

9J-2.0251 Abandonment of Development Orders.

(1) Purpose. This rule establishes the process for local governments to follow in the event a developer proposes to abandon a development of regional impact (DRI) which has been rendered a final development order.

(2) Procedures and Requirements for Abandonment. The following procedures and requirements shall be followed when seeking the abandonment of an approved DRI:

(a) Pursuant to subsection 380.06(26), Florida Statutes, the developer shall submit a completed copy of an Application for Abandonment of a Development of Regional Impact to the local government(s) having jurisdiction. Copies of the application shall be simultaneously filed with the appropriate regional planning agency and the Division. The regional planning agency will distribute copies of the completed application to the appropriate commenting agencies normally involved in the DRI review. Copies of the Application for Abandonment of a Development of Regional Impact, FORM RPM-BSP-ABANDON-DRI-1, incorporated herein by reference, effective 3/91, may be obtained from either the Division or the appropriate regional planning agency.

(b) Upon receipt of the application, the local government shall, at its next regularly scheduled meeting, schedule a public hearing to consider the application and provide 45 days notice of this hearing to the Division and the appropriate regional planning agency.

(c) At the public hearing, the local government shall determine whether the request to abandon shall be granted, granted with conditions, or denied. In determining whether to grant, grant with conditions, or deny the request to abandon an approved DRI, the local government shall consider and adequately address:

1. The developer's reasons for seeking to abandon the DRI;
2. The types and amounts of the development constructed;
3. The types and amounts of impacts from the project's existing and proposed development to any resources, and existing and planned facilities;
4. The extent to which the proposed abandonment will affect areas previously set aside or identified for preservation or protection;
5. The extent to which the developer has complied with conditions of the development order which authorize existing development;
6. The extent to which the developer has relied upon benefits granted to authorized developments of regional impact, pursuant to Chapters 163, 403, and 380, Florida Statutes, which would not otherwise be available after abandonment;
7. The extent and types of impacts the proposed abandonment will have on the local comprehensive plan and local government land development regulations;
8. The extent to which the proposed development after abandonment will be inconsistent with the State Comprehensive Plan, the State Land Development Plan, or the appropriate Comprehensive Regional Policy Plan; and
9. Whether the development is eligible to request abandonment pursuant to subsection (5) below.

(d) Within 30 days after the public hearing, the local government shall render a written decision on the request to abandon which shall include findings of fact and conclusions of law consistent with the provisions of this rule unless a reasonable extension of time is requested in writing by the developer.

(e) Within 15 days after expiration of the appeal period in Section 380.07, Florida Statutes, for an amended development order granting, or granting with conditions, the abandonment of an approved DRI, or within 15 days of the resolution of any such appeal, the appropriate local government shall issue a notice of abandonment which shall be recorded by the developer in accordance with Section 28.222, Florida Statutes, with the clerk of the circuit court for each county in which land covered by the terms of the amended development order is located.

(3) Requirements for an Abandonment which has been granted or granted with conditions.

(a) If the local government determines that the abandonment shall be granted or granted with conditions, the local government shall issue an amendment to the development order which shall include findings of fact and conclusions of law consistent with the provisions of this rule, that either repeals the original DRI development order in its entirety (including previous amendments) or repeals portions of the existing development order, and includes any appropriate additional conditions of abandonment.

(b) The resulting development order must contain conditions which require the developer to mitigate the impacts of all existing and proposed development. This shall include mitigating any impacts resulting from changes in the plan due to abandonment.

(c) The resulting development order must contain conditions which require the developer to satisfy all applicable conditions of the existing development order with regard to existing and proposed development.

(d) The resulting development order must contain conditions which require the developer to request and receive a rescission or amendment to all permits or other approvals which authorize development beyond that which is authorized under the amended development order.

(4) Effect of denying a Request to Abandon. If the local government denies the request to abandon the DRI development order, including previous amendments in effect at the time the request was submitted, the DRI development order shall remain in full effect.

(5) Eligibility to Abandon.

(a) An approved DRI which is proposed after abandonment to be below 100 percent (100%) of any applicable guidelines and standards identified in Section 380.0651, Florida Statutes, or Chapter 28-24, Florida Administrative Code, is eligible to abandon an approved DRI.

(b) An approved DRI which is proposed after abandonment to be at 100 percent or between 100 and 120 percent of any applicable guidelines and standards identified in Section 380.0651, Florida Statutes, or Chapter 28-24, Florida Administrative Code, and upon which no development as defined in Section 380.04, Florida Statutes, has occurred, is eligible to request abandonment of an approved DRI if the Division has issued a binding letter which finds the proposed plan of development after abandonment not to be a DRI.

(c) An approved DRI which is proposed after abandonment to be at 100 percent or between 100 and 120 percent of any applicable guidelines and standards identified in Section 380.0651, Florida Statutes, or Chapter 28-24, Florida Administrative Code, and upon which no development as defined in Section 380.04, Florida Statutes, has occurred, is eligible to request to abandon an approved DRI if the Division has issued a binding letter which finds the proposed plan of development after abandonment to be a DRI. If the Division issues a binding letter which finds the proposed plan of development after abandonment to be a DRI, such a development shall be evaluated under the substantial deviation provisions of subsection 380.06(19), Florida Statutes.

(d) An approved DRI which has commenced development as defined in Section 380.04, Florida Statutes, and which exceeds or is proposed after abandonment to be at or exceed 100 percent (100%) of any applicable guidelines and standards identified in Section 380.0651, Florida Statutes, or Chapter 28-24, Florida Administrative Code, shall not be eligible to request abandonment of an approved DRI. Such a development shall be evaluated under the substantial deviation provisions of subsection 380.06(19), Florida Statutes.

(e) The provisions contained in paragraph 380.06(2)(c), Florida Statutes, shall govern which guidelines and standards are applicable for the purposes of this rule.

(6) Appeal Rights.

(a) Any amended development order or resolution issued pursuant to this rule shall be subject to the appeal provisions of Section 380.07, Florida Statutes.

(b) The issues in any such appeal shall be confined to whether the provisions of subsection 380.06(26), Florida Statutes, and this rule have been satisfied.

Specific Authority 380.032(2)(a), 380.06(23)(a), (26) FS. Law Implemented 380.06(2), (26) FS. History—New 3-10-91, Amended 2-21-01, 6-1-03.