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Committee on Community Affairs

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## POPULATION NEED AS A CRITERIA FOR CHANGES TO A LOCAL GOVERNMENT'S FUTURE LAND USE MAP

### Issue Description

#### Needs Assessment

In the growth management regime, a “needs assessment” is a determination of whether a comprehensive plan amendment submitted by a local government provides more land in a specific land use than is needed to accommodate anticipated population growth. When reviewing comprehensive plan amendments the Department of Community Affairs (“DCA” or “the Department”) reviews all residential, commercial, industrial, and institutional amendments for need; the exceptions are rural, agriculture, and conservation uses.

The purpose of this interim report is to outline the current controversy surrounding the needs issue and to explain the potential effects of changing the existing policy. Currently, many of Florida’s local governments already have enough growth planned in their future land use maps to last for the next several decades<sup>1</sup> (this is also known as over-allocation). Because a local government should only allow land use density increases when there is a need for additional density, it can be unclear when and how a local government can amend its comprehensive plan if the plan is already over-allocated. Additionally, with the housing market collapse causing thousands of homes to go into foreclosure, many Florida citizens have become concerned that the Department has allowed more development than is needed for future growth. Alternatively, those in favor of development, claim that Department has not been consistently applying the needs criteria in their review of comprehensive plan amendments.

Finally, the time horizons for some local governments’ comprehensive plans are relatively short. This is frequently caused by local governments failing to consistently update their plans. The problem with short term horizons is that it may be detrimental to reject thoughtful long term developments in favor of short-range, short-term projects simply because the local government has failed to plan far enough in advance. Other local governments have made long term extensions to their planning time horizons. Unfortunately, some attempts at long term planning make projections so far into the future that the data and analysis is no longer accurate enough to be considered professionally acceptable methodology.

### Background

Adopted by the 1985 Legislature, the Local Government Comprehensive Planning and Land Development Regulation Act<sup>2</sup>- also known as Florida’s Growth Management Act - requires all of Florida’s 67 counties and 410 municipalities to adopt Local Government Comprehensive Plans that guide future growth and development. Comprehensive plans contain chapters or “elements” that address future land use, housing, transportation, infrastructure, coastal management, conservation, recreation and open space, intergovernmental coordination, and capital improvements. As part of each adopted comprehensive plan each local government must also adopt a Future Land Use Map (“FLUM”).<sup>3</sup> The FLUM puts each parcel in the jurisdiction into a designated land use category; therefore, when a developer or landowner makes an application to change their designated land use they

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<sup>1</sup> In a survey of nine Florida Counties conducted by the Department, the Department found there was between 27 and 993 years of growth that has been approved beyond the Counties’ adopted planning horizons.

<sup>2</sup> See Chapter 163, Part II, F.S.

<sup>3</sup> Section 163.3177(6)(a), F.S.

are applying for a FLUM amendment. Assuming the local government votes to transmit the plan amendment to the Department, the Department then reviews the amendment for consistency with the comprehensive plan. Each future land use plan amendment is required to be based upon surveys, studies, and data regarding the area, including the projected population of the area.<sup>4</sup>

When adopting comprehensive plan amendments, local governments must ensure that each land use category is allocated the proper amount of land. If the local government fails to make a proper allocation, it can run into problems of over-allocation and under-allocation.

Over-allocation occurs where comprehensive plan amendments are approved where there is no demonstrated need. The biggest problem caused by over-allocation is urban sprawl. Urban sprawl occurs because there is a lack of constraints on where development occurs. When there are no constraints on development, developers will often develop land which is not contiguous to existing development. This causes increased infrastructure costs, depleted urban cores, and the premature development of agricultural lands and natural areas. Furthermore, once this land has been allocated for higher densities it is extremely difficult to reverse because vested property rights and the Bert Harris Act protect private property rights.<sup>5</sup> Although transferable development rights ("TDR's") are frequently suggested as a solution to over-allocation, TDR programs are often very difficult to implement and monitor consistently.

Under-allocation occurs when there is not enough land in a land use category, in a specific area, to accommodate demand. If there is a higher demand for land than what is available to build, land prices will increase and development costs will go up. Location problems can also occur because under-allocation may limit a developer's options on where to build a new development. Finally, because development is a job creator, under-allocation has the potential to stifle economic growth. Because of the clear problems associated with under-allocation, local governments have a tendency to over-allocate.

Without thoughtful planning, Florida runs the risk of revisiting problems such as the platted lands problem. The platted lands problem is a problem where thousands of plats were sold in areas that lacked proper infrastructure. This resulted in underserved and blighted areas that are difficult or even impossible to revitalize or rezone. Once an area is given a certain land use designation or density, it is difficult to change or decrease the intensity of the zoning without interfering with private property rights.

### **How Need is Determined**

The needs assessment is a part of the land use planning process that provides a mechanism for local governments to determine the appropriate supply of land uses necessary to accommodate anticipated demand. This is particularly true because the "need" issue is one of the factors to be considered in any urban sprawl analysis.<sup>6</sup> Therefore, it is important for landowners, developers, and local governments to have a clear understanding of how need is determined so that each entity understands how need factors into the Department's comprehensive plan amendment compliance decisions. Because of the high risks and costs associated with development, landowners and developers want certainty before they invest their time and money in applying for a land use plan amendment.

Currently, every large scale future land use map amendment to a comprehensive plan is reviewed, by both the local government and Department, to determine if there is a need for the amendment.<sup>7</sup> To determine need, the reviewer must analyze: the categories of land use and their densities or intensities of use, the estimated gross acreage needed by category, and a description of the methodology used.<sup>8</sup> This methodology is then submitted to the Department for review with the proposed comprehensive plan amendment. When reviewing this methodology, the Department reviews both the numerical population and policy factors.

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<sup>4</sup> Section 163.3177(6)(a), F.S.

<sup>5</sup> Section 70.001(1), F.S.

<sup>6</sup> Rule 9J-5.006(5)(g)1 F.A.C.

<sup>7</sup> Rule 9J-5.006(2)(c), F.A.C.

<sup>8</sup> Rule 9J-5.006(2)(c), F.A.C. For an example of how the methodology is analyzed, see page 5.

## Information for Calculating Needs Methodology

In addition to the basic outline provided above for calculating need, there are several components of the methodology that need additional explanation.

### *Market Factor*

**Residential:** A market factor (also known as an allocation number or multiplier) is a numerical tool used by professional planners to determine the amount of land use supply needed to accommodate anticipated growth.<sup>9</sup> For residential land, a market factor is calculated by dividing the amount of dwelling unit capacity by the amount of dwelling unit demand.<sup>10</sup> The Department recommends a market factor of 1.25 which means a plan allows for land uses to support 125% of the projected population.<sup>11</sup> The additional 25% is designed to allow for market flexibility. Therefore, if the proposed residential land use amendment causes the market factor to go above 1.25, the Department can find an amendment “not in compliance” because of a lack of need. However, there is no statute or rule that mandates that every plan amendment must be denied where there is an over-allocation. Rather, if the market factor goes above 1.25 it will cause the plan amendment to be subject to a heightened review to see if it meets the indicators of urban sprawl.<sup>12</sup>

**Commercial/Industrial:** Similar to residential, examining the market factor for commercial and industrial lands is a significant factor in determining need. However, case law has indicated that the need for additional commercial or industrial land may also be demonstrated by other factors such as the suitability of the property for change, locational criteria, and community desires.<sup>13</sup> For industrial land use changes, rural communities are also provided a special exception. Section 163.3177(6)(a) F.S., states that “the amount of land designated for future planned industrial use should be based on surveys and studies that reflect the need for job creation, capital investment, and the necessity to strengthen and diversify the local economies and should not be limited solely by the projected population of the rural community.”

### *Planning Time Horizon*

The Florida Growth Management Act of 1985 requires each local government comprehensive plan to include at least two planning periods, one covering at least the first 5-year period occurring after the plan's adoption and one covering at least a ten-year period.<sup>14</sup> In planning for the amount of land needed for a particular land use, the local government must analyze it within the adopted planning time horizon applicable to that portion of the comprehensive plan. Other local governments have also adopted a third planning time horizon for longer range planning. These longer range planning time horizons have been extended out as far as 40 years, and DCA has approved comprehensive plan amendments that have incorporated these longer term planning time horizons.<sup>15</sup>

### *Population Projections*

A key component of the needs issue are population projections. In 1986, rulemaking required comprehensive plans to be based on resident and seasonal population estimates provided by the University of Florida, Bureau of Economic and Business Research, the Executive Office of the Governor, or generated by the local government.<sup>16</sup> If the local government chooses to base its plan on the figures provided by the University of Florida or the Executive Office of the Governor, medium range projections should be utilized.<sup>17</sup> If the local government chooses to base its plan on either low or high range projections provided by the University of Florida or the Executive

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<sup>9</sup> *The Role of Need in Comprehensive Planning*, Department of Community Affairs Presentation, June 26, 2009.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Sierra Club v. St. Johns County & DCA*, DOAH 01-1851GM (May 20, 2002).

<sup>13</sup> *O'Connell v. Martin County*, DOAH 01-4826GM (Oct. 16, 2002).

<sup>14</sup> Section 163.3177(5)(a), F.S.

<sup>15</sup> “There is not a prohibition against analyzing more time frames than just one planning horizon.” *Sierra Club & Panhandle Citizens v. DCA and Franklin County*, DOAH 05-2731GM (June 12, 2006).

<sup>16</sup> Rule 9J-5.005(2)(e), F.A.C.

<sup>17</sup> *Id.*

Office of the Governor, a detailed description of the rationale for such a choice shall be included with such projections.<sup>18</sup>

### *Alternative Methodologies (for Population Projections)*

If a local government chooses to prepare its own estimates and projections, it is required to submit estimates and projections and a description of the methodologies utilized to generate the projections and estimates to the Department of Community Affairs with its plan amendments for compliance review, unless it has submitted them for advance review. The Department will evaluate the alternative methodology to determine whether the methodology is professionally accepted. In addition, the Department is required to make available examples of methodologies for resident and seasonal population estimates and projections that it deems to be professionally acceptable. Finally, in its review of any population estimates, projections, or methodologies proposed by local governments, DCA must be guided by the Executive Office of the Governor, in particular the State Data Center.<sup>19</sup>

### *Example of Methodology Review*

When conducting a needs methodology review, a professional planner should divide the amount of dwelling unit capacity by the amount of dwelling unit demand to calculate the market factor. Dwelling unit demand is calculated by examining the projected population for the jurisdiction over the adopted planning time horizon. If there is not enough dwelling unit capacity to meet demand then a market factor will be too low and there is a demonstrated need for the plan amendment. Policy reasons for adopting amendments should also be included in this methodology.

### **How the Needs Criteria Has Been Reviewed in the Past**

**Residential:** In the early 1990's, during the initial phase of the adoption of comprehensive plans, the Department found several comprehensive plans "not in compliance" because the plans allocated more land than was needed for residential land use. For example, in 1992 during the adoption of Escambia County's comprehensive plan the Department found the plan "not in compliance" because the plan allocated 5 times more residential land than was needed.<sup>20</sup> Walton and Lee County also had their plans found not in compliance because they allocated more residential land than was needed, i.e. their market factors were too high.<sup>21</sup> Since the early 1990's, however, the Department has typically found comprehensive plan amendments to be in compliance in regards to need, as long as the data and analysis was calculated using professional planning methodologies. For example, in 1994, an administrative law judge ("ALJ") upheld the Department's decision finding a comprehensive plan amendment "in compliance" where the data and analysis was "calculated using acceptable professional planning methodologies."<sup>22</sup> The ALJ also based his decision on the fact that this plan was similar to other counties found acceptable by the Department.<sup>23</sup>

**Commercial/Industrial:** Because of the importance of commercial and industrial lands for job creation, the Department and the courts have typically found that need may be demonstrated by factors other than simple numerical need.<sup>24</sup> For example, in 2003, a Putnam County commercial land use amendment was challenged by a neighboring landowner because there was no demonstrated numerical need.<sup>25</sup> Here, the Department had approved the amendment and the ALJ upheld the decision. The ALJ stated that "an amendment does not have to be found to be not in compliance simply because of a numerical over allocation,"<sup>26</sup> rather the presence of an over-allocation

<sup>18</sup> *Id.*

<sup>19</sup> Rule 9J-5.005(2)(e), F.A.C.

<sup>20</sup> *DCA v. Escambia County*, DOAH 90-7663GM (Feb. 19, 1992).

<sup>21</sup> *DCA et al., v. Walton County*, DOAH 91-001080GM (Apr. 13, 1992). *Sheridan v. Lee County & DCA*, DOAH 90-7791GM (Jan. 27, 1993).

<sup>22</sup> *DCA v. Lake County*, DOAH 91-5960GM (Aug. 10, 1994).

<sup>23</sup> *Id.*

<sup>24</sup> These factors include the suitability of the property for change, locational criteria, and community desires. *O'Connell v. Martin County*, DOAH 01-4826GM (Oct. 16, 2002).

<sup>25</sup> *Parsons v. Putnam County*, DOAH 02-1069GM (May 5, 2003).

<sup>26</sup> *Id.* at 14 citing *Sierra Club v. St. Johns County & DCA*, DOAH 01-1851GM (May 20, 2002).

will trigger a heightened, more thorough review of the indicators of urban sprawl and other factors may outweigh the numerical over-allocation.<sup>27</sup>

**Current Needs Criteria Review**

Recently, the Department has been finding certain land use amendments in compliance despite the numerical needs criteria; however, the Department has also found several amendments not in compliance based on the needs criteria.

**Land Use Amendments Allowed Despite the Needs Criteria**

Although the Department has denied some projects based on need, it has been approving some large scale land use amendments despite the needs criteria. For example, in November 2008, DCA approved the Clear Springs Sector plan.<sup>28</sup> Previously this site, which totals 17,466 acres, had a land use designation of Agriculture at one dwelling unit per five acres. This would have allowed the owner to build 3,241 dwelling units. The site has now been approved to build 11,016 dwelling units at up to 20 units/acre, 6.8 million square feet of Research/Corporate Park/Commercial, 21.8 million square feet of Industrial, and still contain 4,093 acres Agriculture, and 5,597 acres Conservation/Wetlands/Water Resources. Also, in a recent case in Putnam County, where the petitioners contended the amendment designated additional acreage for industrial uses in excess of demonstrated need, the Department found the amendment in compliance.<sup>29</sup> The Department’s decision was based on the County’s designation as a Rural Area of Critical Economic Concern.<sup>30</sup> This decision was also recently upheld by an ALJ.<sup>31</sup> Finally, the Knight property in Bay County is also currently in the process of negotiating with the Department to be approved as a sector plan.

The Department overall has also approved a large number of comprehensive plan amendments. In 2008 alone, the Department approved 559 amendments which could allow up to 195,427 new dwelling units and almost 200 million square feet of non-residential development. *See Table below for more detailed information.*

**Department’s Approved Future Land Use Map Amendments, 2008**

Types and Numbers of Jurisdictions	Numbers of Amendments	Acres Affected	Approvals of Residential Development Capacity (Dwelling Units)	Approvals of Non-Residential Development Capacity (sq. ft.)
Rural Counties <sup>1</sup> (14)	50	13,630	17,422	16,404,881
Rural Municipalities <sup>2</sup> (12)	23	3,666	130,321	1,842,984
Non-Rural Counties (26)	200	86,427	6,108	72,419,398
Non-Rural Municipalities (76)	286	46,607	41,576	108,011,606
<b>TOTALS</b>	<b>559</b>	<b>150,330</b>	<b>195,427</b>	<b>198,678,869</b>

1. Rural counties include those designated as Rural Areas of Critical Economic concern (RACEC) and/or Rural Economic Development Initiative (REDI).
2. Rural municipalities include those incorporated jurisdictions that are within RACEC counties as well as those that are individually designated as either RACEC or REDI.

<sup>27</sup> *Sierra Club v. St. Johns County & DCA*, DOAH 01-1851GM (May 20, 2002).

<sup>28</sup> For more information on Sector Plans, see page 7.

<sup>29</sup> *County of Volusia, et al. v. DCA and Putnam County*, DOAH 07-5107GM (Sept. 22, 2009).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

## Land Use Amendments Denied Based on the Needs Criteria

**Residential/Commercial/Industrial:** Recently, the Department has found several comprehensive plan amendments “not in compliance” due to a lack of demonstrated need. Specifically, these amendments have not been able to demonstrate a numerical population need. In some of the cases the communities have failed to update the planning time horizons in their comprehensive plans. Because the Department’s position is that the need for a plan amendment must be reviewed in conjunction with the planning time horizon adopted in the comprehensive plan, several proposed plan amendments have not been able to demonstrate need. However, because of the time and expense associated with updating comprehensive plans, many local governments have had difficulty keeping their plans up to date. In response, the Department has allowed some communities to adopt longer range planning time horizons and multiple time horizons.<sup>32</sup>

**Marion County Case:** The highest profile case where a land use amendment was rejected because of the needs issue was the case of *Woods & Recio v. Marion County & DCA*, which was recently considered by the Governor and Cabinet.<sup>33</sup> In this case, a developer wanted to change the land use on 400 acres from Rural Land and Urban Reserve to Residential Medium Density, to build 800 new homes. Although the Department originally found the amendment in compliance, they later determined they failed to conduct a needs assessment on the proposed amendment. Therefore, when the case went before an ALJ, the Department changed its position and argued that the amendment should not be allowed because the methodology used was unprofessional in regards to its demonstration of need.

To properly demonstrate need, an applicant must provide data and analysis showing there is a need for more development, in this case residential dwelling units, within the local government’s adopted planning horizon. The Department discourages methodologies that plan for growth beyond the adopted planning time horizon in part because of the potential for urban sprawl. Even if Marion County’s adopted planning horizon had extended out to 2015,<sup>34</sup> the applicant’s data and analysis showed that if the amendment was allowed the plan would allow 5 times more residential dwelling units than were needed to accommodate projected population. The ALJ sided with the Department, finding the applicant’s methodology unprofessional because it did not demonstrate need within the adopted planning time horizon. The Governor and Cabinet upheld the findings of the ALJ.<sup>35</sup>

There are several issues highlighted by this case that are of concern to the development community. First, they argue that the strict needs assessment used in this case and the finding that the methodology was not professionally acceptable was a new non-rule policy, inconsistent with prior DCA policy. Second, the time horizon of the Marion County comprehensive plan was 2010. If population projections are limited by the very short time horizon in the comprehensive plan, planning changes that rely on future population projections will be unable to go forward until the comprehensive plan is updated in its entirety. Third, many jurisdictions are over-allocated, meaning there are currently more dwelling units approved within their adopted planning time horizon than population projections indicate will be needed. As a result, if need alone can defeat a plan amendment, a local government will not be able to approve any land use amendment that increases the number of residential dwelling units until population projections are revised or a new planning time horizon is adopted.

**Charlotte County:** The Department found an amendment expanding the Urban Service Area by 214 acres and increasing density and intensity of development in this area not in compliance because the methodology presented was not professionally accepted. Therefore, the Department found there was no demonstrated need for the amendment.<sup>36</sup>

**Washington County:** The Department found an amendment changing 876 acres from Agriculture to Mixed Use Planned Unit Development not in compliance because the residential needs analysis was not professionally

<sup>32</sup> *Sierra Club & Panhandle Citizens v. DCA and Franklin County*, DOAH 05-2731GM (June 12, 2006).

<sup>33</sup> *Woods & Recio v. Marion County & DCA*, DOAH 08-1576GM (Feb. 4, 2009).

<sup>34</sup> Marion County’s adopted planning time horizon was 2010; the submitted methodology used a planning time frame of 44 years. DCA used a six year planning time horizon of 2015 for their analysis; this planning time horizon was purely theoretical and only used for legal argument. *Woods & Recio v. Marion County & DCA*, DOAH 08-1576GM (Feb. 4, 2009).

<sup>35</sup> *Woods & Recio v. Marion County & DCA*, Administration Commission (Sept. 4, 2009).

<sup>36</sup> Charlotte County Amendment 09-1

acceptable. Although there was a need for an additional 1,058 dwelling units for 2010, the amendment had the potential to create 7,359 new dwelling units.<sup>37</sup>

**Miami-Dade County:** A 2009 amendment expanding the urban service area and changing the land use from Agriculture to Commercial was found not in compliance because the methodology was not professionally accepted and “there is no need for more commercial land in the area of the proposed Lowes site.”<sup>38</sup> The area of the Lowe’s site had a projected ratio of 11.3 acres of commercial per 1000 persons, while the countywide ratio was projected to be 6.1 acres per 1000 persons.

### Alternative Planning Modes

Because large rural tracts are typically not located in areas where a need can be shown for more residential, commercial, or industrial lands, the Legislature has created programs to allow some development in rural areas. These programs are known as Optional Sector Planning and the Rural Land Stewardship Program. Additionally, in 2004, the Legislature created the Ave Maria Stewardship District and the Big Cypress Stewardship District as independent special districts. These districts have independent governing bodies, and have been designed to work in concert with the rural land stewardship program in Collier County.

### Optional Sector Planning

In 1998, the Legislature permitted the creation of five optional sector plans as an alternative to the Development of Regional Impact process.<sup>39</sup> A sector plan process consists of an agreement authorizing the preparation of a sector plan between the county and Department, a conceptual long-term build-out overlay, and a detailed specific area plan. Sector plans emphasize urban form, public participation throughout the process, protection of regional resources and facilities and apply to areas greater than 5,000 acres. A sector plan is adopted as a comprehensive plan amendment and similarly reviewed by the Department for consistency. There are currently three sector plans in existence (West Bay Area Sector Plan, Orange County Sector Plan, Brennan Field Sector Plan), a fourth was recently designated (Clear Springs Sector Plan) and a fifth will likely be officially designated in the near future.

### Rural Land Stewardship

In 2001, the Legislature established the Rural Land Stewardship Area Program (“RLSAP”) as a pilot program.<sup>40</sup> This program allowed counties to designate rural land stewardship areas, within areas that are classified on a future land use map as agricultural, rural, open, or a substantively equivalent land use. Within these areas, planning and economic incentives can encourage the implementation of flexible planning and development strategies to increase densities in some locations while permanently preserving land in other areas. After several legislative changes, in 2006 the Department received its first RLSAP amendments from St. Lucie County (Collier County had also adopted a similar rural land stewardship program, however it was not adopted under the RLSAP statute).<sup>41</sup> After initially finding the St. Lucie County amendments in compliance in 2006, the Department undertook a second look at them in 2007 when it drafted its annual RLSAP report for the Legislature. During this review the Department found several shortcomings in the amendments.<sup>42</sup>

Specifically, the Department found:

- The St. Lucie County program was extremely complex.
- In Collier County, where development was actually happening, the development was being directed to agricultural areas which the Department contends contravenes the principles of rural sustainability.
- The program did not have any requirements that the receiving area be clustered, thus allowing for the possibility of scattered sprawling receiving areas.

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<sup>37</sup> *DCA v. Washington County*, DOAH 07-0609GM (June 26, 2009).

<sup>38</sup> *DCA v. Miami-Dade County & David Brown*, DOAH 08-3614GM (May 11, 2009).

<sup>39</sup> Section 163.3245, F.S.

<sup>40</sup> Section 163.3177 (11)(d), F.S.

<sup>41</sup> *Florida Chamber of Commerce, et al. v. DCA*, DOAH 09-3488RP (Sept. 14, 2009).

<sup>42</sup> *Id.*

Due to these shortcomings, the Department has placed little, if any, reliance on the St. Lucie County RLSAP amendments as an example of proper planning under the RLSAP statute.<sup>43</sup> There is also no evidence that any development has occurred under the St. Lucie program, and its most recent correspondence indicated that none may ever occur.<sup>44</sup> Furthermore, Highlands and Osceola Counties which both applied for and were granted authorization by the Department to designate RLSAP's, have since notified the Department that they would no longer pursue them and the authorization was withdrawn by the Department.<sup>45</sup> In order to clear up some of the confusion over the program, the Department recently entered into rulemaking for the RLSAP.<sup>46</sup> Although these rules were upheld by an ALJ, it remains to be seen whether this program will actually be used.

## Findings and/or Conclusions

### Need Assessment is a Factor in Land Use Planning

The needs assessment is a fundamental part of land use planning. Specifically, the numerical needs assessment is a useful tool to determine whether the amendment will cause an area to become over-allocated or exacerbate existing over-allocation. It is also a key indicator of urban sprawl. However, the numerical needs assessment is only one factor to consider when conducting a needs assessment. It is also important to consider other policy factors such as job creation potential, urban infill, form of development, or the promotion of development in areas where it is most efficient for the local government to promote growth.

### Inconsistent Enforcement

Although the needs assessment has been in the statutes for a long time, it has not been consistently enforced. In reviewing case law, it appears the Department took a tougher stance against urban sprawl and the needs factor in the early 1990's during the initial adoption of the comprehensive plans, then relaxed its review of this criterion for many years when reviewing plan amendments, and has now once again been applying a tougher standard. The market factor being used in many current needs assessments is 1.25. Some amendments are approved despite an over-allocation of development in a given jurisdiction. However, the reason that these amendments are approved is unclear.

### Long Term Land Use Planning is Permitted but Must be Carefully Considered

In cases such as *Woods & Recio v. Marion County & DCA*,<sup>47</sup> a one or two-year planning horizon in the comprehensive plan will make a showing of future need for development difficult or impossible to demonstrate. Long term planning can be valuable, but changing an entire comprehensive plan to reflect a 20 or 30-year planning horizon, while currently allowed under the statutes, may present many difficulties. For instance, because population projections are incorrect, and population projections are required to match the adopted planning time horizon, adopting too long of a planning time horizon can lead to urban sprawl. Therefore, if a local government adopts a longer term planning horizon that allows for more development they are taking a risk that they are allowing development in areas that may never develop.

## Options and/or Recommendations

Planning for growth where growth is needed has a number of benefits including the:

- discouragement of urban sprawl and the efficient use of infrastructure dollars;
- discouragement of premature conversion of agricultural lands;
- prevention of fragmentation of the environment; and
- promotion of coordination of the plan with the plans of adjacent local governments.

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<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Woods & Recio v. Marion County & DCA*, DOAH 08-1576GM (Feb. 4, 2009).



A numerical needs assessment using a market factor is one of the tools the state uses to achieve these important policy objectives. It is possible that a development proposal could fail the numerical needs assessment and still achieve the important policy goals that the test was created to protect. Therefore, a clear articulation of how the test relates to the goals may allow interested parties to understand how particularly well-planned and beneficial development might take place even in a jurisdiction that is over-allocated. Rulemaking or legislative clarification in this area could promote well planned developments where form, function, and location outweigh the detrimental effects of over-allocation.

Either the Legislature by statute or the Department of Community Affairs through rule making could clarify the role of needs assessment in the comprehensive planning process. The Department could, through rulemaking, formalize and elaborate on its current policies and guidelines for analyzing a needs assessment. More clearly identifying the factors considered in assessing need and the beneficial public policies supported by having a needs assessment should assist planners, developers, and policymakers to develop plans that avoid over-allocation and urban sprawl without restricting growth where it would be beneficial.

Finally, there are certain types of development that may not need to undergo stringent needs analysis. For example, local governments are often interested in gaining the efficiencies of enhanced urban infill and redevelopment projects. It may be that these projects are needed for public policy reasons and might not need to provide population data that support their proposals. In addition, certain commercial or industrial job creation projects might not require a stringent needs analysis. The Legislature or the Department may choose to exempt or set different criteria for these projects.