

CHAPTER 9J-28 RULES OF PROCEDURE AND PRACTICE PERTAINING TO FLORIDA QUALITY DEVELOPMENTS

- 9J-28.001 Purpose. (Repealed)
- 9J-28.002 Definitions.
- 9J-28.003 Applicability. (Repealed)
- 9J-28.004 Public Participation. (Repealed)
- 9J-28.005 Notices, Agenda, Conduct of Proceedings.
- 9J-28.006 Application Forms.
- 9J-28.007 Preliminary Development Agreements.
- 9J-28.008 General Requirements.
- 9J-28.009 Requirements for Designation as a Florida Quality Development.
- 9J-28.010 Preapplication Conferences.
- 9J-28.011 Filing the Application for Development Designation.
- 9J-28.012 Development-of-Regional-Impact Conversion.
- 9J-28.013 Designation or Non-Designation of Proposed Development by Reviewing Entities.
- 9J-28.014 Pleadings. (Repealed)
- 9J-28.015 Commencement of Appeal Proceedings. (Repealed)
- 9J-28.016 Answer. (Repealed)
- 9J-28.017 Reply. (Repealed)
- 9J-28.018 Non-Party Response. (Repealed)
- 9J-28.019 Time for Hearing Appeal. (Repealed)
- 9J-28.020 Duties of Review Board Staff.
- 9J-28.021 Conduct of Appeals. (Repealed)
- 9J-28.022 Appeals Decisions. (Repealed)
- 9J-28.023 Florida Quality Development Orders.
- 9J-28.024 Substantial Change.
- 9J-28.025 Monitoring and Enforcement.

9J-28.002 Definitions.

All the terms defined in Section 380.031, Florida Statutes, shall have the meanings provided in that section, whenever used in this chapter. In addition, for the purposes of this rule chapter, the following terms shall have the following meanings:

(1) “Affordable housing” means a situation where monthly rents, or monthly mortgage payments including taxes, insurance, and utilities do not exceed 30 percent of that amount which represents the percentage of the median adjusted gross annual income for very low, low, and moderate income persons; “very low income persons” means one or more natural persons or a family, not including students, the total annual adjusted gross household income of which does not exceed 50 percent of the median annual adjusted gross income of the households within a state, or 50 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within a county in which the person or family resides, whichever is greater; “low income persons” means one or more natural persons or a family, the total annual adjusted gross household income of which does not exceed 80 percent of the median annual adjusted gross income for households within the state, or 80 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater; “moderate income persons” means one or more natural persons or a family, the total adjusted gross household income of which is less than 120 percent of the median annual adjusted gross income for households within the state, or 120 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within the MSA, within the county in which the person or family resides, whichever is greater.

(2) “Appeal” means appeal to the Quality Development Review Board of the denial of designation of a project as a Florida Quality Development by the Department and local government as provided by this rule chapter.

(3) “Beach” means “active beach” which is the zone of unconsolidated material that extends landward from the mean low water line to the place where there is marked change in material or physiographic form, or to the line of permanent vegetation. This is usually the effective limit of storm waves.

(4) “Department” means the State of Florida Department of Community Affairs and may be referred to in this rule as the “state land planning agency.”

(5) “Developer” means any person, including a governmental agency, undertaking any development as defined in this chapter.

(6) “Development Order” means any order granting, denying, or granting with conditions an application for a development permit.

(7) “Development Permit” means any building permit, zoning permit, plat approval, or rezoning, certification, variance, or other action having the effect of permitting development as defined in Chapter 380, Florida Statutes.

(8) “Division” means the Division of Community Planning of the Department of Community Affairs.

(9) “DRI” means development-of-regional impact.

(10) “Dunes” means a mound or ridge of loose sediment usually sand-sized, lying upland of the beach or shore and deposited by any natural or artificial mechanism.

(11) “FQD” means Florida Quality Development.

(12) “Generation” means the act or process of producing or manufacturing hazardous or toxic waste and substances.

(13) “Hazardous substance” will have the meaning given it in Section 403.703(29), Florida Statutes, which provides that hazardous substances means any substance in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 94 Stat. 2767, 42 U.S.C., 9601.

(14) “Hazardous waste” means solid waste, or combination of solid waste, which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly transported, disposed of, or stored, treated, or otherwise managed.

(15) “Primary Dune” means “Frontal Dune” which is the first natural or manmade mound, ridge, or bluff of sand located landward of the beach and having sufficient vegetation, height, continuity or configuration, to offer protection against storm waves.

(16) “Non-party reviewing entity” means a reviewing entity which approves designation of a proposed development as a Florida Quality Development.

(17) “Party” means a developer bringing an appeal pursuant to this rule chapter or a reviewing entity which denies designation of a proposed development as a Florida Quality Development.

(18) “Pleading” means a notice of appeal, petition, answer, reply, non-party response, or any other paper served by a party or reviewing entity in order to conduct an appeal pursuant to this rule chapter, but shall not include the written recommendation of a reviewing entity issued pursuant to Rule 9J-28.013, Florida Administrative Code.

(19) “Program” means the Florida Quality Developments program created pursuant to Section 380.061, Florida Statutes.

(20) “Review Board” shall mean the Quality Developments Review Board created pursuant to paragraph 380.061(6)(a), Florida Statutes.

(21) “Review Board staff” means the staff of the state land planning agency.

(22) “Reviewing entity” means the Department or the appropriate local government with jurisdiction over the site of a proposed FQD.

(23) “Secretary” means the Secretary of the Department of Community Affairs.

(24) “Secondary Dune” means the dunes landward of the primary dune.

(25) “Site Access” means access to the site from adjacent parcels or internal access from one part of the site to another part of the site for pedestrian or vehicular traffic, provided other routes of access are unavailable or impractical.

(26) “Small Quantity Generator” means a business that generates between 100 kg and 1000 kg of hazardous waste in a calendar month as defined in Chapter 40, Code of Federal Regulations, Sections 260.10 and 262.44, Florida Statutes, which is hereby incorporated by reference.

(27) “Toxic substance” means vapors, gases, or highly volatile liquids, which are produced, used, transported, or stored in containers or within piping systems under pressure or at a reduced temperature in order to lower vapor pressure, and which, if released directly or indirectly into the atmosphere, may pose a serious and acute threat to public health, safety, or to the environment.

Specific Authority 380.032(2)(a), 380.061(8)(b) FS. Law Implemented 380.061 FS. History–New 1-23-90, Amended 3-1-01.

9J-28.005 Notices, Agenda, Conduct of Proceedings.

With respect to FQDs, the Department shall provide notice and agenda, and shall conduct any proceedings governed by Chapter 120, Florida Statutes, in accordance with the Uniform Rules of Procedure, Chapters 28-101 to 28-110, Florida Administrative Code.

Specific Authority 380.032(2)(a), 380.061(8)(b) FS. Law Implemented 380.061 FS. History–New 1-23-90, Amended 3-1-01.

9J-28.006 Application Forms.

Applications for designation of a development as an FQD shall be made on Form RPM-BSP-ADA-1, “Development of Regional Impact Application for Development Approval,” effective date: 11/90, as incorporated by reference in Rule 9J-2.010, Florida Administrative Code, and in addition thereto those items specified in Rule 9J-28.008, Florida Administrative Code, “General Requirements,” and Rule 9J-28.009, Florida Administrative Code, “Requirements for Designation as a Florida Quality Development.” The form may be obtained by submitting a request to: State of Florida Department of Community Affairs, Division of Community Planning, 2555 Shumard Oak Boulevard, Sadowski Building, Tallahassee, Florida 32399-2100.

Specific Authority 380.032(2)(a), 380.061(4), (8)(b) FS. Law Implemented 380.061, 380.061(4) FS. History–New 1-23-90, Amended 3-1-01.

9J-28.007 Preliminary Development Agreements.

No development, as defined in Section 380.04, Florida Statutes, shall be undertaken on a project seeking designation as an FQD prior to the issuance of an FQD development order except as authorized by a Preliminary Development Agreement (PDA) as provided in subsection 380.06(8), Florida Statutes, Rule 9J-2.0185, Florida Administrative Code, or as otherwise authorized by Chapter 380, Florida Statutes.

Specific Authority 380.061(8)(b) FS. Law Implemented 380.06(8)(c), 380.061 FS. History—New 1-23-90.

9J-28.008 General Requirements.

(1) Prior to undertaking any development, as defined in Section 380.04, Florida Statutes, a developer must have obtained a development order issued pursuant to Section 380.061, Florida Statutes, or obtain a PDA as set out in subsection 380.06(8), Florida Statutes, and Rule 9J-28.007, Florida Administrative Code, of this rule.

(2) The following are the summarized procedures and requirements.

(a) Participation in preapplication conference proceedings with the Department, the local government, and other affected state and regional agencies pursuant to subsection 380.061(5), Florida Statutes.

(b) Filing an application for development designation pursuant to subsection 380.061(5), Florida Statutes.

(c) A review of the application for development designation for completeness, pursuant to the provisions of Section 120.60, Florida Statutes.

(d) A determination by the local government of approval or denial of the proposed development as an FQD and adoption of conditions of approval, if any.

(e) A determination by the Department of approval or denial of the proposed development as an FQD.

(f) Issuance by the Department of a development order pursuant to subsection 380.061(5), Florida Statutes.

(g) Filing of annual reports pursuant to subsection 9J-28.023(6), Florida Administrative Code.

(h) Monitoring and enforcement of the development for compliance with terms of the development order.

Specific Authority 380.061(8)(b) FS. Law Implemented 380.061 FS. History—New 1-23-90.

9J-28.009 Requirements for Designation as a Florida Quality Development.

To be eligible for designation under this alternative DRI review program, the developer shall comply with each of the following requirements which is applicable to the site of a proposed FQD. The intent of establishing these minimum FQD development standards is to assist, promote, and advance the timely and expeditious review of FQD projects and, unless otherwise specified, such mitigative requirements shall be in addition to the mitigation standards and criteria for developments of regional impact.

(1)(a) The developer is required to preserve, through donations or binding commitments, the following types of lands to protect in perpetuity the natural attributes of these lands.

1. Wetlands and Water Bodies Within the Jurisdiction of the Florida Department of Environmental Protection. The developer shall preserve all wetlands and waterbodies within the jurisdiction of the Florida Department of Environmental Protection (DEP). In order to facilitate review, the developer should obtain a binding Jurisdictional Declaratory Statement from DEP for all wetlands within the project boundaries.

a. The developer may alter such wetlands and water bodies for the purpose of site access provided other routes of access are unavailable or impractical. However, such use shall be subject to approval by the DEP, pursuant to its authority under Chapter 403, Florida Statutes.

b. The developer may use such wetlands and water bodies for the purpose of stormwater management or domestic wastewater management and other necessary utilities to the extent that such uses are permitted pursuant to Chapter 403, Florida Statutes. The developer shall indicate any such proposed use in the application for development designation.

c. The developer may enhance wetlands and water bodies which have been artificially created to produce a more naturally functioning system. Man-made wetlands, created for mitigative purposes, may not be altered unless the redesign or alteration enhances the functionality of the system and is performed in accordance with the approval of the appropriate agencies which required or permitted the mitigation site. Such use is subject to approval by the DEP, pursuant to its authority under Chapter 403, Florida Statutes. The developer shall indicate any such proposed use in the application for development designation.

2. Dunes and Beaches. The developer shall preserve active beach and primary dunes seaward of the coastal construction control line established pursuant to Section 161.053, Florida Statutes. The developer shall also preserve secondary dunes seaward of the coastal construction control line except for those sites where the developer obtains a permit from the Florida Department of Environmental Protection to alter, excavate, or construct structures pursuant to Section 161.053, Florida Statutes. The developer shall set aside adequate public accessways to the beach. The developer may construct and maintain elevated walkways over the dunes to provide access to the beach as permitted pursuant to Section 161.053, Florida Statutes. These walkways shall be designed and built to protect the dunes and their associated vegetation.

3. Significant Archaeological Sites. The developer shall set aside archaeological sites, or portions of such sites, determined to be of significance by the Department of State, Division of Historical Resources.

a. Prior to submittal of the application, the developer shall contact the Division of Historical Resources and receive a determination from the Division of Historical Resources concerning the presence or likelihood of the presence of significant archaeological site(s) on the development property.

b. If the Division of Historical Resources determines that such resources are present or are likely to be present on the development property, the developer shall undertake or cause to be undertaken a professionally conducted archaeological survey, including all appropriate testing and a report of the results of the survey. The results of the survey shall be submitted to the Division of Historical Resources with a request for a determination of significance.

c. If the Division of Historical Resources determines that a significant site is present, the developer shall preserve the site as recommended by the Division of Historical Resources in a manner as specified by this rule section.

d. Documentation of all contacts with and determinations made by the Division of Historical Resources, including proposals for the preservation of identified significant sites, shall be submitted with the application for development designation.

4. Areas Important to Endangered or Threatened Animal Species. The developer shall preserve the habitat areas necessary to ensure the survival of the animal species designated as endangered or threatened by the United States Fish and Wildlife Service hereby referenced as Chapter 50, Code of the Federal Regulations, Section 17.11-12, Subpart B – List, “Title 50 Wildlife and Fisheries Part 17 – Endangered and Threatened Wildlife and Plants,” and the Florida Fish and Wildlife Conservation Commission hereby referenced as published in Rules 68A-27.003-.005, Florida Administrative Code, “Official List of Endangered and Potentially Endangered Fauna and Flora in Florida.”

a. Prior to submittal of the application for development designation, the developer shall undertake or cause to be undertaken a professionally conducted survey to determine the presence of habitat and areas important for endangered and threatened animal species for purposes of reproduction, feeding, nesting or securing shelter from predation or for traveling between such areas. The survey should be conducted at the necessary times of the year for proper identification of endangered and threatened animal species.

b. The survey should be conducted according to guidelines for such surveys as recommended by the Fish and Wildlife Conservation Commission (Commission). The survey should include, at a minimum: (1) a description of the survey methodology, including dates and times; and (2) a list and map of threatened and endangered animal species observed onsite and presumed to use the site based on the vegetative community and species range. The Department may consult with the Commission on the results of the survey and receive comments and recommendations from the Commission.

c. Proposals for the preservation of identified important habitat shall be submitted with the application for development designation. This shall include, but not be limited to, a description of the anticipated impacts on the identified species and communities and an explanation of how these species and their habitat will be protected and preserved in perpetuity.

5. Areas Known to Contain Endangered Plant Species. The developer shall preserve areas known to contain plant species designated as endangered plant species in Rule 9J-2.041, Florida Administrative Code.

a. The developer shall request the Florida Natural Areas Inventory (FNAI) or an appropriate state or federal agency for a preliminary determination as to the possible presence of endangered plant species. In addition, the developer shall undertake or cause to be undertaken a professionally conducted survey to determine the presence of endangered plant species. The survey should be conducted at the necessary times of the year for proper field-identification of the plant species.

b. The survey shall include at a minimum: (1) a map of endangered plant species that exist or are presumed to exist onsite based on species range and site characteristics; (2) a description of the survey methodology, including dates and times; (3) a description of the anticipated impacts on the endangered plant species; and (4) an explanation of how these species will be protected and preserved in perpetuity.

c. Documentation of all contacts with the FNAI and any other professional sources, including proposals for the preservation of areas containing endangered plant species, shall be submitted with the application for development designation. This shall include, but not be limited to, a description of the anticipated impacts on the identified species and an explanation of how these species and the areas in which they occur will be protected and preserved in perpetuity.

(b) Donations of land by the developer as required by subparagraphs 380.061(3)(a)1., Florida Statutes, may be made by conveying the property in fee simple title or lesser interest to the state or to a federal agency, water management district, local government, or other organization approved by the Department. The designated agency or organization receiving the conveyance of property shall display the willingness, ability, and resources to maintain and protect in perpetuity the preservation areas of plant and animal species. All such donations are subject to approval by the Department prior to issuance of the development order or recordation of the conveyance in the public records.

(c) Binding commitments pursuant to subsection 380.061(3), Florida Statutes, may be entered into by the developer as an alternative to the donation process described in paragraph (b) of this section. The binding commitment shall designate certain areas on the site of the FQD as open space to be retained in a natural condition or to be used for passive recreation for the protection of natural values for which the land is to be preserved. All such binding commitments shall be approved by the Department prior to issuance of the development order or recordation of the binding commitment in the public records. In its evaluation of a proposed binding commitment, the Department shall also determine whether a proposed use of the land for passive recreation is consistent with the purposes for which the land is to be preserved. The document establishing the binding commitment shall contain a condition naming the State of Florida as the benefiting party and providing it with enforcement rights should the binding commitment ever be violated. Binding commitments may be established through the following types of instruments:

1. Conservation easements, created in accordance with Section 704.06, Florida Statutes. The maintenance of any such conservation easements shall be confirmed in the annual report issued pursuant to subsection 9J-28.023(6), Florida Administrative Code, of this rule.

2. Restrictive covenants running with the land, which accomplish the preservation of the land areas as specified in the development order and pursuant to Section 380.061, Florida Statutes. The maintenance and continuance of the restrictive covenants shall be confirmed in the annual report issued pursuant to paragraph 9J-28.023(6)(j), Florida Administrative Code, of this rule.

(2) Hazardous and Toxic Substances. Individual business activity within an FQD shall not generate or dispose of hazardous substances in amounts that exceed the small quantity generator upper limit as defined in Rule 17-730.160, Florida Administrative Code, and Chapter 40, Code of Federal Regulations, Section 262.44, Florida Statutes. Amounts below this upper limit shall, for purposes of this rule, be considered generation and disposal of nonsignificant amounts as would occur through household use or incidental use by businesses.

(3) Participation in a Downtown Reuse or Redevelopment Program. If the site of the proposed FQD is located within a redevelopment district the developer shall participate in the planned reuse or redevelopment program established for the redevelopment area.

(4) Dredge and Fill; Stormwater Discharge. There shall be no dredge and fill activities in, and no stormwater discharge into, waters designated as Class II, aquatic preserves, or Outstanding Florida Waters; except as activities in those waters are permitted pursuant to subsection 403.813(2), Florida Statutes, and the developer demonstrates that those activities meet the standards under Class II waters, Outstanding Florida Waters, or aquatic preserves, as applicable.

(5) Open Space, Recreation, Energy Conservation, and Impermeable Surfaces. These issues shall be addressed by the developer when designing the development as an FQD.

(a) Open space should be used to differentiate, integrate or buffer different land uses and activities. Open space should be located around existing natural features as well as planned development to provide a sense of identity and unity within the development.

(b) Planning of recreational facilities and parks should take into account special population groups and the need for barrier-free accessibility to the elderly and handicapped. Barrier-free facilities may include: ramps; railings; appropriate restroom fixtures and design features; and other facilities constructed to allow safe use by all, especially very young children. Recreation needs therefore may vary from one development or neighborhood to the next. Site design for recreational facilities should be flexible in order to meet particular needs appropriate to the development. Site design should consider incorporation of compatible elements of both passive and active types of recreation. Typical facilities may include: play apparatus; multi-purpose courts; sports fields; picnic areas; urban office courtyard areas; nature study and hiking trails; and free play areas.

(c) The developer shall prepare an energy conservation plan for the design, construction and operation of the development. The plan shall outline and describe energy conservation standards and features, and design criteria expected to be used in the architectural design, construction, and operation of the structures. The plan should be included in the application for development designation. The plan shall consider, but not be limited to, the following energy conservation features:

1. Non-motorized paths for means of transportation and recreational use between all points of access between the FQD and the surrounding area that minimize distances between points of destination;

2. Provide connecting routes and designated shelter bus stops for mass transportation systems within the development that are easily accessible and aesthetically pleasing to encourage bus ridership;

3. Orient building design and street layout to reduce glass exposure to the east and west;

4. Locate buildings such that they do not block solar access to adjacent buildings and provide building space that permits natural ventilation of adjacent units;

5. Landscape design that shades buildings, parked cars and pedestrian areas from summer sun;

6. Water reuse for landscape irrigation;

7. The use of solar water heaters or waste heat recovery units to preheat water for cooking, drinking, and washing, if appropriate;

8. Maximum water temperature settings for hot-water heaters of 110 degrees Fahrenheit unless otherwise required by health codes;

9. High-efficiency or conditioning systems with a Seasonal Energy Efficiency Ratio of greater than or equal to 12.0;

10. Use of non-electric energy sources for cooking, water heating, and space heating, where feasible;

11. Minimum use of incandescent lighting;

12. Light-colored wall and roof surfaces, with solar absorption coefficients less than or equal to .50, or the use of self-ventilating or barreled roof tiles if appropriate;

13. Maximum flexibility of air conditioning systems to cool only occupied areas and the precooling of outside air and heat recovery wheels; and

14. Design and installation of computerized energy management systems, suitable for the scale and character of the buildings within the development.

(d) Permeable surfaces shall be constructed or installed where appropriate within the development. Impermeable surfaces should be installed on a limited basis as consistent with local government ordinances, codes and land development regulations. Examples of techniques and materials to increase permeable surfaces may include, but are not limited to: turf blocks; retention areas; xeriscape landscaping techniques; and pervious concrete.

(6) Infrastructure. The developer will provide for construction and maintenance of all onsite infrastructure necessary to support the project. The developer shall enter into a binding commitment with the local government to provide an appropriate fair-share contribution toward offsite impacts which the development will impose on publicly funded facilities and services and condition or phase the commencement of development to ensure that public facilities and services will be available concurrent with the impacts of the development. This commitment does not include offsite transportation facilities. For the purposes of offsite transportation impacts, the developer shall comply, at a minimum, with the following standards: the state land planning agency's development of regional impact transportation rule, if in effect; the approved strategic regional policy plan; any applicable regional planning council transportation rule; and the approved local government comprehensive plan and land development regulations adopted pursuant to Part II of Chapter 163, Florida Statutes.

(7) Consistency with Plans. The design and construction of the development shall be consistent with the adopted state comprehensive plan, the applicable strategic regional policy plan, and the applicable adopted local government comprehensive plan.

(8)(a) Planning and Design Features. In order to encourage innovative and quality design features the Florida Legislature intended that additional features be considered in determining whether a development qualifies for designation as an FQD that address the quality of life of the people who will live and work in or near the development.

(b) In order to implement the intent of the Legislature to ensure the inclusion of planning and design features that address the needs of the people in the state and further the goals and policies of the State Comprehensive Plan as it provides for orderly, social, economic and physical growth of the state, this rule section identifies primary and secondary planning features and assigns points to those features. To qualify for designation under this rule section, the development plan shall have a minimum total of 15 points and shall include at least one of the primary design features. These planning and design features include, but are not limited to:

DESIGN FEATURE	POINTS ASSIGNED
Primary Design Features	
1. Promotion of compact urban growth through complementary mixes of residential and non-residential uses of onsite or offsite adjacent or proximate parcels, including measures for affordable housing; or, establishment of a New Town or New Community, incorporating, where appropriate, features from the Traditional Neighborhood Development code, including measures for affordable housing	5
2. Urban renewal, downtown redevelopment, urban infill, or project location in a designated local or regional activity center as identified in an adopted local government comprehensive plan found to be in compliance with Chapter 9J-5, Florida Administrative Code, or a comprehensive regional policy plan, including measures for affordable housing	5
Secondary Planning and Design Features	
3. Comprehensive Transportation System Management features such as: mass transit, access management, Transportation Demand Management, and the facilitation of pedestrian movement or the nonautomotive-based conveyance of people between land uses	3
4. Preservation of areas that are primary habitat for significant populations of animal species of special concern designated by the Florida Fish and Wildlife Conservation Commission or protection and preservation of uplands as wildlife habitat with special consideration given to prime recharge areas, areas designated by the Florida Department of Environmental Protection to be significant value to the state park system, or other environmentally sensitive property included on the Conservation and Recreation Lands or the Land Acquisition Trust Fund priority list or included as a priority for acquisition by a water management district through the Save Our River program	3
5. Water conservation; reuse of treated effluent where such uses are appropriate; use of water saving devices; xeriscaping	3
6. Household, office, or commercial hazardous waste collection	2
7. Recycling of solid waste	2
8. Promotion of cultural or educational activities	2
9. Care for the elderly	2
10. Development location in Florida Enterprise Zones or Community Development Block Grant target areas linked with project programs such as job training for unskilled workers, or the creation of full-time employment opportunities in areas, or for groups characterized by, high unemployment	1
11. Enhancement of emergency management capabilities	1
12. Onsite childcare	1

13. Other planning and design features addressing areas such as locally identified social concerns, urban amenities, or aesthetic design considerations

1

Specific Authority 380.032(2)(a), 380.061(3), (8)(b) FS. Law Implemented 380.061, 380.061(3) FS. History—New 1-23-90, Amended 3-1-01.

9J-28.010 Preapplication Conferences.

(1)(a) Before filing an application for development approval, the developer shall contact the Department and the regional planning council to arrange a preapplication conference. The Department shall inform the developer of the FQD alternative DRI review process and the use of preapplication conferences to encourage cooperation and mutually beneficial solutions to problems, identify issues, coordinate appropriate state, regional and local agency requirements, and otherwise promote a timely, proper and efficient review of the proposed development.

(b) The Department, in cooperation with the local government and the regional planning council, shall arrange a preapplication conference pursuant to subsection 380.061(5), Florida Statutes. In addition to meetings, preapplication conference activities may consist of telephone calls, written correspondence or reports, or other means of communication that can be used effectively to fulfill the intent of subsection 380.061(5), Florida Statutes.

(c) Upon the request of the developer, the regional planning agency, the local government, or the Department, other affected state, regional, or local agencies shall participate in conference proceedings and shall identify the types of permits issued by the agencies, the level of information required, and the permit issuance procedures as applied to the proposed development. Such information shall be provided for initial project planning and coordination and shall not constitute a binding agency commitment to a course of action on an application for development designation or permit review unless so established in an agreement between the agency and the developer, pursuant to Rule 9J-28.007, Florida Administrative Code, of this rule.

(d) In order to increase the effectiveness of agency participation in the preapplication conference, the Department may request the developer to submit data about the type, size, and location of the proposed development to the agencies at least seven days in advance of the conference activity. Such information requests shall be for the purpose of promoting productive discussions at the preapplication conference and shall not constitute an extensive information requirement in support of the application for development designation.

(e) As a part of the preapplication conference, the Department shall describe the FQD program and shall state the objectives to be achieved in the proceedings. The Department, the local government and the regional planning council shall provide information about the participating local government review procedures that may apply, provide opportunities for the developer and affected agencies to comment on the project, provide information about regional issues pursuant to Section 186.507, Florida Statutes, and seek to promote expeditious, timely and coordinated review evaluation of FQD applications.

(2) The Department will keep all reviewing agencies apprised of the FQD process and coordinate reviews.

Specific Authority 380.061(5), (8)(b) FS. Law Implemented 380.061 FS. History—New 1-23-90.

9J-28.011 Filing the Application for Development Designation.

(1) In accordance with subsection 380.061(5), Florida Statutes, the developer shall simultaneously file completed copies of an application for development designation with the Department, the regional planning council, and the local government with jurisdiction. Copies of the application may be obtained from the Department or the regional planning council.

(2) Pursuant to subsection 380.061(5) and Section 120.60, Florida Statutes, the Department and the local government shall make a determination as to the completeness of the information contained in the application. The regional planning council may provide completeness comments to the Department and the local government.

(a) Within 30 days after receipt of an application, the Department and the local government shall notify the applicant of any apparent errors or omissions and request any additional information. Failure to correct an error or omission or to supply additional information shall not be grounds for denial of the application unless the reviewing entity timely notified the applicant within this 30-day period.

(b) The Department and the local government shall provide copies of their requests for additional information to the applicant, the regional planning council, and each other. The applicant shall submit the additionally requested information to the Department, the local government, and the regional planning council.

(c) The application for development designation shall be approved or denied by the Department and the local government within 90 days after receipt of the original complete application or receipt of the timely requested additional information or correction of errors or omissions which determine the application complete. The 90 day time limitation prescribed by subsection 120.60, Florida Statutes, for the approval or denial of license applications is subject to waiver by the applicant. The Department shall consider any report and recommendations made by the regional planning council which are received within 50 days after receipt of the complete application. In preparing its report and recommendations, the regional planning council should identify regional issues based on the criteria pursuant to subsection 380.06(12), Florida Statutes. If the applicant chooses to appeal the completeness review for the FQD, the 90 day period will be tolled by the initiation of proceedings under Section 120.569, Florida Statutes, and will resume 10 days after the recommended order of the hearing officer is submitted to the Department, the local government, the applicant, and other parties.

(d) Upon the effective date of the development order, the developer shall have the right to use for the Development the certification mark registered with the Secretary of the Florida Department of State for Developments designated as FQDs under Section 380.061, Florida Statutes. The use of this certification mark shall be restricted to promotional, informational or advertising purposes in order to identify this Development as a development approved and designated under Section 380.061, Florida Statutes. A development designated as an FQD shall be exempt from development-of-regional-impact review under Section 380.06, Florida Statutes.

Specific Authority 380.032(2)(a), 380.061, 380.061(8)(b) FS. Law Implemented 380.061, 380.061(5)(b), (6) FS. History—New 1-23-90, Amended 3-1-01.

9J-28.012 Development-of-Regional-Impact Conversion.

(1) At any time prior to the issuance of the FQD development order, the developer of a development of regional impact being reviewed as an FQD shall have the right to withdraw the proposed project from consideration as an FQD and convert to the development-of-regional-impact review process under the provisions of Section 380.06, Florida Statutes. The conversion shall be in the form of a letter to the Department, the local government, and the regional planning council stating the developer's intent to seek authorization for the development as a development of regional impact under Section 380.06, Florida Statutes. If a proposed FQD converts to the development of regional impact review process, the developer shall resubmit the appropriate application and the development shall be subject to all applicable procedures under Section 380.06, Florida Statutes, except that:

(a) A preapplication conference held under paragraph 380.061(5)(a), Florida Statutes, shall satisfy the preapplication conference requirement under subsection 380.06(7), Florida Statutes; and

(b) If requested in the withdrawal letter, a finding of completeness of the application under paragraph 380.061(5)(b), Florida Statutes, may be converted to a finding of sufficiency by the regional planning council if such a conversion is approved by the regional planning council. The regional planning council shall have 30 days to notify the developer if the request for conversion of completeness to sufficiency is granted, denied, or denied with conditions.

1. If granted and the application is found sufficient, the developer shall not have to resubmit the application and the regional planning council shall notify the local government that a public hearing date, as authorized under the provisions of paragraph 380.06(10)(c), Florida Statutes, may be set to consider the development for approval as a development of regional impact. The development for approval as a development of regional impact. The development shall be subject to the standards and procedures of Section 380.06, Florida Statutes, and all applicable rules.

2. If denied, the regional planning council shall provide the developer a statement that the conversion to sufficiency is denied and a statement of the additional information needed to make the application sufficient, as authorized under paragraph 380.06(10)(b), Florida Statutes. The development shall be subject to all applicable procedures under Section 380.06, Florida Statutes. It is the intent of this provision that a denial of conversion with conditions shall require the developer to submit only that information requested by the regional planning council in order to make the application sufficient. The regional planning council shall carry out all other duties and responsibilities as required by paragraph 380.06(10)(b), Florida Statutes, and applicable rules.

Specific Authority 380.061(8)(b) FS. Law Implemented 380.061 FS. History—New 1-23-90.

9J-28.013 Designation or Non-Designation of Proposed Development by Reviewing Entities.

The determination by the Department and the local government concerning the designation or non-designation of a proposed development as an FQD pursuant to subsection 380.061(5), Florida Statutes, shall set forth in writing with particularity the basis for such a determination, copies of which shall be sent to the developer, the regional planning council, and the other reviewing entity.

Specific Authority 380.061(8)(b) FS. Law Implemented 380.061 FS. History—New 1-23-90.

9J-28.020 Duties of Review Board Staff.

It shall be the duty and responsibility of the Department of Community Affairs, as the state land planning agency for purposes of Section 380.061, Florida Statutes, to:

(1) Receive original notices of appeal and petitions and maintain a central file of pleadings in each appeal.

(2) Provide technical assistance during appeal hearings.

(3) Prepare agenda and schedule meetings for the Review Board.

(4) Prepare the written decision of the Review Board.

(5) Perform any other act as may be necessary to aid the Review Board in performing its duties pursuant to Section 380.061, Florida Statutes.

Specific Authority 380.032(2)(a), 380.061(6)(d), (8)(b) FS. Law Implemented 380.061, 380.061(6)(a) FS. History—New 1-23-90, Amended 3-1-01.

9J-28.023 Florida Quality Development Orders.

(1) This rule provides the form, manner of rendition, and contents for Chapter 380, Florida Statutes, development orders issued by the Department of Community Affairs for developments designated as an FQD under Section 380.061, Florida Statutes. An FQD development order shall:

- (a) Be in the form specified by this rule;
- (b) Be rendered in the manner provided in this rule;
- (c) Contain those items required by this rule; and
- (d) Otherwise meet the requirements for a development order provided in this rule.

(2) Without an effective Chapter 380, Florida Statutes, FQD development order, the developer shall not have authorization to commence development on any portion of the development covered by the application for development designation unless the developer has entered into a preliminary development agreement with the Department of Community Affairs pursuant to subsection 380.06(8), Florida Statutes, and Rule 9J-28.007, Florida Administrative Code.

(3) As used in this chapter, rendition or rendering means issuance of a written development order and transmittal of the order together with all pertinent attachments by first class U.S. Mail to the local government with jurisdiction, the regional planning agency, and the developer. A certified return receipt shall be prima facie evidence of transmittal.

(4) Requirements for an FQD development order:

(a) The copy of any FQD development order rendered to the local government with jurisdiction, the regional planning agency, and the developer shall:

- 1. Consist of a written document which shall be printed, typewritten, or otherwise duplicated in legible form on white paper;
- 2. Include copies of all exhibits, attachments, and written materials, including portions of ordinances referenced in the text;
- 3. Include copies of any supplements, development plans, or specifications that are approved with the development order, but that are not in the application for development designation; and
- 4. Contain the signature of the Secretary of the Department and shall be certified as being a complete and accurate copy of the development order.

(b) The copy of any FQD development order rendered by the Department shall contain the following:

- 1. The name of the development;
- 2. The authorized agent of the developer;
- 3. The name of the developer;
- 4. A statement that the Application for Development Designation is approved and the development is designated as an FQD subject to conditions set forth in the development order;
- 5. A description of the development approved, specifically including:
 - a. Acreage of each described land use;
 - b. Open space and green belts;
 - c. Areas designated for preservation and recreation;
 - d. As applicable, the location, square footage, and number of units of the structures or improvements to be placed on the property; and
 - e. Other major characteristics or components of the development;
- 6. Findings of fact addressing whether and the extent to which:
 - a. The development is consistent with and furthers the goals and policies of the adopted state comprehensive plan;
 - b. The local government with jurisdiction has reviewed the development, has found the development consistent with the local government comprehensive plan, and has approved the designation of the development as an FQD, specifying the conditions for approval;
 - c. The Department has reviewed the development, has found it to be consistent with the state comprehensive plan, and has approved the designation of the development as an FQD, specifying the conditions of approval;
 - d. The development is in an Area of Critical State Concern;
 - e. The development is above the applicable development of regional impact thresholds, pursuant to Section 380.06, Florida Statutes, and is thereby a development of regional impact;
 - f. The development will preserve, in perpetuity, wetlands and water bodies within the jurisdiction of the Department of Environmental Protection which occur on development property, specifying the mechanism to be used for the preservation of those wetlands and water bodies or stating that these lands do not occur on the development property;
 - g. The development will preserve, in perpetuity, active beaches and primary dunes that occur seaward of the coastal construction control line on development property, specifying the mechanism to be used for the preservation of those areas or stating that no active beaches or primary dunes occur on the development property;
 - h. The development will preserve, in perpetuity, all archaeological sites determined to be significant by the Department of State, Division of Historical Resources, specifying the mechanism to be used for the preservation of those sites or stating that no such sites occur on the development property;
 - i. The development will preserve, in perpetuity, areas known to be important to animal species designated as endangered or threatened by the United States Fish and Wildlife Service or the Florida Fish and Wildlife Conservation Commission, specifying the mechanism to be used for the preservation of those areas or stating that such areas do not occur on development property;
 - j. The development will preserve, in perpetuity, areas known to contain plant species designated as endangered by the Florida Department of Agriculture and Consumer Services, specifying the mechanism to be used for the preservation of those areas or stating that such areas do not occur on the development property;

k. The development will not produce or dispose of any substances designated as hazardous or toxic by the U. S. Environmental Protection Agency, the Florida Department of Environmental Protection, or the Florida Department of Agriculture and Consumer Services;

l. The development will participate in a downtown reuse or redevelopment program to improve and rehabilitate a declining downtown area if located in or adjacent to a redevelopment district;

m. The development will include open space and recreation areas, specifying the type and acreage of those lands;

n. The development will include energy conservation features;

o. The development will minimize impermeable surfaces;

p. The developer has entered into a binding commitment to provide for the construction and maintenance of all onsite facilities and services necessary to support the development;

q. The developer will provide for construction and maintenance of all onsite infrastructure necessary to support the project and enter into a binding commitment with the local government to provide an appropriate fair-share contribution toward offsite impacts that the development will impose on the publicly funded facilities and services; and

r. For the purposes of offsite transportation impacts, the developer will comply, at a minimum, with the standards of the Department's development of regional impact transportation rule if in effect, the approved regional strategic plan, and any applicable regional planning council transportation rule, and the approved local government comprehensive plan and land development regulations adopted pursuant to Part II of Chapter 163, Florida Statutes; and

s. The development includes innovative design and quality of life features, or other development features that address the needs of the people as identified in the state comprehensive plan for those who will live and work in and near the development;

7. Conclusions of law, addressing:

a. The development complies with the provisions of Section 380.061, Florida Statutes; and

b. The development as a development of regional impact designated as an FQD under Chapter 380, Florida Statutes, development order, is exempt from development of regional impact review, pursuant to Section 380.06, Florida Statutes, subject to the terms and conditions of the development order;

c. The designation of the development as an FQD and its authorization to commence development under a Chapter 380 development order does not entitle the developer to any other necessary approvals or permits from any other authority or in any other jurisdiction;

8. A legal description of the property including the acreage;

9. The monitoring procedures for assuring development compliance with the development order and the assignment of monitoring responsibilities, as appropriate, to officials in the local government, regional planning council, and the Department;

10. Specification of the types of changes that will constitute a substantial change to the development order;

11. Development order conditions based on the recommendations submitted by the local government and the regional planning council. In the event of conflicting recommended development order conditions, the Department shall, after consultation with the local government and the regional planning council, resolve such conflicts in the development order;

12. Incorporation by reference, or by attachment, of the Application for Development Designation, the approval document of the local government with jurisdiction, including conditions for approval, and other relevant written documents;

13. Establishment of expiration dates for the development order, including a deadline for commencing physical development, for compliance with conditions of approval or phasing requirements, and for termination.

(5) Complete copies of any development orders issued pursuant to Section 380.061, Florida Statutes, including any amendments to a previously issued development order, shall be transmitted by the Secretary of the Department to the local government with jurisdiction, to the appropriate regional planning council, and to the owner or developer of the property subject to such order within 30 days of the Secretary's issuance. A development order shall take effect upon transmittal to the above parties unless a later effective date is specified in the order. The effectiveness of a development order shall be stayed by the filing of a notice of appeal pursuant to subsection 380.061(7)(b), Florida Statutes.

(6) The development order shall specify the requirements for an annual report. The annual report shall be submitted by the developer to the Department, the regional planning agency, the local government, and any other entity so identified in the development order, on the form specified by the Department of Community Affairs. Every development order shall require the annual report to include the following:

(a) A statement regarding the status of private and publicly funded facilities and services needed to meet the needs of the proposed development for the upcoming year;

(b) Any changes in the plan of development or in the representations contained in the application for development designation or in the phasing for the reporting year and for the next year;

(c) A summary comparison of development activity proposed and actually conducted for the year;

(d) Undeveloped tracts of land, other than individual single family lots, that have been sold to a separate entity or developer;

(e) Identification and intended use of any lands purchased, leased, or optioned to purchase by the developer which are physically proximate, as defined under paragraph 9J-2.0275(2)(a), Florida Administrative Code, to the FQD site since the development order was issued;

(f) An assessment of the developer's compliance with the conditions of approval contained in the development order and the commitments which are contained in the application for development designation and which have been identified by the local government, the regional planning council, or the Department as being significant;

(g) An indication of a change, if any, in local government jurisdiction for any portion of the development since the development order was issued;

(h) A list of significant local, state, and federal permits that have been obtained or that are pending by agency, type of permit, permit number and purpose of each;

(i) A statement that all persons have been sent copies of the Annual Report; and

(j) A statement confirming maintenance of conservation easements and maintenance and continuance of the restrictive covenants, if appropriate.

(7) After issuance of the FQD development order, subsequent requests for local development permits shall not require further FQD review by the Department or the local government unless otherwise stipulated in the development order. Factors requiring further FQD review shall include, but not be limited to:

(a) A substantial change from the terms or conditions in the development order or a departure from the approved plan of development which significantly decreases the positive aspects of the plan;

(b) Expiration of the period of effectiveness of the development order; or

(c) Conditions in the development order which specify circumstances in which the development will be required to undergo additional FQD review.

Specific Authority 380.032(2)(a), 380.061(8)(b) FS. Law Implemented 380.061, 380.061(5)(d) FS. History--New 1-23-90, Amended 3-1-01.

9J-28.024 Substantial Change.

(1) Any proposed change to a previously designated FQD which creates a reasonable likelihood of any additional regional impacts not previously reviewed by the Department, the local government and the regional planning council or a change involving any of the FQD designation criteria pursuant to the provisions of subsection 380.061(3), Florida Statutes, shall constitute a substantial change and shall cause the development to be subject to further FQD review.

(2)(a) Whenever the developer of a designated FQD proposes a change in its plan of development or to conditions of the FQD development order, it shall submit its proposed change to the Department, the local government, and the regional planning council. Within 30 days of receipt of the proposed change, the Department shall notify the developer whether or not the change is a substantial change and, if the change is determined to be nonsubstantial, whether a modification of the FQD development order is needed.

(b) If the Department and the local government, in consultation with the regional planning council, determine that the proposed change is not a substantial change and does not require a modification of the development order, the developer may proceed with the change, subject to applicable regulatory requirements.

(c) If the Department and the local government, in consultation with the regional planning council, determine that the proposed change is not a substantial change, but may require a modification of the development order, the Department shall, subject to the approval of the local government modify the development order within 60 days of the receipt of the proposed change to the Department or shall notify the developer in writing that it will not modify the development order.

(d) If the Department or the local government, in consultation with the regional planning council, determines that the proposed change is a substantial change, the change shall require the review and approval of the reviewing entities prior to commencing such development activity. This review and approval shall follow the procedures and timetables used for the designation of a development as an FQD as set forth in Section 380.061, Florida Statutes, and Rule 9J-28.011, Florida Administrative Code, of this rule, with such review commencing on the date the decision is made that a proposed change needs to undergo further FQD review. Following approval of a substantial change by the reviewing entities, the Department shall modify the development order to incorporate that approved substantial change.

(e) If the Department or the local government, in consultation with the regional planning council, determines that the developer has made or is making an alteration to the plan of development which they believe may be a change, they shall require the developer to submit information on that alteration for review under this rule section.

(f) Prior to the determination by the Department and the local government, in consultation with the regional planning council, of whether a proposed change is a substantial change, whether the proposed change requires an amendment of the FQD development order, or whether the agencies approve of the change under provisions of subsection 9J-28.024(2), Florida Administrative Code, within this rule section, the developer may not proceed with such development.

(3) A "substantial change" shall mean either:

(a) Any deviation in the carrying out of a condition, commitment, or agreement set forth and recited in the FQD development order which so alters the condition, commitment, or agreement that it can be fairly said to change the intent or result of the condition, commitment, or agreement.

(b) Other similar deviations in the construction of the Development or the alignment of roads which alter significantly the commitments or agreements of the developer or which represent a significant departure from the plan of development or the conditions of the FQD development order.

(c) Any proposed change that meets or exceeds 150 percent of the criteria specified in paragraph 380.06(19)(b), Florida Statutes, shall be presumed to be a substantial change. However, the developer may rebut this presumption by demonstrating that the proposed change is not substantial under the criteria pursuant to paragraphs 9J-28.024(3)(a) and (3)(b), Florida Administrative Code, of this rule.

(d) Any proposed change that meets or is less than 200 percent of the criteria in subparagraph 380.06(19)(b)9., Florida Statutes, shall be presumed not to be a substantial change; provided that the change involves the addition of residential units and that the developer guarantees that 25 percent of the units will be affordable to very low- or low-income households.

(4) A “substantial change” shall not include proposed alterations that do not affect the plan of development or the conditions or commitments expressed in the FQD development order. “Substantial change” shall not include such modifications as the following:

- (a) Architectural or landscape architectural changes necessitated by the soil, topography, or other onsite conditions;
- (b) Reduction of the amount of impervious surface area; and
- (c) Reduction in open space due to governmental requirements for transportation improvements.

(5) The amended development order will be submitted to the local government and the regional planning council pursuant to subsection 9J-28.023(5), Florida Administrative Code, of this rule.

(6) Development within a previously approved FQD may continue, as approved, during the review of a substantial change as decided under paragraph 9J-28.024(2)(d), Florida Administrative Code, of this rule. Also, those portions of the FQD which are not affected by the proposed substantial change may continue to be developed.

Specific Authority 380.061(8)(b) FS. Law Implemented 380.061 FS. History—New 1-23-90.

9J-28.025 Monitoring and Enforcement.

(1) The Department shall seek assistance from federal, state, and regional agencies, and local governments in monitoring and enforcing any FQD development order issued pursuant to Section 380.061, Florida Statutes.

(a) The local government and the Department shall have primary responsibility for monitoring and enforcing the provisions of the development order. The local government shall not issue any permits or approvals or provide any extensions of services to the FQD if the developer fails to act in substantial compliance with the development order.

(b) The Department shall send copies of the FQD development order, or relevant portions thereof, to state and regional agencies that are identified as having planning or permitting responsibilities related to the FQD.

(c) The regional planning agency and the local government shall review the annual report required by subsection 9J-28.023(6), Florida Administrative Code, of this rule chapter and other information available to them and, when appropriate, notify the Department of potential violations of Section 380.061, Florida Statutes.

(2) Pursuant to Section 380.11, Florida Statutes, the Department, all state attorneys, and all counties and municipalities may bring an action for injunctive relief against any person or developer found to be in violation of Chapter 380, Florida Statutes, or any rules, regulations or orders issued thereunder. The Department may institute an administrative proceeding to abate or regulate the conditions or activity creating violation of the development order, the development agreement, or the PDA pursuant to paragraph 380.11(2)(a), Florida Statutes.

(3) A development order issued pursuant to Section 380.061, Florida Statutes, shall only be appealed pursuant to Section 380.07, Florida Statutes.

Specific Authority 380.061(8)(b) FS. Law Implemented 380.061 FS. History—New 1-23-90.