

FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS

General Comments

1. **COMMENTS:** The Department completed its Second Sufficiency Review of the Application for Development Approval (ADA) for the Beacon Countyline Development of Regional Impact (DRI) located in the City of Hialeah. The project will redevelop an area consisting of former construction and demolition material landfills and material reclamation facilities. The applicant chose to modify the project's development program since the First Sufficiency Review by increasing the industrial/ warehouse category from 4,100,000 to 4,300,000 square feet, by decreasing the office from 1,000,000 to 750,000 square feet, by decreasing the retail from 550,000 to 350,000 square feet, and by maintaining 350 hotel rooms. Build out is still anticipated to occur 10-years after the issuance of a Development Order. The following table summarizes the Department's first sufficiency review letter dated December 20, 2007, and each comment's status at the second sufficiency review.

RESPONSE: This comment is acknowledged by the Applicant. Responses to the additional comments contained in the table in the DCA letter are provided below.

2. **COMMENTS:** Question 10 – General Project Description. This comment includes three parts, as follows: a.) because the development will take more than five years, the project must be described in phases (or stages) of development (not to exceed five years); b.) include the magnitude in the appropriate units from Chapter 28-24, F.A.C., where applicable and expected beginning and the completion dates for construction; and c.) include a breakdown of the existing and proposed land uses on the site for each phase of development through completion of the project.

The applicant's response was that 3 of the 10 years will be required for land fill and wetland permitting, and conditions will be tied to development impacts, not time frames. Also, the applicant indicated that the Rule 9J-2 reference to 5-year increments is permissive, not mandatory. DCA's original comment is still pertinent. Rule 9J-2.045(2)(i), F.A.C., notes that "Project phase means a discrete, five year of lesser construction timeframe of development..." The Rule is mandatory, not permissive.

RESPONSE: The Applicant proposes and intends to develop the Project in a single project build-out period. The development of this former landfill Site will be exceptionally complicated and require overlaying development approvals, landfill closure and wetland regulatory requirements with construction and implementation schedules. Therefore, the Applicant determined prior to scheduling the pre-application conference that the establishment of arbitrary 5-year phases for the DRI approval would only serve to further complicate the coordinated and linear implementation of regulatory requirements and, instead proffered, in its pre-application materials, an approach which contemplates DRI conditions that would mitigate impacts as they arise.

The Applicant respectfully submits that multiple five year or lesser phasing timeframes are not mandated for this Project analysis to proceed. The proposed 10-year single timeframe for the Beacon Countyline DRI was presented to the reviewing agencies in

the initial information provided by the Applicant prior to the pre-application conference pursuant to Rule 9J-2.021(d), F.A.C. The proposed phasing of a project was reviewed and agreed to as part of the pre-application process.

Rule 9J-2, F.A.C., is intended to provide a "safe harbor" for projects to follow in the processing of a DRI ADA. In other words, developments that comply with all aspects of the Rule are not to be appealed by DCA and those that do not fully meet the Rule shall be reviewed on a "case-by-case" basis. The Applicant and the agencies who participated in the pre-application portion of this Project agreed that the phasing limitations that are contemplated by the Rule are not warranted. It should be noted that phasing is contemplated in only three instances under the Rule. The three issue areas that contemplate phases as part of the "safe harbor" analysis are the rules concerning (1) hazardous materials usage, potable water, wastewater, and solid waste facilities (Rule 9J2-044, F.A.C.), (2) transportation facilities (Rule 9J2-045, F.A.C.), and (3) adequate housing facilities (Rule 9J2-048, F.A.C.). The hazardous materials aspects of this property are so complicated that phasing would only make things more difficult to implement. Housing issues were agreed at the pre-application conference (at the suggestion of the South Florida Regional Planning Council) to be addressed through the payment of analysis fees into a housing fund. Therefore, no specific housing analysis has been provided. As noted, the transportation methodology contemplates mitigation of impacts throughout the Project build-out period. The transportation methodology was accepted after several meetings. Finally, it should be noted that numerous DRIs have been approved with single build-out periods of longer than five years.

The Applicant provided its methodologies and timeframes at the pre-application conference for the Project, which were followed by a summary of all of the methodologies and assumptions agreed upon at the conference and after subsequent meetings and correspondence, for agency review and approval. Once the agreement was reached as to the information to be provided in the Application for Development Approval, the reviewing agencies cannot subsequently object to the assumptions and methodologies used. Both Sec. 380.06(7)(a), F.S., and Rule 9J-2.021, F.A.C., reiterate this principle. Sec. 380.06(7)(a), F.S., specifically states that once an "agreement is reached regarding the assumptions and methodology to be used in the application for development approval, the reviewing agencies may not subsequently object to those assumptions and methodologies unless subsequent changes to the Project or information obtained during the review make those assumptions and methodologies inappropriate." Rule 9J-2.021, F.A.C., further provides that "after agreement has been reached regarding assumptions and methodologies, reviewing agencies may not subsequently object to those assumptions and methodologies, unless subsequent changes to the Project or information obtained during the review make those assumptions and methodologies inappropriate." These provisions clearly bind the Applicant and the reviewing agencies to a set of parameters for the DRI review process. The Beacon Countyline DRI reached such an agreement prior to the submittal of the Application for Development Approval.

Based on the scope of the proposed development program and the agreement reached following the pre-application conference for the Beacon Countyline DRI pursuant to Sec. 380.06(7)(a), F.S., and Rule 9J-2.021, F.A.C., The Applicant hopes and intends that the ten-year analysis period for this DRI is acceptable to the Department. The phasing timeframes were clearly presented and agreed by all of the reviewing agencies during the pre-application process.

3. **COMMENTS:** Question 10 – General Project Description. Although the application notes on Page 10-9 that a land use change to the Hialeah Future Land Use Map will be required, the application does not identify the anticipated land use or land uses that will be required. Please identify the future land use designation or designations that will be requested for this project.

The applicant's response notes that a Future Land Use Map change from "Annexation Area" to "Industrial" will be requested. In response, DCA notes that the description of the industrial category in the Future Land Use Element appears to focus on the industrial uses, with no mention of the proposed office, retail or hotel uses. If a Comprehensive Plan amendment is submitted to change the property's designation on the Future Land Use Map to industrial, it would likely raise concerns based on the current description of the industrial Future Land Use category.

RESPONSE: The City of Hialeah has consistently advised that it interprets its Comprehensive Plan Future Land Use Element to allow office, retail and hotel uses (in addition to those considered traditionally industrial) within those lands designated as Industrial. The City's Comprehensive Plan, land use and zoning regulations are progressive and therefore would allow the lesser intensive commercial uses within industrial lands. In addition, the industrial zoning district that the Property would be designated (MH Industrial District) specifically permits commercial uses pursuant to Sec. 98-1601, City of Hialeah Code.

4. **COMMENTS:** Question 10 – General Project Description. Indicate whether the project will require an amendment to the capital improvements element, including the five-year schedule of capital improvements, and identify the amendments that will be needed.

The applicant's response notes that the project will likely require amendments to the Capital Improvements element (CIE), which will be identified when the review of the application is completed and the development order conditions are established. DCA concludes that the applicant's response is insufficient. The application does not identify the needed amendments, the associated infrastructure, or the cost. For example, the response to question #10, Part 4, at Table 10.4.B.1 fails to identify the costs. Further, page 17-3 infers that the project will rely on a Reverse Osmosis water plant to be built by the City in 2011, but there is no reference to the CIE amendment.

RESPONSE: This Project does not expressly rely on the R/O Plant construction by 2011. Rather, we recognize that construction of the R/O Plant is an important feature of the County's Water Use Permit (WUP), which projects completion of same between 2011 and 2012. Water availability for the Project is subject to the WUP, not the R/O Plant. The Applicant has filed an application for the amendment of the City's Comprehensive Plan and will amend that application to seek a modification of the City's CIE when sufficiency review of the DRI ADA is complete and the recommended DRI Development Order conditions have been finalized. It is difficult to predict/identify which and whether any amendments are needed, what the associated infrastructure would be, or what the estimated costs are at this time.

Please note that on November 7, 2007, the City adopted amendments to the Comprehensive Plan CIE that include the new water plant. A copy of the adopted amendments is included in this response as **FDCA Attachment 1**. The FDCA Notice of Intent to find these amendments to the City of Hialeah Comprehensive Plan in compliance is also included in **FDCA Attachment 1**.

5. **COMMENTS: Question 13 – Wetlands.** There are approximately 122 acres of wetlands on the site. These wetlands are described as being of poor quality and so no onsite wetlands will be protected. Instead, the applicant proposes to offset these impacts by purchasing credits at a local mitigation bank. The applicant is asked to reconsider the wetlands where the state endangered Southern frogfruit plant (*Phyla stochedifolia*) is located and restore other onsite wetlands to provide viable habitat for wading birds.

The applicant notes that the comment is acknowledged, that preservation of any of the few areas on-site that are not landfill is unlikely, but that mitigation options will be fully explored as part of the environmental permitting process. DCA requests the applicant to explain how they will address the endangered plant that is on site.

RESPONSE: Please note that the revised number of wetland acres on the Project Site is now 104 acres with the removal of the Golden Glades Right-of-Way and the addition of the outparcel near the Golden Glades Right of Way. The applicant has committed to working with DERM to close the landfill in accordance with all current closure requirements. The combination of the closure requirements, along with the stormwater management system design, and the street and building layout necessitate the filling of the 104 acres of wetlands On-Site.

The Applicant is currently coordinating with DERM regarding the closure/development plans. The development plans will incorporate the landfill closure and construction of the closure will be concurrent with the construction of the Development. The final cover layer on the Site will consist of an essentially impervious cap, consisting of buildings, parking lots and roadways, over the majority of the Site and a 2 foot thick layer of approved materials and vegetative cover in pervious areas. The construction phases and schedule will be approved by DERM in compliance with the regulatory closure requirements.

Based on the initial meetings, the DERM requirements for stormwater management and final closure of C&D landfill dictate that stormwater be disposed of or directed to clean areas of the Site that have not received waste material. Essentially, the only areas of the Site that falls into this category are the areas currently delineated as wetland areas. It is required that the 100-year/3-day storm event be retained On-Site. Based on this analysis, the excavation of all of the 55 acres of wetlands in the southern portion of the Site is necessary for construction of the stormwater management system. This impact includes the 40-acre wetland, 10-acre wetland and 5-acre wetland in the southern portion of the Project, all of which are dominated by melaleuca.

In addition to the constraints associated with the closure of the landfill areas, the wetland impacts on the northern portion of the Project are also necessary to meet the requirements of a sustainable multi-use development envisioned by the City and to incorporate the retail components of the overall Project. The northern portion of the Project is adjacent to NW 170th Street, which provides the necessary main road frontage

essential for a successful retail operation as part of the overall multi-use Development. Impacts to the northern 40-acre wetland are also necessary for the construction of the required road system, including the widening of NW 170th Street and NW 102nd Avenue to accommodate the anticipated traffic needs of this portion of Miami-Dade County. These rights-of-way will also include the required utilities lines for the overall Project.

Minimization and avoidance of wetland impacts will be more thoroughly developed as part of the permitting processes with the Army Corps of Engineers, South Florida Water Management District, and the Miami-Dade County Department of Environmental Resources Management.

One of the plant species that has been observed within the wetlands on the Project is frog-fruit, an endangered species on the State of Florida plant list. As described above, in order to appropriately close the landfill in accordance with all federal, state and local criteria as well as to design a cost effective commercial site within the constraints of the Property boundary, all of the wetlands On-Site are proposed to be either excavated for the stormwater management plan or filled. Without any feasible On-Site wetland mitigation components, there are no suitable areas to which the frog-fruit could be relocated On-Site. The Applicant will continue to work with the U.S. Army Corps of Engineers, South Florida Water management District and the Miami-Dade County Department of Environmental Resources Management through their respective permit processes to properly mitigate for the loss of any on-site wetlands as a result of the implementation of this project.

6. **COMMENTS: Question 17 & 18 – Water Supply.** The Department’s copy of the Application for Development Approval did not include a copy of the applicant’s request for a “Letter of Available Service” and a copy of the response from the water service provider (Question 17.F.1.a-c) and the wastewater service provider (Question 18.C.1).

The noted letters from the applicant are provided. The service provider letters will be forwarded when they are received. DCA has no further comment on this issue.

RESPONSE: The service provider letters have been received from the City of Hialeah and from Miami-Dade County Water and Sewer Department. These letters are attached as part of **Question 17 - Water Supply** and **Question 18 - Wastewater Management** included in this response.

7. **COMMENTS: Question 10 – General Project Description.** The application notes at Table 10.4.B.1 that the project’s transportation impact will be addressed through the pipelining and payment of proportionate share contribution. The Department will review the related amendment for a demonstration of consistency with all the criteria provided under Section 163.3180(12), Florida Statutes (F.S.). The criteria include ensuring that the project contains an integrated mix of land uses, is designed to encourage pedestrian or other non-automotive modes of transportation, and has a proportionate share contribution sufficient to pay for one or more required improvements that the transportation improvements implemented through pipelining are included in the development order for the Beacon Countyline DRI, as well as the associated costs. The comprehensive plan amendment should be supported by this information.

RESPONSE: This comment is acknowledged by the Applicant. Please note that **Table 10.4.B.1 (R)** provides "Fair Share cost to be determined". It is unclear at this time as to whether the Applicant will need or intends to avail itself of the concurrency protections provided under Section 163.3180(12), Florida Statutes. It is clear, however, that the Applicant will, at a minimum, avail itself of the mitigation options provided in Rule 9J-2.045(7), Florida Administrative Code, which includes proportionate share payments as one of the available options.

8. **COMMENT: Question 21 – Transportation.** Page 21-5 provides a discussion of backlog trips and how they might be analyzed. The tables that follow this discussion list the existing and future traffic conditions. It appears that the analysis assumes the existence of unconstructed traffic lanes that would otherwise serve the backlog. Comments from the Florida Department of Transportation (District IV), the Florida Department of Transportation (District VI), and the Miami-Dade Planning and Zoning Department objected to this assumption. The Department of Community Affairs also objects to this assumption. The analysis should be revised and resubmitted to remove the assumption regarding unconstructed traffic lanes that would otherwise serve the backlog.

RESPONSE: **Question 21 – Transportation** was revised in response to agency comments during the first sufficiency and improvements necessary to eliminate backlogs are not included in the revised analysis.

9. **COMMENT: Question 21 – Transportation.** On a related transportation issue, page 21-10 notes the following: "The Developer of Beacon Countyline DRI is committed to pursuing an interchange at HEFT/NW 170 Street and has determined that they do not intend to proceed with development beyond a certain amount of Project trips until the contemplated interchange is committed, constructed and/or caused to be constructed. The construction of this interchange has been included in the analysis, in addition to the committed roadway improvements listed in Table 21-2(R). It is the Applicant's intent to use this analysis to establish the appropriate timing of the interchange."

Further, page 21-28 notes the following: "The Applicant contemplates that any development order issued for the Beacon Countyline DRI will contain a condition that will limit development to the issuance of certificates of occupancy for an equivalent amount of development which generates 2,000 pm peak hour net new external trips prior to commencement of construction of an interchange on the HEFT at NW 170 Street." It appears that the interchange has been included in the traffic analysis in the same manner as the committed roadway improvements, notwithstanding that it is currently only planned and unfunded. The applicant is requested to clarify the degree of their reliance on the interchange in the traffic analysis. The same comment applies to the four additional improvements listed at the bottom of page analysis. The same comment applies to the four additional improvements listed at the bottom of page 21-10 and the top of page 21-12, none of which appear to be committed. At least one of these improvements (i.e. NW 170 Street between HEFT and NW 97 Avenue) is dependent on a developer contribution "at a later time" and is not currently the subject of an enforceable developer's agreement. The applicant is requested to clarify the degree of their reliance on these four projects in the traffic analysis.

RESPONSE: The traffic study is based on all these improvements being in place at specific times during Project development and, at the latest, prior to Project build-out. The Applicant commits to appropriate and binding conditions that will be included in the DRI Development Order to make it binding and enforceable.

FDCA Attachment 1

Application No. 7

City of Hialeah Comprehensive Plan Capital Improvements Element Amendments

FDCA Notice of Intent

To find the City of Hialeah Comprehensive Plan Amendment in Compliance