

Sector Plans

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I. Introduction to Sector Plans

Large-area planning is the establishment of a future land use plan for an amount of acreage far in excess of the typical land use plan—usually totaling no more than several thousand acres—through one of the planning tools established by Florida law. It is land planning on a landscape scale. The most frequently used tool for planning a large area in Florida is the sector plan authorized by Section 163.3245, Florida Statutes.

Prior to the initial creation of this tool, large-area planning was primarily the province of the development-of-regional-impact (DRI) program, which is an entitlement program for the authorization of actual development. Comprehensive plan amendments could be adapted to large-area planning, however, the requirements of that program also limited its utility for this special purpose. Florida lacked a practical tool that encouraged land “planning” on a landscape scale and was practical and attractive for landowners and government planners alike. The advent of sector planning gave both the public and private sectors a flexible, but principled, tool for planning an entire landscape long before it came under development pressures from Florida’s nearly relentless pace of growth.

A sector plan typically has a planning period longer than the 20-year planning period that is the basis for most local government comprehensive plans in Florida. Usually, a sector plan includes substantial commitments for long-term preservation of on-site environmental resources as a public benefit to justify a governmental commitment to the long-term development potential created by the plan.

Florida has seen many large-scale development schemes over the years, such as Hamilton Disston’s acquisition of four million acres in the 19th Century and subsequent development

activities that led to cities like Kissimmee, St. Cloud, Gulfport, and Tarpon Springs.¹ In the modern era, some large-area plans became tests for Florida's first-generation land use regulatory program, the DRI program. In one famous case, General Development Corporation planned 42,000 acres in Brevard County, with 26,500 acres vested as against DRI requirements and another 15,500 acres at the center of an early DRI dispute.²

In the 1990s, as the state absorbed masses of newcomers, and sprawling development consumed agricultural lands in Central and South Florida, planners and policy-makers began to look for new tools to more adequately plan for development and environmental preservation. In part, this search was a recognition of the limitations of Florida's 1985 Growth Management Act, which established a regimented "one-size-fits-all" planning program for coordinated land use and capital improvements planning. The local comprehensive planning program was salutary in many respects, but the maximum twenty year planning period for local plans was relatively short for a fast-changing state like Florida. In addition, the rigid requirements for capital improvements planning required a degree of precision that realistically could not be achieved for a long planning period. At the same time, conservation advocates recognized that the Florida Treasury would never have enough money to purchase all of the resource lands that warranted protection. These factors, among others, fed a desire for additional tools that would facilitate land planning on a landscape scale.

The sector plan was designed to meet these varied needs. The best sector plans incorporate long-term commitments for preservation of environmental resources and agricultural lands as well as policy commitments that emphasize strong urban form to create livable communities and a balanced transportation network. In essence, sector plans provide an opportunity to plan in a manner that avoids the sprawling development patterns employed in Florida during the last fifty years. They also have an economic driver that is important to the larger community, and they are products of community-based negotiation by public and private partners in open and collaborative processes.

Other tools that may be used to address large areas of land include two specific tools within the DRI program, the area-wide DRI³ and the master incremental DRI.⁴ Both are more accurately seen as entitlement tools rather than planning tools because each approval must be consistent with the future land use designation for the planning area under the local comprehensive plan. In addition, each creates development rights for the authorized developer, while a true planning tool does not. For that reason, these approvals historically required a degree of exactitude in addressing development impacts that made them of limited use for true planning.

¹ See, e.g., T. Fredrick Davis, *The Disston Land Purchase*, 17 FLORIDA HISTORICAL QUARTERLY 200, 200-10 (1939).

² Gen. Dev. Corp. v. Div. of State Planning, Dep't of Admin., 353 So. 2d 1199 (Fla. 1st DCA 1978).

³ § 380.06(25), FLA. STAT. (2013).

⁴ *Id.* § 380.06(21).

For further information regarding the area-wide DRI and master incremental DRI tools, see Chapter 25.2 of this treatise, “The Environmental Land and Water Management Act of 1972 – Developments of Regional Impact and Areas of Critical State Concern.”

II. Considerations in Undertaking a Sector Plan

A sector plan has attributes that participants in the planning process should consider before embarking upon such a time-consuming, expensive, and potentially controversial endeavor.

A. *Public Sector*

From a local and state government perspective, a sector plan can meet several needs. First, it can enable a local government to prepare for future growth while avoiding the fragmented development and resource protection outcomes so common with the normal twenty year planning period.⁵ This capability is particularly useful for jurisdictions near growing metropolitan areas. Second, a sector plan enables state and local governments to identify basic infrastructure and obtain right-of-way commitments from participating landowners long before needed. Third, a sector plan can be a useful tool for implementing an economic development strategy with local or regional implications. For example, the centerpiece of the West Bay Area Sector Plan in Bay County was the relocation of the Panama City-Bay County International Airport, adjacent to which are planned business and industrial parks.

Collaborating with one or more landowners on a sector plan can be challenging for government agencies for several reasons. First, unlike developers, most agricultural landowners do not have experience at modern regulatory programs because such programs typically exempt agricultural uses.⁶ Second, landowners do not want a long-term plan to interfere with their ranching, farming, or timbering activities in the interim. Third, landowners do not want to put their lands into permanent preservation through the granting of a perpetual conservation easement; they prefer for that commitment to be implemented by a developer when receiving development rights in the future. Fourth, working with multiple landowners can be particularly challenging, given differing characteristics of individual landholdings and business objectives.

B. *Private Sector*

From a landowner’s perspective, a sector plan can meet several needs. First, it can create long-term value in the land and a legacy for good stewards. And it can do so without requiring immediate expenditures or commitments for mitigation of public facility or environmental impacts because a land plan does not authorize development. Second, because unplanned land is like a magnet that attracts facilities that no one else wants, a sector plan can constitute a good

⁵ Some environmentalists have accepted sector plans as a tool to protect Florida’s land and water resources because, due to budgetary constraints, “we are well beyond the point where we can depend on public land acquisition to protect even a major percentage of the conservation lands in need of preservation.” Letter from Eric Draper, Audubon of Fla., to Secretary Thomas G. Pelham, Fla. Dep’t of Cmty. Affairs (July 27, 2009).

⁶ See, e.g., Fla. Wildlife Fed’n v. Collier Cnty., 819 So. 2d 200 (Fla. 1st DCA 2002); see also § 380.04, FLA. STAT. (2013).

defense against unwanted land uses. In other words, a sector plan can settle expectations about the future of the land. Third, in the case of family ownership, it can reinforce a commitment to the land through changing generations because it is intended for implementation over a long period. Fourth, the sector plan will chart the course for future development. Because approval of the master plan will change the underlying land uses, an owner may rely on it for financing or marketing to developers.

Prudent landowners must take into account the disadvantages of the planning process. First, formulating and winning approval for a sector plan is a complicated and expensive process that can lead to public scrutiny and criticism. For a landowner who wants to be left alone to work her land, these byproducts of the land-planning process can be trying. Second, a sector plan may have near-term consequences for ranching and farming if the plan includes requirements to prevent degradation of environmentally sensitive lands prior to the time that such lands are put into permanent protection. Third, conducting a highly visible planning process for a large landholding may heighten the desires of other stakeholders to exert some control over the owner's land. Fourth, although land use changes are not supposed to affect a landowner's agricultural use classification under Florida's Greenbelt Law,⁷ an aggressive property appraiser may attempt to do so.

III. Origins of Sector Plans

The origins of sector plans can be traced to the Horizon West land plan in Orange County during the 1990s. That plan was prepared by landowners and government planners seeking a land use strategy for played-out citrus lands that had been devastated by a series of freezes in the late 1980s. At the same time, Walt Disney World and spin-off tourism development were creating intensive growth pressures in the region. The result was a large-area plan adopted by Orange County in 1995 to establish a framework for balanced, sustainable mixed-use development. State officials worked with Orange County to fit Horizon West's visionary plan into Florida's one-size-fits-all planning program.⁸

At the state level, the Horizon West model resonated with policymakers and stakeholders who were searching for better planning tools in order to address multiple concerns. Florida's planning laws prescribed a maximum twenty year planning period for local comprehensive plans.⁹ Experience demonstrated that this planning period was too short for a fast-growing state

⁷ § 193.461, FLA. STAT. (2013).

⁸ ORANGE COUNTY GOVERNMENT, HORIZON WEST RETROSPECTIVE: AN ASSESSMENT OF FLORIDA'S FIRST SECTOR PLAN 4 (2012) [hereinafter HORIZON WEST REPORT]. Using its agreement-making power, the state land planning agency, in 1995, entered into an agreement with Orange County specifying that the Horizon West framework plan would be implemented by a series of Specific Area Plans to be adopted by comprehensive plan amendment. This model was carried forward into the pilot program statute. *Id.*

⁹ The statute requires a minimum ten year planning period for local comprehensive plans, § 163.3177(5)(a), FLA. STAT. (2013), with a five year planning period for capital improvements planning. § 163.3177(3)(a)1., FLA. STAT. (2013). Before they were rescinded in 2011, the state's minimum criteria for local comprehensive plans specified a maximum twenty year planning period. FLA. ADMIN. CODE R. 9J-5 (repealed by Ch. 2011-139, § 72, at 187, Laws of Fla.).

like Florida, and that the resulting piecemeal planning and development failed to protect natural systems and create livable communities. Also, budgetary limitations resulted in a lack of adequate public funds to purchase environmentally sensitive lands in undeveloped landscapes that might come under future growth pressures. Finally, many large landscapes were still in single ownership, although those landholdings owned by families were beginning to experience generational changes.

The result was the “optional sector plan” pilot program enacted by the Legislature in 1998.¹⁰ It authorized five experimental plans generally modeled after Horizon West and integrated into the local comprehensive planning program as a particular species of plan amendments.

IV. The Pilot Program

A. Planning Requirements

As authorized for the pilot program, an optional sector plan could be commenced by a local government only by advance written agreement with the state land planning agency, at that time the Florida Department of Community Affairs (DCA).¹¹ The minimum size for an optional sector plan was 5,000 acres, although DCA was given the discretion to allow a smaller planning area.¹² Prior to entry into such an agreement, the regional planning council was required to conduct a “scoping meeting” intended “to assist the state land planning agency and the local government in the identification of the relevant planning issues to be addressed and the data and resources available to assist in the preparation of subsequent plan amendments.”¹³

An optional sector plan included two layers of planning and review. The first layer was a conceptual long-term buildout overlay to set a general vision for the entire planning area.¹⁴ The statute set forth five general planning standards to guide preparation of a framework map and the goals, objectives, and policies covering the entire planning area. This general plan was to be adopted as an amendment to the local comprehensive plan, but it did not change the underlying land use within the planning area. Like all comprehensive plan amendments, the overlay was to be supported by the best available data and meet the general requirements of Florida’s planning laws.¹⁵

¹⁰ Ch. 98-176, § 15, at 20, Laws of Florida (codified at § 163.3245, FLA. STAT. (1998)).

¹¹ § 163.3245(2), FLA. STAT. (1998). In 2011, the Legislature created the Department of Economic Opportunity (DEO), transferred DCA’s land planning functions to DEO, and designated DEO as the state land planning agency. Ch. 2011-139, § 6, at 8, Laws of Fla. (amending § 163.3164(20), FLA. STAT. (2011)).

¹² § 163.3245(1), FLA. STAT. (1998).

¹³ *Id.* § 163.3245(2). Notably, the statute required the regional planning council to conduct the mandatory scoping process but did not require that it be paid for those services.

¹⁴ *Id.* § 163.3245(3)(a).

¹⁵ *Id.*

The second planning layer was a detailed specific area plan (DSAP) for discrete increments of development in an area of at least 1,000 acres unless DCA agreed to a smaller development area.¹⁶ The DSAP also was required to be adopted as an amendment to the local comprehensive plan and to address seven planning standards with greater particularity than the overlay.¹⁷ The DSAP changed the underlying land use and also authorized development. Once in effect it carried with it an exemption from the DRI program.¹⁸ The DRI exemption was intended to be one of the principal incentives for landowners to go through the optional sector plan process; however, the utility of this exemption was limited by the fact that the statute expressly required various types of impacts to be evaluated and mitigated pursuant to DRI minimum standards set forth in DCA rules.¹⁹

B. *Plans Approved During the Pilot Program*

During the pilot program that concluded in 2011, optional sector plans were initiated in a number of communities, but resulted in final plan approval and implementation in only three jurisdictions.²⁰ In other communities, optional sector plans were initiated but did not reach actual implementation due to a variety of local factors.²¹

¹⁶ *Id.* § 163.3245(3)(b)(1) (1998).

¹⁷ *Id.* § 163.3245(3)(b) (1998).

¹⁸ *Id.* § 163.3245(5) (1998). Being a comprehensive plan amendment that also authorized development made the DSAP a peculiar and perhaps unique kind of approval under Florida law.

¹⁹ Public facilities and natural resources were to be identified in the conceptual long-term buildout overlay consistent with DRI minimum standards. § 163.3245(3)(a)(2), (3), FLA. STAT. (1998). Mitigation for impacts to public facilities and natural resources from development authorized by a DSAP were to be mitigated consistent with the same DRI standards. *Id.* § 163.3245(3)(b)(3), (5) (1998).

²⁰ Sector plans adopted and implemented during the thirteen-year pilot program included the 72,000-acre West Bay Area Optional Sector Plan in Bay County, the 18,000-acre Clear Springs Optional Sector Plan in the City of Bartow, and the 16,000-acre Escambia Midwest Optional Sector Plan in Escambia County. *See* DEP'T OF CMTY. AFFAIRS, OPTIONAL SECTOR PLAN 2005, 2006 AND 2007 REPORTS 8-11 (2009) [hereinafter DCA 2005-2007 REPORTS].

The statute also authorized the pilot program to include previously approved large-area plans that met the statute's requirements. The 32,000-acre Horizon West plan in Orange County received this status through an agreement with DCA. *Id.* at 6-8.

For an account of the preparation of the West Bay Area Sector Plan by some of its planners, *see* Roger B. Anderson, Sr. et al., *The Importance of Scale in Area-Wide Planning Strategies: Bay County Optional Sector Plan*, 18 J. LAND USE & ENVTL. L. 391 (2003).

²¹ Optional sector plans authorized but not completed or implemented during the pilot program included the 53,000-acre Central Western Communities Optional Sector Plan in Palm Beach County and the 22,000-acre Brannan Field Optional Sector Plan in Clay County. DCA 2005-2007 REPORTS, *supra* note 20, at 9-11. DCA considered but never authorized preparation of an optional sector plan for the 55,000-acre Knight Family Trust property in Bay and Washington counties. DEP'T OF CMTY. AFFAIRS, OPTIONAL SECTOR PLAN 2009 REPORT 6 (2009) [hereinafter DCA 2009 REPORT].

The pilot program spawned other large-area plans that copied many features of the optional sector plan statute but did so without written authorization from DCA to participate in the pilot program. *E.g.*, Blue Head

C. *Evaluation of the Pilot Program*

The optional sector plan concept was generally praised by local governments, planners, environmentalists, landowners, and developers. Because the pilot program included a requirement for DCA to file periodic reports on the experience of the pilot program, a number of reports were prepared to evaluate individual sector plans and the program's overall effectiveness.

In 2007, under a contract from DCA, a team from Florida State University's Department of Urban and Regional Planning prepared a comparative analysis of sector plans and other large-area planning tools. This study concluded one strength of the sector plan program was that it required "specific attention be paid to the development of long-term vision of the urban form the development will take." But the study acknowledged the confusion over applicable technical standards; because the pilot program was intended to be an alternative to the DRI program, it required adherence to exacting DRI standards. Given the applicability of DRI standards, the level of detail required for components of the sector plan process was unclear, the study found.²²

In 2007, DCA concluded that sector plans enjoyed "significant local success" where they had been completed.²³ In light of this "promising" experience, DCA recommended that the Legislature make the sector plan tool generally available to local governments, create an "expedited review process" for DSAPs, and make technical changes to the statute to "ensure the most successful possible outcomes."²⁴

The Florida Chapter of the American Planning Association (FAPA) recommended that sector plans become "a permanent planning tool" for local governments. FAPA also recommended that the Legislature "encourage flexibility in the scope, scale, and timing of various aspects of the Optional Sector Plan process." This flexibility should include, FAPA proposed, "additional incentives and tools to further encourage the use of this program, such as allowing the assembly of platted lands to address missing land uses; education of other state agencies regarding this process; redevelopment tools; funding; lifting caps and other limitations, etc."²⁵

Perhaps the most exhaustive study of sector plans was conducted by Orange County Government in 2012 after the Legislature decided to make sector planning generally available. *The Horizon West Retrospective: An Assessment of Florida's First Sector Plan* evaluated the pioneering Horizon West plan after fifteen years of implementation. The study concluded:

Ranch Sustainable Community Overlay, Highlands County; Rodina Community Overlay, Hendry County; East Nassau Community Area Plan, Nassau County.

²² TIM CHAPIN ET AL., COMPARISON OF FLORIDA'S APPROACHES TO LARGE-SCALE PLANNING: DRIS, RLSAS, OSPs, AWDRIS, AND SAPs 20-21 (2007) [hereinafter FSU COMPARATIVE ANALYSIS].

²³ DCA 2005-2007 REPORTS, *supra* note 20, at 11.

²⁴ *Id.* at 12.

²⁵ AMERICAN PLANNING ASSOCIATION FLORIDA CHAPTER, OPTIONAL SECTOR PLANS 2 (2003). Although the experience with sector plans has been limited to greenfield sites, this recommendation by FAPA contemplated utilization of this planning tool on lands with pre-existing development.

“While visionary in its intent, Horizon West has grappled with a number of challenges including the reluctance of builders and other professionals to stray from the conventional suburban development model, fragmented land ownership, and the recent real estate boom and bust periods.”²⁶ Other challenges included “applying the land use concept and design standards” of the Horizon West plan in a context of multiple landowners and inadequate infrastructure funding.²⁷

The report’s “take-away for practice suggestions” included these best practices:²⁸

- The foundational plan should be prepared only after conducting “an evaluation of the regional context for the project as a part of the vision development process.”
- Unless there is a single landowner or master developer, landowners within the planning area must understand and commit to the vision early in the planning process.
- Once the vision is put into place through adoption of the foundational plan, “a clear implementation strategy should be developed and enforced throughout the planning and development of specific projects.”
- The foundational plan should “reflect a built-in flexibility to account for changing market conditions,” because the plan is to be implemented over an unusually long period.
- “Finally, the scale and complexity of the sector plan process requires a corresponding commitment to project compliance monitoring” to ensure the plan’s vision is realized.

V. Current Law

A. Overview

Among the many landmark changes to Florida’s planning and growth management programs in 2011, the Legislature converted sector plans into a new tool for “long-term planning for conservation, development, and agriculture on a landscape scale[,]”²⁹ especially for large landholdings in strategic locations.³⁰

²⁶ HORIZON WEST REPORT, *supra* note 8, at 3.

²⁷ *Id.* at 2.

²⁸ *Id.*

²⁹ § 163.3245(1), FLA. STAT. (2013).

³⁰ A sector plan is defined by law as “the process authorized by s. 163.3245 in which one or more local governments engage in long-term planning for a large area and address regional issues through adoption of detailed specific area plans within the planning area as a means of fostering innovative planning and development strategies,

Despite significant changes to statutory requirements, lawmakers restated their original intention that sector plans are intended to promote planning innovation and serve as a plan-based substitute for the DRI program.³¹ They also expressed their intention for sector plans to be a means “to facilitate protection of regionally significant resources, including, but not limited to, regionally significant water courses and wildlife corridors.”³² The statute is intended to achieve these purposes by means of planning standards that, unlike the generally applicable planning requirements of Chapter 163, Part II, Florida Statutes, are specifically tailored to the unique challenges of land planning on a landscape scale.

The minimum acreage necessary to undertake a sector plan is 15,000 acres, and the planning area may be located in one or more local jurisdictions.³³ A sector plan is expressly permitted to have a planning period longer than the generally applicable planning period of a local government comprehensive plan, which is usually 20 years.³⁴ These features illuminate the role of the sector plan as a planning tool to create and implement a long-term vision for a large area over an extended period. These particular provisions are perhaps the most tangible manner in which the Legislature telegraphed its intention for sector plans to be “aspirational” in nature.

A local government may commence preparation of a sector plan without advance approval from the state land-planning agency.³⁵ The local government may contract with the regional planning council to conduct a “scoping meeting” to identify the issues to be addressed by the plan, but such a proceeding is optional.³⁶ Unlike the pilot program, in which there was a list of specific issues to be addressed in a mandatory scoping meeting,³⁷ the agenda for a scoping meeting is now defined by statute as only “the issues requested by the local government.”³⁸ This flexibility is intended to give local governments broad latitude to negotiate an agreement with a

furthering the purposes of this part and part I of chapter 380, reducing overlapping data and analysis requirements, protecting regionally significant resources and facilities, and addressing extrajurisdictional impacts. The term includes an optional sector plan that was adopted before June 2, 2011.” *Id.* § 163.3164(42).

³¹ § 163.3245(1), FLA. STAT. (2013).

³² *Id.*

³³ *Id.* A sector plan may not be adopted for land within an area of critical state concern designated pursuant to Section 380.05. *Id.* A sector plan in more than one local government jurisdiction may be coordinated across multiple jurisdictions by means of a joint planning agreement or interlocal agreement between the local governments and “a landowner, developer, or governmental agency.” *See Id.* § 163.3171(4).

³⁴ § 163.3245(3), FLA. STAT. (2013).

³⁵ *Id.* § 163.3245(1). This change was recommended by DCA. DCA 2005-2007 REPORTS, *supra* note 20, at 12.

³⁶ § 163.3245(2), FLA. STAT. (2013).

³⁷ *Id.*

³⁸ *Id.*

regional planning council based on local needs and conditions.³⁹ Scoping meetings, if conducted, must be noticed and open to the public.⁴⁰

B. *Long-Term Master Plan*

As in the pilot program, a sector plan includes two levels of planning.

The first layer is a long-term master plan. Unlike the long-term conceptual buildout overlay used as a first planning layer in the pilot program, the long-term master plan will change the comprehensive plan's land use designations within the entire planning area.⁴¹ Because the statute repeatedly identifies the master plan as being "general" in nature, it is intended to establish a broad framework that can be refined by future "detailed" and market-driven DSAPs.

The applicant is not required to demonstrate "need" for the master plan based on population projection or any other criteria; however, the master plan must "specify the projected population within the planning area during the chosen planning period."⁴² Due to the change in nomenclature, the master plan is no longer required to be a "buildout" plan. Further, the master plan "may include a phasing or staging schedule that allocates a portion of the local government's future growth to the planning area through the planning period."⁴³ Finally, owners of land within the planning area have an unconditional right to exclude their property from a master plan prior to its adoption by the local government.⁴⁴

The planning standards for a long-term master plan are intended to provide general direction for the conservation, development, and agricultural outcomes envisioned for the planning area.⁴⁵ As refined and expanded by the Legislature in 2011, the required components of a master plan are:

- "A framework map that, at a minimum, generally depicts areas of urban, agricultural, rural, and conservation land use[.]" The map should show in general

³⁹ *Id.* Compensation for scoping services by a regional planning council was not required under the 1998 law and is not required under the new law. One rationale for scoping to be optional under the new law is that it will enable a regional planning council to negotiate compensation for scoping services, if requested.

⁴⁰ *Id.*

⁴¹ § 163.3245(3), FLA. STAT. (2013).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.* § 163.3245(8). After adoption of the master plan, "an owner may withdraw his or her property from the master plan only" by a comprehensive plan amendment adopted by the local government. *Id.* Therefore, obtaining the informed consent of all owners within a planning area will be an important task early in the planning process. These features of the statute were patterned after the statutory scheme for an area-wide DRI. *See Id.* § 380.06(25)(l).

⁴⁵ Because a long-term master plan must comply with "the other requirements of this chapter" in addition to those specified in Section 163.3245, the use of the qualifying word "general" for each of the seven planning standards for a long-term master plan provides statutory gloss on how those "other requirements" of Chapter 163, Part II, should be applied in the context of a master plan. *Id.* § 163.3245(3)(a).

terms the distribution of uses, with their densities and intensities, throughout the planning area and provide a “general framework for the development pattern in developed areas with graphic illustrations based on a hierarchy of places and functional place-making components.”⁴⁶ The purpose of this provision is to emphasize sound urban form as the basis for development in the planning area. The requirement for “graphic illustrations” of place-making components was recommended by planners as a tool to help translate a long-term vision into specific urban forms in a DSAP.

- “A general identification of the water supplies needed and available sources of water, including water resource development and water supply development projects, and water conservation measures” to meet water demand through the planning period.⁴⁷ This planning standard does not distinguish between water demand for uses that meet the definition of “development”⁴⁸ and those that do not.
- “A general identification of the transportation facilities” needed to serve the planning area through the planning period with “guidelines to be used to establish each modal component intended to optimize mobility.”⁴⁹ With this language, the Legislature set forth its preference for multi-modal transportation systems in the planning area.
- “A general identification of other regionally significant public facilities necessary to support the future land uses” through the planning period and “procedures to be used to mitigate the impacts of future land uses on public facilities.”⁵⁰
- “A general identification of regionally significant natural resources within the planning area based on the best available data” and “procedures for protection or conservation of specific resources consistent with the overall conservation and development strategy for the planning area.”⁵¹

⁴⁶ *Id.* § 163.3245(3)(a)(1). The “graphic illustrations” that have been accepted by the state land-planning agency range from maps to renderings to photosets of illustrative urban forms.

⁴⁷ *Id.* § 163.3245(3)(a)(2). The terms “water resource development” and “water supply development” are taken verbatim from the Florida Water Resources Act of 1972, Chapter 373, Florida Statutes. *See Id.* § 373.019(24), (26). This provision is one of several that are intended to link, at a planning level, land use and water resource decision-making.

⁴⁸ § 163.3164(14), FLA STAT. (2013) (cross-referencing § 380.04, FLA. STAT. (2013)).

⁴⁹ *Id.* § 163.3245(3)(a)(3).

⁵⁰ *Id.* § 163.3245(3)(a)(4). The term “public facilities” means “major capital improvements, including transportation, sanitary sewer, solid waste, potable water, educational, parks and recreational facilities.” *Id.* § 163.3164(38). A long-term master plan should address these enumerated facilities at a minimum. Although unnecessary, the statute expressly authorizes on-site central utilities, making it a seemingly legislative preference.

⁵¹ *Id.* § 163.3245(3)(a)(5). The term “regionally significant natural resources” creates only a general link to the strategic regional policy plans required under the Florida Regional Planning Council Act. That statute requires regional planning councils to identify “natural resources of regional significance.” *Id.* § 186.507(1). These

- “General principles and guidelines” in the form of goals, objectives, policies, or strategies regarding, among other things, “urban form and the interrelationships of future land uses; . . . achieving a more clean, healthy environment; limiting urban sprawl; providing a range of housing types; protecting wildlife and natural areas; advancing the efficient use of land and other resources; creating quality communities of a design that promotes travel by multiple transportation modes; and enhancing the prospects for the creation of jobs.”⁵²
- “Identification of general procedures and policies to facilitate intergovernmental coordination to address extrajurisdictional impacts from future land uses.”⁵³

The long-term master plan remains one of the few local planning decisions subject to a full compliance review coordinated by the state land-planning agency.⁵⁴ DEO may issue a report on its objections, recommendations, and comments (ORC report) to the long-term master plan, but such a report may address only whether the plan amendment is “in compliance” with statutory requirements and whether it “will adversely impact important state resources and facilities.”⁵⁵

The state land-planning agency may initiate a formal compliance proceeding on a long-term master plan. As in the past, such a proceeding will be heard by an administrative law judge,⁵⁶ and is subject to the preponderance of the evidence standard.⁵⁷ Third parties have a right to seek a formal administrative hearing on whether a long-term master plan is “in compliance”

resources identified in the pertinent strategic regional policy plan should be a first point of reference when identifying “regionally significant natural resources” in a long-term master plan, however, state and regional review agencies can identify other specific resources to be considered regionally significant in the master plan. The key requirement is for the identification of such resources to be based upon the best available data.

The long-term master plan must address “the protection and, as appropriate, restoration and management of [regionally significant natural resources] identified for permanent preservation” and specify that preservation shall be by “recordation of conservation easements consistent with s. 704.06.” Such conservation easements “shall be phased or staged in coordination with detailed specific area plans to reflect phased or staged development within the planning area.” *Id.* § 163.3245(3)(a)(6).

⁵² § 163.3245(3)(a)(6), FLA. STAT. (2013).

⁵³ *Id.* § 163.3245(3)(a)(7). Florida law provides that intergovernmental coordination requirements of Chapter 163, Part II, do not require a resolution of any intergovernmental disputes related to planning issues. Such statutory requirements only require that procedures be put into place by which local governments will attempt to resolve such disputes. *Id.* § 163.3245(6)(h); *Dep’t of Cmty. Affairs v. Lee County*, No. 89-1843GM (Admin. Comm’n Jan. 7, 1993).

⁵⁴ § 163.3184(2)(c), (4)(a), FLA. STAT. (2013).

⁵⁵ *Id.* § 163.3184(4)(d)(1).

⁵⁶ *Id.* § 163.3184(5)(b).

⁵⁷ *Id.* § 163.3184(5)(c)(2)(a).

with statutory requirements;⁵⁸ however, under the statute, a compliance proceeding initiated by a third party will be subject to the fairly debatable standard.⁵⁹

C. *Detailed Specific Area Plans*

The second planning layer is still a DSAP.⁶⁰ During the pilot program, a DSAP was required to be adopted as an amendment to the local government's comprehensive plan; however, a DSAP is now a local development order and is not subject to a state compliance review.⁶¹ The statute provides that the DSAP encompass at least 1,000 acres and expressly requires it to be "consistent with the long-term master plan" and other pertinent requirements of Chapter 163, Part II.⁶² As with the long-term master plan, a DSAP is not required to demonstrate "need" based on population or any other basis. It also may have a longer planning period than the generally applicable planning period of the local government's comprehensive plan.⁶³

The planning standards for a DSAP are intended to provide a detailed plan of development—including identification of development impacts and the methods for their mitigation—and conservation for a specific portion of the planning area. Those standards are:

- "Detailed identification and analysis of the maximum and minimum densities and intensities of use and the distribution, extent, and location of future land uses."⁶⁴
- "Detailed identification of water resource development and water supply development projects and related infrastructure and water conservation measures to address water needs of development" in the DSAP area.⁶⁵

⁵⁸ *Id.* § 163.3184(4)(d)(1).

⁵⁹ § 163.3184(5)(c)(1), FLA. STAT. (2013). The statute does not prescribe the standard to be applied if both the state land-planning agency and a third party initiate compliance proceedings and the two proceedings are consolidated, or if a third party intervenes in a compliance proceeding initiated by the state land planning agency.

⁶⁰ *Id.* § 163.3245(3).

⁶¹ *Id.* DCA recommended in 2007 that a DSAP be subject to "an expedited review process . . . thereby eliminating the current disincentive created by the existing requirement to go through the full comprehensive plan amendment process[.]" DCA 2005-2007 REPORTS, *supra* note 20, at 12.

⁶² *Id.* § 163.3245(3)(b)(1). A local government has discretion to approve a DSAP of less than 1,000 acres. *Id.*

⁶³ *Id.* § 163.3245(3).

⁶⁴ *Id.* § 163.3245(3)(b)(2). Unlike during the pilot program, a DSAP is not required to include "a functional relationship between a full range of land uses[.]" Compare § 163.3245(3)(b)(1), FLA. STAT. (2013), with § 163.3245(3)(b)(1), FLA. STAT. (1998). This change was intended to facilitate the use of sector plans for specialized uses for economic development purposes similar to the new Panama City-Bay County International Airport located within the West Bay Area Sector Plan in Bay County.

⁶⁵ § 163.3245(3)(b)(3), FLA. STAT. (2013). The terms "water resource development" and "water supply development" are taken verbatim from the Florida Water Resources Act of 1972, Chapter 373, Florida Statutes. *See*

- “Detailed identification of the transportation facilities to serve the future land uses in the detailed specific area plan.”⁶⁶
- “Detailed identification of other regionally significant public facilities, including public facilities outside the jurisdiction of the host local government, impacts of future land uses on those facilities, and required improvements consistent with the long-term master plan.”⁶⁷
- “Public facilities necessary to serve development in the detailed specific area plan, including developer contributions in a 5-year capital improvement schedule of the affected local government.”⁶⁸ This ambiguous provision is best interpreted as meaning that the DSAP should identify the major capital improvements needed to serve the DSAP project, and that such improvements also must be included in the local government’s five-year capital improvement schedule required by Section 163.3177(3)(a), Florida Statutes.
- “Detailed analysis and identification of specific measures to ensure the protection and, as appropriate, restoration and management of lands within the boundary of the detailed specific area plan identified for permanent preservation through recordation of conservation easements . . . and other important resources both within and outside the host jurisdiction.”⁶⁹ This DSAP standard is intended to ensure that off-site environmental impacts are avoided or, if they cannot be avoided, minimized and mitigated.
- “Detailed principles and guidelines” in the form of goals, objectives, policies, or strategies that address “urban form and the interrelationships of future land uses; achieving a more clean, healthy environment; limiting urban sprawl; providing a range of housing types; protecting wildlife and natural areas; advancing the efficient use of land and other resources; creating quality communities of a design that promotes travel by multiple transportation modes; and enhancing the prospects for the creation of jobs.”⁷⁰

Id. § 373.019(24), (26). This provision is one of several that are intended to link, at a planning level, land use and water resource decision-making.

⁶⁶ *Id.* § 163.3245(3)(b)(4).

⁶⁷ *Id.* § 163.3245(3)(b)(5). The term “public facilities” means “major capital improvements, including transportation, sanitary sewer, solid waste, potable water, educational, parks and recreational facilities.” *Id.* § 163.31634(38). A DSAP should address these enumerated types of facilities at a minimum.

⁶⁸ § 163.3245(3)(b)(6), FLA. STAT. (2013).

⁶⁹ *Id.* § 163.3245(3)(b)(7).

⁷⁰ *Id.* § 163.3245(3)(b)(8).

- “Identification of specific procedures to facilitate intergovernmental coordination to address extrajurisdictional impacts from the detailed specific area plan.”⁷¹

As under the pilot program, all development within an approved DSAP is exempt from DRI review.⁷² In addition, as a DRI surrogate, the DSAP now has the same protection from arbitrary down-planning or down-zoning as a DRI.⁷³ An approved DSAP will be protected from down-planning or down-zoning “unless the local government can demonstrate that implementation of the plan is not continuing in good faith based on standards established by plan policy, that substantial changes in the conditions underlying the approval of the detailed specific area plan have occurred, that the detailed specific area plan was based on substantially inaccurate information provided by the applicant, or that the change is clearly established to be essential to the public health, safety, or welfare.”⁷⁴

Also like the DRI program, the statute authorizes the state land-planning agency to bring an administrative appeal to the Florida Land and Water Adjudicatory Commission (FLWAC), but only on grounds that an adopted DSAP “is not consistent with the comprehensive plan or with the long-term master plan.”⁷⁵ Such an appeal must be commenced within 45 days of rendition of the DSAP to the state land-planning agency “as prescribed by rules of the state land-planning agency for a development order for a development of regional impact.”⁷⁶ Standing to initiate such an administrative appeal is limited to the state land planning agency, the owner, or the developer.⁷⁷ Proceedings must be conducted pursuant to Section 380.07.⁷⁸

D. *Urban Form and Reducing Auto-Dependence*

The statute’s planning standards are intended to bring about a superior urban form by emphasizing compact urban development that will promote multiple modes of transportation. This linkage of land use and transportation at a policy level is intended, among other things, to

⁷¹ *Id.* § 163.3245(3)(b)(9). Florida law provides that intergovernmental coordination requirements of Chapter 163, Part II, do not require a resolution of any intergovernmental disputes related to planning issues. Such statutory requirements only require that procedures be put into place by which local governments will attempt to resolve such disputes. *Id.* § 163.3245(6)(h); *Dep’t of Cmty. Affairs v. Lee County*, No. 89-1843GM (Admin. Comm’n Jan. 7, 1993).

⁷² § 163.3245(3), (5), FLA STAT. (2013); *see also Id.* § 380.06(24)(s).

⁷³ *Compare* § 163.3245(5)(d), FLA STAT. (2013), *with* § 380.06(15)(c)(3), FLA. STAT. (2013).

⁷⁴ § 163.3245(5)(d), FLA. STAT. (2013).

⁷⁵ *Id.* § 163.3245(3)(e).

⁷⁶ *Id.* *See also* FLA. ADMIN. CODE R. 73C-40.025(5) (2013).

⁷⁷ § 163.3245(3)(e), FLA. STAT. (2013). *See also* *Friends of the Everglades, Inc. v. Bd. of Cnty. Comm’rs of Monroe Cnty.*, 456 So. 2d 904 (Fla. 1st DCA 1984) (representing, prior to 1993, a repeal of statutory authority for a regional planning council to initiate an appeal pursuant to section 380.07). After administrative review has been initiated, a third party may intervene. *Fairfield Cmty. v. Fla. Land and Water Adjudicatory Comm’n*, 522 So. 2d 1012 (Fla. 1st DCA 1988). *See also* FLA. ADMIN. CODE R. 42-2.008 (2013).

⁷⁸ § 163.3245(3)(e), FLA. STAT. (2013).

counteract Florida’s historic tendency toward sprawling, low-density development patterns that result in over-reliance on the automobiles for private transportation, with adverse environmental, economic and social consequences.

This underlying imperative can be seen in requirements for both the master plan and each DSAP to “advanc[e] the efficient use of land” and to “creat[e] quality communities of a design that promotes travel by multiple transportation modes.”⁷⁹ The desire for a smarter development pattern is also embodied in the requirement for the master plan to be based upon “a hierarchy of places and functional place-making components.”⁸⁰ Among the tools expressly authorized to help achieve this outcome are minimum densities and intensities of use, particularly proximate to a multi-modal transportation corridor. Moreover, the master plan must include “guidelines to be used to establish each modal component intended to optimize mobility.”⁸¹ Finally, both the master plan and each DSAP are required to “limit[] urban sprawl.”⁸²

E. *Resource Protection*

The statute also emphasizes resource protection and land preservation. The master plan must identify regionally significant natural resources based on the best available data and provide “procedures for protection or conservation of specific resources consistent with the overall conservation and development strategy for the planning area.”⁸³ It also must identify lands for permanent preservation and address the “protection and, as appropriate, restoration and management” of such lands.⁸⁴ The new law requires the state land planning agency to consult with the Department of Environmental Protection, the Fish and Wildlife Conservation Commission, Department of Agriculture and Consumer Services, and water management districts in evaluating the design of conservation set-aside areas.⁸⁵

Land identified in the master plan for permanent preservation must be made subject to a perpetual conservation easement consistent with Section 704.06, Florida Statutes. The granting of such conservation easements “shall be phased or staged in coordination with detailed specific

⁷⁹ *Id.* § 163.3245(3)(a)(6), (3)(b)(8).

⁸⁰ *Id.* § 163.3245(3)(a)(1).

⁸¹ *Id.* § 163.3245(3)(a)(3).

⁸² *Id.* § 163.3245(3)(a)(6). While this phraseology is subtly different from the general statutory command to “discourage the proliferation of urban sprawl,” *Id.* § 163.3177(6)(a)(9), the “limit urban sprawl” requirement of Section 163.3245 should be applied in the same manner for practical reasons. The statute prescribes a “safe harbor” means for demonstrating that a comprehensive plan or plan amendment discourages the proliferation of urban sprawl by incorporating a “development pattern or urban form” with certain characteristics. *See Id.* § 163.3177(6)(a)(9)(b). Because Section 163.3245 does not provide any standards for addressing urban sprawl, the planning standards of Section 163.3177(6)(a) should guide an evaluation of whether a long-term master plan or DSAP limits urban sprawl.

⁸³ § 163.3245(3)(a)(5), FLA. STAT. (2013).

⁸⁴ *Id.* § 163.3245(3)(a)(6).

⁸⁵ *Id.* § 163.3245(3)(c).

area plans to reflect phased or staged development within the planning area.”⁸⁶ Other measures may be employed to protect environmentally sensitive lands not intended for permanent preservation, including but not limited to comprehensive plan policies, restrictive covenants, and conveyance to public agencies or not-for-profit organizations.

When the master plan is implemented, each DSAP must address both on-site regionally significant natural resources warranting some form of protection as well as “other important resources both within and outside the host jurisdiction.”⁸⁷ For lands within a DSAP that are to be permanently preserved by a conservation easement, the easement must be “effective before or concurrent with the effective date of the detailed specific area plan.”⁸⁸ All lands identified in the master plan for permanent preservation must be subject to a recorded conservation easement no later than the effective date of the final DSAP within the planning area.⁸⁹

F. *Linkage of Land, Water and Transportation Planning*

The statute establishes clear linkages between land use, transportation, and water supply planning. This was the most important policy breakthrough of the 2011 legislation.

A metropolitan planning organization’s long-range transportation plan “must be consistent, to the maximum extent feasible, with the long-term master plan, including, but not limited to, the projected population and the approved uses and densities . . . of use and their distribution within the planning area.”⁹⁰ A water management district must incorporate into its regional water supply plan the “water needs, sources and water resource development, and water supply development projects identified in” both the long-term master plan and a DSAP.⁹¹

Through these planning linkages, the Legislature has attempted to provide the means by which basic infrastructure to implement a long-term master plan will be incorporated into regional water and transportation plans years before the infrastructure is needed in connection with actual development authorized by a DSAP.

⁸⁶ *Id.* § 163.3245(3)(a)(6). The phrase “shall be phased or staged” precludes state agencies or local governments from requiring upfront conservation easements on lands identified for permanent preservation as a condition for approval of a long-term master plan.

⁸⁷ *Id.* § 163.3245(3)(b)(7).

⁸⁸ *Id.* This language creates a chicken-or-egg issue with respect to environmental permits that require perpetual conservation easements on environmentally sensitive lands that the master plan also identifies for permanent preservation. One way to address this conundrum is for the DSAP to be approved by the local government with an effective date that is contingent upon approval of environmental permits and the granting of any conservation easements required by such permits.

⁸⁹ § 163.3245(3)(b), FLA. STAT. (2013).

⁹⁰ *Id.* § 163.3245(4)(a).

⁹¹ *Id.* § 163.3245(4)(b). Water management districts are authorized to issue consumptive use permits “for durations commensurate with the long-term master plan or detailed specific area plan,” provided that all other permitting criteria are satisfied. *Id.*

G. *Vesting*

The statute authorizes a local government to enter into a development agreement pursuant to the Florida Local Government Development Agreement Act,⁹² addressing the entire planning area of the master plan or the area addressed in a specific DSAP.⁹³ By entering into a concurrent development agreement, a landowner or developer may ensure that local “laws and policies governing the development of the land at the time of the execution of the development agreement shall govern the development of the land for the duration of the development agreement,”⁹⁴ subject to certain limitations.⁹⁵ Such an agreement is intended conditionally to “lock-in” development regulations without contravening Florida’s robust contract zoning doctrine.⁹⁶

An alternative method for conditional vesting of the master plan is through concurrent or subsequent review and approval of a master-incremental DRI⁹⁷ “for the entire planning area in order to establish a buildout date until which the approved uses and densities and intensities of use of the master plan are not subject to downzoning, unit density reduction, or intensity reduction,” absent certain showings by the local government.⁹⁸ The statute requires that review of the master incremental DRI application “shall be at a level of detail appropriate for the long-term and conceptual nature of the long-term master plan and, to the maximum extent possible, may only consider information provided in the application for the long-term master plan.”⁹⁹

Once a master incremental DRI development order is effective for the planning area, implementation shall be by adoption of DSAPs pursuant to Section 163.3245(3)(b) instead of an incremental DRI development order as otherwise required by Section 380.06(21).¹⁰⁰

H. *Conversion of Previously Approved Large-Area Plans*

In 2011, the Legislature decided that a large-area plan adopted by a local government prior to July 1, 2011, may be implemented through the procedures specified by the revised statute so long as the plan “meets the requirements for a long-term master plan” and the state land-planning

⁹² § 163.3245(7), FLA. STAT. (2013); §§ 163.3220-163.3243, FLA. STAT. (2013). *See also* Robert M. Rhodes, *The Florida Local Government Development Agreement Act*, 62 FLA. BAR JOURNAL 81 (1988).

⁹³ § 163.3245(7), FLA. STAT. (2013).

⁹⁴ *Id.* § 163.3233(1).

⁹⁵ *Id.* § 163.3233(2).

⁹⁶ *See, e.g.,* Morgran Co. v. Orange Cnty., 818 So. 2d 640 (Fla 5th DCA 2002); Chung v. Sarasota County, 686 So. 2d 1358 (Fla. 2d DCA 1996); P.C.B. P’ship v. City of Largo, 549 So. 2d 738 (Fla. 2d DCA 1989).

⁹⁷ § 380.06(21), FLA. STAT. (2013).

⁹⁸ *Id.* § 163.3245(6).

⁹⁹ *Id.*

¹⁰⁰ *Id.* This decision by the legislature may not be varied by a planning agreement or local comprehensive plan policy to the contrary. *Id.* § 163.3245(12).

agency enters into a planning agreement with the local government, conferring that status on the previously approved plan.¹⁰¹ If so, then thereafter, “the large-area plan shall be implemented through detailed specific area plans that meet the requirements of [the new law] and shall otherwise be subject to this section.”¹⁰²

VI. Conclusion

Section 163.3245, Florida Statutes, creates a versatile planning tool that authorizes government planners and private landowners to make flexible but principled planning decisions concerning the long-term future of an entire landscape. The two layers of planning authorized by the statute avoid the shortcomings of both conventional comprehensive plan amendments and the large-area entitlement procedures of the DRI program. The statute creates a tool that encourages true “planning” on a landscape scale in a manner that is practical and attractive for landowners and government planners alike, with resulting plans that are both flexible and principled. In appropriate circumstances it can overcome the challenges of urban form and environmental preservation that typically arise from piecemeal planning in fast-growing state like Florida.

¹⁰¹ *Id.* § 163.3245(10).

¹⁰² *Id.* Qualifying large-area plans, which have been converted into sector plans by a planning agreement entered into pursuant to this provision are: East Nassau Community Area Plan in Nassau County, Northeast District Conceptual Master Plan in Osceola County, and Rodina Community Overlay in Hendry County. Ana Richmond, Chief of Cmty. Planning, FLA. DEP’T OF ECON. OPPORTUNITY, LAND USE AND SECTOR PLANNING, *Presentation to East Central Florida Corridor Task Force* (Apr. 29, 2014).