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## **An Introduction to Large-Area Planning**

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***Q. Do Florida's growth management programs have any planning tools that are specially designed for large landholdings?***

**A.** Yes. The Legislature has authorized four specific tools that are suitable for long-term development, conservation and agricultural planning on large areas. Two of them are plan-based tools that are adjuncts of the local government comprehensive planning program. The other two are specialized tools in Florida's development-of-regional-impact ("DRI") program. Each tool has its own minimum requirements and could be appropriate for some situations but not for others. Their use in any particular situation should be decided on only after a thorough review of the property's characteristics, the real estate market, the owner's business goals and the local and state political situation.

***Q. What are the plan-based tools and how do they work?***

**A.** The plan-based tools are sector planning and rural land stewardship. Both tools include two layers of planning – first, a comprehensive plan amendment that addresses the entire planning area and, second, a locally adopted development order that authorizes urban development in the planned development area. For both of these tools, the state land planning agency must review and approve the first layer of planning but the local government acts alone in adopting the development order.

***Q. Have these tools been used before?***

**A.** Yes. Sector planning under the statute has been used since 1998. Sector plans have been approved in Orange, Bay and Escambia counties and in the City of Bartow. In addition, under the 2011 reforms of the sector planning statute, previously approved large-area plans in Osceola and Nassau counties have been converted into sector plans. We represented landowners in obtaining approval of several of these plans.

Rural land stewardship was authorized by the Legislature in 2001. A rural land stewardship area under the statute has been approved only in St. Lucie County, however, the statutory program is based on a pioneering stewardship program in Collier County. We represented a developer involved in the St. Lucie plan.

**Q. *What are the requirements to do a sector plan?***

**A.** A planning area must include at least 15,000 acres to be eligible for a sector plan. The planning area may be in more than one local jurisdiction, and it may include lands owned by more than one owner. The first planning layer is a “long-term master plan” for the entire planning area. It would generally identify areas for long-term conservation, development and agriculture, specify uses and maximum densities and intensities of use, include a general public facilities plan and meet other general requirements. The local government must adopt the long-term master plan by comprehensive plan amendment and, after state review and approval, the master plan would designate the approved future land uses for the planning area on the Future Land Use Map.

**Q. *What is the second layer of planning for a sector plan?***

**A.** The second layer is a “detailed specific area plan” or “DSAP”, to authorize urban development in a specific area – generally, a minimum 1,000 acres -- within the overall planning area. The DSAP would focus on development form, impact mitigation and needed public facilities. In order for the DSAP to become effective, lands within it that were identified in the master plan for long-term conservation would be made subject to a perpetual conservation easement. The DSAP would be adopted by local action without state review, although the state land planning agency could initiate an administrative appeal to the Governor and Cabinet if the DSAP is not consistent with the long-term master plan.

**Q. *How does rural land stewardship work?***

**A.** A rural land stewardship area must include at least 10,000 acres. It can be located in more than one county, but it cannot be located within a municipality or in an established urban services area. The lands may include those of more than one owner.

The first layer is a “future land use overlay” which designates a sending area where transferrable “stewardship credits” may be created and a receiving area where the credits may be used for development. The credits would be created through recordation of a stewardship easement or restrictive covenant on environmentally sensitive lands within the sending area. The number of credits created for each preserved acre in a sending area would be based on its natural characteristics and the long-term uses to be allowed on that acre. When all the acreage to be preserved is accumulated, and the future uses on each acre are taken into account, it yields a total number of stewardship credits which may be used for development in a receiving area.

**Q. *What is the second layer of planning in rural land stewardship?***

**A.** The second layer is a local development order adopted by the local government. The development must be located on land identified as a receiving area in the overlay, which typically would include the lands with lowest environmental values. Further, the densities and intensities of use must meet planning standards in the overlay, and the

developer must obtain enough stewardship credits from the sending area to justify the amount of development that he or she wants to do.

**Q. *The “need” and “planning period” issues were sometimes obstacles to large-area planning in recent years. Are they still a concern?***

**A.** Under statutory changes in 2011, the state no longer requires a demonstration of “need” for a land use change, based on population projections. In addition, sector plans are specifically authorized to have a different planning period from the generally applicable planning period of the local comprehensive plan, typically 20 years. Sector plans are supposed to be based on much longer planning periods.

**Q. *Does the DRI program apply in sector planning or rural land stewardship?***

**A.** No. Development in a planning area subject to a long-term master plan is exempt from DRI review if approved through a DSAP. Development in a receiving area of a rural land stewardship area also is exempt from DRI review.

**Q. *Do third parties have any right to contest the planning decisions made through sector planning or rural land stewardship?***

**A.** Yes. If the local government adopts the master plan or overlay and a third party does not like it, then the third party has two avenues. First, the third party can try to persuade the state land planning agency – now the Department of Economic Opportunity (“DEO”) -- to take the position that the master plan or overlay would adversely affect important state resources and facilities, which would necessitate a hearing before a state administrative law judge. If DEO challenges the master plan or overlay, the third party can intervene and raise additional issues.

Second, if DEO accepts the master plan or overlay, the third party can initiate its own compliance proceeding before a state administrative law judge. State law is very liberal on the showing that a third party must make in order to qualify for such a hearing, however, under recent statutory changes a third party must overcome the lenient “fairly debatable” standard in order to prevail against the local government.

**Q. *So it looks like it pays to be on the government's side.***

**A.** That's right. Your chances of succeeding in the land planning process are much better with the local government and DEO on your side. It is possible to prevail over the objections of DEO and third parties, even though there are formidable obstacles to doing so, but it is indispensable to have the local government on your side.

That's one reason we typically recommend that clients engage in an aggressive “public involvement” program, with regulators, neighbors and other stakeholders, when preparing any kind of land plan. It's the best insurance against litigation. And it's particularly important for a large-area plan because – even though they like to say they want to see large-area planning – regulators and environmentalists are usually nervous about a large-area plan during review. They fear that approving such a plan could later

be seen as a big mistake, much like the massive platted subdivisions approved in Florida during the Fifties and Sixties are now regarded as major blunders.

**Q. *Are there any distinctions between sector planning and rural land stewardship that should enter into my thinking about which one to use?***

**A.** Yes, here are some distinctions you may want to keep in mind.

The sector planning law specifically requires the local transportation planning agency and the water management district to take the development program of a long-term master plan into account when preparing regional transportation and water supply plans. There is no such direct linkage between land, water and transportation planning for rural land stewardship.

The sector planning law includes specific authorization for a landowner to obtain conditional vesting of the approved uses and densities and intensities of use in a long-term master plan. That is not expressly authorized under rural land stewardship, and probably is not possible because a rural land stewardship overlay does not identify a specific development program, only a receiving area in which future development may be authorized, depending upon how many stewardship credits are created later.

A DSAP issued to implement a long-term master plan in sector planning expressly must include protection against arbitrary down-zoning prior to buildout, just like a developer would receive in a DRI development order. A development order for a receiving area in a rural land stewardship area is not required to have that protection.

The sector planning law expressly authorizes a local government to enter into a development agreement for the entire planning period of a long-term master plan even if it exceeds the 30-year maximum duration generally allowed for development agreements. There is no such authorization for rural land stewardship.

**Q. *What about the other two large-area planning tools?***

**A.** They are specific tools for the DRI program, which is a state-required development review process for certain projects. The local government with jurisdiction over the development is responsible for deciding whether to issue a development order, but it may do so only after the proposed project has been reviewed by state, regional and local agencies to identify certain types of impacts and to require that those impacts be ameliorated through "mitigation" by the developer.

Within the DRI program, the two large-area planning tools are the "master incremental" DRI and the "area-wide" DRI. Both have been features of the DRI program since its early days but have not been widely used.

**Q. *So these two DRI tools are from an entirely different land use program?***

**A.** That's right. Under Florida law, land use approval in a comprehensive plan does not authorize development. A separate development order is needed. A DRI development order is necessary for a project that meets certain statutory criteria.

**Q. Do these tools have two layers also?**

**A.** Not exactly. Both a master incremental DRI and an area-wide DRI may be approved for a large planning area only if the proposed development is consistent with the Future Land Use Map in the local comprehensive plan. So it would be necessary to get land use approval for the planning area – which is the first layer under both sector planning and rural land stewardship – as a foundation for a master incremental DRI or an area-wide DRI. The land use amendments could be sought simultaneously, but the applicant would still have the complexity of working in separate processes.

**Q. How does the master incremental DRI work?**

**A.** A master incremental DRI does not have a minimum acreage requirement but it is intended for a project that “includes two or more developments of regional impact ... over an extended period of time.” In addition to getting land use approval on the FLUM, the first step is approval of a “master development order” with a master plan for the entire planning area. Specific projects would be subject to approval of an “incremental” DRI development order for a smaller portion of the master plan. Both the master plan and the incremental development order would be subject to DRI review, in effect making for three layers of planning, two of which would involve DRI review.

**Q. What is an area-wide DRI?**

**A.** An area-wide DRI covers a large planning area and, within it, all development is exempt from DRI review. There is no minimum acreage requirement but there are significant procedural hurdles. This process, unlike the others discussed above, requires advance approval by the local government, the regional planning council and the state land planning agency before a developer can even submit an application. Or a local government could be the applicant. Like the master incremental DRI, the area-wide DRI also must be consistent with the Future Land Use Map, so a comprehensive plan amendment also may be needed.

**Q. What do you end up with after completing DRI review?**

**A.** DRI review typically concludes with a development order adopted by the local government that authorizes development of the project, subject to conditions for preventing or mitigating development impacts. The conditions are requirements that the developer must satisfy throughout the life of the project. These can be enforced in court by the local government or DEO. The DRI development order also includes protection against arbitrary down-zoning prior to buildout.

**Q. Do third parties have a right to contest DRI approval?**

**A.** No. DEO, the developer or the landowner may appeal a local government's decision on a DRI development order to the Governor and Cabinet. Generally, nobody else can appeal the local government's decision, although other needed approvals for the project may become the focus of litigation. Third parties have the right to file a lawsuit in circuit court contending that an approved DRI is not consistent with the local

comprehensive plan, and DEO can raise that issue in an appeal to the Governor and Cabinet.

Even though only DEO, the developer or the landowner may appeal a DRI development order, third parties may get involved in DRI review. Citizen groups and agencies may meet with reviewers to ask them to recommend certain limitations on the project. They may appear at the local government hearing to either oppose the project or ask for conditions. They may even encourage DEO to appeal a DRI development order and, if the agency does so, they may intervene to raise issues of their own.

**Q. *So it sounds like we have to go through at least two layers of review no matter which large-area planning tool we choose.***

**A.** That's generally correct. Under Florida law, a local comprehensive plan only designates areas as appropriate for certain land uses, but it does not authorize development. A separate development order is necessary. Even then, the development order issued by the local government can only be implemented if the applicant also gets other required permits from all other regulatory agencies. So you have two layers of review for the plan-based tools, and two but probably three layers of process for the DRI tools.

**Q. *Now I'm beginning to see why the development process is so expensive and time-consuming. It must go on for years and cost a fortune.***

**A.** It does. If federal approvals are required, that also will take time. And it can be a very public process. The application and everything else submitted to a government agency becomes a public record, available for inspection by anyone. On a high-profile project, a landowner or developer should expect extensive press coverage and editorial criticism of those parts of the project that citizen groups don't like.

**Q. *So what are the advantages and disadvantages of these tools?***

**A.** Although the suitability of each tool depends upon the facts of a particular situation, it is possible to generalize about these tools in some respects.

The two plan-based tools have the advantage of changing the underlying land use within the planning area on the Future Land Use Map. Further, both of these tools have a DRI exemption, so the second layer of review within the planning area should be faster, cheaper and easier. As between these two tools – in addition to the distinctions explained above -- rural land stewardship requires more data collection about the property than sector planning and thus probably incurs greater upfront expenses.

As for the two DRI tools, before using either, it almost certainly would be necessary to go through the land use amendment process for at least some portion of the planning area – namely, the area to be developed with urban uses. While such a plan amendment would not be subject to the same scrutiny at the state level as a long-term master plan or a future land use overlay under the two plan-based tools, it would be a demanding process for a land use amendment of this magnitude. In addition to

getting land use approval, the landowner or developer would need to get the DRI development order for the development area, which is also lengthy and expensive.

***Q. Do you have experience with large-area planning?***

**A.** Yes. Our recent work included large-area plans for the 50,000-acre Blue Head Ranch in Highlands County and the 19,000-acre Northeast District Conceptual Master Plan in Osceola County. The Osceola plan was converted into a sector plan under the new sector planning law through a special agreement with DEO in 2011, and the Blue Head Ranch plan has been approved by DEO for conversion.

We also have worked on large-area planning for the 55,000-acre Knight property in Washington and Bay counties, the 40,000-acre Latt Maxcy Ranch in Osceola County and the 20,000-acre East Nassau land plan in Nassau County. We represented the developer in the 22,000-acre Adams Ranch Rural Land Stewardship Area in St. Lucie County.

We have experience on projects with both the master incremental and area-wide DRI processes. And we have participated in confidential strategic “game-planning” for other private landholdings.

Please let us know if we can give you further information about large-area planning.

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