

(19) SUBSTANTIAL DEVIATIONS.--

(a) Any proposed change to a previously approved development which creates a reasonable likelihood of additional regional impact, or any type of regional impact created by the change not previously reviewed by the regional planning agency, shall constitute a substantial deviation and shall cause the proposed change to be subject to further development-of-regional-impact review. There are a variety of reasons why a developer may wish to propose changes to an approved development of regional impact, including changed market conditions. The procedures set forth in this subsection are for that purpose.

(b) Any proposed change to a previously approved development of regional impact or development order condition which, either individually or cumulatively with other changes, exceeds any of the following criteria shall constitute a substantial deviation and shall cause the development to be subject to further development-of-regional-impact review without the necessity for a finding of same by the local government:

1. An increase in the number of parking spaces at an attraction or recreational facility by 10 percent or 330 spaces, whichever is greater, or an increase in the number of spectators that may be accommodated at such a facility by 10 percent or 1,100 spectators, whichever is greater.

2. A new runway, a new terminal facility, a 25-percent lengthening of an existing runway, or a 25-percent increase in the number of gates of an existing terminal, but only if the increase adds at least three additional gates.

3. An increase in industrial development area by 10 percent or 35 acres, whichever is greater.

4. An increase in the average annual acreage mined by 10 percent or 11 acres, whichever is greater, or an increase in the average daily water consumption by a mining operation by 10 percent or 330,000 gallons, whichever is greater. A net increase in the size of the mine by 10 percent or 825 acres, whichever is less. For purposes of calculating any net increases in size, only additions and deletions of lands that have not been mined shall be considered. An increase in the size of a heavy mineral mine as defined in s. 378.403(7) will only constitute a substantial deviation if the average annual acreage mined is more than 550 acres and consumes more than 3.3 million gallons of water per day.

5. An increase in land area for office development by 10 percent or an increase of gross floor area of office development by 10 percent or 66,000 gross square feet, whichever is greater.

6. An increase in the number of dwelling units by 10 percent or 55 dwelling units, whichever is greater.

7. An increase in the number of dwelling units by 50 percent or 200 units, whichever is greater, provided that 15 percent of the proposed additional dwelling units are dedicated to affordable workforce housing, subject to a recorded land use restriction that shall be for a period of not less than 20 years and that includes resale provisions to ensure long-term affordability for income-eligible homeowners and renters and provisions for the workforce housing to be commenced prior to the completion of 50 percent of the market rate dwelling. For purposes of this subparagraph, the term

"affordable workforce housing" means housing that is affordable to a person who earns less than 120 percent of the area median income, or less than 140 percent of the area median income if located in a county in which the median purchase price for a single-family existing home exceeds the statewide median purchase price of a single-family existing home. For purposes of this subparagraph, the term "statewide median purchase price of a single-family existing home" means the statewide purchase price as determined in the Florida Sales Report, Single-Family Existing Homes, released each January by the Florida Association of Realtors and the University of Florida Real Estate Research Center.

8. An increase in commercial development by 55,000 square feet of gross floor area or of parking spaces provided for customers for 330 cars or a 10-percent increase of either of these, whichever is greater.

9. An increase in hotel or motel rooms by 10 percent or 83 rooms, whichever is greater.

10. An increase in a recreational vehicle park area by 10 percent or 110 vehicle spaces, whichever is less.

11. A decrease in the area set aside for open space of 5 percent or 20 acres, whichever is less.

12. A proposed increase to an approved multiuse development of regional impact where the sum of the increases of each land use as a percentage of the applicable substantial deviation criteria is equal to or exceeds 110 percent. The percentage of any decrease in the amount of open space shall be treated as an increase for purposes of determining when 110 percent has been reached or exceeded.

13. A 15-percent increase in the number of external vehicle trips generated by the development above that which was projected during the original development-of-regional-impact review.

14. Any change which would result in development of any area which was specifically set aside in the application for development approval or in the development order for preservation or special protection of endangered or threatened plants or animals designated as endangered, threatened, or species of special concern and their habitat, any species protected by 16 U.S.C. ss. 668a-668d, primary dunes, or archaeological and historical sites designated as significant by the Division of Historical Resources of the Department of State. The refinement of the boundaries and configuration of such areas shall be considered under sub-subparagraph (e)2.j.

The substantial deviation numerical standards in ²subparagraphs 3., 5., 8., 9., and 12., excluding residential uses, and in subparagraph 13., are increased by 100 percent for a project certified under s. [403.973](#) which creates jobs and meets criteria established by the Office of Tourism, Trade, and Economic Development as to its impact on an area's economy, employment, and prevailing wage and skill levels. The substantial deviation numerical standards in subparagraphs 3., 5., 6., 7., 8., 9., 12., and 13. are increased by 50 percent for a project located wholly within an urban infill and redevelopment area designated on the applicable adopted local comprehensive plan future land use map and not located within the coastal high hazard area.

(c) An extension of the date of buildout of a development, or any phase thereof, by more than 7 years

shall be presumed to create a substantial deviation subject to further development-of-regional-impact review. An extension of the date of buildout, or any phase thereof, of more than 5 years but not more than 7 years shall be presumed not to create a substantial deviation. The extension of the date of buildout of an areawide development of regional impact by more than 5 years but less than 10 years is presumed not to create a substantial deviation. These presumptions may be rebutted by clear and convincing evidence at the public hearing held by the local government. An extension of 5 years or less is not a substantial deviation. For the purpose of calculating when a buildout or phase date has been exceeded, the time shall be tolled during the pendency of administrative or judicial proceedings relating to development permits. Any extension of the buildout date of a project or a phase thereof shall automatically extend the commencement date of the project, the termination date of the development order, the expiration date of the development of regional impact, and the phases thereof if applicable by a like period of time.

(d) A change in the plan of development of an approved development of regional impact resulting from requirements imposed by the Department of Environmental Protection or any water management district created by s. 373.069 or any of their successor agencies or by any appropriate federal regulatory agency shall be submitted to the local government pursuant to this subsection. The change shall be presumed not to create a substantial deviation subject to further development-of-regional-impact review. The presumption may be rebutted by clear and convincing evidence at the public hearing held by the local government.

(e)1. Except for a development order rendered pursuant to subsection (22) or subsection (25), a proposed change to a development order that individually or cumulatively with any previous change is less than any numerical criterion contained in subparagraphs (b)1.-13. and does not exceed any other criterion, or that involves an extension of the buildout date of a development, or any phase thereof, of less than 5 years is not subject to the public hearing requirements of subparagraph (f)3., and is not subject to a determination pursuant to subparagraph (f)5. Notice of the proposed change shall be made to the regional planning council and the state land planning agency. Such notice shall include a description of previous individual changes made to the development, including changes previously approved by the local government, and shall include appropriate amendments to the development order.

2. The following changes, individually or cumulatively with any previous changes, are not substantial deviations:

- a. Changes in the name of the project, developer, owner, or monitoring official.
- b. Changes to a setback that do not affect noise buffers, environmental protection or mitigation areas, or archaeological or historical resources.
- c. Changes to minimum lot sizes.
- d. Changes in the configuration of internal roads that do not affect external access points.

- e. Changes to the building design or orientation that stay approximately within the approved area designated for such building and parking lot, and which do not affect historical buildings designated as significant by the Division of Historical Resources of the Department of State.
- f. Changes to increase the acreage in the development, provided that no development is proposed on the acreage to be added.
- g. Changes to eliminate an approved land use, provided that there are no additional regional impacts.
- h. Changes required to conform to permits approved by any federal, state, or regional permitting agency, provided that these changes do not create additional regional impacts.
- i. Any renovation or redevelopment of development within a previously approved development of regional impact which does not change land use or increase density or intensity of use.
- j. Changes that modify boundaries and configuration of areas described in subparagraph (b)14. due to science-based refinement of such areas by survey, by habitat evaluation, by other recognized assessment methodology, or by an environmental assessment. In order for changes to qualify under this sub-subparagraph, the survey, habitat evaluation, or assessment must occur prior to the time a conservation easement protecting such lands is recorded and must not result in any net decrease in the total acreage of the lands specifically set aside for permanent preservation in the final development order.
- k. Any other change which the state land planning agency, in consultation with the regional planning council, agrees in writing is similar in nature, impact, or character to the changes enumerated in sub-subparagraphs a.-j. and which does not create the likelihood of any additional regional impact.

This subsection does not require the filing of a notice of proposed change but shall require an application to the local government to amend the development order in accordance with the local government's procedures for amendment of a development order. In accordance with the local government's procedures, including requirements for notice to the applicant and the public, the local government shall either deny the application for amendment or adopt an amendment to the development order which approves the application with or without conditions. Following adoption, the local government shall render to the state land planning agency the amendment to the development order. The state land planning agency may appeal, pursuant to s. 380.07(3), the amendment to the development order if the amendment involves sub-subparagraph g., sub-subparagraph h., sub-subparagraph j., or sub-subparagraph k. and it believes the change creates a reasonable likelihood of new or additional regional impacts.

- 3. Except for the change authorized by sub-subparagraph 2.f., any addition of land not previously reviewed or any change not specified in paragraph (b) or paragraph (c) shall be presumed to create a substantial deviation. This presumption may be rebutted by clear and convincing evidence.
- 4. Any submittal of a proposed change to a previously approved development shall include a description

of individual changes previously made to the development, including changes previously approved by the local government. The local government shall consider the previous and current proposed changes in deciding whether such changes cumulatively constitute a substantial deviation requiring further development-of-regional-impact review.

5. The following changes to an approved development of regional impact shall be presumed to create a substantial deviation. Such presumption may be rebutted by clear and convincing evidence.

a. A change proposed for 15 percent or more of the acreage to a land use not previously approved in the development order. Changes of less than 15 percent shall be presumed not to create a substantial deviation.

b. Notwithstanding any provision of paragraph (b) to the contrary, a proposed change consisting of simultaneous increases and decreases of at least two of the uses within an authorized multiuse development of regional impact which was originally approved with three or more uses specified in s. [380.0651\(3\)\(c\)](#), (d), (e), and (f) and residential use.

(f)1. The state land planning agency shall establish by rule standard forms for submittal of proposed changes to a previously approved development of regional impact which may require further development-of-regional-impact review. At a minimum, the standard form shall require the developer to provide the precise language that the developer proposes to delete or add as an amendment to the development order.

2. The developer shall submit, simultaneously, to the local government, the regional planning agency, and the state land planning agency the request for approval of a proposed change.

3. No sooner than 30 days but no later than 45 days after submittal by the developer to the local government, the state land planning agency, and the appropriate regional planning agency, the local government shall give 15 days' notice and schedule a public hearing to consider the change that the developer asserts does not create a substantial deviation. This public hearing shall be held within 60 days after submittal of the proposed changes, unless that time is extended by the developer.

4. The appropriate regional planning agency or the state land planning agency shall review the proposed change and, no later than 45 days after submittal by the developer of the proposed change, unless that time is extended by the developer, and prior to the public hearing at which the proposed change is to be considered, shall advise the local government in writing whether it objects to the proposed change, shall specify the reasons for its objection, if any, and shall provide a copy to the developer.

5. At the public hearing, the local government shall determine whether the proposed change requires further development-of-regional-impact review. The provisions of paragraphs (a) and (e), the thresholds set forth in paragraph (b), and the presumptions set forth in paragraphs (c) and (d) and subparagraph (e) 3. shall be applicable in determining whether further development-of-regional-impact review is required.

6. If the local government determines that the proposed change does not require further development-of-regional-impact review and is otherwise approved, or if the proposed change is not subject to a hearing and determination pursuant to subparagraphs 3. and 5. and is otherwise approved, the local government shall issue an amendment to the development order incorporating the approved change and conditions of approval relating to the change. The requirement that a change be otherwise approved shall not be construed to require additional local review or approval if the change is allowed by applicable local ordinances without further local review or approval. The decision of the local government to approve, with or without conditions, or to deny the proposed change that the developer asserts does not require further review shall be subject to the appeal provisions of s. 380.07. However, the state land planning agency may not appeal the local government decision if it did not comply with subparagraph 4. The state land planning agency may not appeal a change to a development order made pursuant to subparagraph (e)1. or subparagraph (e)2. for developments of regional impact approved after January 1, 1980, unless the change would result in a significant impact to a regionally significant archaeological, historical, or natural resource not previously identified in the original development-of-regional-impact review.

(g) If a proposed change requires further development-of-regional-impact review pursuant to this section, the review shall be conducted subject to the following additional conditions:

1. The development-of-regional-impact review conducted by the appropriate regional planning agency shall address only those issues raised by the proposed change except as provided in subparagraph 2.
2. The regional planning agency shall consider, and the local government shall determine whether to approve, approve with conditions, or deny the proposed change as it relates to the entire development. If the local government determines that the proposed change, as it relates to the entire development, is unacceptable, the local government shall deny the change.
3. If the local government determines that the proposed change should be approved, any new conditions in the amendment to the development order issued by the local government shall address only those issues raised by the proposed change and require mitigation only for the individual and cumulative impacts of the proposed change.
4. Development within the previously approved development of regional impact may continue, as approved, during the development-of-regional-impact review in those portions of the development which are not directly affected by the proposed change.

(h) When further development-of-regional-impact review is required because a substantial deviation has been determined or admitted by the developer, the amendment to the development order issued by the local government shall be consistent with the requirements of subsection (15) and shall be subject to the hearing and appeal provisions of s. 380.07. The state land planning agency or the appropriate regional planning agency need not participate at the local hearing in order to appeal a local government development order issued pursuant to this paragraph.

(i) An increase in the number of residential dwelling units shall not constitute a substantial deviation

and shall not be subject to development-of-regional-impact review for additional impacts, provided that all the residential dwelling units are dedicated to affordable workforce housing and the total number of new residential units does not exceed 200 percent of the substantial deviation threshold. The affordable workforce housing shall be subject to a recorded land use restriction that shall be for a period of not less than 20 years and that includes resale provisions to ensure long-term affordability for income-eligible homeowners and renters. For purposes of this paragraph, the term "affordable workforce housing" means housing that is affordable to a person who earns less than 120 percent of the area median income, or less than 140 percent of the area median income if located in a county in which the median purchase price for a single-family existing home exceeds the statewide median purchase price of a single-family existing home. For purposes of this paragraph, the term "statewide median purchase price of a single-family existing home" means the statewide purchase price as determined in the Florida Sales Report, Single-Family Existing Homes, released each January by the Florida Association of Realtors and the University of Florida Real Estate Research Center.