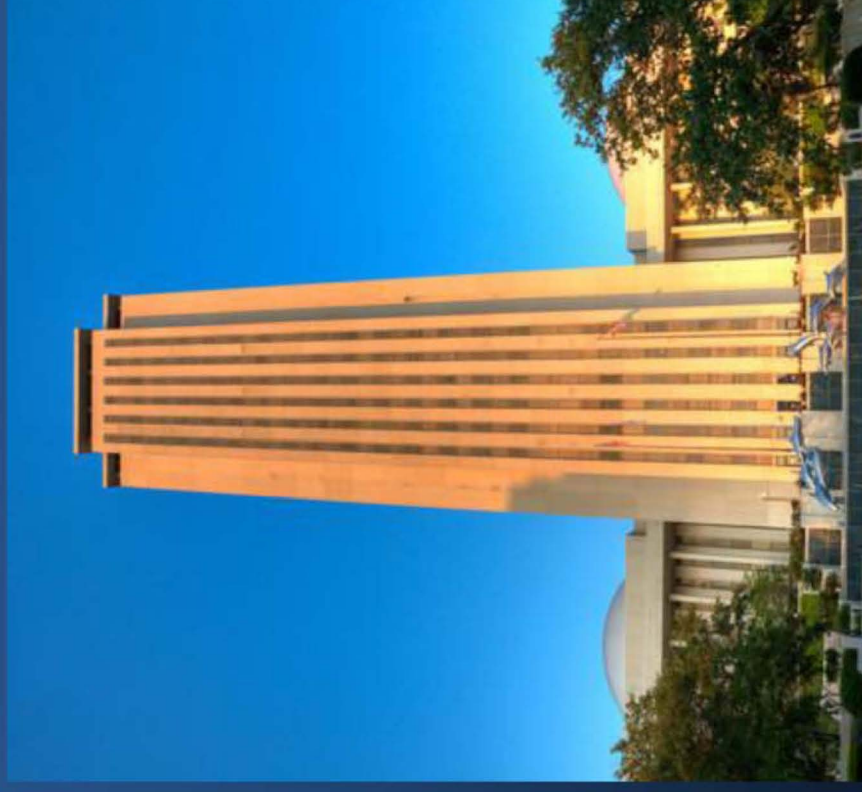


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**CHAMBER**  
of Commerce



# Overview of Presentation

1. Identifying the Problems
2. Guiding Principles
3. Key Areas of Reform



*[www.FloridaChamber.com](http://www.FloridaChamber.com)*

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# Identifying the Problems

- Disjointed, inconsistent approach to growth
  - 25 years of statutory changes
  - Vast differences in interpretations between administrations
- Regulatory scheme designed to manage 1,000 people / day
- Mission creep: planning becoming regulation
- Lack of incentives or focus on long-range planning

*[www.FloridaChamber.com](http://www.FloridaChamber.com)*

# Identifying the Problems

- Abuse of agency “commenting”
  - One agency conditions permits based upon the comments of another agency
- Agency interpretations that nullify statute
  - Adopted and unadopted rules undermine legislative intent

*[www.FloridaChamber.com](http://www.FloridaChamber.com)*

# Identifying the Problems

- Compatibility and consistency
  - Projects and amendments are frequently stopped or challenged based upon technicalities
- Local government regulatory duplication
  - Federal, state, and local regulations over the same issues

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# Guiding Principles

- Focus on large-scale, long-term planning
- Comprehensive reform versus incremental steps
- Transition from regulation to planning
- Future of DCA depends on role, not location

*[www.FloridaChamber.com](http://www.FloridaChamber.com)*

## Key Areas of Reform

- Limit state role in comprehensive plan review
- Repeal Rule 9J-5 and limit DCA rulemaking
  - Legislature should set out clear requirements
- Revise the plan amendment process
  - Eliminate ORC reports
  - Eliminate EAR reports
  - All amendments subject to Alt State Review

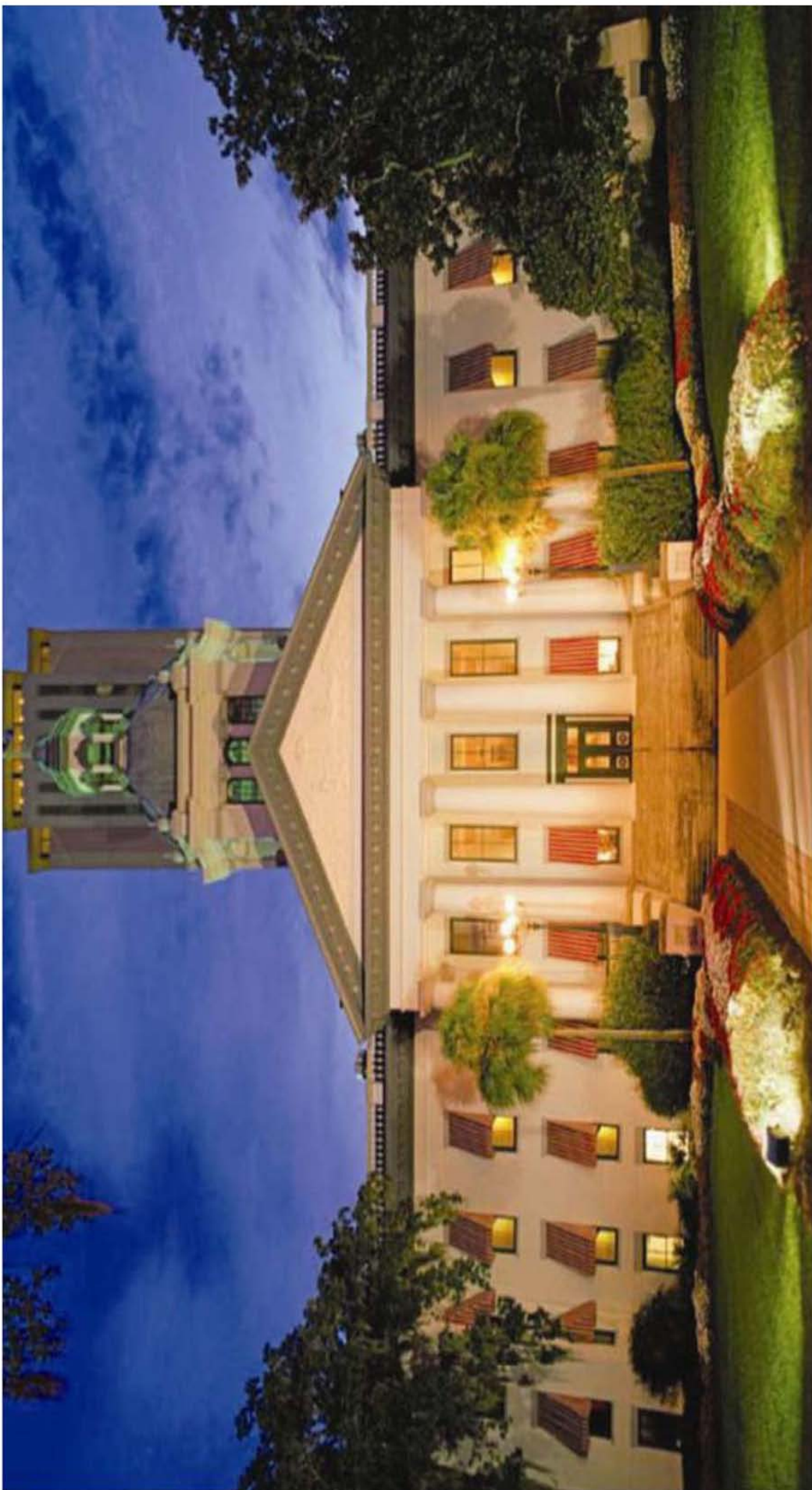
*[www.FloridaChamber.com](http://www.FloridaChamber.com)*

## Key Areas of Reform

- Eliminate “need” and modify future land use requirements
- Revise Sector Plan statute
- Reform Rural Land Stewardship Statute

*[www.FloridaChamber.com](http://www.FloridaChamber.com)*





*Questions?*



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## **Linda Loomis Shelley**

Linda Loomis Shelley has significant experience in environmental and land use permitting before state, regional and local entities and provides advice and assistance regarding Florida administrative practice and litigation.

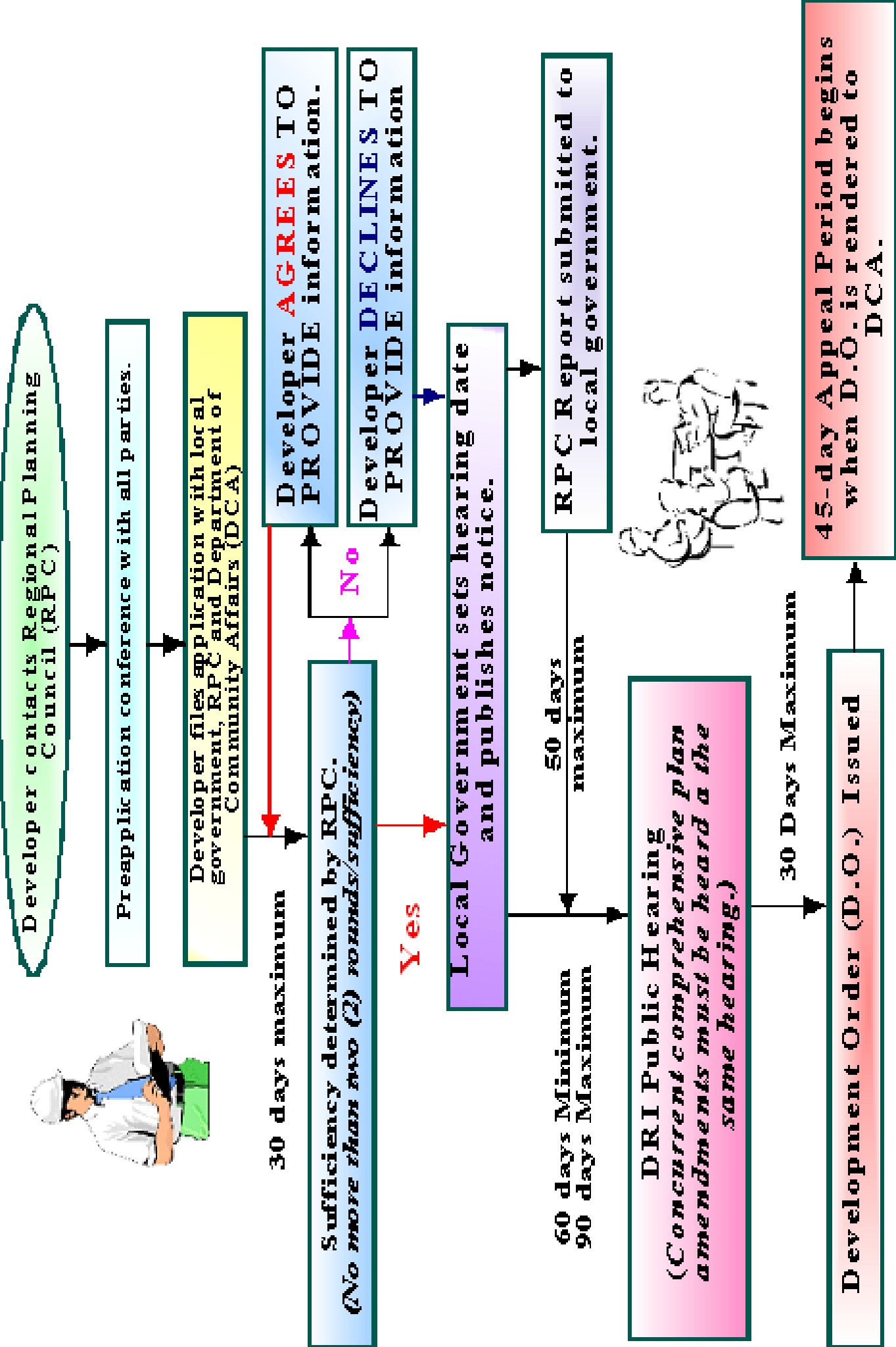
### **Previous Experience**

- Florida Department of Insurance, Office of the Treasurer & State Fire Marshall, Tallahassee, FL  
Chief of Staff, February 2000-December 2000
- Florida Residential Property & Casualty, Joint Underwriting Association, Tallahassee, FL  
Assistant Executive Director, January 1999-February 2000
- Office of the Governor, Tallahassee, FL  
Chief of Staff, August 1995-January 1999
- Florida Department of Community Affairs, Tallahassee, FL  
Secretary, May 1992-August 1995
- Law Firm of Dixon, Blanton & Shelley, Tallahassee, FL  
Partner, January 1987-May 1992
- Governor Bob Graham, Tallahassee, FL  
General Counsel, October 1985-December 1986
- Florida Department of Community Affairs, Tallahassee, FL,  
General Counsel, February 1985-October 1985
- Governor Bob Graham, Tallahassee, FL  
Assistant General Counsel, September 1981-February 1985
- Law Firm of Corlett, Merritt, Killian & Sikes, Miami, FL  
Associate, November 1977-September 1981

### **Community Involvement**

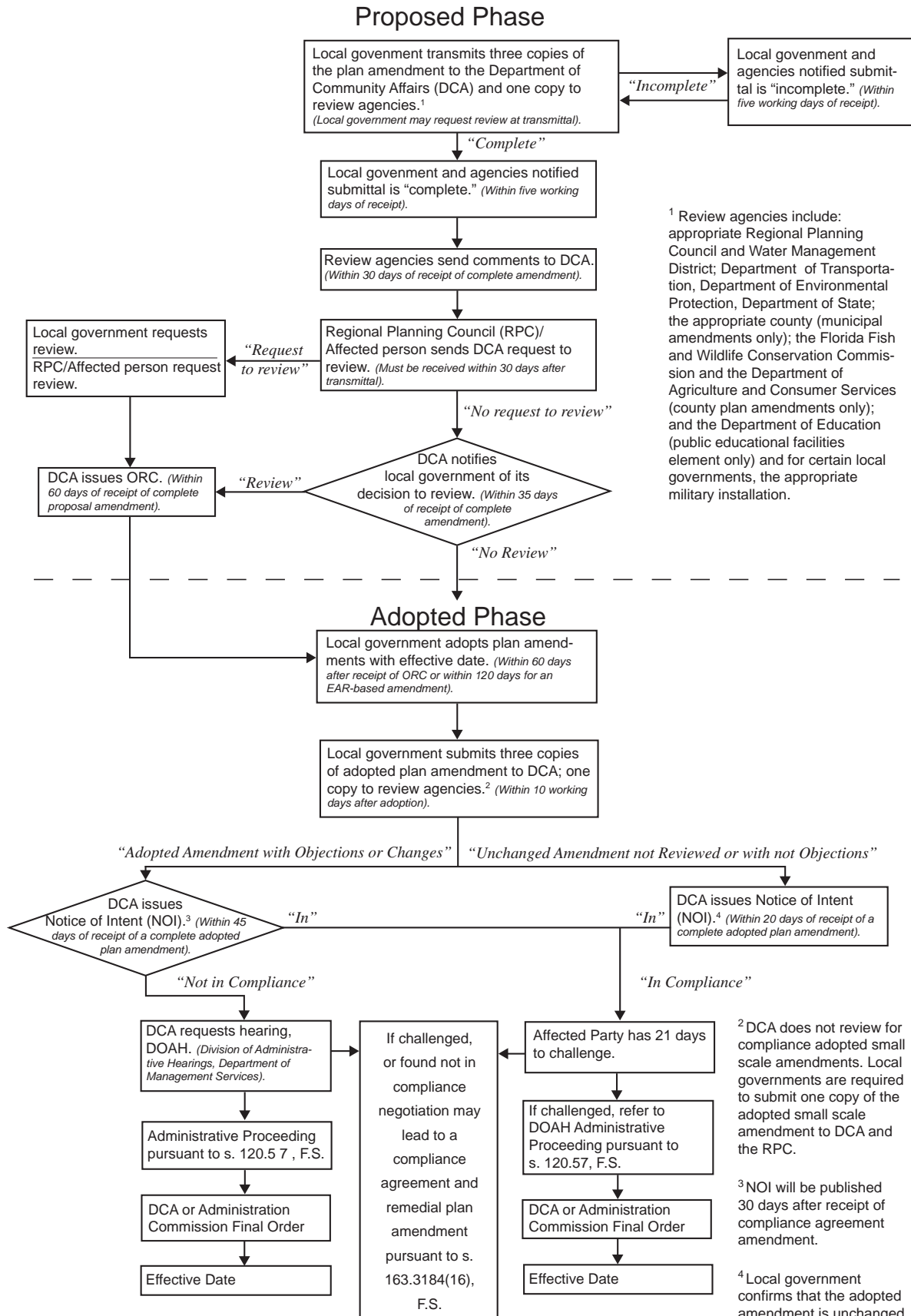
- Associated Industries of Florida, Florida Development and Infrastructure Council:  
Chair
- Federal Judicial Nominating Commission, Northern District: Advisory Council of the  
Florida Conflict Resolution Consortium
- Leadership Florida
- University of Florida Law Center Association: Board of Trustees

# Development of Regional Impact (DRI) Review Process - Section 380.06 F.S.



# Comprehensive Plan Amendment Process

Section 163.3184, Florida Statutes







**Douglas Buck**  
**Director of Governmental Affairs**  
**Florida Home Builders Association**

Douglas Buck brings 25 years of experience to his chief lobbyist role, including 16 years at FHBA and nine years in leading government agencies focused on housing. Buck played a major role in the development of Florida's Growth Management Act and many of the laws and rules that impact the day-to-day businesses of builders and associates. He holds a Master's degree in urban and regional planning from Florida State University and a B.S. degree from the University of Iowa. [dbuck@fhba.com](mailto:dbuck@fhba.com) Mobile: 850-251-1836



## **Ed Braddy, Executive Director, the American Dream Coalition**

Ed Braddy is the Executive Director of the American Dream Coalition. From 2002-2008, Ed served two terms as a city commissioner in Gainesville, Florida. As a member of the Gainesville City Commission, he deliberated on numerous policy matters affecting growth management and comprehensive planning and was a member of the Metropolitan Transportation Planning Organization and the North Central Florida Regional Planning Council. As executive director of the American Dream Coalition, Ed has written on growth management and land use matters in national journals like *New Geography* and *American Thinker* as well as in local and regional publications. He frequently speaks about urban public policy, especially as it relates to housing, land-use, transportation and the purpose of government at the local level.

Founded in 2002, the American Dream Coalition (ADC) is a non-profit 501(c)(3) organization that supports citizens and organizations that promote the American Dream of freedom, mobility, and affordable homeownership. The ADC bridges the gap between scholarly research, elected officials, community leaders & grassroots activists. The ADC champions cost-effective, market-oriented alternatives to conventional land-use and transportation planning and opposes coercive land-use policies and wasteful transportation projects. The ADC has numerous publications available on its website at [americandreamcoalition.org](http://americandreamcoalition.org).