

9J-2.016 Binding Letters of Interpretation.

(1) If any developer is in doubt whether his proposed development is required to undergo DRI review or whether his development rights have vested pursuant to subsection 380.06(20), Florida Statutes, or whether a proposed substantial change to a development of regional impact previously vested pursuant to subsection 380.06(20), Florida Statutes, would divest such rights, the developer may file an application for a Binding Letter of Interpretation with the Division. Prior to submitting a formal application, the developer is encouraged to consult with the Division staff to insure that appropriate information is presented. The developer shall submit an application for a binding letter of interpretation by completing and filing with the Division Form RPM-BSP-BLID-1 (development of regional impact status), RPM-BSP-BLIVR-1 (vested rights), or RPM-BSP-BLIM-1 (substantial modification to a previously vested development), as appropriate. These forms may be obtained upon request to any regional planning agency or to the Division of Community Planning, whose address is 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100. The completed form shall be submitted to the Division of Community Planning.

(2)(a) The Division or the local government with jurisdiction over the land on which a development is proposed may require a developer to obtain a binding letter if the development is at any presumptive numerical threshold or up to 20 percent above any numerical threshold in the guidelines and standards.

(b) Such requirement for an application to be submitted shall be in the form of a written request sent to the developer via certified first-class U.S. mail, return receipt requested, with copies sent to the regional planning agency and the Division or the local government of jurisdiction as appropriate. If the development is found to be a DRI, no development shall occur until a final DRI development order is issued or an agreement is executed pursuant to subsection 380.06(8) or 380.032(3), Florida Statutes.

(3) Any local government may petition the Division to require a developer of a development located in an adjacent jurisdiction to obtain a binding letter of interpretation. The petition shall state with particularity facts sufficient to support a finding that the development as proposed is a development of regional impact. After consideration of the facts in the petition, the Division shall make a decision whether or not to require the developer to obtain a binding letter and shall notify the petitioning local government of that decision. This paragraph shall not be construed to grant standing to the petitioning local government to initiate an administrative or judicial proceeding pursuant to this rule.

(4) A copy of the entire application for a Binding Letter of Interpretation and any supplemental information shall be provided by the applicant to the regional planning agency and local government with jurisdiction over the development site at the time it is submitted to the Division. The Division shall give notice of receipt of the application for a Binding Letter of Interpretation by publication in the Florida Administrative Weekly. Notice shall also be given to the local government having jurisdiction over the proposed development and to the appropriate regional planning agency. A copy of the notice shall be given to the applicant.

(5) Within 15 days from the receipt of an application for a Binding Letter of Interpretation, the Division shall determine and notify the applicant, the local government and the regional planning agency whether the application information is sufficient to enable the agency to issue a binding letter, and the Division shall request any additional information needed. If the Division determines that the information in the application is not sufficient, the applicant shall either provide additional information as requested, or shall notify the Division in writing that the information will not be supplied and the reasons therefor. If the applicant declines to provide the requested information, the Division will so notify the local government and regional planning agency and begin the binding letter review. If the applicant does not respond to the request for additional information within 120 days, then the binding letter application shall be deemed to be withdrawn, and the Division shall provide notice of such to the applicant. If the applicant provides the requested additional information, the Division shall, within 15 days from receipt of the additional information, determine whether the additional information furnished is sufficient to comply with its request. If the additional information is not sufficient, the Division shall notify the applicant, the local government, and the regional planning agency how the information does not satisfy the original request. The Division may only request additional information needed to clarify the information received or to answer new questions raised by, or directly related to, the information received. The applicant then has 120 days from the rendering of the request to respond to the request for additional information. When all the requested information is received, the application will be considered sufficient and the applicant, the local government and the regional planning agency will be so notified.

(6) The Division shall review the completed application and any additional information provided. The Division shall consider all written documents, written statements, and information submitted by the applicant or gathered and made part of the record by the Division during its investigation and evaluation of the application. The Division may initiate an investigation of the application or of any information submitted and may utilize in its evaluation any relevant facts obtained during its investigation. The applicant shall be informed of and provided copies of any relevant facts obtained or received by the Division that will be utilized in the binding letter determination and shall be given an opportunity to respond to them. The Division shall solicit and accept submissions of information from the appropriate regional planning agency and appropriate local government, relevant to any applications. The Division may solicit and accept submissions from any person or agency who may possess factual information relevant to the Division's investigation of an application. The Division may specify that all information submitted by the regional planning agency, local government, or governmental agencies relevant to a binding letter application or responses to information submitted by the developer must be transmitted to the Division by a certain date. Failure to submit such information by the specified date may result in that information not being considered by the Division in its determination. In evaluating an application prior to making a determination, the Division shall convene a conference if it considers that such conference will advance its evaluation of the application. At the request of the Division or the applicant, any such conference shall be recorded and such information may become a part of the record on which the determination is made. A party shall be entitled to a transcript of any conference upon payment of costs.

(7) Within thirty-five (35) days of acknowledging receipt of a sufficient application, or receiving written notification that additional information requested pursuant to subsection (4) will not be supplied, but not sooner than fourteen (14) days after publication of the notice in the Florida Administrative Weekly, the Division shall issue a Binding Letter of Interpretation with respect to the proposed development. The time for issuance of a binding letter of interpretation, or reconsideration thereof, may be extended upon agreement between the Division and the applicant.

(8)(a) In response to a sufficient application for a Binding Letter of Interpretation determining development of regional impact status received by the Division, the Division shall determine whether the proposed development will be required to undergo DRI review. This determination shall be based upon: the guidelines and standards in Section 380.0651, Florida Statutes, and Chapter 28-24, Florida Administrative Code, and applied as indicated in paragraphs 380.06(2)(c) and (d), Florida Statutes, and Rules 28-24.013 and .014, Florida Administrative Code; the information submitted on Form RPM-BSP-BLID-1; and other factual information obtained from third parties including an appropriate regional planning agency and local government. The Division may determine that proposed development below the applicable numerical threshold contained in Section 380.0651, Florida Statutes, or Chapter 28-24, Florida Administrative Code, is required to undergo DRI review if the Division has determined that such development, because of its character, magnitude or location, would have a substantial effect on the health, safety or welfare of citizens of more than one county. Also, the Division may determine that a proposed development above the applicable numerical threshold contained in Section 380.0651, Florida Statutes, or Chapter 28-24, Florida Administrative Code, is not required to undergo DRI review, if it would not have such an effect.

(b) The burden of establishing that a proposed development which exceeds the applicable numerical threshold contained in Section 380.0651, Florida Statutes, or Chapter 28-24, Florida Administrative Code, is not required to undergo DRI review shall be on the applicant. The burden of establishing that a proposed development which does not exceed the applicable numerical threshold contained in Section 380.0651, Florida Statutes, or Chapter 28-24, Florida Administrative Code, is required to undergo DRI review shall be on the Division.

(9) When requested by the submission of Form RPM-BSP-BLIVR-1, and if the Division has determined that the proposed development is required to undergo DRI review, the Division will make a determination as to whether rights have vested pursuant to subsection 380.06(20), Florida Statutes. In order for the Division to make such a determination, the developer shall furnish sufficient information indicating that the development has acquired vested rights pursuant to subsection 380.06(20), Florida Statutes.

(10) When requested by the submission of Form RPM-BSP-BLIM-1, and if the Division has determined that the proposed development is required to undergo DRI review and that rights have vested, the Division shall make a determination as to whether a proposed change to the vested plan of development is substantial, and, if substantial, whether the proposed change would result in reduced regional impacts. In making such a

determination, the criteria in paragraphs 380.06(4)(e) and (f) and 380.06(19)(b), Florida Statutes, shall be considered.

(11) If the Division concludes that the proposed development is required to undergo DRI review, that rights have not vested, or that a proposed change to a previously vested development would increase regional impacts so as to divest rights to complete the development, it shall issue a binding letter requiring compliance with Chapter 380, Florida Statutes.

(12) If the Division concludes that the proposed development is not required to undergo DRI review, that rights have vested, or that a proposed change to a previously vested development would not divest rights to complete the development, it shall issue a binding letter indicating that compliance with Chapter 380, Florida Statutes, is not required.

(13) If the applicant declines to provide information requested by the Division, and the Division concludes that it does not have sufficient information to determine whether the proposed development is required to undergo DRI review, whether the development rights have vested, or whether a proposed substantial change to a development of regional impact previously vested would divest such rights, then the letter issued by the Division pursuant to paragraph 380.06(4)(a), Florida Statutes, shall state that the information was insufficient to make the binding determination requested by the applicant.

(14) A Binding Letter of Interpretation shall contain findings of fact and conclusions of law which shall specify the factual, legal, and policy grounds supporting the Division's determination. The Binding Letter of Interpretation shall be final agency action.

(15) Every binding letter issued by the Division determining that a proposed development is not required to undergo DRI review, but not including binding letters of vested rights or of modification of vested rights, shall expire and become void unless the plan of development has been substantially commenced within:

(a) Three years from October 1, 1985 for binding letters issued prior to October 1, 1985; or

(b) Three years from the date of issuance of binding letters issued on or after October 1, 1985.

The expiration date of a binding letter shall begin to run after final disposition of all administrative and judicial appeals of the binding letter any may be extended by mutual agreement of the Division, the local government with jurisdiction, and the developer. Comments from the regional planning agency will be solicited by the Division when any request for an extension of the expiration date is made.

(16) Rights which have vested pursuant to paragraph 380.06(20)(a), Florida Statutes, and for which the notification requirements of paragraph 380.06(20)(a), Florida Statutes, have been met, shall expire and become void after June 30, 1990, unless development of the vested plan has commenced prior to that date upon the property that the Division has determined has acquired vested rights following the notification or in a binding letter of interpretation. When the notification requirements of paragraph 380.06(20)(a), Florida Statutes, have not been met, vested rights authorized by paragraph 380.06(20)(a), Florida Statutes, expired June 30, 1986, unless development commenced prior to that date.

(17) Copies of the binding letter shall be provided to the applicant, the local government, the regional planning agency, and appropriate state agencies. The Division shall request such governments or agencies to notify the Division of potential violations of Section 380.06, Florida Statutes. In addition, notice of the issuance of a binding letter shall be given to persons who have requested notice. Pursuant to paragraph 380.06(4)(d), Florida Statutes, Binding Letters of Interpretation issued by the Division shall bind all state, regional and local agencies as well as the developer.

Specific Authority 380.032(2)(a), 380.06(23)(a) FS. Law Implemented 120.569, 380.031, 380.032, 380.06(1), (2)(c), (d), (e), (4), (20), 380.0651 FS. History—New 4-12-81, Amended 5-4-83, Formerly 27F-1.16, 9B-16.16, Amended 11-20-90, 2-21-01, 6-1-03.